

THE ROLE OF NATIONAL IMPLEMENTATION BODIES IN ENSURING COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW (IHL)

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Abstract

The Geneva conventions of 1949 and their additional protocols of 1977 and 2005 are the principal treaties governing the humane treatment of civilians, aid to and protection of the victims of armed conflict. In order to secure the guarantees provided by these instruments, it is essential that the states implement their provisions fully. Implementation requires the states to adopt a number of internal laws and regulations. They must, for example, establish rules on the punishment of violations, the use and protection of the Red Cross, Red Crescent and the Red Crystal Emblems for protected persons. In addition, the states are obliged to spread knowledge of the conventions and protocols as widely as possible. Owing to the broad range of issues associated with these responsibilities, comprehensive Implementation of the rules of international Humanitarian law requires coordination and support from all the government bodies concerned. The implementation of international humanitarian law rules represent the attitude of State Parties to comply with the

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provisions of international humanitarian law either as hard or soft law. This paper looks at the provisions of these instruments vis-à-vis their implementation by States and concludes that States should by their different internal mechanisms and individual efforts comply with these instruments in good faith as demanded by Article 2(2) & (6) of the UN Charter. This is because implementation is key when it comes to fulfilment of the set purpose of any international instrument aimed at maintaining peace and security of any State or region of the world.

Keywords: Implementation, Compliance, Protection, Violation and Regulation.

1. Introduction

Promoting compliance with International Humanitarian Law is one among the goals of modern states built upon the principles of liberty, democracy, respect for human rights and fundamental freedoms. International Humanitarian law (IHL) also known as the law of armed conflict or the law of war is intended to alleviate the effects of armed conflict by protecting those persons who are not involved in armed conflict or no longer taking part in armed conflict “persons hors de combat”¹ and by regulating the means and methods of warfare. IHL is applicable to any armed conflict both international and non-international and irrespective of the origin of the conflict. It also applies to other situations like aggression and self-defence leading to armed conflict. Different legal regimes are applicable to international armed conflict that occur between two or

¹ Art. 41 Additional Protocol I to the Geneva Conventions of 12 August 1949.

more States² and non-international armed conflict³ which occurs or takes place within a state. The occurrence of a situation classified as armed conflicts will further be classified as international or non-international armed conflict depending on a range of factors based on fact and law. Appropriate legal analysis coupled with sufficient information about the particular factor should be sought always in order to determine whether a situation amounts to an armed conflict and thus whether international humanitarian law is applicable. The question of regulation in the area of armed conflict may not be perfect enough to tackle the issues of protection during armed conflict but the problems confronting states today is that of compliance and implementation by National bodies of individual state parties to the 1949 Geneva Conventions and the Additional Protocols and other relevant instruments covering armed conflict. We shall now look at the provisions of these instruments and analyze them in more elaborate perspective so that we can bring out the issues affecting the willingness or capacity of States in agreeing to compliance with International Humanitarian Law.

2. The Basic Principles and Instruments of IHL Requiring Compliance

The word ‘compliance’ is a legal and formal word compelling obedience of an order, rule or request.⁴ An order is a command, direction or instrument, which in most cases can be in writing and may be oral⁵. A rule generally is an established and authoritative standard or principle; a general norm mandating or guiding conduct

² The Four Geneva Conventions of 12 August 1949, Numerous Hague Conventions, Regulations and Rules from 1907 till the present time.

³ Additional Protocol II to Geneva Conventions of 12 August 1949

⁴ Cambridge Advanced Learners dictionary 3rd Edition.

⁵ Bryan A. Garner (Ed) Black’s Law dictionary 8th Edition.

or action in a given type of situation⁶. From the above, it shows that to talk about compliance means that there is something substantive to comply with. What to comply with are the basic provisions of International Humanitarian Law. 463

According to European Union guidelines on promoting compliance with international Humanitarian law (IHL)⁷, the principal legal instruments on International Humanitarian law include the following:

- 1907 Hague convention IV Respecting the laws and customs of war; Regulations respecting the laws and customs of war;
- 1925 protocol for the prohibition of other Gases, and of Bacteriological methods of warfare;
- 1949 Geneva Convention I for the Amelioration of the conditions of the wounded and sick in Armed Forces in the field;
- 1949 Geneva Convention II for the Amelioration of the conditions of the wounded, sick and shipwrecked member of Armed forces;
- 1949 Geneva convention III Relative to the Treatment of prisoners of war;

⁶ Ibid.

⁷ European Union (EU) Guidelines on Human Rights Dialogues (Economic and Financial Affairs Council of 13 December, 2001); Guidelines EU Policy towards third countries on torture and other cruel, inhuman or degrading punishment or treatment (General Affairs Council of 9 April, 2001); EU Guidelines on Children and Armed Conflict (General Affairs Council of 8 December 2003); and Council common position 2003/444/CFSP of 16 June 2003 on the ICC (Official Journal L150 of 18.06. 2003) See www.Icrc.org/eng/resources/documents visited on 15th June 2020.

- 1949 Geneva convention IV Relative to the protection of civilians in time of war;
- 1977 Protocol I additional to the Geneva conventions of 12 August 1949 relating to the protections of victims of International Armed Conflict;
- 1977 Protocol II Additional to the Geneva Convention of 12 August 1949 relating to the protection of victims of non-International Armed Conflicts;
- 1954 Hague convention for the protection of convention for the protection of cultural property in the event of armed conflict;
- -2006 Geneva Protocol III additional to the Geneva Convention of 12 August 1949 and Relating to the Emblem of the International Committee of the Red Cross;
- -Regulations for the Execution of Convention for the protection of Cultural Property in the Event of Armed Conflict;
- 1954 First Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict;
- 1999 Second Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict;
- 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction;
- 1980 UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects;
- 1980 Protocol I on Non-Detectable Fragments;
- 1989 Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices;

- 1996 Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices;
- 1989 Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons;
- 1995 Protocol IV on Blinding Laser Weapons;
- 2003 Protocol V on Explosive Remnants of War;
- 1993 Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction;
- 1997 Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction;
- 1993 Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991;
- 1994 Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994;
- 1998 Rome Statute of the International Criminal Court;
- The 2000 optional Protocol to the convention on the right of the child on the involvement of children in armed conflict, and
- The 2008 Convention on Cluster Munitions⁸.

⁸ In 2005 the ICRC published a comprehensive study on Customary International Law. An Introduction to the study is available on the ICRC websites <www.icrc.org> accessed on 16 June, 2020.

The above international statutes and their specific provisions in the area of means and methods of warfare and the various mechanisms of protection for different categories of persons and the environment are detailed but not exhaustive as laws are dynamic in their efforts to cope with regulations in the affairs of human beings and their environment.

When discussing existing IHL mechanism, in principle, the existing mechanisms are not defective and have great potentials but suffer from lack of use and compliance linked to lack of political will by states to seize them.⁹ It was the opinion of experts that both state actors and armed groups are bound by the provision of International humanitarian law applicable in situations of non-international armed conflicts and called on all actors to work towards a better compliance with these provisions.¹⁰ Significantly, the means on how to practically improve compliance among armed groups include the conclusion of special agreements between state actors and armed groups¹¹, unilateral declarations by the armed groups and granting by States of some kind of immunity to members of armed groups for their participation in hostilities instead of declaring them wanted for prosecution. A number of

⁹ Report prepared by IRC, Geneva, October 2003 the international committee of the Red Cross (ICRC) is co-operation with other institutions and organisation organized a series of regional expert seminars on the topic 'improving compliance with IHL' the seminar were organized as part of the preparation for the 28th international conference of the Red Cross and Red Crescent. Five seminars were held with the same agenda in Cairo (23-24 April 2003), Pretoria (2-3 June, 2003) Kuala Lumpur (9-10 June, 2003) Mexico City (15-16 July 2003) and Bruges, Belgium (11-12 September 2003) at p.3 see <www.icrc.org/eng/resources/document> accessed on 15 June 2020.

¹⁰ Ibid

¹¹ Common Art. 3 (3) to the four Geneva Conventions of 1949.

proposals were made of new IHL mechanism and the ICRC was commended as one of the most competent actors to effect improvement in compliance with International Humanitarian law in non-international armed conflict.¹²

The term ‘compliance’ seems to connote the same meaning as ‘implementation’.

According to professor (Dr.) Umesh Kadam, the term ‘implementation’ encompasses all measures that must be taken to ensure that rules of law are fully respected¹³. Two other related terms used in the context of International Humanitarian law are ‘enforcement’ and ‘effective compliance’. Implementation of International Humanitarian law refers to measures designed to monitor and ensure its observance whereas enforcement means the collection of mechanism and rules available to secure restoration of observance of the provisions of legal instruments when such laws are violated.¹⁴ The inherent dignity of every humanbeing can best be promoted and safeguarded through a complementary application and safeguard through a complimentary application of (in particular, international humanitarian law), human right and refugee law (as appropriate). International humanitarian law when properly applied affords a vital protection to the lives and dignity of those who are Vulnerable in terms of conflict. Its provisions aim at protecting civilians, people deprived of their liberty, the wounded in war, and

¹² Report prepared by ICRC, Geneva, October, 2003 at p.3-4.

¹³ Umesh Kadam: Implementation of international humanitarian law in Japan, The ICRC perspectives P.1 see <[www. Adh-geneva.ch](http://www.Adh-geneva.ch)> accessed on the 17th June, 2020.

¹⁴ Ibid. Also see the domestic Implementation of International Humanitarian law. A Manual of ICRC P.19 see <www. Operationspaix.net> accessed on 17th June, 2020.

those under foreign or military occupation¹⁵. Parties to an armed conflict have the responsibility to implement and respect those laws and the international community has the responsibility-to ensure this respect.¹⁶

Where international humanitarian law is not respected, however, human suffering becomes all the more severe and the consequences become all the more difficult to overcome. It has, as far as the consequences are concerned, to be reminded that past wars are among the causes of new wars. This is particularly evident for wars, which have been waged, in total disregard of the rules of International Humanitarian law. Deliberate targeting of civilians, indiscriminate attacks, forced displacement of populations, destruction of infrastructure vital to civilian populations, the use of civilians as human shields, rape and other forms of sexual violence, torture, destruction of civilian property and looting -these and other violations of international humanitarian law cause untold suffering in armed conflicts throughout the world. As witnessed most recently in Darfur, for example, we have to recognize that the ability of humanitarian organizations to protect the civilian population in armed conflict is often extremely limited. Indeed, the objective of protecting human dignity through ensuring respect for the law involves staggering practical challenges.¹⁷

¹⁵ Generally Art. 50 – 58 Additional Protocol I to the Geneva Conventions of 12 August 1949

¹⁶ Keynote address by Dr. Jacob Kelleberger, a former Swiss diplomat and former president of the International Committee of the Red Cross, XXVIIIth Round Table on current problems of International Humanitarian Law. San Remo, 2 September, 2004.

¹⁷ Ibid.

3. What are National Humanitarian Law Implementation Bodies?

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The purpose of a legal provision is to influence human behaviour. Every norm is an order to influence behaviour in a particular way or not to behave in that particular way. Such commands or prohibitions (Standard of behaviour) must then be implemented. This is true for rules of humanitarian law as it is for national law e.g. a penal code or road traffic regulations. The fact that in International Humanitarian law, the rule applies in the first place to sovereign states does not alter the principle that the rule imposes an obligation.¹⁸ The main difference between domestic law and international law is to be found at the level of implementation. While a state has machinery for implementation of laws in its territory, (legal instruments, administration, law courts, police force, etc) the International Community is composed of a great number of individual states and International organizations and other institutions¹⁹ who in turn rely on states members to be able to function properly. In view of the above, it is clear that states are the most endowed with opportunities to implement International Humanitarian law.

The National International Humanitarian Law (IHL) implementation bodies are specific autonomous IHL bodies created by a state composed of persons, representative of the key ministries and government departments. These include Civil Societies and distinguished and honourable individuals for the purpose of monitoring IHL situation with a view to advising the government on the management of various IHL instruments and to implement

¹⁸ Hans-peter Gasser, International Humanitarian law an introduction, 1993. P.79.

¹⁹ Ibid

their provisions to all the segments of the society²⁰. These segments will include military personnel, victims of armed conflicts, civilians, cultural properties and so on based on the provisions of IHL instruments²¹.

In a state where a National IHL implementation body is not in existent, one should be created without delay. The creation of a National implementation body may be in the following model:

a. Establishment

A National IHL body may be formed as a Commission, Committee, or a State Department. The name so called is not the main issue. The main point is that there should be a law promulgated backing the establishment of the National IHL implementation body. This body must be allowed to work independently outside direct control by either the Executive or the Legislature. Its mandate and schedule of activities should be spelt out in the instrument establishing it.²²The source of funding should be made in such a way that the body so created will not be made to be sub-ordinate to another State Department or agency. The source of funding for this kind of body should be consolidated in the budget of that State. The financial independence of a government department is needed to allow such bodies to function optimally. This is without prejudice to operate under a supervisory Ministry of State. Otherwise it may be made to operate under the office of the President who in most

²⁰ Art. 80. Additional Protocol I to the Geneva Conventions of 12 August 1949

²¹ Note 11 (Domestic Implementation of IHL) P. 25 Also see Umesh Kadam Op. Cit. P.1

²² Maria Teresa DUTLI: The importance of National Implementation of International Humanitarian Law PP 187-195 at <www.ihl.org>accessed on 17th June, 2020, also see: Domestic Implementation of International Humanitarian Law, A manual [www. operationspaix.neta](http://www.operationspaix.neta), accessed on 17th June, 2020, Umesh Kadam Op. Cit. at [www. world.org](http://www.world.org).

cases is the Commander-in-Chief of the Armed Forces of the State in question²³. The establishment of such bodies will enhance performance of States in compliance with International Humanitarian Law.

b. Structure

The structure of the established government organ or agency for the implementation and compliance with international humanitarian law must of necessity be an Inter-Ministerial, Inter-Departmental working group that will represent all the strata of society including the National Red Cross, Red Crescent or Red Crystal Societies. It may even be known as National Commission on International Humanitarian Law (NCIHL). It must be an organ with corporate personality, exist perpetually and have a consolidated budget approved by the Parliament and has relationship with other organs of government for effectiveness.

c. Composition and Method of Operation

The National Commission on International Humanitarian Law as a body should have a Chairman; it should have members from key Ministries, National Red Cross, Red Crescent and Red Crystal societies and National minorities each of whose candidature is recommended by these organs and organizations and to be sent by the Executive to the Legislature for approval. This will be after the individuals concerned have been screened by another Independent Body like the Code of Conduct Bureau. The members should be of individuals of high integrity and high moral values who can wither the storm against malpractices and corruption in carrying out their given assignments.

²³ Sections 217-218, CFRN, 1999.

4. Enhancing the Implementation of International Humanitarian Law

The answer as to what can be done to make the law work more effectively to protect the victims or potential victims of armed conflict is to be found in the 1949 Geneva Conventions for the protection of victims of war and their Additional Protocols I, II and III applicable in international and non-international armed conflicts respectively. These instruments as well as the other humanitarian law treaties, prescribed a range of mechanisms to promote compliance with the rules. These international instruments make it clear that the States themselves are bound not only to respect, but also to ensure respect for the rules that they must act internationally, at both the bilateral and the multilateral levels, to suppress violations of the law²⁴. They also establish a role for independent third parties and, in the field of compliance specifically, for an international fact-finding commission.²⁵ Article 90 of AP I provides for an elaborate system of compliance with International Humanitarian Law to the extent that it went as far as creating a special organ called the International Fact Finding Commission consisting of fifteen members elected by secret ballot from a list of persons to which Parties to the Protocol may nominate a person. The members of the Commission shall serve in their personal capacities. The members shall have the requisite qualifications to be members and the election shall be based on equitable geographical representation. In case of casual vacancy, the Commission itself shall fill the vacancy relying on the guiding principles of establishment of the Commission²⁶. The Commission shall be competent to:

²⁴ GC I-IV Common Articles 1, 2, 3; AP III Article 1.

²⁵ Addition Protocol I Art. 90

²⁶ Additional Protocol I Art. 90 (1) (e).

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- i) enquire into any fact alleged to be a grave breach or other serious violation of the Conventions or of this Protocol⁴⁷³
 - ii) facilitate through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol²⁷.

This Commission works in Chambers. A Chamber consist of seven members appointed as follows:

- i) Five members of the Commission, not nationals of any Party to the conflict, appointed by the president of the Commission.
- ii) Two *ad hoc* members, not nationals of any Party to the conflict, one to be appointed by each side to the dispute²⁸.

The President of the Commission sets the other criteria including appointment of additional members if the need arise²⁹

Under the treaties of international humanitarian law, a number of measures must be adopted in time of peace to ensure compliance with the Law in time of war. Article 80 of Additional Protocol I, entitled “Measures for execution”, emphasizes this point and indicates to the States how they are to fulfill their obligations. Under IHL a range of measures must be undertaken. Among the main ones are:

- a. To have IHL instruments translated into the national language³⁰;
- b. To spread knowledge of them as widely as possible both within the armed forces and general population³¹;

²⁷ Additional Protocol I Art. 90 (2) (c).

²⁸ Additional Protocol I Art. 90 (3) (a).

²⁹ Additional Protocol I Art. 90 (3) (b).

³⁰ Geneva Conventions. Common Art. 48 GCI, 49 GC II, 128 GC III and 145 GC IV.

- c. To repress all violations of IHL instruments and, in particular to adopt criminal legislation that punishes war crimes;
- d. To ensure that persons, property and places specifically protected by the law are properly identified and marked;
- e. To adopt measures to prevent the misuse of the Red Cross, the Red Crescent, the Red Crystal and other emblems and signs for IHL;
- f. To ensure that protected persons enjoy judicial and other fundamental guarantees during armed conflicts;
- g. To adopt and train persons in IHL; in particular, to ensure the presence of legal advisers within the armed forces;
- h. To provide for the establishment and/or regulation of:
 - National Red Cross and Red Crescent Societies, and other voluntary aid societies such as:
 - Civil defence organizations
 - National Information Bureau
- i. To take account of IHL when selecting military sites and in developing and adopting weapons and military tactics;
- j. To provide for the establishment of hospital zones, neutralized zones and demilitarized zones.

Some of these measures require the adoption of legislation or regulations. Others require the development of educational programmes, the recruitment and/or training of personnel, the production of identity cards and other documents, the setting up of special structures, and the introduction of planning and

³¹ Geneva Conventions. Common Art. 47 GC I 48 GC II, 127 GC III and 144 GCIV; Protocol I Art. 83 and Protocol II Art. 19. See also Protocol I Art. 6” Qualified Persons”, 82 “Legal Advisers in Armed Forces” and 87 “Duties of commanders”. See Maria Teresa DUTLI: *The Importance of National Implementation of IHL*, Op. Cit. PP. 188-189.

administrative procedures, all of which help to ensure effective implementation of IHL. Each treaty, however, has its own implementation requirements and purposes.

5. The main differences between National Implementation in Monist and Dualist Countries

States may be generally described as either monist or dualist. In monist states, treaties typically take direct effect in domestic law without separate implementing legislation. As part of the treaty accession procedure, the country’s parliament adopts what is called a “ratification law” and orders it to be published in the official gazette. However, many provisions in IHL treaties require the adoption of more than what a typical “ratification law” contains. This is in part because most IHL treaties require the enactment of a number of specific provisions, including, for instance, the adoption of emblem protection measures, or the establishment of a national information bureau.

In dualist States, the requirement for implementing legislation is even more evident as without it treaties have no direct effect in domestic law.

Many legal systems may also be described as based on ‘common law’ or ‘continental law’ (also described as ‘civil law’). Common law States are primarily dualist, and civil-law States are usually monist. These general terms reflect the history of their legal system, as inspired either by English common law or by Roman law, while each system has greatly influenced the other, and in practice neither exists in its ‘pure’ form, some of their main differences include:

Issue	Common law	Continental law
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Jurisdiction	Case-law from higher courts is a source of law, and often binds judges, in addition to legislation	Judges rely primarily on legislation as found in written form
Criminal law and procedure	Uses of juries, hearsay rule, criminal offences in legislation other than the criminal code, existence of common-law offences	Use of examining magistrates, greater involvement in trial by judges rather than restricted to counsel

For the purpose of national IHL implementation, many Common law jurisdictions adopt separate (stand-alone) legislations for the obligations deriving from each of the major treaties. Thus, there will often be a Geneva Conventions Act, an international Criminal Court Act, an Anti-personnel Landmines Act and so on, all of which normally include criminal offences. Continental-law jurisdictions, on the other hand, often insert all criminal offences flowing from these treaties into their criminal code, which may be civilian or military or both.³²

6. Why the International Criminal Court alone cannot Implement International Humanitarian Law

³² In practice states draw upon both models, depending mainly on the level of details found in the provisions of the Treaty in question; see also Shaw M.N International Law 5th Edition, 2003 pp 121-123; J.H Jackson ‘status of Treaties in Domestic Legal Systems: A policy Analysis’ , 86 AJIL 1992, P. 310.

The jurisdiction of the International Criminal Court (ICC) has the following characteristics: it is complimentary, limited, non-retroactive, automatic and not time-barred. 477

The first of these characteristics - '*complemetarity*' means that the ICC will only exercise jurisdiction when the state that would normally have jurisdiction is either unable or unwilling to exercise it. Thus, States are and remain primarily responsible for prosecuting and punishing crimes over which the ICC also has jurisdiction, to the extent required by the other international rules by which they are bound, i.e. those set forth in the 1949 Geneva Conventions and in customary international law. The jurisdiction of the ICC is *limited* to genocide, crimes against humanity and war crimes.³³ It will be extended to crimes of aggression once they have been defined. The Court's jurisdiction covers crimes committed after July 2002, the date on which the Rome Statue entered into force for the State Parties. For those States that become party to the Statute after its entry into force, the ICC will have jurisdiction only once the State has ratified or acceded to the Statute, confirming the non-retroactive character of its rules. The jurisdiction is *automatic* and does not need any declaration or other act. Finally, the crimes under the ICC's jurisdiction are not time-barred. The success of the ICC is directly contingent on complete and prompt State cooperation. The States Parties need to render assistance to the ICC in many ways enumerated in the provisions of the Rome Statute. In order to be in a position to benefit from the principle of complimentary, States Parties should bring their national legislation in line with international law and give their domestic courts jurisdiction over crimes under the jurisdiction of the ICC. Since the capacity of the ICC is limited, its importance is likely to

³³ Rome Status, Art. 6-8. See also Maria Teresa DUTLI Op. Cit. P 292

lie not only in its work but also in the example that it sets to governments.³⁴

7. National Bodies for the Implementation of International National Humanitarian Law

The obligation to implement humanitarian law falls primarily on the States. It is they who must act to ensure full compliance with the law. To date, 69 national committees for the implementation of international humanitarian law have been created worldwide. They have been assigned specific functions to promote humanitarian law and prepare measures for its implementation, with the general objective of providing government with support on matters relating to the law. They take the form of interministerial working groups or advisory committees set up by the States to facilitate the process of national implementation.

How the National Body is organized and its objectives are determined at the time of its formation. The Body should, however, be able to evaluate domestic law in the light of international obligations, be in a position to make recommendations and monitor application of the law, and promote activities, to spread, knowledge of the law. It thus requires a wide range of expertise, and must therefore include representatives of the government ministries concerned with the implementation of humanitarian law. Precisely which ministries are relevant will depend on the committee's mandate, but they are likely to include defence, foreign affairs, justice, finance, education and culture. It may also be useful to have representatives of parliamentary committees, members of the judiciary, personnel from the armed forces general staff, and

³⁴ Ibid

representatives of the National Red Cross or Red Crescent Society.³⁵ The implementation of humanitarian law is an ongoing process in which the adoption of laws and regulations is but one step. Comprehensive implementation invokes monitoring the application and promotion of the law, as well as keeping abreast of and contributing to its development. It is therefore recommended that the national committee be a permanent and not an ad hoc body.

8. The Challenges of National IHL Implementation within Individual State Parties

The International Fact-Finding Commission which, notwithstanding its great potential and quality of its membership, has never been called upon to exercise its responsibility since it was established in 1991. It is difficult to evaluate the role of discreet diplomacy in relation to the duty to ensure respect. It is certainly true that bilateral contacts continue to have a role to play in exerting pressure on offending States. At the multilateral level, regional and international organizations have shown an increasing interest in the implementation of humanitarian law. Resolutions on this issue have been adopted, for example, by the Organization of American States, the Organization of African Unity (African Union), the Council of Europe and the League of Arab States. The United Nations, which tended to be wary of humanitarian law in its early years, has also shown increasing concern for the issue as reflected in resolutions adopted by the General Assembly and Security Council. Yet some regions still take compliance with IHL as compliance with alien colonial laws.³⁶

³⁵ Ibid

³⁶ The case of Al-Bashir, President of Northern Sudan with a warrant of arrest since 2009 and the attitude of African States with the exception of Malawi recently is a case in point.

When it comes to spreading knowledge of the law, education and training continue to be a matter of major concern to the entire International Red Cross and Red Crescent Movement. The International Committee of the Red Cross has devoted growing resources to this activity in the past twenty years. It has recruited specialists and used a range of media, from folksongs and puppet-shows to academic seminars, to bring the rules of humanitarian law to school children, soldiers, irregular fighters, officials and politicians. Governments are also encouraged and provided with assistance to discharge their dissemination responsibility. Despite these efforts, there is still great a need to disseminate the provisions to all concerned.

Humanitarian law also seeks to ensure that individuals, whatever their position, are held to account for their actions. Serious violations are to be considered as criminal acts, as “war crimes”, and States are obliged to punish grave breaches of humanitarian law regardless of the place of the offence or the nationality of the offender. The now familiar notions of individual liability and universal jurisdiction represented major innovations when introduced into humanitarian law. Here corruption, making state officials to be seen as above the law is a militating factor.³⁷

States party to international humanitarian law treaties undertake to adopt the necessary legislative measures to suppress any grave breaches of the treaties³⁸. The good result here is yet to be noticed.

³⁷ The various allegation of corruption against elected and appointed officials in Nigeria without any concrete thing coming out of investigations may encourage people not to respect IHL provisions.

³⁸ “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 bridges of the present Conventions (...)”, Geneva Conventions, Common Arts. 49,50,129,146.

Grave breaches comprise some of the most flagrant violations of international humanitarian law. They are listed in the Geneva Conventions and Additional Protocol I to include the following acts. Willful killing, torture or inhuman treatment, willful causing great suffering or serious injury to the body or health, attacks on the civilian population and indiscriminate attacks, attacks on works and installations containing dangerous forces against non-defended localities, perfidious use of the protected emblems, unlawful population transfers, unjustified delay in repatriation of prisoners of war or protected civilians, attacks on Historic Monuments or places of worship and denial of judicial guarantees³⁹. Grave breaches such as these are regarded as war crimes⁴⁰.

The notion of war crimes is broader than that of grave breaches because it covers, in addition to the acts enumerated above, other serious violations of the customary or treaty-based rules of international humanitarian law, regardless of whether such violations are committed in situations of international or non-international armed conflicts⁴¹. National criminal legislation adopted to sanction violations of international humanitarian law should as a minimum:

- i. establish, in respect of each grave breach covered, the nature and extent of the punishment, with due regard for the principle of proportionality between the penalty imposed and the gravity of the breach committed;
- ii. recognize the individual criminal responsibility not only of the persons who committed any of the said breaches, but also of those who ordered the commission thereof, and

³⁹ Geneva Conventions. Common Arts. 50, 51, 129, 147, and Protocol I. Art. 28.

⁴⁰ Protocol I Art. 85.

⁴¹ Maria Teresa DUTLI. Op.Cit. P. 191.

- recognize the individual criminal responsibility of superiors;
- iii. provide in particular for the repression of grave breaches which are the result of an omission where the omission in question is not already punishable under ordinary national law;
 - iv. specify that interests and imperatives of a political or military nature, national interests and requirements and orders issued by superiors do not justify the commission of grave breaches and are not grounds for exemption from punishment;
 - v. have a substantive and personal scope permitting application of the law to any perpetrator of a grave breach, irrespective of his or her nationality or the place where the act was committed;
 - vi. give any person prosecuted for committing such a breach the right to a fair trial by an impartial and regularly constituted court and to regular judicial proceedings affording the generally recognized judicial guarantees;
 - vii. comply with the obligation to facilitate cooperation with other States in terms of judicial assistance in criminal matters and matters involving extradition.

9. Conclusion

I will like to conclude on a note of caution. Perhaps the greatest difficulty of the future lies in the changing nature of modern warfare itself and the increasing number of conflicts in which the normal structures of authority do not apply⁴². Promoting compliance with humanitarian law in conflicts where there are no clearly identified authorities and where humanitarian workers are

⁴² Maria Teresa DUTLI *Op. Cit.* p. 195.

themselves at risk may appear both impossible and irrelevant.
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Some have argued that the rules of humanitarian law need to be modified but this seems to be a legal response to what is essentially a non-legal problem. Others argue that the solutions, if they exist, lie in the hands of psychologists and communications experts and not lawyers. The debate continues. One thing at least is clear - the problem of implementation, of respect for the rules, will continue to present one of the gravest challenges for humanitarian law in the years ahead.