

Quadrant II – Transcript

Paper Code: HRL1018

**Module Name: Basic Principles of International Humanitarian Law (IHL);
Relation between IHL and International Human Rights Law**

Module No: 03

Hello Friends, This is Unit 1 - Introduction to International Humanitarian Law. We are discussing Module - Basic Principles of International Humanitarian Law (IHL), Relation between IHL and International Human Rights Law. Outline of this module - Basic Principles of International Humanitarian Law, Relation between International Humanitarian Law and International Human Rights Law. At the end of this module, students will be able to discuss different Basic Principles of International Humanitarian Law and distinguish between International Humanitarian Law and International Human Rights Law.

Introduction to Basic Principles of International Humanitarian Law. International Humanitarian Law is a set of rules to limit the consequences of an armed conflict. It includes those rules of international law that establishes minimum standard of humanity in any situation of armed conflict and these minimum standards are referred to as Basic Principles of International Humanitarian Law. We have total 7 Basic Principles of International Humanitarian Law. Let's discuss them one by one.

Starting with the First Basic Principle, Equality of Belligerents and Non – Reciprocity. Belligerents are to respect International Humanitarian Law in all circumstances. May it be an Aggressor state or a Defending state, they are equally bound by the Principle of International Humanitarian Law. Harsh nature of an armed conflict does not give an excuse to the Defending state to violate the International Humanitarian Law. Belligerents are to respect International Humanitarian Law, even if it has been violated by the adversary nations. This is referred to as the act of Non - reciprocity. Let's understand this with the help of example. We have the 2 High Contracting Parties, High Contracting Party A and High Contracting Party B. Signatories to Geneva Convention that deals with Humanitarian law are referred to as High Contracting Parties. Now there exists an armed conflict between High Contracting Party A and High Contracting Party B. Suppose, an military aircraft that belongs to High Contracting Party A does a forced landing into the territory of High Contracting Party B. The question that arises is, Will the aircraft pilot belonging to High Contracting Party A be protected in the territory of High Contracting Party B? Or Will he be killed? The answer is the aircraft pilot will be protected as the High Contracting Party B is bound by International Humanitarian Law, even if during the armed conflict, the soldiers of High Contracting Party B have been killed by soldiers of the High Contracting Party A. Aircraft pilot will be protected and not killed. This is the principle of Non -Reciprocity.

Let's move on to the Second Basic Principle, Balancing Military Necessity and Humanity. In an armed conflict, there has to be a balance sought between Military Necessity and Humanity. I agree that winning a war is important and by reason of which Military Necessity causes death, injury and destruction of the property of the opponent. But does that mean the belligerent nation gets the absolute right to wage what is called as Unrestricted War or a Total War? and the answer is NO. The consideration of humanity imposes limitations on the means and methods of warfare. There has to be balance sought between the Military Necessity and Humanity. Let's understand this with the help of example. We have High Contracting Party A and High Contracting Party B. Armed Conflict arises between these two nations. There exists an ammunition depot which supplies ammunitions to the soldiers of High Contracting Party B and we have a water resource on which the armed forces of High Contracting Party B are dependent. The question that arises is - By reason of Military Necessity, will the armed forces of High Contracting Party A be able to destroy the ammunition depot? or By reason of Military Necessity, will they be able to destroy the water resource or poison the water resource? And the answer is poisoning the water body is not considered as a valid action under international law. However, destroying the ammunition depot will be considered as a right action under the International Humanitarian Law. Hence, balance has to be sought between the Military Necessity by targeting military object and Humanity by protecting the water resource.

Moving on to the next principle is Principle of Distinction. The parties to an armed conflict must at all times distinguish between Combatants and Hors de Combat, Combatants and Civilian Population and Civilian Objects and Military Objectives. Let's understand the meaning of these terms. First, Combatants - These are members of armed forces who take part in hostilities, example, the soldiers. Second, you have Hors de Combat - These are members of armed forces who are no longer taking part in the hostilities due to sickness, wounds, detention or surrender. These are soldiers, which are wounded, which are sick. Third, you have the civilians which are persons who are not part of the armed forces, especially women and children. Next you have the Military Objective - It is limited to those objects which by their nature, location, purpose or use make an effective contribution to military object and lastly you have the civilian objects which are all the objects that are not considered as military objectives. Hence, parties to an armed conflict must make a distinction between Combatants and Hors de Combat and Combatants and Civilians and definitely a distinction between Military Objectives and Civilian Objects.

Moving on to the next principle is Principle of Proportionality. Belligerent attack is subject to Principle of Proportionality when the lawful target is attacked, and secondly, the infliction of civilian harm cannot be avoided. While doing this, it has to be ensured that the expected incidental civilian harm should not be excessive to the military advantage that is sought in times of war. In this case, proportionality is absolute, but excessiveness is relative. An example to check whether the proportionality test was followed or not, is the atomic bombing of Hiroshima and Nagasaki by United States on 6th and 9th of August 1945. The military advantage that was sought was the surrender of Japanese armed forces. However, the incidental damage that resulted was the loss of life of 1, 29,000 people in case of Hiroshima and 2, 26,000 people in case of Nagasaki. In this case, the incidental civilian harm

has been excessive in comparison to the military advantage and hence, Principle of Proportionality was not complied with.

The next principle is Precautionary Principle. Precautionary means you have to take caution, care before wrong happens. Even if, proportionality is met, precautionary measures to be taken to minimize the harm. It may be done before an attack in terms of military objectives and combatants, or it can be done during an attack by either canceling or suspending the attack if it is irrelevant and lastly, precautionary principles can be taken even against attack by removing civilian and civilian objects away from military objectives, placing military objectives away from densely populated areas or by spreading information among the people.

The next principle that we have is the Principle of Humane Treatment. Persons who are not taking active part in the hostilities to be treated humanely. We are talking about soldiers who are sick, injured, surrendered or are under detention. They are entitled to respect for their person, honour, family rights, religious convictions and practices, and for their manners and customs. They must be protected against all acts or threats of violence, insult and public curiosity.

And the last Basic Principle that we have is the Principle of Non-Discrimination. Person taking no active part in the hostilities to be treated equally. These are Hors de Combat. There cannot be any distinction or an isolation of these persons on the ground of sex, race, birth, color, wealth and finally religion. However, there could be a preferential treatment to Hors de Combat on the basis of sex, age, and health. So these are the seven Basic Principles of International Humanitarian Law.

Lastly, we have a distinction between International Humanitarian Law (IHL) and International Human Rights Law (IHRL). IHL is applicable in times of armed conflict, IHRL is applicable in times of peace. IHL binds actors to armed conflict, IHRL binds government in their relation to individuals. IHL protects those who are no longer taking part in the hostilities. However, IHRL protects civilians through rules on conduct of hostilities.

This is the Reference.

Thank you.