Chapter 8

Implementation of IHL

Introduction

- General Problems of Implementation of International law
- Available mechanisms of implementing IHL

Available Mechanisms of Implementing IHL

❖ **Measures to be taken in peacetime**

- To prepare military, economic and humanitarian aspects.
- Soldiers have to be properly instructed in peacetime. The whole population must have a basic understanding of IHL.
- Adoption of the instruments of IHL and translating them into national languages.
- Qualified personnel and legal advisors have to be trained.

Respect by the Parties to the Conflict

- IHL obliges parties to a conflict to respect its rules.
- Under Article 1 common to the Geneva Conventions and Protocol I, “States undertake to respect the rules therein in all circumstances.”
- This is the principle of *pacta sunt servanda*.
- Parties engaged in an armed conflict, including non-government armed groups, have the duty to respect the rules of IHL.

The Obligation to Ensure Respect

- Under Article 1 common to the Conventions and Protocol I, States also undertake to ensure respect for IHL.
- Under this principle, not only the State directly affected by a violation is concerned and may take measures to stop it, but also all other States must take measures.
- The obligations under IHL are, therefore, certainly obligations erga omnes.

Scrutiny by Protecting Powers and ICRC

- During war (armed conflict), there is no diplomatic or other relation between the parties.
- There is no possibility of bilateral communications (talks) in the absence of a third party who offer their good office.
- Thus, it is necessary to have a neutral State (s) to talk to each party to the conflict, and thereby supervise (or even assist them in) the implementation of IHL.

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- Protecting powers are neutral States (States that are not parties to the conflict) that are chosen (appointed) by the parties of the conflict to oversee the implementation of IHL by both parties to the conflict.
- According to the Conventions, if no protecting powers can be appointed, a detaining or an occupying power can ask a third State bilaterally to act as a substitute of a protecting power.

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- If this does not work, the offer of a humanitarian organization such as the ICRC to act as a humanitarian substitute of a protecting power shall be accepted.
- Tasks of the protecting powers relate to the following fields:
- visit to protected persons,
- supervision of relief measures and evacuations,

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- reception of applications by protected persons,
- assistance to judicial proceedings against protected persons,
- transmission of information, documents, and relief goods,
- the offering of good offices and others.

- Most of these tasks are also assumed by the ICRC because of its mandate.

The Role of National Red Cross, Red Crescent Societies and NGOs

- National Societies can promote the implementation of IHL within their own countries.
- According to Article 27 of Convention I, national societies of neutral States also play a role in this field when they lend their assistance to a party to a conflict or when they serve under the auspices of the ICRC.
- NGOs.

The UN and IHL

- The primary objective of the UN is to prevent war (by restricting the use of force), & not to regulate the conduct of war.
- Security Council is authorized the use of force.
- But UN intermingles jus ad bellum and jus in bello.
- ICJ- may interpret IHL.

International Responsibility for Violations

- Violations of IHL lead to state and individual responsibility.
- In the traditional structure of international law, only States are assumed to violate IHL.
- There is, however, a growing branch of international law which consists of rules of international law specifically criminalizing certain individual behavior
- IHL is one of the first branches of international law, which contained such rules of international criminal law.

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- IHL obliges States to suppress *all its violations*. Certain violations, called war crimes, are criminalized by IHL.
- IHL confers on all States universal jurisdiction over grave breaches.
- IHL requires States to enact legislation to punish such grave breaches, to search for persons who have allegedly committed such crimes, & to bring them before their own courts or to extradite them to another State for prosecution (see Arts. 49, 50, 129, & 146 respectively of the four Conventions and Art. 85 (1) of Protocol I).

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- The principle of universal jurisdiction allows and even obliges states to bring proceedings against the perpetrator, regardless of the place where crime is committed and the nationality of the perpetrator or the victim.
- The rationale behind is that certain crimes are so harmful to international interests.
- Apart from national prosecutions, individuals were brought before international ad hoc courts.

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- Currently, we have a permanent international court called International Criminal Court (ICC) having jurisdiction over war crimes.
- According to Article 5 of the Rome Statue, the International ICC has jurisdiction over genocide, crimes against humanity, war crimes, and crimes of aggression.

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- However, the Court operates a complement not as a substitute to national courts. Consequently, it can exercise jurisdiction only if a State is unable or unwilling to prosecute.
- Today, the international criminal responsibility of individuals for violation of IHL is beyond any doubt.
- Thus, prosecution before international tribunals (courts) is one mechanism for the implementation of IHL.