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Contribution of the international committee of the red cross (ICRC) to the development and implementation of international humanitarian law

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Abstract

The role of the International Committee of the Red Cross to the development and implementation of international humanitarian law cannot be overemphasized. This is because of the humanitarian services and other gigantic role the organization play towards the development and implementation of IHL. It is therefore salient for the international community to recognize these services by the ICRC. Data from secondary sources which include text books, journals, newspapers, online materials etc, were used throughout the paper. Qualitative and descriptive analysis was therefore employed as method of data analysis. The paper reveals that despite the enormous effort of the ICRC in providing humanitarian aid, the organisation is battling with serious challenges especially the issue of non-compliance by states and inaccessibility to the victims of armed conflicts. Major recommendation offered by the paper calls for strict compliance to the provisions of IHL among other things.

Keywords: Aid, Armed Conflicts, International Committee of Red Cross, International Humanitarian Law, Compliance

1. Introduction

International Humanitarian Law (IHL) is based on the premise that though mankind is capable of great cruelty, compassion is also fundamental to our nature. The law was created to ensure a degree of humanity in the midst of war and to limit the effects of armed conflict. Specifically, it protects certain categories of individuals (civilians) and their properties and combatants who are no longer taking part in the hostility (prisoners, the sick and wounded); and restricts the means and methods of warfare. As a result, war no longer occurs in a legal vacuum whereby everything is permissible (Maresca & Lavoyer, 1999). While international humanitarian law is intended first and foremost for governments, it is also applicable to non-governmental armed groups. It sets out who is entitled to protection, lays down the rights and obligations of the belligerents and provides a framework in which humanitarian activities can be carried out (Flue & lavoyer, 1997).

International law provides valuable tools for humanitarian NGO's in their struggle to safeguards human rights. It is therefore not surprising that NGO's involvement in safeguarding human rights have always focused in the implementation (or violation) of universal or regional human rights standards by governments (Show, 2013). This reflects the traditional views of governments as the centers of power and responsibility as well as the general conception that modern states are bound by international law (either by virtue of becoming party to a treaty or because the rule is recognized as a norm of customary international law); and the classic human rights view that only government can violate human rights (Ibid). Killings committed by individuals or groups are crimes. Such actions become violation of human rights if the perpetrator is the agent of a state or if the state fails in its duty to protect the individual or to prosecute the alleged perpetrator (Brett, 1998). Humanitarian law also provides a framework in which NGO's too can work in connection with armed conflicts (Flue & lavoyer, 1997). The ICRC, as prepared to carry on its traditional role of working for the development of international humanitarian law, pursuant to its mandate under the Statutes of the International Red Cross and Red Crescent Movement (Hans, 1993).

1.1 Brief Background of ICRC

Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence (Hans, 1993). The origins of the International Committee of the Red Cross (ICRC) go back to the 1800s and

to the visions and ideas of the Swiss citizen Henry Dunant. He was present at the battle in Solferino, Italy in 1859 and this experience came to shape his ideas and change his life. He was surprised by the ruthless killings that took place and for that he took on the role to help the wounded and try to bring some humanity into the hostile situation. Three years later, his experiences were noted down in the book "Memories from Solferino." There, his ideas of alleviating pain and humanity during wartime were discussed. In 1863, together with three other men, Dunant founded the committee that led to the Red Cross (Ungureanu & Agata, 2010).

1.2 Objectives of the paper

This paper intends to achieve the following objectives:

- To identify the pivotal nature of humanitarian services rendered by ICRC.
- To examine the role of ICRC in the development and implementation of IHL.
- To make appropriate recommendation in ensuring the implementation, and compliance of IHL.

1.3 Methodology of the study

This study utilized secondary method for data collection in which data was generated from both published and unpublished materials and a qualitative and descriptive analysis was made from that.

2. Literature Review

2.1 The International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance (Gasser, 1995). The ICRC also endeavors to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles (Mwale, 2013).

The International Committee of the Red Cross (ICRC) has a specific mandate from the States to monitor the implementation of humanitarian law (Gardam, 1999). The ICRC deals directly with governments and armed opposition groups to obtain greater compliance and appeals to the international community only as a last resort in the face of massive violations (Fleck, 2008). The ICRC also has the task of paving the way for the development of humanitarian law, to ensure international rules keep pace with changes in warfare itself (Gill & Sehgal, 2012). The organisation is uniquely placed for such a mission. The ICRC is the traditional guardian of international humanitarian law and is specifically entitled by the law to visit prisoners of war and to monitor the circumstances of civilians protected by the Fourth Geneva Convention (Shirley, 2008). The community of States has also conferred on it the right to offer its humanitarian services to those parties to an armed conflict, including internal conflicts (Scott, 2008). Certainly, the ICRC has no monopoly on promoting compliance with international humanitarian law. The State parties to the Geneva Conventions have a key responsibility in ensuring that the laws are respected by other States (Forseythe, 2005). There is also a great deal that other humanitarian NGOs can do in this regard. Thus far, however, the only debate on such a role has been in the form of a workshop organized by the ICRC in 1996 for a limited number of NGOs. Some NGOs then felt they neither had adequate knowledge of

humanitarian law nor a sufficient mandate to take action in this regard. Therefore they often looked to the ICRC for guidance though some did attempt to act on their own despite their limited knowledge of the law (Goldstein & Pavehouse, 2008).

3. ICRC and the development and implementation of IHL

The pivotal nature of the work of the ICRC in situations of humanitarian crisis cannot be gainsaid. The organisation have been playing an important role not only in providing assistance to persons in armed conflict and conflict situation but also in the development and implementation of the body of humanitarian law that exist today (Mwale, 2013).

- Participation in the 1954 Hague Convention on Cultural Property and the 1949 Geneva Conventions, their Additional Protocols of 1977 relating to the protection of victims of armed conflicts, translated the provision of the Conventions and Protocols into the national language(s) and also spreads the knowledge of their provisions as widely as possible both within the armed forces and the general population (Kadam, 2001). The preparatory work for the 1949 Geneva Conventions was entirely undertaken by the ICRC itself or by experts acting under its auspices (Carey, & Dunlap, 2003).
- Ensuring the compliance of the law through watching the actions of the warring parties, denounces publically the violators and, in particular, struggles to adopt criminal legislation that punishes war crimes (Scott, 2008).
- The ICRC ensures that persons, property and places protected by the law are properly identified, marked and protected. It also ensures that protected persons enjoy judicial and other fundamental guarantees during armed conflict (Hans, 1993)
- ICRC helps governments fulfill their legal obligations through the ICRC Advisory services created in 1995 which provides specialized legal advice to governments and also shares information between them. It therefore supports governments by helping them fulfill their responsibility to promote and implement IHL through national and administrative measures. One of the priorities of ICRC in south Sudan for instance, is to promote respect and compliance with IHL (Mwale, 2013).
- The ICRC also interacts with weapon bearers such as the armed and security forces, armed groups and military private companies. Special attention is given to this group of persons because they take part in direct hostilities and they play an important role in ensuring compliance with IHL (Kellenberger, 2014).
- Asides from interaction with weapon bearers, ICRC also interacts with the civilian population. According to Umesch Kadam, "it is equally important to promote knowledge of humanitarian law among those whom it is intended to protect - civilian population, as well as among those who have to apply it - public officials of various ministries" (Macoubrey, 1999).
- The ICRC provides training on IHL and how to observe the rules in war time. The organization's aim is "not only to promote IHL training but to build up a relation that supports the ICRC's operational needs, above all making sure that key armies are aware of the ICRC's role in conflict and the sort of practical cooperation they can expect (Gill & Sehgal, 2012).

- ICRC also employs former military and police officers as special delegates to work with armed forces and police (Mwale, 2013).
- Through the organization's education and outreach programs, civilians especially the youth are taught about IHL and its governing principles. The ICRC emphasized the teaching of IHL at the university and secondary school levels. In collaboration with universities, the organisation hold essay writing content and other competitions moot courts. This help in dissemination of information (Ibid).
- The ICRC monitors the changing nature of armed conflict, organize consultations on how to investigate the situations with view to ascertaining the possibility of reaching agreement on new rules and therefore prepare draft texts for submission to diplomatic conferences (Kadam, 2001).
- The ICRC also contributes to the implementation of policies restricting the use of weapons of mass destruction (WMD) during war and that of the disarmament and arms control. More often, the organisation contributes in the prosecution and adjudication of war criminals. For instance, the perpetrators of the Rwandan and Liberian genocide etc were all brought to book with the help of ICRC (Francois, 2011).

According to Yves Sandoz it is not easy to separate the specific roles of the ICRC in a logical sequence because many of its function overlap. In his article '*The International Committee of the Red Cross as guardian of international humanitarian law*', he presents a six -tier functional approach to the role of the ICRC in implementing international humanitarian law. He speaks of the following roles played by the ICRC and these includes;

- The monitoring function - concerning the constant reassessment of humanitarian rule to ensure that they are 'geared to the reality of conflict situation' and preparing for their developments to deal with emerging or future conflicts. Yvez Sandoz asserts that there is still room for improvement or clarification of IHL;
- The catalyst function – encouraging discussions of problems and possible solutions in IHL especially within gr oups of governmental and other experts;
- The promotion function - relating to advocacy in favour of the law by disseminating and teaching the law. This function allows for state to adopt national measures to ensure the implementation of IHL;
- The guardian angel function - involving guarding IHL against legal developments that may weaken or ignore its existence;
- The direct function - which involves making a direct contribution to applications of IHL in situations of armed conflicts and
- The watch dog function – which involves raising the alarm whenever serious violations of IHL occur (Mwale, 2013).

4. ICRC Structure

The ICRC is a private organization that has taken on a special role in the field of humanitarian law Hans, H. (1993). 192 states have accepted and recognized the Geneva Conventions and all have recognized the ICRC as an organization with a special mandate to carry out work with humanitarian relief during armed conflicts. In international

law, the Geneva Conventions are binding tools that are legitimate across the world (Mwale, 2013).

The ICRC main headquarters are located in Geneva, Switzerland and is represented in about 80 nations worldwide. The ICRC is the main body to decide upon a response in times of conflict and coordinate it with national Red Cross Societies and their International Federation (Hans,1993).

At the time of the founding of the organization there were five appointed members of the committee. During times of conflict or in other times when extra manpower and force was needed, there was an increase in the number of members (Flue & Lavoyer, 1997). Today the ICRC Statutes allows for 15 to 25 members and they are elected by what is called cooptation, meaning election by the sitting members (Gill & Sehgal, 2012).

Challenges facing the ICRC

Non-compliance is the major challenge devastating the activities of ICRC in its effort to ensure the implementation of IHL. According to Article 1(3) of Additional protocol I and Article 13(3) of Additional protocol II, civilians lose their immunity from attack. The recent war in the Gaza strip is an example in which it was difficult to distinguish between combatants and civilians (Mwale, 2013). In his word, the president of ICRC Jakob Kellenberger asserted that “the humanitarian landscape has changed dramatically. The attack of 11 September 2001, the resultant wars in Afghanistan and Iraq, the continue rise of the non-state armed groups and the increased use of new, high-tech weapons have posed serious new questions for humanitarian values and action” (Kellenberger, 2014). Moreover, direct access to the victims of armed conflict and other situations of violence is becoming more difficult because of security constraints.

Conclusion and Recommendation

The above literatures revealed that the value of ICRC is immeasurable. From its inception, the organisation is seriously committed towards addressing such humanitarian need of the people affected by armed conflicts or any other situations of violence by responding and adequately providing their needs. More recently, it goes beyond humanitarian intervention and therefore traverses to implementation of humanitarian law. It is also apparent to note that ICRC touches humanity by humanizing war as well as protecting and promoting IHL and its principles. To enables the organisation to maintain level of neutrality, objectivity and achieve its primary goals, the paper recommends the followings;

- Greater compliance should be respected and promoted among states and armed conflicts groups. Moreover, close supervision should be given to dig out the violators, denounce them publically with necessary penalty. This will serve as deterrence to others.
- ICRC should be allowed access to the victims of armed conflicts in order to discuss, understand and identify their needs as well as suggesting measures to address them.
- Taking into consideration the specialized advice to governments by the ICRC Advisory Service of 1995, National governments should use this as a network that would support the implementation and promotion of respect and compliance with IHL across national boundary, which subsequently transcend to international borders.

- ICRC should ensure that the provisions of the conventions held in Geneva in 1949 and Hague in 1954 respectively as well as their Additional protocols are fully implemented and participating nations ensures dissemination of the provisions as widely as possible. This will draw a line of action and ensures successful applicability of the law.

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