UNIT 13 WHAT IS THE IMPACT OF ARMED CONFLICTS ON VULNERABLE GROUPS – WOMEN, CHILDREN AND MINORITIES?

Structure

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13.1 INTRODUCTION

'It is not the paper justification in part agreements, but it is real justification in the balance of good which it is to bring to mankind', as Bertrand Russell once observed in his seminal essay on "The Ethics of War" (1915), is more fundamental than an axiom and needs no further validation. As August 12, 2009 marks the 60th anniversary of the Geneva Conventions respect for Russell’s axiom remains central for international humanitarian law in practice that endorses the values of minimizing suffering of individuals and limiting methods of warfare. The four Geneva Conventions – dealing with protection of wounded, sick soldiers on land, shipwrecked military personnel at sea, prisoners of war and civilians - were signed in the Alabama room at Geneva's town hall on August 12, 1949 and have since been adopted by 194 nations, an indication that they enjoyed broad accession. Post Cold War there is an increase in the number of internal conflicts resulting in civilian casualties. According to a study conducted by the Stockholm International Peace Research Institute, 16 major armed conflicts were reported in 2008 as against 14 in 2007. These conflicts were largely internal and claimed the lives of millions of civilians, both due to targeted attacks and to the collateral effects of attacks on legitimate military targets and left many of them permanently displaced from their homelands.

On the eve of the 60th anniversary of the Conventions, the International Committee of the Red Cross commissioned a research on the relevance and effectiveness of the Geneva Conventions by conducting thousands of interviews in Afghanistan, Columbia, the Democratic Republic of Congo, Georgia, Haiti, Lebanon, Liberia and Philippines. The report, titled “Our World-Views from the Field” illustrates a disconcerting situation.
Of the people surveyed 44% said they had personally experienced armed conflict. The highest figures were in Liberia (96%), Lebanon (75%) and Afghanistan (60%). In Afghanistan, 76% of those who had personal experience of armed conflict said they were forced to leave their homes, while 61% said they had lost contact with a close relative. In Liberia, 90% of the people said they had been displaced, followed by 58% in Congo and 61% in Lebanon. The UN Assistance Mission in Afghanistan recorded over 1,445 civilian casualties in 2008; early January Israeli offensive in Gaza resulted in high number of casualties, particularly among children; media reports suggest that more than 20,000 civilians may have been killed in the recent conflict in Sri Lanka. Statistics of war deaths may not include deaths that may occur even years after the war, from disease, malnutrition, destruction of health, lack of access to water and sanitation services. If one were to add these to war deaths, the numbers would indeed be staggering. These instances are glaring violations of Geneva Convention IV and Additional Protocol I dealing with the protection of civilians in armed conflicts and raises extremely grave concern to international humanitarian law.

In this background, we will discuss the efforts of the United Nations to ensure of 'protection' of civilians and thereby issues relating to the impact of armed conflicts on civilians particularly vulnerable groups like women (in most parts of the world women face almost similar problems during and after armed conflicts, therefore relevant issues and legal response is discussed in a general manner) and minorities (case of Sri Lanka has been given special attention owing to the importance the Sri Lankan conflict in current times) and their legal protection mechanisms with reference to the issues in the South Asian region will be discussed. As there will be discussion on child soldiers in subsequent units, an attempt is made to focus on armed conflicts and women and minorities in this unit.

13.2 OBJECTIVES

After reading this unit, you should be able to:

- describe the role of the United Nations in general in the protection of civilians in armed conflicts; impact of conflicts on vulnerable groups.

13.3 PROTECTION OF CIVILIANS IN ARMED CONFLICTS: EFFORTS OF THE UNITED NATIONS

The topic of protection of civilians in armed conflicts was placed on the agenda of the Security Council ten years ago. The recent report of the Secretary General on the protection of civilians in armed conflicts (S/2009/277) emphasizes on the need to further strengthen the protection of civilians as actions on the ground have not yet matched the progress in words and the development of international norms and standards. The need to strengthen protection further lies in part in the changing nature of conflicts from the conventional warfare to prevailing low intensity conflicts, guerilla warfare adopted particularly by non- State actors and the revolution in military affairs in the wake of development of information technology. The proliferation and fragmentation of non-State armed groups has contributed to the asymmetric nature of conflicts in Afghanistan, Iraq, Pakistan and Somalia leaving civilians in lurch. The Secretary-General’s report to the Council enlists five core challenges: enhancing compliance for international law: enhancing compliance by non-state armed groups; enhancing protection through effective UN peacekeeping and other relevant missions; enhancing humanitarian access and enhancing accountability for violations. Besides
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Inherent complexities these challenges can be effectively addressed only when there is comprehensive action from institutions involved in humanitarian protection. The *Aide Memoire* (2009) of the Office for the Coordination of Humanitarian Affairs also lists a number of objectives for civilian protection, such as humanitarian access for vulnerable population, measures against forced displacement, reduction of small arms and removal of explosive remnants of war including cluster munitions. It exemplifies the need for facilitating Security Council’s consideration on issues of protection of civilians in armed conflicts. As held by Kofi Annan in 2001, it is crucial to establish a “Culture of Protection” so as to ensure Actual Protection of non-combatants caught in the midst of conflicts. Such a culture can be infused with a relentless pursuit by academia, policy makers and military leaders’ so as to be able to demonstrate that for contemporary armed conflicts Geneva Conventions could be far reaching as originally envisaged.

### Self Assessment Question

1. Evaluate the contribution of the United Nations in the application of IHL.

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### 13.4 IMPACT OF ARMED CONFLICTS ON VULNERABLE GROUPS IN SOUTH ASIA: AN OVERVIEW

There are major conflicts occurring in South Asia, from intra-state conflicts in India, Pakistan, Bangladesh, Sri Lanka, Nepal, and Bhutan, to inter-state disputes including India-China, India-Pakistan, India-Sri Lanka, India-Nepal, and India-Bangladesh. These conflicts have an impact on regional stability, and often affect the lives of civilians particularly children, women, disabled people etc. Since the late 2001, South Asia, on the one hand has been facing a sudden growth in the intensity of conflicts and on the other hand witnessing newly emerged conflicts with new dimensions. The post 9/11 era has also influenced the transformation process including the nature of conflicts as discussed in the foregoing. In the recent past all the Governments of respective countries in South Asia have come up with different peaceful ways of conflict resolution that have created an optimist approach to deal the issues. But on the other hand asymmetric warfare and latest tactics have been introduced by the militant organizations operating in the region have created new challenges to the States.

#### 13.4.1 Political Participation of Minorities and International Law: Background

The development of promotion and protection of rights of individuals belonging to minorities is a global phenomenon as almost all countries have national or ethnic, linguistic and religious minorities. The *International Covenant on Civil and Political Rights*, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* recognize the need for protection of rights of persons belonging to minorities (1992). As the only UN instrument that specifically addressed the special rights of minorities, the Declaration enlists that minorities have the right to enjoy their own culture without interference, and the right to participate effectively in
the decisions at the national level, among others. The Declaration emphasizes that States should take necessary measures to implement national policies and programs with due regard for minorities’ interests, their right to education so as to encourage knowledge of the history, traditions, knowledge and culture of minorities within their territories. However, minorities continue to face threats, discrimination and are often excluded from taking meaningful participation in the economic, social and political life including their participation in elections, national parliaments and the public service of their countries in spite of the measures taken within the UN system legitimizing their protection by recognizing the existence of their rights. It is in this background the theme of effective political participation by persons belonging to minorities’ was chosen by Gay McDougall, the independent expert on minority issues as the theme of the second session of the UN Forum on Minority Issues (FMI) with a focus on three issues:

- Identification of challenges and problems facing minorities and states;
- Identification of good practices in relation to minorities and political participation and
- The consideration of opportunities, initiatives and solutions in this context.

It was widely documented that many of the ethnic crises in the world is due to the exclusion of minorities from taking part in the power sharing and decision making processes of their respective political system. But for a stable and peaceful society based on values of multiculturalism it is important to treat minorities with due respect for their rights. The spirit of international protection of minorities was well defined by the Permanent Court of International Justice (PCIJ) in 1935 in ‘Minority Schools in Albania’ case. The Court held that persons belonging to racial, religious or linguistic minorities were to be given the same treatment and the same civil and political rights and security as other nationals in the state in question. It was further established by the PCIJ that minorities’ had the right to live ‘peacefully’ along with the rest of the population and to ‘preserve their separate identities, peculiarities, traditions and characteristics’ by focusing on the issue of equality that has to be ‘effective’ and ‘genuine’. The PCIJ further noted in the Albania case that ‘equality in law precludes discrimination of any kind; where as equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations’. The essence of this formulation is that principle of non-discrimination requires establishment of equality in fact as well as formal equality in law. Francesco Capotorti (Special Rapporteur of the Sub Commission on prevention of Discrimination and Protection of Minorities and Professor of International Law at the University of Rome) observes that the view of the PCIJ ‘holds good for any set of international rules to protect minorities’. According to Florial Bieber, the political participation of minorities in the larger concept of minority rights can be based on two arguments. First, that so as to ensure other rights and discrimination of minorities’, the minority itself should actively participate actively in the political decision making process that govern the protection of minority rights. In the absence of which other mechanisms of minority rights protection might perhaps be weakened. Second, without special protection measures minorities’ there is a possibility that they might be excluded from the political system.

13.4.2 Treatment of Minorities in South Asia

South Asia is the location of some of the most publicized conflicts involving minorities in the modern world. Many different types of minorities characterize South Asia. The

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The retreat of colonialism from South Asia left major minority problems in its wake. Minorities in this area are often large, organized groups inhabiting specific historical territories. Their ambitions are frequently seen to threaten the stability of States, creating situations of considerable tension. Difficulties are compounded by de facto discrimination against minorities, despite the proliferation of admirable accommodating structures and principles of non-discrimination and equality. The rise of religious fundamentalism creates the most acute difficulties and often conflicts in a State. The “internationalization” of minority conflicts in the region can also result in interference in a State’s internal affairs and escalate conflict.

In each of the South Asian states – India, Pakistan, Bangladesh, Sri Lanka, Nepal and Bhutan – one also finds national minorities, almost all of them living in their historical homelands and possessing distinct cultural and linguistic identities. All of them, except Nepal and Bhutan, entered the modern period in history under British colonial dispensation, which gave them the concepts of constitutionalism, representative government, autonomy and safeguards, and even Nepal and Bhutan did not remain unfamiliar with these ideas. States succeeded the colonial era, with British India as the pivotal creation, with large and rapidly increasing populations, divided partly along sectarian lines. The partition process was accompanied by considerable loss of life and displacement of populations. Let us consider the example of creation of Bangladesh, whose establishment in place of the former East Pakistan in 1971-72 was accompanied by tragic loss of life and leading to the creation of an enormous refugee problem. For instance tribal people in India and Bangladesh constitute sizeable groups in uneasy relationship with neighbors. The fact that separation inevitably involves creation of an ethnic minority creates difficult problems for ethnic relations. Besides its legacy of partition, colonialism produced “planted” groups such as Indian Tamils in Sri Lanka, and mixed-race Anglo-Indians. The scale of minority problems in the area is great, which requires considerable thought and effort in devising appropriate structures towards the achievement of social harmony both on the domestic and international fronts.

13.4.3 Instruments on Minority Rights in the South Asian Region

The record of State adherence to general international instruments on human rights is variable. The most noticeable lacuna concerns the position of Pakistan, which is not a party to either of the two International Covenants on Human Rights, but is a party to the Conventions Against Racial Discrimination and Apartheid. India has made a unique reservation to the Covenants on Human Rights, both of which allow the right of self-determination to “all peoples”: “… the Government of the Republic of India declares that the words ‘the right to self-determination’ apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of the people or nation — which is the essence of national integrity”. Bangladesh, India and Pakistan are parties to the International Labour Organization’s Convention on Indigenous and Tribal Populations.

Besides general treaties, specific agreements on minorities have been concluded between States in the region, as might be expected in an area of few States but many large minority groups. The earliest is the Agreement between Pakistan and India, signed at New Delhi in 1950 in the light of the horrendous events which accompanied partition; the opening paragraph reads: “The Governments of India and Pakistan solemnly agree that each shall ensure to the minorities throughout its territory, complete equality of citizenship, irrespective of religion, a full sense of security in respect of life,
culture, property and personal honour, freedom of movement within each country and freedom of occupation, speech and worship, subject to law and morality. Members of the minorities shall have equal opportunity with members of the majority community to participate in the public life of their country, to hold political or other office, and to serve in their country’s civil and armed forces. Both Governments declare these rights to be fundamental and undertake to enforce them effectively.” Other notable agreements include the New Delhi Agreement of 1973 between India and Pakistan with the concurrence of Bangladesh, and the Tripartite Agreement of 1974 concerning, among other things, the transfer of large numbers of Biharis and other non-Bengalis from Bangladesh to Pakistan.

The most recent case of an international agreement designed to cope with an ethnic crisis is the Colombo Accord of July 1987 between India and Sri Lanka to establish peace and normality in Sri Lanka. Both the rights of minorities and the rights of the State are underlined; the preamble recites the parties’ desire “to preserve the unity, sovereignty and territorial integrity of Sri Lanka”, “acknowledging that Sri Lanka is a multi-ethnic and a multi-lingual plural society consisting, inter alia, of Sinhalese, Tamils, Moslems (Moors) and Burghers... recognizing that each ethnic group has a distinct cultural and linguistic identity which has to be carefully nurtured”. The Agreement provides for referenda and elections on the status of the Tamil area, an amnesty and other procedures designed to satisfy “the imperative need of resolving the ethnic problem of Sri Lanka”. Specific constitutional protection of minority rights is a strong feature in the region. The Constitution of India recognizes the claims of communities and individuals on the State. The Constitution combines provisions on equality of individuals with principles designed to protect and consolidate the identity and integrity of groups. Elements of positive discrimination for certain groups are present — “for the advancement of ... socially and educationally backward classes of citizens or for the scheduled castes and scheduled tribes”. For group identity, Article 29(1) of the Constitution provides that “any section of the citizens residing in the territory of India ... having a distinct language script or culture of its own shall have the right to conserve the same”. Whereas Article 29 refers to citizens, Article 30(1) describes minorities: “All minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice.” Article 350A provides that it is the goal of every State and local authority “to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to minority groups”. Linguistic group rights are balanced against the general direction of State policy — it is deemed to be the duty of the Union to promote Hindi “so that it may serve as a medium of expression for all elements of the composite culture of India”. Broad guarantees are provided in respect of religion, and there are extensive sections in the Constitution devoted to the Scheduled Castes and Scheduled Tribes.

In the case of Pakistan, its Constitution’s Article 222 states that: “... all existing law should be brought into conformity with the injunctions of Islam ...” However, the rest of the Article recites that “nothing in this part shall affect the personal laws of non-Muslim citizens or their status as citizens”. Pakistan, like many Islamic States, is not governed entirely by principles of legal territoriality, but also by the principle of personality: members of religious groups may be legally subject to the demands and benefits of their religions as well as to State law in general. Other articles of the Constitution deal positively with minorities and their rights. Rights are for individuals as well as religious communities; linguistic groups are also catered for — Article 28 recites the right of “any section of the citizens speaking in a distinct language ... to
preserve and promote the same . . . ” In Bangladesh, the validity of religious laws and customs of religious minorities has been recognized in such matters as personal and family laws.

13.4.4 Issues of Minorities’ Protection and Armed Conflicts: Case of Sri Lanka

The bloody conflict between the Sri Lankan government and the Tamil Tigers wreaked havoc resulting in issues between the majority Sinhalese and the ethnic, linguistic and religious minorities that remains to be addressed. This situation aggravated the plight of minorities and led to armed conflict. Like India, Pakistan and Bangladesh, Sri Lanka inherited at independence in 1948 a British-made basic law that envisaged a centralized unitary state. The Soulbery constitution of 1948 made little change and a combination of Sinhala nationalism (they constitute 74% of the population) and the Buddhist religious code (70%) of the Sinhalese are Buddhists) made for an even more aggressively majoritarian state. This State offered little accommodation to the minorities – Tamils 18%, Muslims 7%. In 1957, Prime Minister Bandaranike tried to correct the anti-minority bias through an agreement with the Tamil Federal Party. The key was devolution of some powers to regional councils, as the Tamils were concentrated in the northern region. This agreement was unilaterally scrapped by the ruling coalition. Another accord was signed in 1965 and this too was abandoned. Instead, the constitutional changes in the early seventies aggravated the plight of minorities and led to armed conflict. Yet another accord was negotiated in 1987 through Indian good offices and it too failed to work. Mrs Chandranaike then drafted new devolution proposals and at the same time launched an all-out war with Liberation Tigers of Tamil Eelam (LTTE). During all this process, ethnic/religious identities have been further strengthened. The Tamils’ hopes of a good bargain with Colombo have given them reason to be firm on their demands and the Sinhalese reaction to possible compromises on the unity of the state and primacy of Buddhism too appears to have hardened. Although caught in the web created by Sinhala-Buddhist politics of excluding all other elements in society, Sri Lanka has at the same time made considerable effort at developing mechanisms for minorities’ protection. Its constitution guarantees basic freedoms and there is a Ministry of Ethnic Affairs and National Integrity. A National Human Rights Commission has also been functioning for some years. Attempts have also been made to enact equal opportunities legislation to bring relief to the disadvantages and minorities’ amidst escalation of conflicts.

Self Assessment Question

2) Discuss the Impact of armed conflicts in South Asia on Minorities.

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13.4.5 Impact of Armed Conflicts on Women

Women increasingly bear the major burden of armed conflict. In recent years particular attention has been given to the question of violence against women in armed conflict. The significance of these developments is considerable. However, the focus on violence—in particular on sexual violence—tends to obscure other important aspects of women’s experience of armed conflicts. The 1995 Beijing Platform for Action calls on “governments, the international community and civil society, including non-governmental
organizations and the private sector... to take strategic action” in relation to the “the
effects of armed or other kinds of conflict on women, including those living under
foreign occupation.” Considerable work has been done regarding women and armed
conflict by institutions concerned with human rights violations against women generally.
Indeed, the process of identifying women’s particular experiences and demonstrating
the failure of the law to acknowledge them is more advanced in this context than in
organizations focusing solely on armed conflict. Traditionally, reports and studies on
the effects of armed conflict tend to incorporate women in the general category of
civilians without regard to the different experiences of men and women civilians. The
particular concerns of women have, to date, been regarded as peripheral in such
analyses. For example, until recently, sexual violence against women was regarded
as an inevitable aspect of armed conflict.” Women experience armed conflict in a
different way than men. These effects differ widely across cultures depending upon
the role of women in particular societies. One thing is clear: armed conflict often
exacerbates inequalities (in this context, those based on gender) that exist in different
forms and to varying degrees in all societies’ and that make women particularly
vulnerable when armed conflict breaks out. Of the more than one billion people living
in poverty today, the great majority are women.” They are, moreover, generally
disadvantaged in terms of education and are considerably less mobile because of
their traditional role in caring for others.” Further, these inequalities continue after the
cessation of hostilities. Women are often excluded from the reconstruction processes
that take place after armed conflict as well as from peacebuilding initiatives.”

Overall, women are most likely to experience conflict as civilians. Many armed
struggles, however, do involve a significant number of female combatants.” Their
treatment by the military institution reflects the subordinate position of women in
society generally. The experiences and needs of women combatants during captivity
differ from that of men. Although the Third Geneva Convention provides for such
matters as separate dormitories and conveniences for women prisoners of war, it
should deal more adequately with issues such as reproductive health. Consequently,
women are frequently disadvantaged, either deliberately or because their needs are
not properly understood. Further, the balance of sexes in the teams of experts sent
to provide humanitarian assistance contributes to the unequal treatment of women in
such situations. UNHCR stresses the need to involve women in their operations in the
field and confirms the difference that their involvement makes to the perception
of women’s particular problems. However, to date male personnel who may not be
particularly sensitive to problems faced by female survivors have dominated the
teams of experts. Similarly, the balance of sexes in fact-finding investigation teams
dealing with sexual violence in armed conflict is determinative of whether women’s
stories are to be told. Methods of investigating and documenting human rights abuses
often obscure abuses against women. For example, the UN “fact-finding” mission in
Rwanda in 1994 somehow did not detect systematic sexual violence against women
until nine months after the genocide when women began to give birth in unprecedented
numbers. It has been suggested in the context of the Rwandan conflict that due to
the significance of rape in that culture it is not possible to investigate incidents of
sexual violence, as the women concerned are not willing to discuss their ordeals.
However, Human Rights Watch has found that the use of female investigators and
interpreters makes a considerable difference to whether or not women are willing to
speak out.

Further as members of the civilian population women experience distinctive economic
problems in armed conflict. In many cases women are separated from the men who
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traditionally may be their source of income. Lack of education and training, their role in caring for others, and general community attitudes make it extremely difficult for women to support themselves financially. In many cultures, moreover, it is women who have the most to gain from economic development, and are thus particularly disadvantaged when these resources are diverted during armed conflict. Many other cultural factors exacerbate the economic problems suffered by women in armed conflict. For instance, armed conflict often forces women from their homes. In fact, women civilians are generally the first to be evacuated when hostilities break out. Evacuation, although desirable in many ways, can lead to considerable hardship. Evacuees are generally exposed to foreign and often inadequate-living conditions and, consequently, tend to be more prone to accidents, injuries, and disease. There may also be an increased risk of pregnancy as contraception is generally not readily available, and women are likely to be dislocated from many basic health services. Further, refugees and internally displaced persons—a large percentage of whom are women and girl children—are an almost inevitable result of armed conflict, and the problem is growing. Evidence exists of widespread mistreatment of women in refugee camps. These women also face distinctive problems that are largely unacknowledged as they attempt to rebuild their lives as refugees in a new country. Documentation of sexual abuse of women during and after warfare has increased and the trauma suffered by victims of sexual abuse is now receiving greater consideration. However, more support services need to be provided to women, particularly for dealing with the physical and psychological effects of their injuries. Some of the common issues women have to deal with are abortion, abandonment of babies conceived during rape, and HIV and other infections.

Girl children are vulnerable in armed conflict in many of the same ways as women, but there are also factors that affect them specifically. To date, little attention has been given to this issue. The primary focus in relation to children has been on raising the minimum age of participation in hostilities, an issue predominantly affecting boy children. However, a recent study of children in armed conflict commissioned by the UN General Assembly has addressed some of these issues, although its focus is sexual violence against girl children. In more recent times, the media has fundamentally changed the way that armed conflict is viewed throughout the world. This has a particular impact on women. A positive effect of this development has been the presence of women journalists in the conflict in the Former Yugoslavia, which is thought to have contributed to attention being focused on the incidence of sexual violence during those hostilities. Nevertheless, overall the emphasis has traditionally been placed on the suffering and heroism of men. The glorification of the combatant is an integral part of the culture of warfare. Generally, the trauma, experiences, and death of women as a result of armed conflict are disregarded. When, on the other hand, attention is paid to the experiences of women in armed conflict, it is frequently exploitative and damaging to the women concerned. The peacekeeping forces of the United Nations have kept up the unfortunate tradition of abuse of women. There are many reports of rape and sexual harassment by UN Peacekeepers—for example in Cambodia as well as complicity in sexual abuse perpetrated by parties to the conflict. These incidents raise unresolved questions regarding the extent to which the United Nations is bound by the provisions of IHL. The International Committee of the Red Cross has consistently argued for a broad approach to the applicable law and regards all the provisions of IHL as applicable when UN contingents resort to force, whether through peacekeeping or peace enforcement forces.
13.4.6 International Legal Response to Protection of Women in Armed Conflicts

International humanitarian law contains general provisions protecting all civilians and a number of provisions affording women "special protection" during armed conflict. Forty-three provisions of the Geneva Conventions and Protocols specifically deal with women and the effects of armed conflict. However, they all deal with women in their relationships with others, not as individuals in their own right. Nineteen are, in fact, designed to protect children. Those that deal with sexual offenses are couched in terms of offenses against women's honor. Women's honor, as depicted in IHL, is constituted solely on the basis of certain sexual attributes, the characterizing features of which are what is seen as important to men, namely the chastity and modesty of women. In contrast, the honor of men is a much more complex concept in IHL, encompassing both mind and bodily attributes. The rules dealing with women are presented as less important than others. They are drafted in different language than the provisions protecting combatants and civilians generally, using the concept of "protection" rather than prohibition. Their breach, moreover, is not treated as serious within the rules themselves in that they are not considered "grave breaches" of the Conventions and, until recently, no attempt had been made to enforce these rules, despite widespread breaches. However it is important that the provisions of international humanitarian law are better enforced.

No amount of enforcement can overcome this fundamental flaw in the system and the legal system should take account of women as subjects in their own right. Armed conflict affects men and women in fundamentally different ways. Women may already receive special protection under IHL—for example when they are pregnant or prisoners of war. But these rules relate only to the sexual and reproductive aspects of women's lives. The failure to address many of the problems experienced by women as a result of armed conflict can be attributed to the boundaries of IHL. Increasingly, scholars are focusing on the unreality of the rigid divisions between human rights law, IHL, and refugee law. Modern armed conflict involves the whole population and its effects are far reaching and long-term. IHL, with the exception of the Fourth Geneva Convention dealing with occupied territories, only applies while armed conflict continues. For women in particular, the cessation of hostilities often marks just the beginning of their battle for survival. Two examples of the operation of the boundaries of IHL illustrate how the law should consider more the reality of warfare for women. The first illustration concerns the way in which a component of the rules themselves, the principle of proportionality, has been applied. The second example relates to economic sanctions.

The principle of proportionality is a central aspect of IHL. The treaty rule of proportionality can be found in Article 51 (5)(b) of Protocol I, where indiscriminate attacks are defined so as to include those "which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated." This provision does not require that factors such as long-term civilian casualties, either from injuries at the time of attack or from resulting starvation and disease, be taken into account in determining what is a proportionate attack. Neither are commanders required to assess to what extent attacks will lead to the displacement of the civilian population and the creation of a refugee problem. To some extent these factors might be regarded as more appropriately the province of the law on the use of force. That is, in the overall planning of a military campaign leaders should always consider whether such results are warranted by the requirements
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The use of economic sanctions illustrates the increasingly random impact of the boundaries within which IHL operates. The effects of this phenomenon on women are distinctive and unacknowledged. On several recent occasions, sanctions have been associated with enforcement actions of the Security Council as an integral part of the overall solution to international conflict. The deleterious impact of economic sanctions on the civilian population is documented. The particular effects of such measures on women, however, is largely overlooked although well-illustrated by the Persian Gulf conflict where a mandatory sanctions regime has continued long after the cessation of armed hostilities. There are no rules of IHL that specifically regulate economic sanctions during armed conflict. Some provisions of IHL are, however, relevant in this context. Starvation is a prohibited method of warfare under Articles 54 of Protocol I and 14 of Protocol II; this principle is arguably a customary rule. Article 70 of Protocol I provides for relief actions in certain circumstances. Additionally, Articles 23 and 55 of the Fourth Geneva Convention impose certain obligations on contracting States or occupying powers in relation to the provision of essential supplies to the civilian population. However, these rules only apply while the armed conflict is in progress or, in the case of the Fourth Convention, during occupation. After the conflict, arguably, no relevant law applies.”

Thus the economic sanctions still in place against Iraq, as part of the overall solution to the threat to international peace and security posed by that state, are outside any rules of armed conflict. Furthermore, the source of these sanctions is the powers of the Security Council under Chapter VII of the United Nations Charter. Decisions of the Security Council under Chapter VII impose mandatory obligations on states. Under Article 103 of the Charter these obligations prevail over any other treaty obligations that states may have, including those of IHL. Moreover, it is questionable whether the Security Council itself is bound by any limitations derived from IHL.

Self Assessment Question

3) Discuss the Impact of armed conflicts in South Asia on Women.

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13.5 SUMMARY

- The goal of international humanitarian law is to limit the effects of war on people and property and to protect particularly vulnerable persons. States have always been limited in the ways in which they conduct armed conflicts, from the adherence to national laws and bilateral treaties, to the observance of time-honored customary rules. However, throughout history these limitations on warfare varied...
greatly among conflicts and were ultimately dependant on time, place, and the countries involved. Therefore it is incumbent on States to act forthwith for better protection of vulnerable groups.

13.6 TERMINAL QUESTIONS

1) What do you think about the role of the United Nations in facilitating the protection of civilians in armed conflicts?

2) Discuss the international legal response to political participation of minorities.

3) Write short notes on the following:
   - Armed conflicts and vulnerable groups
   - Minorities’ protection and armed conflicts: Case of Sri Lanka

4) Evaluate the international legal response to protection of women in armed conflicts.

13.7 ANSWERS AND HINTS

Self Assessment Questions

1) Refer to Section 13.3

2) Refer to Sub-section 13.4.4

3) Refer to Sub-section 13.4.6

Terminal Questions

1) Refer to Section 13.3

2) Refer to Section 13.4

3) Refer to Sub-section 13.4.6

13.8 REFERENCES AND SUGGESTED READINGS
