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A Comprehensive Review of ICRC's Role in Promoting the Applicability of International Humanitarian Law

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ABSTRACT

This article provides an in-depth examination of the International Committee of the Red Cross's (ICRC) multifaceted role in promoting the applicability of International Humanitarian Law (IHL). With a unique and distinctive nature, the ICRC, which has been in existence for 150 years, plays a crucial role in encouraging compliance with International Humanitarian Law (IHL). It functions as a direct advocate for the Conventions in various conflicts around the globe. Before the establishment of the Conventions, the ICRC has been instrumental in the development of International Humanitarian Law (IHL) since the mid-1800s. The author also examines how historical influence continues to shape the ICRC's obligations under the Conventions. Despite the Conventions' limited function for the ICRC, its actual operations differ greatly from its authorized duties. States and non-state actors recognize the ICRC's unique status as a Swiss NGO with an international presence and accept its actions. The ICRC's history of using discretion and flexibility to navigate a treaty with a weak mandate supports this acceptance.



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1. Introduction

The International Committee of the Red Cross (ICRC), a unique hybrid of a Swiss non-governmental organization (NGO) and an international organization, has been around for 150 years and takes on a lot of the lead role in promoting the observance of the Geneva Conventions in cases where there is no effective mechanism for implementation. With its headquarters in Geneva and representatives from all around the globe, the International Committee of the Red Cross (ICRC) serves as the leading advocate for the Conventions in several conflicts. The ICRC codified international humanitarian law (IHL) in the mid-nineteenth century, making it a central organization even before the Conventions. Consequently, in keeping with its forerunners, the Geneva Conventions anticipate or even delegate specific duties to the International Committee of the Red Cross (or an analogous entity presently nonexistent for various reasons). Although most states and non-state entities recognize the ICRC as having a valid role, there is a significant disparity between that position and its actual operations, as outlined in the Conventions (Lovat, 2020).

The “International Committee of the Red Cross” (ICRC) mainly deals with humanitarian issues about conflicts. However, there may be times when its work intersects with the rights of those seeking asylum (Bukhari et al., 2020). Currently, the Conventions omit most ICRC operations, and governments' legal obligations to collaborate with the ICRC are severely limited. Instead, the institution has managed to sidestep a treaty with a weak mandate by utilizing a discretionary and flexible method and identity throughout its long history. Now, nations anticipate that the ICRC will intervene in IACs, NIACs, and other non-conflict scenarios, and they also expect that parties to conflicts will grant the ICRC access to their territories to fulfill its mandate. The ICRC's operations and nations' expectations regarding its work demonstrate the limitations of relying on the Conventions' texts to comprehend contemporary international humanitarian law (Peirce, 1980).

2. Research Methodology

The doctrinal study will enhance the present article. Instead of looking at how the law is applied in the modern world, this research will take a more traditional "black letter" approach. Drawing on historical and contemporary sources, the researcher will provide an analysis that describes and explains the IHL. Using non-numerical data, qualitative research will delve into the ICRC's role and its impact on international humanitarian law (IHL) development instead of just surveying a large population. Meanwhile, the research philosophy will be interpretive, which focuses on the researcher's subjective experiences of "constructing" the theory by providing meanings, explanations, and how they interact with or relate to one another.

3. Significance

This article aims to give the International Committee of the Red Cross (ICRC) credibility and authority so that states will follow its directives without compromising their sovereignty. Field operations in different sections of the world's "hot spots" give significant insights into the real-world challenges that war victims experience in their everyday lives, and this article will pave the way to supplement such efforts.

4. The ICRC's Role in the Implementation of International Humanitarian Law

Viewed through the lens of its loftier mission as the "guardian of international humanitarian law," the two primary operational responsibilities of ICRC become visible. Constantly, the ICRC works to elicit compliance by actors with the rules defined by IHL, in addition to supporting victims of armed conflict. Even though the Conventions exclude any reference to such an essential function, states and non-state actors alike have grown to embrace it as a crucial, parallel purpose. This does recognize the ICRC's vital role in developing international humanitarian law. As Teixeira (2021) highlighted, "This occurs in a variety of settings, from covert meetings with opposing parties to chambers of international organizations, and involves both state and non-state actors both before and during armed conflict."

The three main types of actions the ICRC took in this area are detailed below. First, the ICRC's technical assistance primarily aims to build capacity so that states and, to a growing degree, non-state actors can establish institutions and regulatory frameworks that will likely enhance their capability to comply with international humanitarian law. That is why the ICRC focuses on governments to encourage them to ratify various accords and pass laws to put them into effect. It provides so-called advising services to local and foreign decision-makers, with legal oversight, offering practical support. As stated in the ICRC's annual report, "the organisation appears to take it as a given that ratification and domestic legislation are prerequisites for states to adhere to the rules of IHL" (Krieger, 2013). This is often helped by domestic laws mandating military personnel to follow IHL and including sanctions for violations based on the specifics of each case.

Despite this, the ICRC invests very little in this area, which may indicate that the organization understands that establishing a legal framework is just the beginning of the road to compliance. International humanitarian law (IHL) standards are being translated into doctrine, operational policies, and rules of engagement by the International Committee of the Red Cross (ICRC), which also helps develop laws and provides education and training for those caught up in armed conflicts. It coordinates various educational activities for service members at all levels and assists with preparing military manuals. The ICRC has sought to educate non-state armed groups about the rules of international humanitarian law (IHL) for at least ten years after acknowledging the necessity of engagement with them. There are unique obstacles to this kind of endeavor because these groups sometimes function in secrecy, have strange organizational structures, and could be ignorant of or even hostile toward IHL, e.g., viewing it as a weapon of states against rebellions (Harroff-Tavel, 2003).

The ICRC develops, interprets, and promotes international humanitarian law (IHL) through a worldwide, non-country-specific set of activities that includes technical support. Its stated goal is to raise awareness of international humanitarian law (IHL), hoping that states, NGOs, and other non-state actors will take it more seriously and, more importantly, adhere to it when conflicts emerge.

5. Critical Assessment

States have entrusted ICRC with obligations that they cannot assume collectively as parties to the Geneva Conventions because of its prominence, pedigree, and mode of operation. This has happened both directly and by tacit consent and other means. In international humanitarian law (IHL), unlike other global systems, nations create or assign members to intergovernmental bodies that investigate, mediate,

persuade, and gather support for strategies to force a violating entity to change its behavior. However, under international humanitarian law (IHL), a Swiss non-governmental organization (NGO) operates independently of nations and is financially responsible only to itself for carrying out this duty. The ICRC fully supports and embraces the increased level of accountability.

On top of that, it has accomplished something truly remarkable: it has acknowledged its limited political clout. It has used it to its advantage by relying on the confidence that states have in it to provide vital aid to victims of war, whether they are troops or civilians. Despite enormous military forces, the International Committee of the Red Cross (ICRC) can gain access to areas that are inaccessible or too difficult for the majority of non-governmental organizations (NGOs), diplomats, and officials from international organizations to access. The organisation relies on its emblem and the knowledge of its staff to achieve both minor and occasionally significant victories for international humanitarian law (Krieger, 2013).

However, in the end, the many burdens carried by the ICRC show that the states that were signatories to the Geneva Conventions did not fully accept and own them. Notable states are still reluctant to strengthen the Conventions through an enforcement mechanism tied to and controlled by the state parties, despite decades of calls from both states and NGOs for this, particularly during the 2011 international conference of the Movement. Working with the Swiss government, the ICRC has been trying to get the Conventions' signatories to agree on the details of this system since 2011. In many ways, this new, clandestine effort is a continuation of earlier efforts by the ICRC to establish and codify International Humanitarian Law (IHL) to pressure nations to remedy the Geneva Conventions' long-standing shortcomings.

This methodical process is now focused on finding common ground on new methods for reporting on national IHL implementation regularly, having regular topic talks, and gathering facts. Despite the existence of such a system and its limited reach, nations seem to still favour having a small number of illustrious Swiss individuals and international staff work to ensure that international humanitarian law is followed and that victims of conflict receive assistance. Possibly because of the apparent polarisation that comes with implementing IHL, nations are less interested in constructing an institution within the Conventions that they might control and use against infringers. Although the United Nations or the European Union may sometimes intervene to punish offenders, the state parties are understandably wary of the possible strife that could arise from enforcing international humanitarian law. The International Committee of the Red Cross (ICRC) may consider itself the guardian of the Geneva Conventions, but this may lead to the delegation of responsibility for ensuring adherence to these treaties, which is something to consider carefully (Gnaedinger, 2001).

6. The Problem of Implementation of the Effective Role of ICRC

There is room for interpretation in the ICRC's work because the organisation stays out of complex legal issues. To keep its operations running smoothly, the company frequently uses informal or practical agreements with the states where it does business. To bolster its assertion of non-partisanship, the ICRC sometimes highlights its private law position, using its dual legal character. It rarely asserts its international legal identity. The idea of the ICRC formally suing a state is hard to fathom because it goes against the organization's core values (Klabbers, 2015). Equally unlikely is the idea that a state would sue the ICRC to force it to either offer or withhold its service.

International personality is sometimes practical or "helpful" for carrying out the ICRC's mission, although it is not essential, given the organization's propensity for functioning with an unclear legal standing. Because of its vital position as a neutral mediator during wartime, the organization must act independently, just like any other body (Rona, 2002). It is worth mentioning that the 1949 Geneva Conventions do not require state parties to pass laws penalizing Common Article 3 violations. This is because the Conventions do not classify these violations as grave breaches. The only requirement placed on states is that they permit international organizations like the ICRC to offer aid. Crucially, the execution of Common Article 3 is not monitored by any supervisory authority. Another point is that states have some leeway in applying Common Article 3 because it is a broad principle evident in different situations.

Enforcing domestic legislation and successfully implementing the law are fundamental to protecting victims in non-international armed conflicts within a state. As an example, the Belgian Law of 16 June 1993 is one of several national laws that have made efforts to guarantee the application of Common Article 3, and some have even gone so far as to label grave breaches of international humanitarian law during non-international armed conflicts as crimes against humanity (Henckaerts, 2008).

Several legal systems have abandoned the categorization of wars as international or domestic. Severe breaches of international humanitarian law are sometimes regarded as crimes against international law by criminal laws, which apply this standard independently of the victim's or offender's nationality. The authority of national courts to hear cases involving breaches of Common Article 3 of the Geneva Conventions has been expanded by recent changes, such as those to the US War Crimes Act of 1996. No matter the nature of the conflict, specific criminal statutes of Slovenia, Yugoslavia, Bosnia Herzegovina, and Ethiopia make it a crime to commit acts that are classified as war crimes (Forsythe, 2005). However, the conditions specified in Article 3 are closely adhered to by the tribunal's authority in jurisdictions where individual responsibility is given for Common Article 3 infractions. Considered outside the purview of Common Article 3 are issues about apartheid and genocide.

It is common practice for courts to punish particular infractions relevant to international armed conflicts when determining individual culpability for Common Article 3 offences. According to Abraham (2007), however, they do not consider Common Article 3 transgressions serious breaches. When trying cases involving violations of humanitarian law during internal wars, European national courts often punish particular actions without consistently classifying them as crimes against humanity or war crimes. The complicated legal landscape makes harmonizing legal frameworks across jurisdictions for non-international armed conflicts brutal.

International Criminal Tribunals for the Former Yugoslavia (ICTY), Rwanda (ICTR), and the International Criminal Court (ICC) are ad hoc international criminal tribunals that have attempted to address this issue. However, no reliable system exists to execute arrest warrants and judgments (Dind, 1998). Prosecuting persons under Common Article 3 and interpreting phrases like 'armed conflict' based on the 'geo-military profile' of parties involved are examples of outcomes that international tribunals can produce. Concerns arise for sovereign nations when tribunal interpretations differ from municipal legislation. Standard Article 3 was interpreted as declaratory of customary international law in a recent ICTY opinion in *Prosecutor vs Tadic*. The ruling clarifies the definition of an armed conflict by outlining

prohibitions within such conflicts and the reasons for their existence. Notably, the tribunal's jurisdiction was exercised about matters falling under Common Article 3 of the Crimes Against Humanity statute. The tribunal connected crimes against humanity to armed conflict to establish jurisdiction, even though this is not always necessary. There are two main issues with the tribunal's strategy. It has been highlighted by Hall (1998) that “there isn't an objective criterion for ascertain ability when it comes to determining the presence of armed conflict based on prolonged armed violence between state authority and organized armed organizations.”

A well-organized terrorist group that uses sporadic violence to target government authorities within a state could be considered as engaging in armed conflict, according to the Tadic reasoning. Even guerrilla warfare tactics employed by terrorist groups, which do not meet the criteria for armed conflict, could be classified as armed conflict based on the Tadic decision. Critics argue that the Tadic court failed to recognize the limitations of Common Article 3 of the “Geneva Conventions, 1949,” by including it in the discussion. By linking it to crimes against humanity, the court overlooked the vital principle that the legal scope of the treaties themselves defines treaty-based procedures. Despite its lack of clarity in jurisprudence, the Tadic decision opens up the possibility of categorizing less intense conflicts as crimes against humanity.

Nevertheless, the “Rome Statute of the International Criminal Court” presents a distinct interpretation of crimes against humanity. The term "crimes against humanity" is defined by an explanatory definition that identifies certain acts as crimes against humanity. These acts are considered crimes against humanity when they are carried out as part of a widespread or systematic attack targeting any civilian population, and the perpetrator knows the attack (Comtesse, 1997). Crimes against humanity, as defined under the Rome Statute, encompass criminal acts that meet the criteria of a "widespread or systematic attack targeting any civilian population, with awareness of the attack." The ICTY Statute differs from the Rome Statute, as it utilizes more sophisticated terminology that can adapt to different contexts (Brugger, 2009).

7. Conclusion

In conclusion, the global environment needs a uniformly managed oversight authority to monitor and enforce the execution of the pertinent article. This article stipulates that an impartial humanitarian body, illustrated by the International Committee of the Red Cross (ICRC), has the power to offer its services to conflicting parties (Giladi & Ratner, 2015). The decision for states to accept or reject this offer is ostensibly under their discretion; however, the ICRC's offers are only sometimes accepted. States that elect to take the services methodically outline the scope of support, presumably keeping control while benefiting from the apparent advantages.

Interestingly, this article's importance stems from both the voluntary acceptance of ICRC services and the deliberate rejection by states for strategic reasons. When a state rejects the ICRC's offer, it routinely argues that the issue is solely related to an internal disturbance and falls under its authority. Hence, this piece can redefine the function of the ICRC, granting it increased credibility. Through skillfully managing the intricate interactions between states and their proposals, the ICRC is positioned to enhance its role as a significant participant in humanitarian matters. This will lead to a more resilient and responsible implementation of international humanitarian law worldwide.

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