

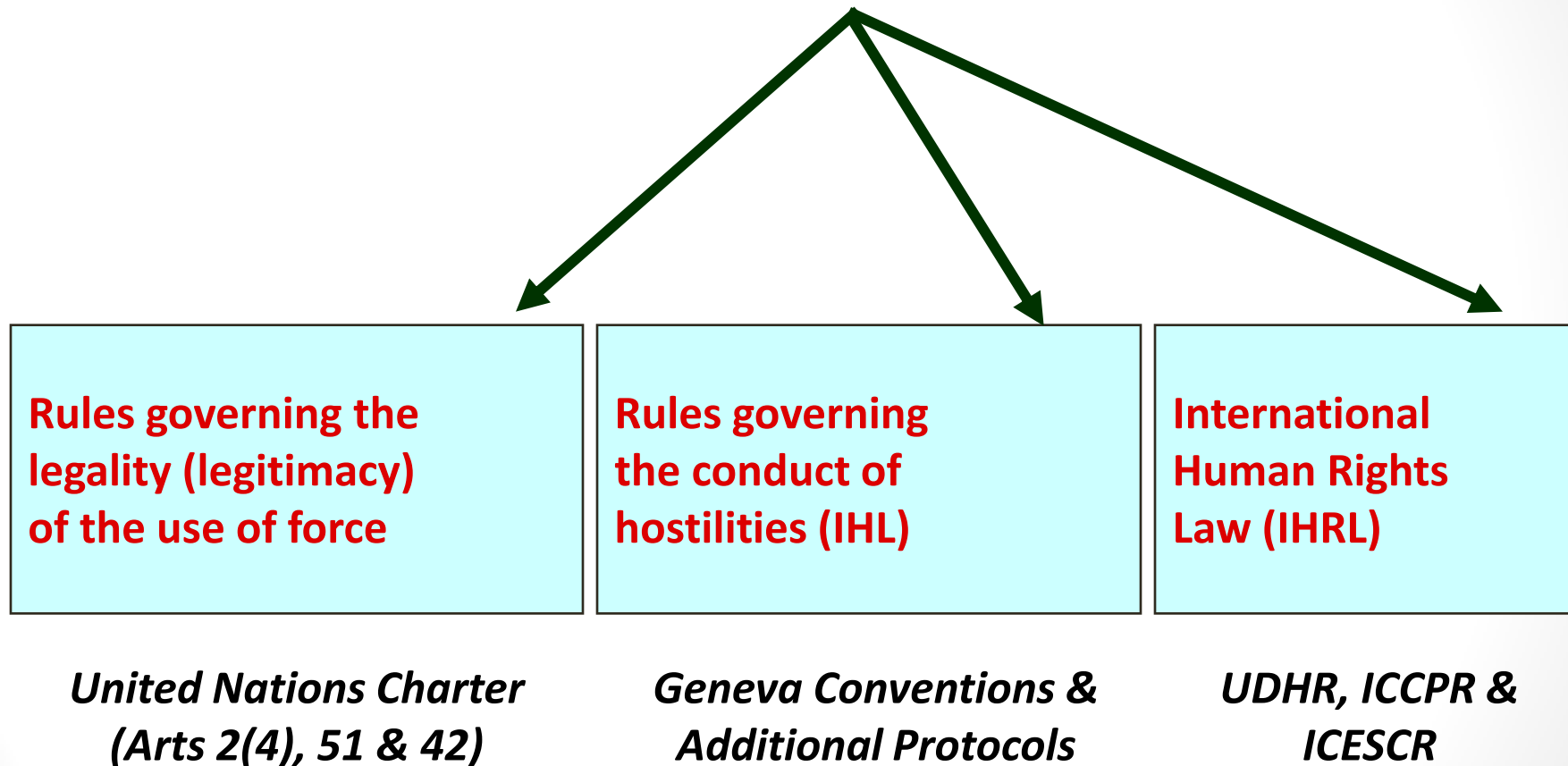
Implementation of International Humanitarian Law

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International Humanitarian Law: What it is?

- IHL is a set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict
- The fundamental purpose of IHL is to reduce the unnecessary suffering, loss and damage caused by armed conflicts – the aim is to protect the victims
- IHL only applies in situations of armed conflicts. It is also known as the '*Law of War*' or '*Law of Armed Conflict*'.

IHL and the International Legal Framework



Implementation of International Humanitarian Law

- IHL Implementation Obligations: All contracting States have an obligation to implement IHL
 - *The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances (Common Article 1 of the GC)*
- IHL compliance: steps required by States:
 - Respect for IHL by parties to the conflict (GC Art.1)
 - Ratification of key IHL instruments (i.e. AP I & II, Ottawa, ICC)
 - Measures for national implementation (*including the enactment of enforcement mechanisms and repression of breaches*)

Obligation of Implementation of IHL

- Obligations of Implementation of IHL in International Level (international Mechanisms)
- Obligation of Implementation of IHL in National Level (State Parties Obligations)

Implementation of IHL at International Level

- The establishment of international Fact-finding Commission
- Enquiry Procedure under the Geneva Conventions
- Role of International Criminal Tribunals to Implement IHL(The ICTY and ICTR) and Obligations of States
- The Establishment of International Criminal Court and its Role in Implementing IHL

Implementation of IHL at International Level

- The Obligation of States to Transmit Official Translations, Laws and implementing Regulations
- Mutual Assistance of States in Criminal Matters
- Reporting System of the Application of IHL Conventions
- Information transmitted within International Organizations
 - United Nations and Regional Organizations
- Cooperation with the United Nations
- Measures to exert Diplomatic Pressure

The International Fact- Finding Commission

- Art. 90 of the Protocol 1 of the GC Provides for the establishment of an International Fact – Finding Commission
- Purpose is to investigate allegations of grave breaches and other serious violations of IHL
- Special Features - It is a permanent body
 - It is an important means of ensuring that IHL is both applied and implemented during armed conflict
 - By recognizing its competence on a permanent basis states contributes significantly to the implementation of IHL and to ensuring compliance with it during armed conflict.

Enquiry Procedure under the GCs

- Articles 52,53,132 and 149 of Four GCs respectively provides identical provisions on enquiry procedure in the event of violation of the conventions.
- They read as follows-
 - At the request of a party to the conflict, an enquiry shall be instituted in a manner to be decided between the interested parties concerning any alleged violation of the convention
 - If agreement has not been reached concerning the procedure for the enquiry, the parties should agree on the choice of an umpire who will decide on the procedure to be followed.
 - Once the violation has been established, the parties to the conflict shall put an end to it and shall repress it with the least possible delay.

The Role of ad-hoc International Criminal Tribunals to Implement IHL

- The United Nations Security Council exercising its authority under Chapter VII of UN Charter, has established Ad hoc Tribunals to punish grave breaches of international law committed in the context of the former Yugoslavia and Rwanda
 - The International Criminal Tribunal for Former Yugoslavia (ICTY)
 - The International Criminal Tribunal for Rwanda (ICTR)

The International Criminal Tribunal for Former Yugoslavia

- The International Criminal Tribunal for the former Yugoslavia (ICTY) was established in 1993 through the UN Security Council Resolution 808, which has mandate to prosecute the crimes committed in the former Yugoslavia
 - Grave breaches of the Geneva Conventions of 1949
 - Violation of the Laws and Customs of War
 - Genocide
 - Crime against Humanity

The International Criminal Tribunal for Rwanda

- The international Criminal Tribunal for Rwanda (ICTR), was established in 1994 by the UN Security Council resolution 955.
- Its jurisdiction is limited to the acts committed in Rwanda by Rwandan nationals during 1994, it covers
 - The Crimes Genocide
 - Crime against Humanity
 - Violations of Common Article 3 of the 1949 Conventions and Additional Protocol II

International Criminal Tribunals and the Obligations of States

- States have obligations to cooperate with these Ad-hoc tribunals, which includes where necessary the enactment of legislation to ensure the collection of evidence and the arrest and transfer of those accused of crimes within the Tribunal's jurisdiction
- Further, States are obliged to bring persons accused of grave breaches of the principles of IHL treaties, for trial before their own national courts or to extradite them for trial in other jurisdictions.

Establishment of the ICC and its Role in Implementing IHL

- Historically several Efforts have been made to establish a Permanent ICC
- Through series of negotiations the permanent ICC was established in 1998 by adopting the Rome Statute.
- Main features of Rome Statute:
 - Art. 6, 7 and 8 of the ICC provides jurisdiction in respect of Genocide, Crimes against Humanity and War Crimes.
 - These include most of the grave breaches of IHL mentioned in the 1949 GCs and their APs whether committed in international or non-international armed conflicts.

The ICC – Main Features

- Under the 1949 GCs and 1977 AP1, states have an obligation to prosecute persons accused of war crimes before their own national courts or extradite them for trial where they could be tried.
- The ICC statute does not abrogate the States obligations under existing instruments of IHL or under customary international law
- Principle of complementarity- Exhaustion of domestic remedy is essential. The
- ICC can works only on the basis of complementarity principle and in cooperation with the national court.

Obligations of Contracting Parties to address the application of the Convention and the protocol

- Under 7 of the AP 1, (General Provision for application of IHL)
- “The depository of this protocol shall convene a meeting of the high contracting parties, at the request of one or more of the said parties and upon the approval of the majority of the said parties to consider general problems concerning the application of the Conventions and of the Protocol” .

Obligation of States to inform each other on Laws and Implementing Regulations

- The 1949 GCs and Aps which are part of the core of IHL, provide for the exchange of information between states parties on national measures to implement their provisions
- Arts 48, 49, 128 and 145 GCs and of Art. 84 of the AP1: state parties have obligation to communicate to one another the official translations of the treaties in question and any laws and regulations they have adopted to ensure implementation.
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- This translation are to be communicated
 - In peacetime through Swiss Government which is the depositary to the GCs and APs; and
 - In war time through the Protecting Powers (Art 5 AP1)

Exchange of Information under Treaty Mechanisms

- Convention on the Prohibition of the Development, Production stockpiling and Use of Chemical Weapons and on their Destruction of 1993 (Art. 7- about the information exchange)
- Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1999 (Art. 30 requires the states parties to communicate without delay information to one another)

Mutual Assistance of States in Criminal Matters

- Art. 88 of the AP 1 Provides:
- The High contracting parties shall afford one another the greatest measures of assistance in connection with criminal proceedings brought in respect of grave breaches of the Geneva Conventions or Additional Protocols (...). When circumstances permit, the High Contracting Parties shall cooperate in the matter of extradition (...).

Reporting system under the IHL Conventions

- The exchange of information is the primary purpose of the reporting systems for which provisions are made in the IHL Treaty Mechanisms
- Art. 26 of 1954 Convention on the Protection of Cultural Property in the event of Armed Conflict- state parties must submit a report to the Director General of UNESCO at least once every four years.
- Art. 7 of 1997 Convention on the Prohibition of the use Stockpiling, Production and Transfer of Anti Personnel Mines and their Destruction requires the States parties to submit an annual report to the Secretary- General of the UN informing the national implementation measures.
- Art. 8 of Optional Protocol to the Convention on the Rights of Child on the involvement of Children in Armed Conflict.

Information Transmitted within International Organizations

- United Nations
 - Since the adoption of the Additional Protocols in 1977, the UN General Assembly has regularly requested the Secretary General of the UN to report to it on the Status of implementation of the IHL treaty mechanisms particularly Aps.
- Regional Organizations
 - Regional Organisation have obligation to comply the international obligations in accordance with the UN Charter (Chapter VIII, Arts. 52, 53 and 54)

Cooperation with the United Nations

- Article 89 of AP1 Provides:
 - “In situations of serious violations of the Geneva Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in cooperation with the United Nations and in conformity with the United Nations Charter”.

Diplomatic Measures

- To secure compliance with IHL the following diplomatic pressure may be exerted:
 - Continuous protest may be lodged by state parties with the ambassadors representing the states
 - Public denunciation, by one or more parties and /or by a particularly influential regional organization of the violation of IHL
 - Diplomatic pressure on the author of the violation, through intermediaries.

National Implementation of IHL

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National Implantation of IHL

- Enactment of National Legislation
- The Obligations to Disseminate IHL
- Obligations to have qualified Personnel to facilitate the Application of Conventions and Protocol and to have legal Advisers in Armed Forces
- Obligation to protect the Red Cross/ Red Crescent Emblems
- Organizational Measures to be adopted in Peacetime and in the Event of Armed Conflict
- Establishment of National Committees on IHL
- Role of National Red Cross and Red Crescent Societies

Enactment of National Legislation

- The GCs Arts. 48, 49, 128, and 145 and Art 84 of AP 1:
 - The high contracting parties shall communicate to one another... The laws and regulations which they may adopt to ensure the application thereof
 - Arts. 49-50; 50-51; 129-130; 146-147; and AP- I 85-95: Provides National legislation must be enacted to provide for appropriate penal sanctions of grave breaches of IHL
 - The high contracting parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the GCs

Dissemination of IHL

- Four GCs have identical provisions to reaffirm the general obligation to disseminate the texts the Geneva Conventions (Arts. I/II/III/IV, Arts.47/48/127/144):

The High Contracting Parties undertake in time of peace as in time of war, to disseminate the text of the Convention as widely as possible in their respective countries, particularly to include the study thereof in their military and if possible, civil instruction, so that the Principles thereof may become known to all their armed forces and to the entire population.

Obligation to have Qualified Personnel

- Art.6 of AP1:
- “ The High contracting parties shall in peacetime endeavor to train qualified personnel to facilitate the application to the Conventions and of this Protocol.”

Legal Advisers in Armed Forces

- Art. 82 of AP1 :
- The High contracting parties at all times, and the parties to the conflict in time of armed conflict, shall ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the conventions and this Protocol and on the appropriate instruction to be given to the armed forces on this subject

Legal Advisers in Armed Forces

- Introducing legal advisers into the armed forces demonstrates a state party's commitment to improve respect for IHL and compliance with it.
- Art. 82 is mandatory and its aim is to ensure that military commanders have access to sound advice on how to apply and teach the GCs and APs

Protection of the Red Cross and Red Crescent Emblems

- GCs and the Aps provides states must adopt internal measures establishing
 - The identification and definition of the emblem(s) recognized and protected.
 - The national authority with the competence to regulate the use of emblems
 - Those entitles with permission to employ the emblems;
 - The uses for which permission is authorized.

Protection of the Red Cross and Red Crescent Emblems

- In addition, all the states must enact national legislation prohibiting and punishing the unauthorized use of the emblems at all time .
- The National legislation must apply to all forms of personal and commercial use and prohibit imitations or designs capable of being mistaken for Red Cross and Red Crescent.

National IHL Committees

- Setting up IHL committees is recognized as an important step in ensuring the effective application of IHL and has been advocated by the International Group of Experts for the Protection of war victims and the 26th International Conference of the Red cross and Red crescent.
- Creating a IHL National committees can be a useful and indeed decisive step in ensuring the comprehensive implementation of IHL
- Neither the GCs nor their Aps require such a committee to be set up. It is therefore entirely up to the state concerned to determine how it is created, how it functions and who its members are.

Functions of IHL National Committees

- The organization and objectives of a National Committee must be determined by the State at the time of the committee's formation.
- The purpose is to further the implementation and promote knowledge of IHL at the national level.
- The Committee should be able to evaluate existing national law in the light of the obligations created by the Conventions, Protocols and other instrument of IHL.

Functions of IHL National Committees

- The Committee should make recommendations for further implementation, to monitor the law and ensures it is applied.
- To propose new legislation or amendments to existing law, coordinating the adoption and content of administrative regulations, or providing guidance on the interpretation and application of IHL rules.
- To play an important role in promoting activities to spread knowledge of IHL. To have an authority to conduct studies, propose activities, and assist in making IHL more widely known.
- Involve in instructing the armed forces, teaching it in various levels of the public education system and promoting the basic principles of IHL among the general population.

Role of National Red Cross and Red Crescent Societies

- The National Societies may take steps to implement IHL effectively by
 - Participating in dissemination of IHL Instruments
 - Discussing their content and purpose with national authorities
 - Promoting support for those instruments.

Role of National Red Cross and Red Crescent Societies

- 1. Adoption of National Legislation
 - Making national authorities aware of the need for legislation to implement the law;
 - Drafting national legislation and/or commenting on the draft legislation of the national authorities;
 - Encouraging the introduction and adoption of implementing legislation;
 - Explaining to legislators and the general public the need to implement IHL by adapting national legislation.

Role of National Red Cross and Red Crescent Societies

- 2 Protection of the Emblems
 - Raising awareness among national authorities, professionals, business people and the general public;
 - Make known the need for legislation to protect the emblems, and encouraging its adoption;
 - Monitoring use of the emblems;
 - Reporting misuse of the emblems to the appropriate national authorities;
 - Advising national authorities on legal questions related to use to the emblems.

Role of National Red Cross and Red Crescent Societies

- 3. Dissemination
 - To spread knowledge of the law,
 - Reminding national authorities of their obligation to spread knowledge;
 - Providing authorities with advice and promotional materials;
 - Taking part in the authorities' promotional programs;
 - Monitoring the continuation and content of national programs

Role of National Red Cross and Red Crescent Societies

- 4. Legal Advisers in the Armed Forces and Qualified Persons:
 - Making national authorities aware of the need for legal advisers in the armed forces as well as qualified persons;
 - Taking part in the training of armed forces advisers and qualified persons;
 - Recommending suitable candidates for the qualified persons.

Role of National Red Cross and Red Crescent Societies

- 5. National Committees for the implementation of IHL
 - Making the national authorities aware of the advantages of having these committees;
 - Providing advice and materials on setting them up;
 - Providing secretarial and other services;
 - Advising the committees once set up;
 - Encouraging the committees to meet regularly.

Role of National Red Cross and Red Crescent Societies

- 6. Cooperation and Assistance
 - By promoting implantation, National Societies may also draw on advice , materials and direct assistance from others within the International Red Cross and Red Crescent Movement, including:
 - Other National Societies within the same region, and from countries with a similar legal system;
 - National Societies with experience in particular areas of implementation;
 - The ICRC;s Advisory Service on IHL

Role of National Red Cross and Red Crescent Societies

- Using and developing their own resources, and drawing on the advice and assistance of other members of the International Red Crescent Movement, National Societies can do much to bring about effective implementation of IHL.

Organizational measures during Peacetime

- National Red Cross and Red Crescent Societies and other voluntary aid societies must be duly recognized and authorized by their government.(AP I, Art 26)
- Medical establishments and units shall, as far as possible, be situated in such a manner that attacks against military objectives can not imperils their safety(AP I, Art 19)
- Medical establishments, units, transports and personnel shall be marked by the distinctive emblem of the Red Cross or Red Crescent (AP I Arts.,38-44; AP II,41-45;IV,18)
- Optional light, radio and electronic signals should be provided to mark medical establishments, units and transports more effectively (AP I, Annex I, Arts 5-8)

Organizational measures during Peacetime

- The study , development, acquisition or adoption of a new weapon, means and method of warfare, it must be determined whether its use would, in some or all circumstances, be prohibited by international law (AP I, Art. 36)
- To the maximum extent feasible, military objectives shall not be located within or near densely populated areas. (AP I, Art 58)
- A civil defence organization should be set up for exclusively humanitarian tasks: to protect the civilian population against dangers and to help it to recover from the immediate effects of hostilities or disasters, and to provide the conditions necessary for its survival

Organizational measures during Peacetime

- National information bureaus for Prisoners of War and civilians should be established (GC III, Arts. 122-124; IV, 136-141)
- Central Tracing Agency services for missing persons and children (AP I, Arts 33, 78) shall be organized.
- Preparation shall be made for the notification of hospital ships (APII, Art. 22)
- Steps shall be taken to safeguard cultural property (1954 Hague Convention, Art. 3)
- Legal Advisers for military leaders shall be employed and trained (AP I, Art. 82)

Organizational measures to be taken in the Event of Armed Conflict

- Special agreement should be considered for all matters concerning which it may be deemed suitable to make separate provision (GCs I,6; II,6;III,6;IV,7)
- Protecting Powers or substitutes should be appointed (GCs I,8,10;II 6;III,6;IV,7)
- The activities of ICRC must be facilitated and supported (GCs I,9;II,9;III,9;IV,10;AP I,81)
- The possibilities and Procedures for international fact finding should be encouraged and supported(GCs I,52,II,53;III 132;IV,149;AP I,90)

Organizational measures to be taken in the Event of Armed Conflict

- Use of good offices for the settlement of disputes should be accepted and supported (GCs I,11; II,11;III,11;IV,12)
- Hospital zones and localities shall be established for the wounded and sick (GC I, 23 and Annex I)
- Hospital zones and localities shall be established for the civilian population (GC IV, 14 and Annex I)
- Prisoners of War shall be protected, and procedures shall be enacted for a competent tribunal to determine the status of persons who have fallen into enemy hands (GCs III,5 Para. 2; AP I, 45 para.2)

Thank you for your kind Attention !!!