

# **INTERNATIONAL HUMANITARIAN LAW**

## **(ELECTIVE COURSE)**

### **INTRODUCTION**

IHL is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. IHL is also known as the law of war or the law of armed conflict. IHL is part of international law, which is the body of rules governing relations between States.

The IHL is rooted in the rules of ancient civilizations and religions – warfare has always been subject to certain principles and customs. Universal codification of IHL began in the nineteenth century. Since then, States have agreed to a series of practical rules, based on the bitter experience of modern warfare. These rules strike a careful balance between humanitarian concerns and the military requirements of States. As the international community has grown, an increasing number of States have contributed to the development of those rules. IHL forms today a universal body of law. A major part of IHL is contained in the four Geneva Conventions of 1949. Nearly every State in the world has agreed to be bound by them. The Conventions have been developed and supplemented by two further agreements: the Additional Protocols of 1977 relating to the protection of victims of armed conflicts.

The objective of IHL is to limit the suffering caused by warfare and to alleviate its effects. Its rules are the result of a delicate balance between the exigencies of warfare ("military necessity") on the one hand and the laws of humanity on the other. Humanitarian law is a sensitive matter and it suffers no tampering. It must be respected in all circumstances, for the sake of the survival of human values and, quite often, for the sheer necessity of protecting life. Each and every one of us can do something to promote greater understanding of its main goals and fundamental principles, thereby paving the way for better respect for them. Better respect for humanitarian law by all States and all parties to armed conflicts will do much to help create a more humane world.

A close dissection of contemporary international law would reveal that it is undergoing a rapid and profound transformation to keep pace with the remarkable changes in the world arena. It has constantly been expanding its frontiers not only in terms of its subjects but also of its orientation, resulting in an identifiable change in its character. Indeed, the structure of international legal system is quite flexible in order to be responsive to socio-political transition for its very survival. It is likely to be under even greater pressure for change in the 21<sup>st</sup> century.

recent trends in practice that affect the IHL application. Apart from international, non-international and "internationalized" internal armed conflicts, have also been marked. It is a major development. The launching of a global fight against terrorism as a result of the horrific events of September 11th, 2001, is yet another example. It is noted that the fight against terrorism has led to a re-examination of the balance between state security and individual protections.

Acts of transnational violence and the responses generated by them have not only refocused international attention on IHL over the past two years, but have also led to a re-examination of the adequacy of this body of law in a way not seen for several decades. One of the main IHL-related issues being currently debated is whether the fight against terrorism is a "war" in the legal sense or not. As is well known, there is no uniform answer.

### **COURSE OBJECTIVES**

- a. Dissemination of International humanitarian law
- b. Know about the implementation of International humanitarian Law in the National Legal System.
- c. Awareness about the enforcement mechanisms.

The course consists of four modules.

#### **Module – I Introduction to International Humanitarian Law (IHL). Week 1-2 6 classes**

- 1.1. History and Development of IHL
- 1.2. Application of IHL
- 1.3. IHL and Human Rights

This module will discuss the historical origin and the development of IHL and gives an introductory view about the subject. This module will make a survey on the existing treaties and customs those applicable to humanitarian law. As a part of it, it will discuss the

Emergence of Hague and Geneva conventions, Marten's clause, common article 3. It also discusses the convergence of law of Geneva and the law of The Hague in the form of additional protocols of 1977 and the convergence of human rights and IHL.

### **Further Readings**

Frits Kalshoven, Liesbeth Zegveld, Constraints on the waging of war : an introduction to international humanitarian law, ICRC, Geneva, 3rd ed., (2001).

Marco Sassòli and Antoine A. Bouvier in co-operation with Susan Carr, Lindsey Cameron and Thomas Maurice, How does law protect in war ? Cases, documents and teaching materials on contemporary practice in international humanitarian law, ICRC, Geneva, 2<sup>nd</sup> edition (2006).

Jean-Marie Henckaerts, Louise Doswald-Beck, With contributions by Carolin Alvermann, Knut Darmann, Baptiste Rolle, Customary International Humanitarian Law, Cambridge University Press, (2005).

René Provost, International Human Rights and Humanitarian Law - Cambridge University Press, (2005).

"Symposium: The Hague Peace Conferences",

Edited by George H. Aldrich & Christine M. Chinkin, Symposium issue, American Journal of International Law, Vol. 94, No. 1, 2000.

Doswald-Beck, Louise, And Vite, Sylvain, "International Humanitarian Law and Human Rights Law", International Review of the Red Cross, No. 293, March 1993, pp. 94-

**Module – II Rules Of Conduct Of Hostilities. Week 4-8 10 classes**

- 2.1. General Limitations on the Means and Methods of Warfare
- 2.2. Specific Weapons Regime
- 2.3. The Principle Of Distinction.
- 2.4. Rule Of Military Necessity and Rule Of Proportionality.
- 2.5. Prohibition Of Direct And Indiscriminate Attacks.

This **Module** will discuss the rules governing the conduct of hostilities such as the General Limitations on the methods and means of hostilities, Specific Weapons Regime, the principle of distinction, rule of military necessity and rule of proportionality, prohibition of direct and indiscriminate attacks.

**Further Readings**

Best, Geoffrey, War and Law Since 1945 (Oxford: Clarendon Press, 1997).

Dinstein, Yoram, The Conduct of Hostilities under the Law of International Armed Conflict, Cambridge University Press, (2004).

Durham, Helen (ed.); McCormack, Timothy L. H. (ed.) The Changing Face of Conflict

and the Efficacy of International Humanitarian Law, (The Hague : M. Nijhoff, 1999).

Mccoubrey, Hilaire, International Humanitarian Law : Modern Developments in the Limitation of Warfare, 2nd Ed., (Aldershot, UK: Ashgate, 1998).

Carnahan, Burrus M. "Lincoln, Lieber and the Laws of War: The Origins and Limits of the Principle of Military Necessity", American Journal of International Law, Vol. 92, No. 2, 1998, pp. 213-

Daoust, Isabelle, Coupland, Robin and Isoe, Rikke, "New wars, new weapons? The obligation of States to assess the legality of means and methods of warfare", International Review of the Red Cross, No. 846, 2002.

**Module – III Protected Persons And Property. Week 9-14 12 classes**

- 3.1. Wounded, The Sick, The Shipwrecked.
- 3.2. Prisoners Of War.
- 3.3. Medical, Religious And Relief Personnel.
- 3.4. Protection Of Civilians.
- 3.5. Protection of Women.
- 3.6. Protection of Children.
- 3.7. Protection of Refugees and Internally displaced Persons
- 3.8. Protection Of Cultural Property.

This Module will discuss the protected persons and property required to be protected in armed conflict such as wounded, the sick, the shipwrecked, prisoners of war, medical, religious and relief personnel, protection of civilians, women and war, children in war, protection of refugees, internally displaced persons and protection of cultural property in armed conflicts.

### **Further Readings**

Chinkin, Christine, Women: The Forgotten Victims of Armed Conflict: In the Changing Face of Conflict and Efficacy of International Humanitarian Law, Durham And McCormack (Eds.), (The Hague: Kluwer Law International, 1999).

Lindsey, Charlotte, Women Facing War ICRC Study on the Impact of Armed Conflict on Women, (2001).

Aldrich, George H. "The Taliban, Al Qaeda, and the Determination of Illegal Combatants", American Journal of International Law, Vol. 96, 2002.

Darmann, Knut, "The legal situation of unlawful/unprivileged combatants", International Review of the Red Cross, No. 849, 2003.

Dutli, Maria Teresa, "Captured Child Combatants", International Review of the Red Cross, No. 278, September 1990, pp. 421-434.

Durham, Helen, "Women, armed conflict and international law",

International Review of the Red Cross, No. 847, 2002.

Helle, Daniel, "Optional Protocol on the Involvement of Children in Armed Conflict to the Convention on the Rights of the Child", International Review of the Red Cross, No. 839, September 2000, pp. 797-809.

Henckaerts, Jean-Marie, "New Rules for the Protection of Cultural Property in Armed Conflict", International Review of the Red Cross, No. 835, September 1999, pp. 593-620.

"The Protection of Refugees in Armed Conflict", International Review of the Red Cross, No. 843, 2001.

"Protection of cultural property in armed conflict", International Review of the Red Cross,

"Aspects of occupation", International Review of the Red Cross, No. 853, 2004.

TVGNS Sudhakar, "Protection of women during armed conflict: a survey of existing network of customary – treaty law and practice", Yearbook of International Humanitarian and Refugee Law, Vol. 6, (2006), pp. 251-264.

**Module – IV Implementation Of IHL And Institutional Mechanisms. Week 15-19 10 classes**

4.1. Basic issues involved in Implementation Of IHL. 48

4.2. Implementation Of Law At National Level. 48

4.3. Grave Breaches Of Geneva Conventions And Additional Protocols. 51

4.4. Accountability and Criminal jurisdiction.

4.5. Protecting Power System. 52

4.6. ICRC. 52

4.7. War Crimes Tribunals. 53

This Module will discuss the implementation of law at national regional and international level, the criminal responsibilities and the applicable jurisdiction and the available institutional mechanisms.

In respect of implementation of law, it will consider the implementation of law at national level, accountability and impunity, criminal responsibility, individual criminal responsibility, superior orders and command responsibility, international criminal

jurisdiction, universal jurisdiction, grave breaches of Geneva conventions and additional protocols.

With regard to the institutional mechanisms, it will study the system of protecting power, ICRC, Nuremberg and Tokyo tribunals, UN war crimes tribunals and newly established International Criminal Court.

### **Further Readings**

Berry, Nicholas O. War and the Red Cross (London: Macmillan, 1997).

Osiel, Mark J. Obeying Orders: Atrocity, Military Discipline and the Law of War, New Brunswick, (London: Transaction, 1999).

Obote-Obola, Alex, The Judging of War Criminals: Individual Criminal Responsibility under International Law (Stockholm: Stockholms Universitet, 1997).

Dinstein, Yoram And Tabory, Mala (Eds.), War Crimes in International Law (The Hague: Martinus Nijhoff, 1996).

Allen, Beverly, Rape Warfare: The Hidden Genocide In Bosnia-Herzegovina And Croatia. –(Minneapolis; London: Univ. Of Minnesota Press. 1996).

Ball, Howard, Prosecuting War Crimes and Genocide: The Twentieth-Century Experience, (Kansas: University Press of Kansas , 1999).

“Interpretation of international humanitarian law by the international tribunals”, International Review of the Red Cross, No. 850, June 2003

TVGNS Sudhakar, “The situation in Darfur: possible Security Council referral to ICC”, Yearbook of

International Humanitarian and Refugee Law, Vol. 2, (2004), pp. 116-130.

TVGNS Sudhakar, “International Criminal Justice: an Analysis of International Criminal Judicial Institution”, NUJS Law Review, Vol. 1, No. 1, (2008), pp. 1-33.

Natalie Wagner, “The development of the grave breaches regime and of individual criminal responsibility by the International Criminal Tribunal for the former Yugoslavia”, International Review of the Red Cross, Vol. 85, No. 850, (2003), pp. 351.

### **Method**

Lecture-cum-discussion, projects and case study will be adopted for teaching the subject.

