Chapter – VI
Role of Independent Agencies in protecting human rights during Armed Conflicts

6.1 Introduction

From the time immemorial, major victims of an armed conflict, whether internal or international, are the civilians. The destruction of civilian property and looting, the forced displacement of populations, the use of civilians as human shields, the destruction of infrastructure vital to civilian populations, rape and other forms of sexual violence, torture, indiscriminate attack etc. are too common in such conflict\(^1\). The International Humanitarian Law intends to alleviate pain and sufferings from such conflicts by providing essential protection for those directly affected by armed conflict. But, such rules are meaningless so long the parties to the conflicts unwilling to follow the rules or unaware of such rules. Where IHL is not respected human sufferings increases and consequences of conflict more difficult to repair. So what is required is that due respect to the existing laws that means to minimize the sufferings resulting from an armed conflict.

To bridge this gap international neutral agencies always encourage the participants in armed conflicts to respect human rights and humanitarian law. The United Nations General Assembly, the UN Commission on Human Rights, the International Court of Justice, and several other intergovernmental organizations have occasionally attempted to secure respect for human rights law during armed conflicts

and have referred on an irregular basis to humanitarian law in such endeavours. The international non-governmental organizations also do monitoring, fact fighting and explore the violations of human rights to the international community. They maintain extensive website documenting violations and calling for remedial action, both at governmental and grass-roots level. They also monitor the functioning of government and pressure them to act according to the principles of human rights and humanitarian laws. Such activities of NGOs help to fill up the creditability gap by developing and maintaining pressure for accountability mechanism both in national and international level.

International Committee of the Red Cross (ICRC), is the pioneer in this aspect, has long played a leading role in working for the application of humanitarian law during armed conflicts; it has also begun to refer to human rights law in situations of internal strife or tensions not covered by international humanitarian law. ICRC involves in such activities in two ways, firstly, by providing humanitarian services to the victims of such conflict and secondly, by disseminating information regarding IHL among parties to the conflict as well as different sections of the society for improving compliance with the IHL. The ICRC renders such services under the mandate of Common Article 3 to the four Geneva Conventions which stipulates that in non-international armed conflict situation an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its service to the Parties to the Conflict. So, this chapter presents a overview of the various mechanisms adopted by the International Committee of Red Cross to improve the situations of people affected by non-international armed conflict.

---

6.2 Establishment of ICRC and its services

The history of the International Committee of Red Cross is closely linked to that of IHL. In fact ICRC is the driving force behind development of IHL. The Organization, established by Henri Dunant of Switzerland in the year of 1863, with the idea of international action to limit the sufferings of the sick and wounded in wars, has now acquired a unique position and widely respected humanitarian actor. The organization is primarily private but with public dimensions, legally speaking being a Swiss private association but recognized by public international law.

The ICRC was established with the mission to “... protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles...” . This mission is affirmed by the Statute of the International Committee of Red Cross and Red Crescent Movement, which described the ICRC’s mandate as working for “the faithful application of international humanitarian law” and towards “the understanding and dissemination of International Humanitarian Law”.

The protection as mentioned in the mission statement of ICRC includes effort to prevent or put a stop to actual or potential violations of IHL and other relevant bodies of laws and norms. Protection relates firstly to the cause of, or the circumstances that lead to, violations mainly by addressing those responsible for the violations and those who may have influence over the letter and secondly, to their

---

3 David P. Forsythe, *International Review of the Red Cross*, Volume 89 Number 865 March 2007, P. 1

4 Statute of the International Committee of Red Cross and Red Crescent Movement, adopted by the 25th international Conference of the Red Cross and Red Crescent in Geneva in October 1986, Article 5(2)(c)

5 Ibid, Article 5(2)(g)
consequences. This definition of protection also includes activities that seek to make individuals more secure and to limit the threats they face by reducing their vulnerability and/ or their exposure to risks, particularly those arising from armed hostilities or acts of violence.

The ICRC offers its services in four types of situations namely, international armed conflict situations, non-international armed conflict situations, internal disturbances and other situations of internal violence.

In addition, in some context are of a mixed nature and combine some of the characteristics of above mentioned situations.

6.3 Role of ICRC in non-international armed conflict situation

The role played by the ICRC in non-international armed conflict situations can be discussed under two headings namely-

A. Services relating to protection of life and dignity of the victims of armed conflict i.e. rendering humanitarian services and

B. Secondly promoting and strengthening the humanitarian laws.

6.3.1 Protection of life and dignity of the victims of armed conflict

The ICRC renders the services for protection of life and dignity of the victims of armed conflicts through various activities, namely-

1. Visiting detainees

2. Protecting civilians

3. Restoring family links

---

4. Ensuring economic security

5. Water and habitat

6. Health

7. Cooperation with national societies

8. Building respect for international humanitarian law

9. Safeguarding health care

10. Other activities

6.3.2 Visiting detainees

Detention or deprivation of liberty of individual is a natural consequence of any types of conflict. So, for many years, the ICRC gave pride of place to its activities on behalf of detainees. The members of ICRC visits Prisoners of Wars and civilians interned during armed conflict with the aim that detainees whatever the reason for their arrest and detention are treated with dignity and humanly, in accordance with international norms and standards. The ICRC also works to draw the attention of the authorities to any problems face by the detainees and to ascertain through repeated visits whether appropriate remedial action has been taken.

In 2012, the ICRC visited 540,669 detainees in 1,744 places of detention in 97 countries and territories, including detainees under the jurisdiction of international courts and tribunals, monitored 26,609 of these detainees individually (including 626 women and 1,235 minors and enabled 13,913 detainees to receive visits from family members.\(^7\)

\(^7\)Visiting detainees, ICRC, available at www.ICRC.org, last visited 26 July 2013
6.3.3 Protecting Civilians

In contemporary conflicts, the losses sustained by civilians are generally higher than those seen among weapon bearers. So, the ICRC’s protection efforts are intended to benefit the civilians who are not or who are no longer participating in hostilities and violent confrontations. Special attention is paid to groups exposed to specific risks, such as children (recruitment of minors), women (sexual violence), and elderly, handicapped, and displaced persons. For this ICRC’s protection work is aimed at reminding the parties concerned of the rules governing the conduct of hostilities (such as distinguishing between the civilian population and military objectives, the principles of precaution and proportionality, and ensuring access to basic necessities for the population’s survival), as well as the rules relating to the use of force in law enforcement operations. The ICRC also seeks to ensure that civilians are not subject to discrimination and that they have access to health care, safe drinking water, and agricultural land. The ICRC is also involved at the highest diplomatic level when it is a matter, e.g., of advocating for the prohibition of certain weapons whose use is deemed contrary to the basic rules of IHL, such as anti-personnel landmines and cluster munitions.

Most of the time, ICRC delegates, having documented abuses which they learned about in the field, inform the authorities of the existence of protection problems and ask them to take action to end these abuses and/or provide assistance to the victims. The solutions provided by the ICRC are not limited to making confidential representations to the authorities. They may take multiple forms, from promoting rules of engagement and operation consistent with international standards

---

8 Protection of Civilian Population, ICRC, 29-10-2010 overview available at www.ICRC.org. Last updated 03-11-10
for the armed forces and police, to evacuating persons trapped in combat zones, as well as facilitating agreements between the parties to a conflict that will contribute to safeguarding the fundamental rights of the population⁹.

### 6.3.4 Restoring family links

In a conflict situation the ICRC always trying to locate people and put them back into contact with their relatives. For this purpose, the ICRC has established a Central Tracing Agency (CTA) which collects information on prisoners of war and civilians in occupied territories (particularly those who are interned) so that contact can be established and maintained with their families; searches for persons missing in the event of armed conflicts ; and monitors the return of children to their families. The means adopted by the ICRC to render this service vary from one emergency context to another depending on the prevailing political and military situation, existing needs and available resources and include Red Cross mobile phone, radio network, newspapers, notice boards, Family Link Website on internet and Red Cross message.

### 6.3.5 Ensuring Economic Security

The ICRC’s work to promote economic security aims to ensure that households and communities affected by conflict or armed violence can meet essential needs and maintain or restore sustainable livelihoods. Its activities range from emergency distributions of food and essential household items to programmes for sustainable food production and micro-economic initiatives. Needs covered include food, shelter, access to health care and education. Economic security activities

---

⁹ Ibid
are closely linked to health, water and habitat programmes. All these activities come within the ICRC’s global mission to protect victims of conflict\(^\text{10}\).

### 6.3.6 Water and Habitat

During armed conflict communities frequently lack shelter, medical care and access to safe drinking water because sources have been damaged or destroyed. ICRC’s water and habitat activities ensure that people of such areas have access to water and create or maintain a sustainable living environment. In 1983, the ICRC set up its Water and Habitat Unit, which has five main areas of activity:

- a. Water supply, storage and distribution
- b. Sanitation, waste management and environmental science
- c. Restoration and management of electric power
- d. Construction, repair and safety of structures
- e. Provision of temporary community facility

Its approach to this work is community-based and includes coordination with the relevant authorities – essential to ensure sustainability\(^\text{11}\).

In acute crisis situations where water supplies are interrupted and lives are at risks as people seek alternative sources in a hostile environment, the ICRC aims to ensure emergency access to water and health care and to maintain whatever local facilities remain. In emergency, chronic and post-crisis situations, the ICRC’s priority


\(^{11}\) Water and habitat, *ICRC*, 29-10-2010 overview, available at [www.ICRC.org](http://www.ICRC.org), last visited 29 July 2013
is to ensure continuity of basic services by supporting and strengthening existing resources.\textsuperscript{12}

6.3.7 Health

ICRC’s Health Unit acts with the object to assist people affected by conflict by providing basic preventive and curative health care. In emerging or acute crises, when access to medical facilities and provision of care are at risk, the ICRC helps ensure continuation of basic health services, First Aid, emergency transport and emergency hospital care. The basic services include outpatient treatment, mother and child care, vaccination campaigns and dealing with the consequences of sexual violence. War wounds that may lead to amputation or other serious disabilities are dealt with within the framework of physical rehabilitation programmes. In chronic crises and post-crisis situations, the ICRC may provide more diversified support to ensure continuity of primary health care including broader immunization programmes, health and hygiene promotion. It may also take steps to strengthen hospital management.

ICRC medical staff also visits prisons to assess the inmates health and investigate the consequences of physical or psychological ill-treatment.\textsuperscript{13}

6.3.8 Cooperation with National Societies

The ICRC works closely with the National Red Cross and Red Crescent Societies and with their federation in order to ensure a concerted, rational and rapid humanitarian response to the needs of the victims of armed conflict and other situations of internal violence. There are four aspects to co-operation namely

\textsuperscript{12} Ibid
\textsuperscript{13} ICRC Health, 29-10-2010 overview, available at www.ICRC.org, last visited 29 July, 2013
operational cooperation, coordinating the movement’s components, National Society capacity building and Cooperation in devising Movement policies.

Operational cooperation covers various activities such as providing first aid and health care, distributing food, taking war causalities to hospital and restoring family links. This type of cooperation can also include National Societies which wish to cooperate outside their own country in context where the ICRC is working.

In addition to organizing its own operations the ICRC coordinates the activities of other components operating in the country and thereby maximizing complementarities of mandates and skills.

ICRC helps in National Society capacity building by sending its expertise in the following fields to the National Societies.

a. Promotion of International Humanitarian Law and of the Movement’s Fundamental Principles.

b. Emergency aid and health care for those affected by conflict.

c. Restoring family links.

d. Mine-hazard awareness education

e. Measure to strengthen the legal bases and statutes of the National Societies.

Lastly, ICRC takes an active part in designing and implementing policies for the Movements which are adopted at statutory meeting such as the Council of Delegates and International Conference of the Red Cross and Red Crescent Movement.
6.3.9 Safeguarding Health Care

The Red Cross and Red Crescent Movement run a global campaign aiming to improve security and delivery of impartial and efficient health care in armed conflict and other emergencies.

6.3.10 other activities

Besides all these activities of the ICRC in the armed conflict situations, the Organization also involves some other activities as discussed below-

1. The Organization works for reducing the effect of weapon contamination on civilians
2. As a guardian of IHL the Organization involves in encouraging the ratification of treaties, monitoring compliance, promoting awareness and contributing to law’s development.
3. It takes steps for social research studies on the impact of armed conflict on civilians and behaviour during armed conflict.
4. By maintaining relations with a wide range of contacts, including States, non-state actors and international organizations the ICRC promote the knowledge, understanding and development of IHL.
5. By maintaining relations with private sectors, ICRC promote humanitarian principles with companies operating in war-prone areas and also tries to enhance the ICRC’s capacity to help the victims of war.

6.4 Promoting and strengthening the humanitarian laws

The ICRC has been the driving force behind the development of humanitarian laws. Most of international documents on humanitarian laws including the Geneva Conventions are adopted under the initiative of ICRC. Its mandate obliges it to look
into the implementation and promotion as well as raise awareness on humanitarian laws.

Common Article 3 to the four Geneva Conventions which is often referred as ‘treaty in miniature’ provides the rules that are applicable in non-international armed conflict. It lays down the minimum protection that must be afforded to all those who are not, or who are no longer, taking an active part in hostilities such as civilians, members of armed forces of the parties to the conflict who have been captured, wounded or have surrendered. It provides for humane and non-discriminatory treatment for all such persons in particular by prohibiting acts of violence to life and persons specially murder of all kinds, mutilation, cruel treatment and torture, taking of hostage, outrage upon personal dignity, in particular humiliating and degrading treatment. It prohibits the passing of sentences and carrying out of executions without previous judgement pronounced by regularly constituted court, affording all the judicial guarantees which are recognized as indispensible by civilized peoples. Finally it imposes an obligation on the parties to collect the wounded and sick and cared for them.

Along with these rules Protocol II additional to four Geneva Conventions provides for humane and non-discriminatory treatment of all those who are not, or who are no longer, taking direct part in hostilities. It expands the protection provided by Common Article 3 by including prohibitions on collective punishment, acts of terrorism, rape, enforced prostitution and indecent assault, slavery and pillage.

The particular feature of these rules is that they are addressed not only to the states party to those treaties but more broadly to the ‘Parties to the conflict’. Each party to the conflict must respect and ensure respect for international humanitarian
law by its armed forces and by other persons or groups acting de facto on its instruction or under its control.

However, in many times it appears that the parties to a conflict of non-international nature are not aware to these obligations. So, ICRC conducts many dissemination and training activities among armed forces, police, and security forces and other bearing arms, as well as decision makers and opinion leaders at the local and international level to make the rules of humanitarian law known. But, merely making the parties to armed conflict aware of the law or of their specific obligation is not enough to improve their compliance with IHL, so long they do not respect the law. It is equally necessary to develop positive attitude in the minds of parties to conflict to respect the rules laid down in IHL. It is also necessary to secure a commitment from the parties to conflict to comply with the law. To this end, the parties should be encouraged and helped to put their commitment into practice. The ICRC does this through an ongoing process of confidential bilateral dialogue and representation, which includes reminding the parties of their obligation and commitments, monitoring and reporting, as well as training and capacity building.

When an armed conflict breaks out, the ICRC by way of a letter or memorandum submitted directly to the parties to a conflict, of the legal characteristics of the situation and reminds them about the rules applicable in such situations and of their obligation under the International Humanitarian Law. It can be done through press release also. The ICRC sends such communication at the beginning of a conflict if a particular situation warrants it.

Besides all these the ICRC has been adopting different legal tools to improve compliance with humanitarian law by the parties to non-international armed conflict. Such legal tools are special agreement, unilateral agreement, inclusion of
humanitarian law in the code of conduct for armed groups, as well as inclusion of humanitarian law in ceasefire or peace agreement.

### 6.4.1 Special Agreement

Under the Common Article 3 to the Geneva Conventions, parties to a non-international armed conflict should endeavour to comply with humanitarian law by means of adopting a special agreement. Such agreement provides a plain statement of law applicable in the context or of an expanded set of provisions of IHL beyond the law that is already applicable and secures a clear commitment from the parties to uphold that law. The ICRC to this end helps the parties to a non-international armed conflict for negotiating a special agreement among the parties to the conflict. Commitments made in such special agreement have provided a basis for follow-up interventions with parties to a conflict, either concerning respect for IHL in general or related to special issue or operational objectives. The ICRC by bringing reference to such agreement may ask the parties to put their commitments into effect and to allow the ICRC to provide relief and protection to the victim of the conflict.

The ICRC negotiated such special agreement among the parties to conflict in Yemen in 1962, in Nigera in 1967 and in 1992 in Republic of Bosnia and Herzegovina (BiH).

There are examples of conflicts where attempts to negotiate a special agreement did not result in one comprehensive document, but in several separate agreements. This was the case in Tajikistan, where negotiation took place under the auspicious of the United Nations between 1995 and 1997. The ICRC attended the meeting as an observer and used this forum to express its humanitarian concerns.\(^{14}\)

\(^{14}\)Supra note 1.
The main obstacle in adopting such special agreement is that very often the state parties to the conflict think that negotiation of such agreement with the armed groups will grant a degree of legitimacy to an armed group. But the Common Article 3 to the Geneva Conventions makes it very clear that such agreement in no way affect the legal status of the parties to the conflict.

6.4.2 Unilateral Declaration

Most often the non-state actors to a non-international armed conflict consider themselves technically not bound by the international obligation specified in treaty law as they cannot ratify or formally becomes party to such treaty. So, in general they make a unilateral declaration in which they state their commitment to comply with IHL. The contents of Unilateral Declaration may refer to common Article 3 to the Geneva Conventions or to both Common Article 3 and Additional Protocol II or may state the provisions of IHL to which the armed group is committing itself, without reference to specific treaty provision.

If the armed groups do not themselves make such declaration the ICRC or other humanitarian may asked the armed group for a written declaration of their willingness to comply with IHL. ICRC requests are usually bilateral and confidential. On receiving a unilateral declaration the ICRC will usually acknowledge it and then encourage the group to take all measures necessary for implementing the commitments it contains.

Such declaration are also used as a basis for follow-up activities and reference are cited by ICRC while making representation concerning violation of IHL or to provide a general reminder to a group of the commitment it has made to adhere to
IHL. The ICRC made such intervention with armed groups occurred in Angola, Colombia, Nicaragua, Rwanda, South Africa, Sri Lanka and other countries.

**6.4.3 Inclusion of Humanitarian Laws in the code of conduct for armed groups**

The ICRC or such other humanitarian actors often call for armed groups of a non-international armed conflict to develop or adopt codes of conduct or ‘rules of engagement’ for their members. ICRC does so bilateral and confidentially. Such code of conduct should be consistent with the rules of International Humanitarian Law and provide a concrete mechanism that enables its members to respect the law. The code of conduct should also contain a description of the means necessary to implement the IHL, including internal situations.

**6.4.4 Inclusion of Humanitarian Law in ceasefire or peace agreement**

Generally, the ceasefire agreement or peace agreement between the parties to a conflict brings reference to the humanitarian principles. ICRC and such other actors don’t directly involve in negotiating such agreements. But they may use the provisions in ceasefire agreement to remind the parties of their IHL obligation, to encourage compliance with the law, or negotiate for access. The ICRC made such representation in Democratic Republic of Congo, on the basis of 1999 ceasefire agreement and in Indonesia on the basis of 2002 agreement on the occasion of hostilities between the government of Indonesia and the Free Aceh Movement (FAM).

Similarly, peace agreement, although usually confidential and involve the relevant parties only, the ICRC and such other actors are sometimes able to review and comment on the IHL provisions in a draft agreement. It was happened in Siera
Leone, Burundi and Cote d’-Ivoire where the ICRC was able to comment on IHL related terms during the negotiation of peace agreement.

Besides all such activities, for promotion of IHL among the armed groups involved in non-international armed conflict, the ICRC also contribute to the development of national law for implementation of IHL and works to ensure its application. The ICRC’s Advisory Service helps governments to fulfill their responsibility to promote and implement statutory and customary IHL through national legislation and administrative measures. It offers its expertise and practical experience of conflict to help government to meet their responsibilities by passing legislation, training the armed forces and the police and promoting IHL among young people. The organization also organize education and outreach programme to create awareness of IHL among young people who are considered to be tomorrow’s leaders, opinion makers, soldiers and policemen. The ICRC very often holds national, regional and international seminars on the implementation of IHL in conjunction with the authorities or a National Societies. Along with this the ICRC tries to build awareness of IHL among young people by encouraging Universities to offer courses in IHL and by supporting lectures who teach it. The aim of this education programme is to foster respect for the notion of human dignity and to familiarize with IHL and humanitarian action.

6.5 Humanitarian Services by other agencies

International non-governmental organization, aside from ICRC, possess an important role in assessing whether governments and armed opposition groups are
respecting their human rights and humanitarian law obligation\textsuperscript{15}. They primarily focus upon human rights violations and seek to persuade governments to fulfill their human rights and/or humanitarian law obligation. Persecution can be accomplished by diplomatic contacts with the government concerned, appeals through media, letter writing campaign, communications to intergovernmental organizations, and efforts to encourage other governments to intercede\textsuperscript{16}. Amnesty International is one of such international NGO has been working for defending human rights since 1961. It claims that more than three million supporters, members and activists of the organization covering over 150 countries of the world are working for defending human rights. The members of this NGO take up human rights issue through letter writing, campaigning, demonstrations, vigils and direct lobbing of those who are in power\textsuperscript{17}. Human Rights Watch (HRW) is another leading NGO of the world which is dedicated to protecting the human rights of people around the world. The organization has been working for more than 30 years and it’s headquarter is in New York. The members investigate and expose human rights violations, hold abusers accountable, and those who hold power to end abusive practices and respect international human rights law.

\textbf{6.6 Services of neutral agencies in India}

India is a country which has been facing the trauma of separatist insurgencies in different parts, since her inception to the world community as a independent country. Particularly, many parts of North-east India and the Jammu and Kashmir have witnessed insurgency problems since before India got independence from the

\textsuperscript{15} Weissbrodt David, “The Role of International Organization in the implementation of Human rights and humanitarian law in situations of armed conflict,” published by SAGE, available at jpr.sagepub.com, last visited March 17, 2014

\textsuperscript{16} Supra note 15

British Colony. The Government of India, has been trying to face such problems by enacting and imposing different draconian security laws in such areas that confer wide powers on the government armed forces to do anything whatever they want, even to kill a person on mere suspicion, which ultimately led to widespread human rights violations. Such laws, despite solving the problem, increase the number of insurgent groups day by day.

But, though violation of humanitarian law facilitated by such laws are common, whether in Jammu and Kashmir or North-east India, the International Committee of Red Cross has not been granted access to visit detention centre in any of States of North-east India except a very limited extent in Jammu and Kashmir. In Jammu and Kashmir, the ICRC’s activities started in 1995 and conducted within the framework of memorandum of agreement between the Government of India and ICRC. Here, the ICRC monitors detainees’ treatment and living condition, including their access to medical care and respect for their judicial guarantee, but, such findings also remained confidential due to agreement with the government.

The Government of India till date has not permitted the ICRC to enter into the conflict prone areas of North-eastern States. Operations by the Indian Army are conducted in absence any agency to provide humanitarian services and also to look into conditions of detainees. In 2003, the Bhutan Royal Army of Bhutan Kingdom conducted an operation in the dense forest in the southern districts to flush out anti Indian rebel namely the ULFA, NDFB and KLO from the country. Many international humanitarian and human rights groups urged Bhutan to allow independent teams to verify that women and children were trapped in the military offensive against Indian separatists. But the Government of Bhutan refused permission to the ICRC to send a team to the Kingdom.
6.7 Concluding Remarks

Lack of political will on the part of the government to implement humanitarian laws is one of the major problems before the ICRC while rendering humanitarian services. Very often, the government authorities disagree to qualify a particular situation as armed conflict and thereby deny the applicability of IHL. They claim the conflicts going on in their area as a situation of tension and thereby hinder or block contact with armed group or access to the geographical area under its control. At the same time bearer of arms with little or no training in IHL are directly involved in the fighting. Even if such non-state actors have knowledge of such laws, they deny the applicability of humanitarian laws by refusing to recognize a body of law created by the States, or by claiming that they can’t be bound by obligations ratified by the government against whom they are fighting. Such situations also affect the creditability of a ICRC while rendering humanitarian assistance to the victims of armed conflict.

The Government of India also so long has been trying to solve the insurgency problems in the North-east India only through force without permitting the ICRC to intervene. This should not be continued. Acceptance of ICRC’s service would demonstrate that the fighting parties want to bring an end to the violence. The ICRC’s involvement could help protect the residents of the North-east India who are currently trapped in the middle between insurgents and government armed forces.