

# **Implementing International Humanitarian Law through ICRC- A Way Forward**

*By Dr. Sridevi Krishna*

*Assistant Professor, Vidyavardhaka Law College, Mysore, India*

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## **Abstract**

Violent conflicts have posed a challenge to human civilization since ages. Epidemiological studies indicate that war ranks among the top-ten causes of death worldwide. Populations affected by armed conflict experience severe public health consequences, mediated by population displacement, food scarcity, and the collapse of basic health services, which together often give rise to complex humanitarian emergencies. Armed conflicts can also cause the displacement of people thereby violating their right to life. The outcome of war is more barbarous which has challenged the human civilization. Their effects are inhumane and require a global concern. In this regard there requires a support which can protect the people interest aftermath an armed conflict. The role of ICRC is highly acknowledgeable as it works in helping the victims of armed conflict and also in developing and promoting implementation of International Humanitarian Law. This paper studies the role of ICRC an organization which has been working for the cause of protection of human rights during armed conflict and also its role as a guardian in implementing International Humanitarian Law.

**Keywords:** IHL, ICRC, Human Rights, Warfare

## **Introduction**

Since the First Geneva Convention was adopted in 1864,<sup>i</sup> International Humanitarian Law (IHL) has become a complex and steadily developing body of international law. Its conventions, protocols and customary rules encompass a large range of subjects, from the protection of the sick and wounded, civilians, civilian objects, prisoners of war and cultural property to the restriction or prohibition of specific types of weapons and methods of warfare. All parties to a conflict are bound by applicable IHL, including armed groups involved in conflict against international law. The 1949 Geneva Conventions are universally accepted today, and the 1977 Additional Protocols enjoy increasingly widespread acceptance.

Furthermore, acceptance of international instruments is only the first albeit vital step towards effectively implementing the legal protections contained in the instruments. State parties must then comply with their obligations under these instruments and, for the rules of IHL to be effective in times of armed conflict, States must carry out a number of actions domestically in times of peace. These include creating a legal framework that will ensure that national authorities, international organizations, the armed forces and other weapons bearers understand and respect the rules; that the relevant legislative and practical measures are undertaken; that applicable IHL norms are complied with during armed conflicts; and that violations of this body of law are prevented and when they occur, that the perpetrators are punished. Responsibility for ensuring full compliance with IHL rests with States. This responsibility is prominently set forth in Article 1 common to the four Geneva Conventions, which requires States Parties to “respect and to ensure respect for the present Convention in all circumstances.”<sup>ii</sup>

Genuine political will is an essential precondition to the protections that IHL affords in situations of armed conflict. Political will alone, however, is insufficient. It must be translated into legislative and regulatory measures, policy directives and other mechanisms aimed at creating a system that will ensure the law is complied with and violations are dealt with appropriately. Coordination among State entities, government departments, armed forces and civil society is a sine qua non of an effective system. The national authorities face a formidable task. The very relevance of IHL is being challenged by the nature of today’s armed conflicts. Added to this is the complexity faced by States competing political agendas and legislative priorities, and limited financial and human resources whether or not they are involved in or

affected by an armed conflict. This situation has prompted an increasing number of States<sup>iii</sup> to recognize the usefulness of creating a group of experts often called a national IHL committee or a national commission for IHL to coordinate activities in the area of IHL. In many cases this expert group acts as an inter- ministerial and multi-disciplinary advisory body on IHL-related issues for political and military authorities and decision-makers. The creation of such entities was encouraged twenty years ago by the 26<sup>th</sup> International Conference of the Red Cross and Red Crescent, echoing the recommendations of the Intergovernmental Group of Experts for the Protection of War Victims on the usefulness of such mechanisms.<sup>iv</sup> The recent trend validates that initiative.

The International Committee of the Red Cross (ICRC), through its Advisory Service on IHL, assists States willing to set up a national IHL committee and maintains regular contacts with existing committees. The ICRC supports them by providing expert legal advice, training their members, strengthening their capacity and delivering any needed technical assistance.<sup>v</sup> Drawing on the best practices of existing national committees, the ICRC Advisory Service has developed specific tools to facilitate and harmonize the work of the committees and relations between them.<sup>vi</sup> It also organizes meetings of national-committee representatives from around the world to assess their achievements, discuss the challenges they face and facilitate the sharing of experience. The Advisory Service encourages peer exchanges and cooperation, especially among committees within the same region, which often have a common language and shared legal traditions and face similar situations and challenges.

### **The work of ICRC**

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. It also endeavors to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

To be able to carry out its mission effectively, the ICRC needs to have the trust of all States, parties to and people involved in a conflict or other situation of violence.<sup>vii</sup> This trust is based in particular on an awareness of the ICRC's policies and practices. The ICRC gains people's trust through continuity and predictability. Combining effectiveness and credibility irrespective of time, place or range of needs is a permanent challenge for the organization, because it must be able to prove it can be both pragmatic and creative. Within the framework of the ICRC's clear strategy and priorities, its delegations in the field are thus given considerable autonomy to decide how best to help victims of conflict and other situations of violence.

ICRC ensure respect, through its neutral and independent humanitarian work, for the lives, dignity and physical and mental well-being of victims of armed conflict and other situations of violence. All of the ICRC's work is geared towards meeting this fundamental objective and strives to fulfill this ideal. The ICRC takes action to meet the needs of these people and in accordance with their rights and the obligations incumbent upon the authorities.

The ICRC's work developed along two lines. The first of these is operational, i.e. helping victims of armed conflict and other situations of violence. The second involves developing and promoting international humanitarian law and humanitarian principles. These two lines are inextricably linked because the first operates within the framework provided by the second, and the second draws on the experience of the first and facilitates the ICRC's response to the needs identified. This dual nature thus reinforces the very identity of the ICRC and distinguishes it from other international humanitarian organizations, private or intergovernmental, which generally concentrate on just one of these two priorities.

### **The Legal Basis of ICRC**

The main legal basis for the ICRC's work is to be found in international humanitarian law. The Statutes of the International Red Cross and Red Crescent Movement (the Movement)<sup>viii</sup> and resolutions of the International Conference of the Red Cross and Red Crescent and the Council of Delegates underscore the legitimacy of the ICRC's work. International humanitarian law, like the Statutes of the Movement, confirms a historical tradition of ICRC action which predates its successive codifications.

States gave the ICRC the responsibility of monitoring the faithful application of international humanitarian law. As the guardian of humanitarian law, the ICRC takes measures to ensure respect for, to promote, to reaffirm and even to clarify and develop this body of law. The organization is particularly concerned about possible erosion of international humanitarian law and takes bilateral, multilateral or public steps to promote respect for and development of the law.

The ICRC generally cites international humanitarian law in reference to its activities. It nevertheless reserves the right to cite other bodies of law and other international standards protecting people, in particular international human rights law, whenever it deems it necessary. The ICRC has developed several policy documents that draw on its long experience. These texts serve as a guide for its actions and aim to give the organization long-term coherence, which in turn gives the ICRC added predictability and credibility when exercising its mandate.

The ICRC sets priorities on the basis of the following criteria:

1. The extent of victims' suffering and the urgency of their needs: the principle of impartiality, mentioned in humanitarian law, remains the pillar of the ICRC's work, which is non-discriminatory and proportionate to the needs of the people requiring protection and assistance;
2. Its unique capabilities deriving from its distinctiveness as a neutral and independent organization and intermediary and its experience in assisting the victims of armed conflict (local knowledge, human resources, logistics, tracing work, etc.). The particular merit of the ICRC, which results from its principles and its operational experience, is recognized by the international community. It fits into the scheme of an environment for humanitarian work that is characterized by numerous very different agencies;
3. The legal basis for its work:<sup>ix</sup> the ICRC endeavors to take action in situations where international humanitarian law is applicable and carefully considers the advisability of taking action in the context of the direct results of these situations and in other situations of violence not covered by international humanitarian law (internal disturbances and tensions). In all cases, it tailors its action according to the criteria set out above.

Operational considerations and constraints can be added to these criteria.

## **Course of Action by ICRC**

There are four different situations in which ICRC takes action-

1. The ICRC's endeavor to help the victims of international armed conflict and non-international armed conflict. The ICRC offers its services on the basis of international humanitarian law, and after taking due account of the existing or foreseeable need for humanitarian aid.
2. In other situations of violence, the ICRC offers its services if the seriousness of unmet needs and the urgency of the situation warrant such a step. It also considers whether it can do more than others owing to its status as a specifically neutral and independent organization and to its experience. In these situations, its offer of services is based not on international humanitarian law but on the Statutes of the Movement. <sup>x</sup>
3. If a natural or technological disaster or a pandemic occurs in an area where the ICRC has an operational presence, meaning it can deploy quickly and make a significant contribution, the organization steps in with its unique capabilities, to the extent it is able and in cooperation with the Movement. It generally takes action during the emergency phase only.
4. In other situations, it makes its own unique contribution to the efforts of all humanitarian agencies, especially within its fields of expertise such as tracing work and disseminating international humanitarian law and the Fundamental Principles. These are all fields in which it has an explicit mandate.

All these actions set out a mission to fulfill the ICRC purposes. It is in the form of protecting the lives and dignity of victims of armed conflict; assisting the victims of armed conflict; increase the operational capacity and enforcing international humanitarian law and universal humanitarian principles.

## **Implementation of Humanitarian Law through ICRC**

Ignorance of the law is a major obstacle for respecting it. For this reason, the ICRC reminds States of their obligation to make IHL widely known. It also takes action to this end, encouraging incorporation of IHL in educational programmes, military training and university curricula. The ICRC further reminds States that they must take all the steps necessary to ensure

that the law is implemented at the domestic level and applied effectively. It does so chiefly through its Advisory Service on IHL, which provides technical guidance to States and helps their authorities adopt domestic implementing laws and regulations.

The four Geneva Conventions and their Additional Protocols give the ICRC a specific mandate to act in the event of armed conflict. During international armed conflicts, the ICRC has a right to visit prisoners of war and civilian internees to make sure that their treatment and the conditions in which they are being held are consonant with IHL. Information on the detainees must be sent to the ICRC's Central Tracing Agency, which ensures that detainees do not go missing. The ICRC also provides humanitarian assistance, such as consignments of foodstuffs, medical supplies and clothing, to people in need.

In addition to the tasks incumbent upon it under IHL treaties, the ICRC has a broad right of initiative. It may always offer its services to the parties to a conflict.<sup>xi</sup>

The ICRC also has a right of initiative – recognized in the Statutes of the International Red Cross and Red Crescent Movement – in situations that do not reach the threshold of an armed conflict, but that warrant humanitarian action. In situations where IHL does not apply, the ICRC may offer its services to governments without that offer constituting interference in the internal affairs of the State concerned.

On the strength of the conclusions it draws from its protection and assistance work, the ICRC makes confidential representations to the relevant authorities in the event of violations of IHL. Confidentiality is one of the main working methods of the ICRC. It is a long-standing ICRC policy and a practice that derives directly from the principles of neutrality and impartiality. It enables the ICRC to establish and maintain a constructive dialogue with parties to an armed conflict and other stakeholders; to have access to conflict areas, places of detention and victims of armed conflict and other situations of violence; and to ensure the security of its beneficiaries and of its staff. Bilateral confidential representations to the parties to a conflict is the ICRC's preferred mode of action to put an end to violations of IHL or of other fundamental rules protecting persons in situations of violence, or to prevent the occurrence of such violations. However, this mode of action is complementary to others. In particular, the ICRC reserves the right to issue a public denunciation of specific violations of IHL if:

- (1) The violations are major and repeated or likely to be repeated;
- (2) Delegates have witnessed the violations with their own eyes, or the existence and extent of those violations have been established on the basis of reliable and verifiable sources;
- (3) Bilateral confidential representations and, when attempted, humanitarian mobilization efforts have put an end to the violations;
- (4) Such publicity is in the interest of the persons or populations affected or threatened.

As a guardian of Humanitarian Law, it takes the role of watching over the law itself to protect it from those who may undermine or weaken it, either because they disregard it or because they are too close to it. This function is of course connected with monitoring function and may serve to promote that activity, but it has characteristics of its own and needs constant attention. For example- when UN Convention on the Rights of the Child was drafted, the proposed provision fell short of those contained in the Geneva Conventions and the Protocols thereto. This inconsistency in the rules certainly would have weakened the international humanitarian law, and the delegates of governments and the ICRC had to intervene to draw up an acceptable text and introduce a saving clause to safeguard the gains made by international humanitarian law. There have been many other cases in which the gains made by international humanitarian law have been in danger of being undercut, usually; it is true, on account of ignorance rather than malice. For example, the concept of mercenaries in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries of 4 December 1989; or the International Law Commission's concept of "serious" war crime, which threatened to weaken the very concept of "war crime"<sup>xii</sup> These few examples serve to show that international humanitarian law is unfortunately still not fully understood even in the diplomatic circles that draw up rules overlapping its provisions. It is therefore in real need of a guardian angel that will fly to its rescue whenever necessary.

Thus, the ICRC sees the work it does to encourage parties to armed conflict to comply with international humanitarian law as part of its "direct action" function. This work is indeed closely interrelated with field operations and the observations made during those operations. But many examples show that, even when such encouragement is combined with direct ICRC action and complementary activities by other players, there are still serious shortcomings and

grave breaches of international humanitarian law. This is where the watchdog function comes in, in the sense of sounding the alarm.

The ICRC has often been blamed for failing to speak out when it should and for not doing enough to make the international community aware of unacceptable situations. This was the main criticism leveled at its conduct during the Second World War, conduct which has been closely scrutinized through documents in the organization's archives and has been the subject of several publications

### **Conclusions & Suggestions**

Thus, it can be said that nowadays, denunciation often does more to bring the denouncer into the limelight than to make any real improvement in the situation. It is no longer enough merely to inform; those concerned have to be placed squarely before their responsibilities. As a watchdog of humanitarian law, ICRC must bark intelligently. ICRC must not and cannot feel responsible for every violation of international humanitarian law. That would be a burden too heavy to bear. On the contrary, the role of guardian is an invaluable complement to humanitarian action in that it generates constant thought about the meaning of such action and how to make it more effective. Moreover, the role of guardian is not a lonely one. More than ever before, it has to be seen as a force for mobilization, constantly defending humanitarian values in the heat of crises when they tend to be forgotten in wartime and insisting on their importance when no one wants to think of them in peacetime.

But above all, the role of guardian of international humanitarian law should be regarded as an act of faith. It would be intolerable to work in the midst of conflict, surrounded by the horrors of war, without hoping for a better future and without faith in humanity. The guardian of international humanitarian law must also stand by those who in spite of everything and even when things are at their worst are determined to believe in and to defend the values on which that law is built. The author is accordingly very pleased to make his modest contribution to this collection in honour of an eminent figure who has defended those values against all odds, and whose attitude shows us that a guardian simply has no right to feel discouraged.

Today the value of the fundamental principles of international humanitarian law goes beyond their original scope and significance. Humanity in war, compassion for the victims, and

impartiality, meaning no adverse distinction based on race, ethnic origin, religion, social class or any other factor, can and must be adopted as basic values in peacetime too. Surely respect for every human being, and compassion for those who suffer, are values on which the future of the world must be built. By defending these values even in war, the guardian of international humanitarian law is also combating the feelings of helplessness and fear that make peoples indifferent to each other and drive them into isolation. In spite of everything, and sometimes in spite of everyone, the guardian of international humanitarian law must look to the future with confidence.

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## Endnotes

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<sup>i</sup> Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 22 August 1864.

<sup>ii</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950), Art.1

<sup>iii</sup> Currently 108; see the table showing the existing National IHL Committees at: <https://www.icrc.org/en/document/table-national-committees-and-other-national-bodies-international-humanitarian-law>.

<sup>iv</sup> Commission I: War Victims and Respect for International Humanitarian Law," International Review of the Red Cross, Vol. 76, No. 310, 1996, p. 37

<sup>v</sup> Preventing and Repressing International Crimes: Towards an "Integrated" Approach Based in Domestic Practice, report of the 3rd Universal Meeting of National Committees for the Implementation of International Humanitarian

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<sup>vi</sup> See ICRC, *Guiding Principles Concerning the Status and Methods of Operation of National Bodies for the Implementation of International Humanitarian Law*, and ICRC, *Practical Advice to Facilitate the Work of National Committees on International Humanitarian Law*, which supplements the *Guiding Principles*, both available at: [www.icrc.org/en/war-and-law/strengthening-ihl/national-committees](http://www.icrc.org/en/war-and-law/strengthening-ihl/national-committees).

<sup>vii</sup> See Art. 5.3 Of the Statutes of the Movement. In its capacity as a specifically neutral and independent humanitarian organization, the ICRC examines whether it is better placed than other organizations to respond to the needs arising from these situations, such as visiting security detainees in cases where information or rumor indicates there may be poor detention conditions or ill-treatment.

<sup>viii</sup> The States parties to the Geneva Conventions normally meet representatives from the components of the Movement (the ICRC, the Federation and the National Societies) once every four years within the framework of the International Conference. The latter is competent to amend the Statutes of the Movement (which define the ICRC's role) and can assign mandates to the various components, but it cannot modify the ICRC or Federation statutes or take any decisions contrary to these statutes (Art. 11.6 of the Statutes of the Movement)

<sup>ix</sup> Based on the facts on the ground, the ICRC will determine the legal nature of the situation, which will define its legal frame of reference.

<sup>x</sup> Arts 5.2(d) and 5.3 of the Movement Statutes.

<sup>xi</sup> See Article 3, Article 9 of the First, Second and Third Geneva Conventions, and Article 10 of the Fourth Geneva Convention

<sup>xii</sup> the Draft Code of Crimes against the Peace and Security of Mankind prepared by the International Law Commission, document A/CN.4/466 of 24 March 1995; and the ICRC's statement of 1 November 1995 to the UN General Assembly, with special reference to Art. 22 of the draft.