



Inter-Parliamentary Union

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ICRC



International Humanitarian Law

Handbook for Parliamentarians N° 25

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Cover photo: Taiz, Yemen. Amidst the destruction, the civilian population struggles to survive. Every day brings new challenges and new dangers. ©ICRC/Anees Mahyoub

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This publication replaces the original handbook, which appeared in 1999. While the structure of the handbook has not changed significantly, the content has been thoroughly updated in respect of new developments in the field of international humanitarian law.

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Foreword

In an increasingly complex world, not only are conflicts more widespread and likely to spill over national borders, but they also exhibit more unconventional forms of violence. As the face and practice of modern warfare is changing dramatically, the need to respect and protect civilians is more urgent than ever.

The original Geneva Convention adopted more than 150 years ago was a major step forward in protecting sick and wounded combatants. Since then, international humanitarian law (IHL) has grown to include many other treaties and protocols aimed at regulating the conduct of war and limit its effects.

Unfortunately, armed conflict is invariably accompanied by terrible human suffering, all too often due to violations of IHL. These affect not just belligerents but also civilians, who increasingly bear the brunt of conflict. At times civilians are even specifically targeted and subjected to horrible atrocities in blatant disregard of the Geneva Conventions, whose aim is to protect those not engaged in hostilities.

But there is nothing inevitable about this suffering: we have the ability and means to prevent it. The Geneva Conventions and their Additional Protocols are powerful mechanisms designed to protect those not, or no longer, engaged in the fighting. In a world where a dangerous complacency is developing with regard to lack of respect for IHL, the relevance and significance of this body of law have perhaps never been so great.

Whilst all countries have ratified the 1949 Geneva Conventions, many have yet to ratify or accede to the Additional Protocols of 1977 and other IHL treaties. Universal ratification of IHL instruments is a critical first step in making sure those entitled to protection under the law actually benefit from it.

Parliamentarians play a vital role in taking this indispensable first step as well as the subsequent steps needed to ensure effective implementation. The rules of IHL need to be incorporated into the national legislation and regulations of every country. The domestic implementation of IHL treaties is essential to achieving a much greater level of adherence.

Legislation alone is not enough. Through their oversight responsibilities, parliaments and parliamentarians can ensure the military and security forces are properly trained and knowledgeable on IHL. Through their leadership and advocacy, they can also raise greater awareness of IHL among the public. If the concepts underpinning IHL are known and understood in peacetime, they are more likely to be applied in wartime.

This handbook is the most recent outcome of many fruitful years of cooperation and partnership between the Inter-Parliamentary Union (IPU) and the International Committee of the Red Cross (ICRC), the guardian and promoter of IHL. It is specially designed to familiarize parliamentarians with the general principles of the Geneva Conventions and their Additional Protocols and guide them in the process of implementing this body

of law in their respective country. The handbook provides step-by-step information on measures that States party to the Geneva Conventions must take to fulfil the obligations they have accepted to “respect and ensure respect” for IHL.

This is a highly politicized area in which parliamentarians, as political leaders and representatives of the people, must be in the vanguard of efforts to ensure IHL is faithfully applied.

This handbook is also intended to help parliamentarians in countries that are not yet party to all IHL treaties to convince their government leaders of the absolute need to protect civilians caught up in conflict and ensure perpetrators of war crimes are held accountable for their actions.

Victims of war the world over are a daily reminder that the responsibility to protect the most vulnerable people and to end human suffering is a collective one. The power of the world’s parliaments to effect global change through individual national action is an immense one. This handbook is intended to help them put that power to use.



Martin Chungong
Secretary General
Inter-Parliamentary Union



Peter Maurer
President
International Committee of the Red Cross

What does this handbook contain?

Part 1 offers a general **overview of international humanitarian law (IHL)** through an analysis of nine general questions. It addresses the sources of IHL; the situations in which it applies; the categories of people protected by its rules; mechanisms for implementing IHL and suppressing violations thereof; and the link between IHL and other branches of international law.

Part 2 is entirely devoted to the **role of parliamentarians in implementing IHL**. It reviews the different types of measures parliamentarians should consider to improve States' respect for IHL. These measures seek to *prevent* violations of the obligations accepted by States; *improve oversight* regarding application of the rules; and *punish* those who are responsible for violations of the rules. Each of these measures is accompanied by a detailed checklist for the parliamentarians.

Part 3 contains an overview of some **key issues** that are prevalent in today's armed conflicts, ranging from acts of terrorism to sexual violence and from the use of new technologies to the protection of the personal data of victims of armed conflict.

Part 4 provides a number of **model instruments and reference materials**. These resources can help parliamentarians in their efforts to have their country accede to IHL treaties and to carry out the legislative work necessary to properly apply and enforce these treaties domestically.

Part 5 describes the work of IPU and the ICRC in further detail.

Part 1: Q&A about international humanitarian law

Anayancy Prison, Quibdo, Colombia. Private interview with detainee. ©ICRC/ Boris Heger



What is international humanitarian law?

International humanitarian law (IHL), sometimes called the “law of war” or “law of armed conflict,” regulates relations between States, international organizations and other subjects of international law in times of armed conflict. It is a branch of public international law that consists of rules aimed at protecting people who are not or are no longer participating in the hostilities and at restricting the means and methods of warfare. In other words, IHL consists of international treaty law and customary rules that are specifically meant to resolve humanitarian issues arising directly from armed conflict, whether of an international or a non-international character.

The seven fundamental rules underpinning the 1949 Geneva Conventions and their Additional Protocols of 1977 and 2005

1. People who are hors de combat and those who do not take a direct part in hostilities are entitled to respect for their lives and their moral and physical integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.
2. It is forbidden to kill or injure an enemy who surrenders or who is hors de combat.
3. The wounded and sick shall be collected and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, facilities, transports and equipment. The red cross and red crescent emblems are the signs of such protection and must be respected.
4. Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They shall have the right to correspond with their families and to receive relief.
5. Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he or she has not committed. No one shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment.

IHL has two branches:

The “law of Geneva”: the body of rules that protects victims of armed conflict, such as military personnel who are hors de combat (such as wounded combatants and prisoners of war) and civilians who are not or are no longer directly participating in hostilities.

The “law of The Hague”: the body of rules establishing the rights and obligations of belligerents in the conduct of hostilities, and which limits the means and methods of warfare.

6. Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. It is prohibited to employ weapons or methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering.
7. Parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilians and civilian property. Attacks shall be directed solely against military objectives.

IHL does not determine whether a State has a right to wage war or use armed force against another State. That question is governed by a distinct branch of public international law called **jus ad bellum** and set out in the United Nations Charter. IHL, on the other hand, is synonymous with **jus in bello**. This latter body of law regulates the behaviour of parties engaged in an armed conflict, regardless of the reasons for the conflict or of which party started the hostilities. It is also designed to protect victims of armed conflict, regardless of their loyalties.

Jus ad bellum	Jus in bello
Determines the right to resort to armed force.	Applies to all parties and governs their behaviour once an armed conflict has broken out.
<p>Making war illegal</p> <p>Article 2(4) of the United Nations Charter states that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state”. In other words, war is not an acceptable means of settling disputes between States.</p> <p>The Charter nevertheless makes two exceptions to this rule:</p> <ul style="list-style-type: none"> • for cases of individual or collective self-defence in response to aggression by another State or group of States; and • upon authorization by the UN Security Council (acting on the basis of Chapter VII of the Charter) in order to maintain international peace and security. 	<p>War is a reality</p> <p>IHL applies irrespective of the reasons for the conflict and the validity of its underlying causes.</p>

The prohibition against the use of force does not apply to non-international armed conflicts.

Striking a balance between military necessity and humanity

IHL is a compromise between two underlying principles: military necessity and humanity. These two principles shape all its rules.

According to the principle of **military necessity**, parties to a conflict may only resort to those means and methods that are necessary to achieve the legitimate military purpose of a conflict and that are not otherwise prohibited by IHL. The degree and kind of force that the parties can use is therefore limited to what is needed to overcome the enemy as quickly as possible with the smallest loss of life and resources.

The principle of **humanity** forbids the parties to a conflict to cause any suffering or destruction that is not required to achieve the legitimate purpose of a conflict.

Distinction, proportionality and precaution

IHL seeks to protect civilians in times of conflict by regulating the conduct of hostilities, i.e. how the parties to an armed conflict carry out their military operations. It draws on three principles:

Distinction: The parties must distinguish at all times between civilians and civilian objects on one hand, and combatants and military objectives on the other. In other words, a party to an armed conflict may only direct its attacks against combatants and military objectives. Direct attacks against civilians and civilian objects are prohibited. Indiscriminate attacks are also prohibited; they refer to attacks that are not directed at a specific military objective, employ a method or means of warfare that cannot be directed at a specific military objective, or employ a method or means of combat the effects of which cannot be limited as required by IHL.

Proportionality: Injury to civilians and the incidental loss of civilian life and property should not be excessive in relation to the concrete and direct military advantage anticipated by an attack.

Precaution: The parties must take constant care to spare civilians and civilian objects during military operations. This can include double-checking that a target is indeed a military objective or effectively warning the civilian population before an attack.

Prohibitions and restrictions on certain means and methods of warfare

General prohibitions and restrictions

IHL prohibits means (weapons) and methods of warfare that:

- are designed mainly to spread terror among the civilian population;
- do not distinguish between combatants and civilians (and their property);
- cause superfluous injury or unnecessary suffering;
- cause severe and long-term damage to the natural environment.

Specific prohibitions and restrictions

The use of some **weapons** is restricted or completely prohibited under treaty and customary IHL, including:

- poison and poisonous weapons;
- chemical and biological weapons;
- bullets that spread or explode within the body (dum-dum bullets);
- weapons whose primary effect is to injure by fragments that cannot be detected by X-rays;
- explosive and inflammable projectiles;
- mines, booby-traps and similar devices;
- incendiary weapons and weapons that are primarily designed to burn objects or people;
- blinding laser weapons;
- explosive remnants of war;
- anti-personnel mines;
- cluster munitions.

The 2013 Arms Trade Treaty prohibits a State from authorizing any transfers of conventional arms, their key components and ammunition if it has knowledge that they would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions, attacks directed against civilian objects or civilians protected as such, or other war crimes. It also requires an exporting State to conduct a risk assessment as to whether such weapons or items could be used to commit or facilitate a serious violation of IHL or international human rights law (IHRL).

Some **methods of warfare** are specifically prohibited under treaty and customary IHL, including:

- denying quarter: an adversary's forces must be given an opportunity to surrender and be taken prisoner;
- pillaging private property;
- starving the civilian population; and
- resorting to perfidy to kill, injure or capture an adversary. Perfidy is defined in Article 37 of Additional Protocol I as *"acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence"*. This includes, for instance feigning injury or sickness in order to attack an enemy.

What are the main IHL treaties and related instruments?

Treaties on protecting victims of armed conflict

Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention) <i>12 August 1949</i>	Protects wounded and sick combatants, the personnel attending them, the buildings in which they are sheltered and the equipment including means of transportation used for their benefit. Regulates the use of the red cross, red crescent and red crystal emblems.
Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention) <i>12 August 1949</i>	Extends protection to shipwrecked combatants and regulates how they are to be treated.
Convention relative to the Treatment of Prisoners of War (Third Geneva Convention) <i>12 August 1949</i>	Protects members of the armed forces who have been taken prisoner. Sets forth the detaining power's rights and obligations, including how prisoners are to be treated.
Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) <i>12 August 1949</i>	Establishes the rules governing the protection of the civilian population, in particular the treatment of civilians in occupied territory and those deprived of their liberty, and the question of occupation in general.
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) <i>8 June 1977</i>	Contains fundamental guarantees for people not taking part in hostilities during an international armed conflict and sets forth rules on protecting civilians, civilian objects and the installations essential for civilians' survival.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II) <i>8 June 1977</i>	<p>Contains fundamental guarantees for people not taking part in hostilities during a non-international armed conflict and sets forth rules on protecting civilians, civilian objects and the installations essential for civilians' survival.</p>
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Additional Protocol III) <i>8 December 2005</i>	<p>Adds the red crystal to the red cross and red crescent as distinctive emblems.</p>
Convention on the Rights of the Child <i>20 November 1989</i>	<p>Article 38 expands the protection of children in situations of armed conflict.</p> <p>Article 43 envisions a committee that would be created to monitor the signatory States' progress on their obligations under the Convention.</p>
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict <i>25 May 2000</i>	<p>Requires States Parties to refrain from forcibly recruiting children under the age of 18 in their armed forces and to ensure that any member of their armed forces under the age of 18 does not take a direct part in hostilities.</p> <p>Calls on non-State armed groups to abstain from recruiting or using children under the age of 18 in hostilities.</p>
International Convention for the Protection of All Persons from Enforced Disappearance <i>20 December 2006</i>	<p>Seeks to ensure that people do not go missing, including in situations of armed conflict.</p>

Treaties restricting the use of or prohibiting certain weapons

Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare <i>17 June 1925</i>	<p>Prohibits the use of asphyxiating, poisonous and other gases, and of liquids, materials and devices of that nature.</p>
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Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction <i>10 April 1972</i>	<p>Prohibits the development, production, stockpiling, acquisition and retention of microbial agents, other biological agents and toxins that have no justification for preventive, protective or other peaceful purposes.</p> <p>Also prohibits weapons, equipment and means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.</p>
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 (CCW) <i>10 October 1980, amended on 21 December 2001</i>	<p>Establishes the framework for prohibiting certain weapons (see the convention protocols below).</p>
CCW Protocol on Non-Detectable Fragments (Protocol I) <i>10 October 1980</i>	<p>Prohibits the use of weapons that injure by fragments that cannot be detected by X-rays.</p>
CCW Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) <i>10 October 1980, amended on 3 May 1996</i>	<p>Prohibits the use of mines, booby-traps and other devices against the civilian population and restricts their use against military targets.</p> <p>The amended protocol further extends the prohibition of those devices and extends its scope to non-international conflicts.</p>
CCW Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) <i>10 October 1980</i>	<p>Prohibits the use of incendiary weapons against civilians and civilian objects and restricts their use against military targets.</p>
CCW Protocol on Blinding Laser Weapons (Protocol IV) <i>13 October 1995</i>	<p>Prohibits the use of laser weapons that are specifically designed to cause permanent blindness.</p>

CCW Protocol on Explosive Remnants of War (Protocol V) <i>28 November 2003</i>	<p>Makes States Parties as well as non-State actors responsible for explosive remnants of war in territory under their control, and urges users of explosive ordnance to provide assistance to facilitate the marking and clearance, removal or destruction of explosive remnants of war.</p>
Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction <i>13 January 1993</i>	<p>Prohibits the development, production, stockpiling and use of chemical weapons.</p>
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction <i>18 September 1997</i>	<p>Prohibits the use, stockpiling, production and transfer of anti-personnel mines (land mines).</p>
Convention on Cluster Munitions <i>30 May 2008</i>	<p>Prohibits the use, development, production, acquisition, stockpiling, retention and transfer of cluster munitions and any assistance or encouragement to engage in activities banned by the convention.</p>
Arms Trade Treaty <i>2 February 2013</i>	<p>Regulates international transfers of conventional weapons, ammunition, munitions, parts and components.</p>

Treaties on protecting cultural property and the environment

Convention for the Protection of Cultural Property in the Event of Armed Conflict <i>14 May 1954</i>	<p>Protects cultural property, including works of architectural, artistic or historical significance; applies also to non-international conflicts.</p>
First Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict <i>14 May 1954</i>	<p>Seeks to prevent the exportation of cultural property from occupied territory and to ensure such property is safeguarded and returned.</p>

Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict <i>26 March 1999</i>	Expands the rules protecting cultural property and strengthens enforcement mechanisms; applies also to non-international conflicts.
Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques <i>10 December 1976</i>	Prohibits the use, for military or other hostile purposes, of environmental or geophysical modification techniques having widespread, lasting or severe effects.

International criminal justice

Statute of the International Criminal Court (ICC Statute) <i>17 July 1998, amended on 11 June 2010 (Kampala Amendments)</i>	Establishes a permanent international criminal court with jurisdiction over genocide, war crimes, crimes against humanity and the crime of aggression. ¹
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Do you want to learn more about IHL treaties and related instruments?

Contact the ICRC directly or consult the ICRC's Treaties and Customary Law webpage: <https://www.icrc.org/en/war-and-law/treaties-customary-law>.

Interested in whether your State has signed a given treaty?

Contact the depository State or the ICRC, or consult its treaty database (<https://www.icrc.org/ihl>).

What is customary IHL?

IHL is developed by States through both treaties and customary law. Customary law is formed when State practice is sufficiently dense (widespread, representative, frequent and uniform) and accompanied by a belief (the *opinio juris*) among States that they are legally bound to act – or prohibited from acting – in certain ways. Custom is binding on all States except those that have persistently objected to a given practice or rule since its inception.

The links between treaty law and customary law are numerous and complex. Many provisions of the treaties listed above are recognized as having originated in the sphere of customary law, and a number of provisions that represented new developments when they were adopted as treaty provisions have progressively acquired customary value. In addition, many treaty provisions that were initially supposed to apply only in international armed conflicts are now considered to be applicable in all types of armed conflicts as customary law.

¹ The ICC's jurisdiction over the crime of aggression will not take effect until the States Parties activate it, which can happen from 1 January 2017.

Interested in finding out more?

In 1995, the ICRC embarked on a detailed study of the customary rules of IHL. The study, which took ten years to complete, can be consulted on the ICRC website: <https://www.icrc.org/customary-ihl>.

When does IHL apply?

IHL applies only in situations of armed conflict. It offers two systems of protection: one for international armed conflict and another for non-international armed conflict. The rules applicable in a specific situation will therefore depend on the classification of the armed conflict. IHL does not apply to situations of violence that do not amount to armed conflict; these are termed internal disturbances and tensions and are governed by human rights law and domestic legislation.

International armed conflicts (IACs) are those in which one or more States resort to the use of armed force against another State or States. The rules applicable in international armed conflicts also apply during:

- an armed conflict between one or more States and an international organization (i.e. a multinational force);
- a war of national liberation (under certain conditions); and
- occupation.

Non-international armed conflicts (NIACs) are conflicts that take place within the territory of a single State between governmental armed forces and one or more non-State armed groups, or between such groups themselves. Many armed conflicts today are non-international in nature. For hostilities to be considered a NIAC, they must reach a certain level of intensity and the groups involved must be sufficiently organized.

What are internal disturbances and tensions?

Internal disturbances and tensions (such as riots and isolated and sporadic acts of violence) disrupt public order without amounting to armed conflict; they cannot be regarded as armed conflicts because the level of violence is not sufficiently high or because the individuals resorting to violence are not organized as an armed group.

Which law applies?

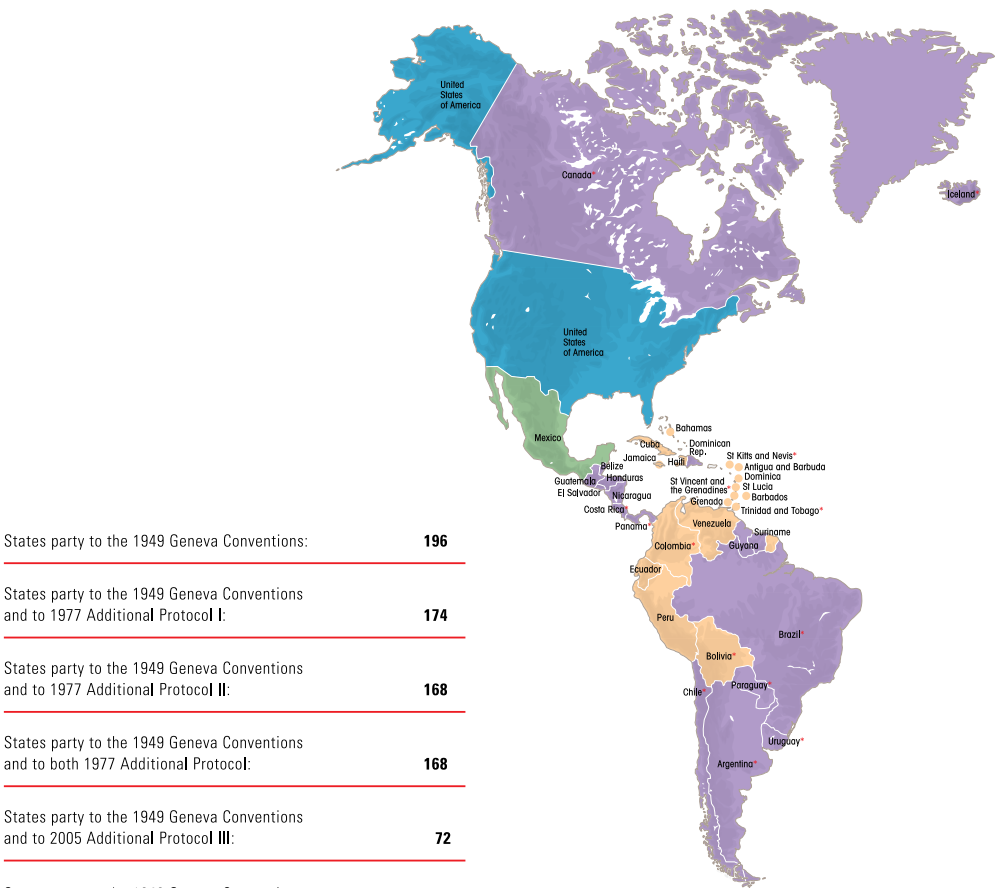
The rules that apply to a specific conflict depend on whether it is international or non-international. International armed conflicts are subject to a broad range of rules, including those set forth in the four Geneva Conventions and Additional Protocol I. A more limited set of rules applies to non-international armed conflicts. They are laid out in **Article 3 common to the four Geneva Conventions** and in **Additional Protocol II**.

- **Common Article 3** applies to “armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties” (see Common Article 3, paragraph 1 of the Geneva Conventions). These include armed conflicts in which one or more organized non-State armed groups are involved. NIACs may occur between State armed forces and organized non-State armed groups or only between such groups.

States party to the Geneva Conventions

This map shows which States were party to the 1949 Geneva Conventions and to their Additional Protocols, as at 31 December 2015. It also indicates which States had made the optional declaration under Article 90 of Additional Protocol I, recognizing the competence of the International Fact-Finding Commission.

N.B. The names of the countries given on this map may differ from their official names

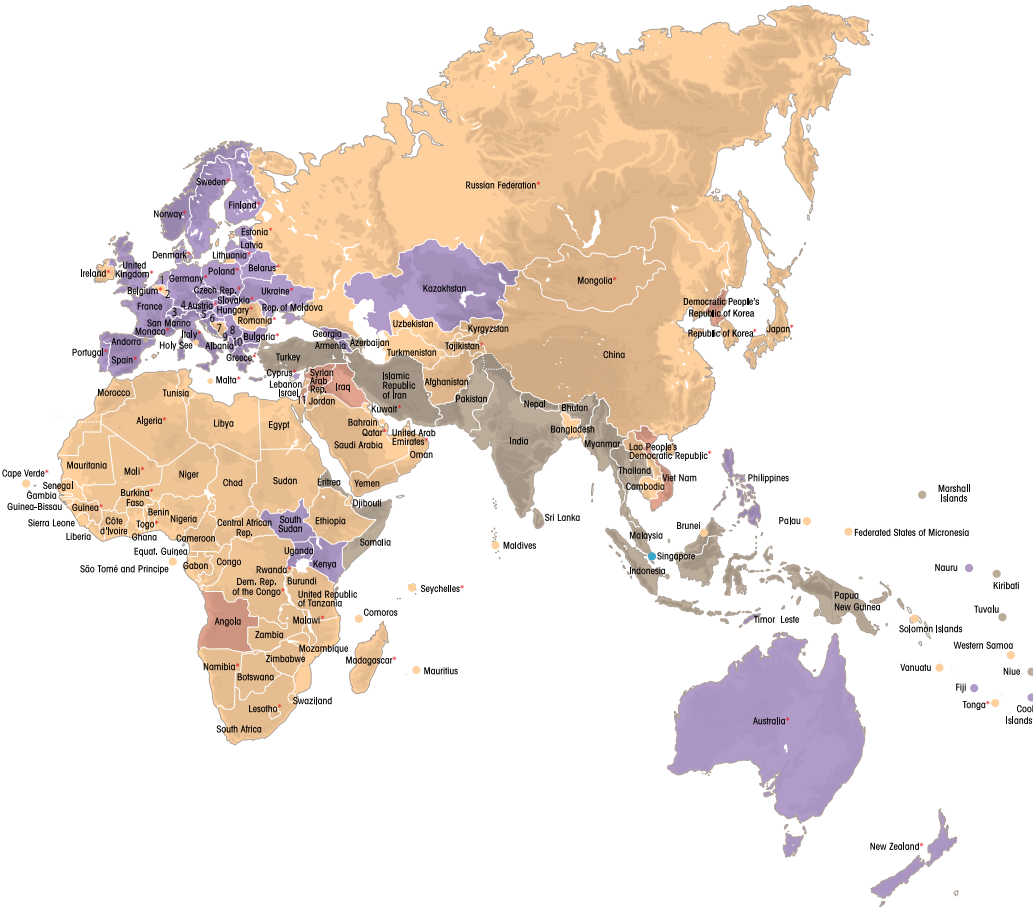


States party to the 1949 Geneva Conventions:	196
States party to the 1949 Geneva Conventions and to 1977 Additional Protocol I:	174
States party to the 1949 Geneva Conventions and to 1977 Additional Protocol II:	168
States party to the 1949 Geneva Conventions and to both 1977 Additional Protocols:	168
States party to the 1949 Geneva Conventions and to 2005 Additional Protocol III:	72
States party to the 1949 Geneva Conventions, to both 1977 Additional Protocol and to 2005 Additional Protocol III:	68
States having made the declaration under Article 90 of 1977 Additional Protocol I:	76

Source: ICRC Annual Report 2015.
For an updated table of States Parties see <https://www.icrc.org/ihl>.

and their additional protocols

<div></div> States party to the 1949 Geneva Conventions only	<div></div> States party to the 1949 Geneva Conventions and to 1977 Additional Protocol I and II	<div>State</div> States having made the declaration under Article 90 of 1977 Additional Protocol I
<div></div> States party to the 1949 Geneva Conventions and to 1977 Additional Protocol I only	<div></div> States party to the 1949 Geneva Conventions, to both 1977 Additional Protocol I and to 2005 Additional Protocol III	
<div></div> States party to the 1949 Geneva Conventions and to 2005 Additional Protocol III only	<div></div> States party to the 1949 Geneva Conventions, 1977 Additional Protocol I and 2005 Additional Protocol III	



- 1 Netherlands*
- 2 Luxembourg*
- 3 Switzerland*
- 4 Liechtenstein*
- 5 Slovenia*
- 6 Croatia*
- 7 Bosnia and Herzegovina*
- 8 Serbia*
- 9 Montenegro*
- 10 FYR Macedonia*
- 11 Palestine*

- **Additional Protocol II** applies to armed conflicts “which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”. (See Article 1, paragraph 1 of Additional Protocol II.) The definition of a NIAC is thus narrower in Additional Protocol II than in common Article 3. For more information, see “Who does IHL protect and how?”

The gap between treaty-based rules applicable in international armed conflicts and those applicable in non-international armed conflicts is gradually being filled by customary law, which generally applies to all types of armed conflicts.² Weapons-related treaties also apply, regardless of the type of armed conflict.

The classification of the types of conflicts is not left to the parties but depends on objective factors; no formal declaration of war or recognition of the situation is required. The existence of an armed conflict – and thus the application of IHL – depends on *what actually happens on the ground*. With the exception of the few rules already applicable in peacetime, IHL starts to apply as soon as an armed conflict arises. In **international armed conflicts**, this means when the first protected person is affected by the conflict, the first segment of territory is occupied or the first attack is launched; in **non-international armed conflicts**, this means when the necessary level of violence and of organization of the parties is reached.

Article 3(4) common to the Geneva Conventions clearly states that application of Article 3 “shall not affect the **legal status of the Parties to the conflict**”. The application of IHL to a non-international armed conflict therefore never internationalizes the conflict or confers any status to a party to that conflict (other than the international legal personality necessary to have rights and obligations under IHL).

However, classifying whether a conflict is international or non-international is often challenging. In recent years, situations have arisen where both international and non-international conflicts have taken place at the same time and on the same territory. The multitude of parties and their conflictual relations are an important characteristic of contemporary armed conflicts. On the State side, the number of foreign interventions in armed conflicts contributes to the growing number of actors involved. On the non-State side, a large number of fluid, multiplying and fragmenting armed groups frequently take part in the fighting. In many situations, third States and/or international organizations intervene, sometimes themselves becoming parties to the conflict. Questions regarding classification often arise when there is a lack of precise information about the nature of the involvement of third parties and when third parties do not acknowledge their participation in the hostilities at all. In such cases, the applicable law depends on the nature of the relationship between the parties to the conflict.

² For more information on customary IHL, see Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules, ICRC, Geneva / Cambridge University Press, Cambridge, 2005, available at <http://www.icrc.org/customary-ihl/eng/docs/home>.

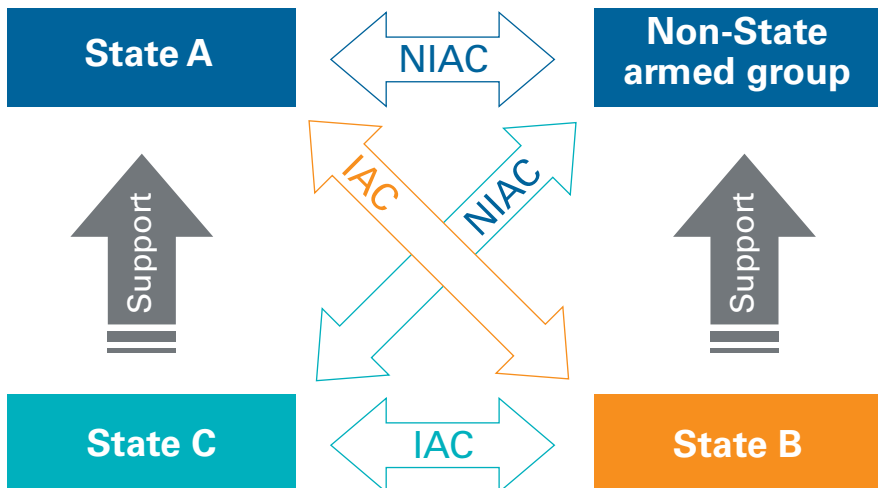
How international and non-international armed conflicts can coincide³

Picture a situation in which:

- State A is engaged in a non-international armed conflict (NIAC) with a non-State armed group;
- State B joins the conflict by conducting acts of hostilities on the side of the non-State armed group;
 - ➡ State A and the non-State armed group are *still* engaged in a NIAC;
 - ➡ Yet States A and B are now engaged in an international armed conflict (IAC).

The situation evolves and:

- State C joins the conflict on the side of State A;
 - ➡ State A and the non-State armed group are *still* engaged in a NIAC;
 - ➡ State C and the non-State armed group are *now* engaged in a NIAC;
 - ➡ States B and C are now engaged in an IAC if armed confrontations occur between them.



Who does IHL protect and how?

IHL protects certain categories of people from the effects of hostilities. These include people who are not or are no longer taking part in the hostilities, such as:

- wounded, sick and shipwrecked people, whether military or civilian;
- medical and religious personnel, whether military or civilian;
- persons detained in connection with an armed conflict, including prisoners of war;
- civilians.

³ In this figure, a "State" could also be a coalition of States or an international or regional organization (i.e. a multilateral force), and this would not affect whether the conflict was deemed international or non-international.

Parties to a conflict must respect these people's lives, dignity, and mental and physical integrity, provide them with material assistance and treat them humanely and without discrimination in all circumstances. This means:

- it is forbidden to kill or wound enemies who surrender or are unable to defend themselves;
- the wounded and sick must be collected and cared for;
- civilians must not be intentionally attacked;
- civilian access to humanitarian assistance must be facilitated; and
- prisoners and detainees must receive adequate food, shelter and medical care and be able to exchange messages with their families; they must also benefit from procedural safeguards and judicial guarantees.

Direct participation in hostilities

The only exception to the prohibition against intentionally attacking civilians comes into play when civilians directly participate in hostilities, such as when they take up arms against the enemy. In such instances, they may be targeted for attack, but only for such time as they directly participate in hostilities. In order to qualify as direct participation in hostilities, a specific act must meet all of the following criteria:

1. The act must reach a certain **threshold of harm**. This is the case when the act will likely adversely affect the military operations or military capacity of a belligerent party. It could also be the case when the act will likely injure or kill civilians or render combatants hors de combat or will destroy civilian objects.
2. There must be a **direct causal link** between the act and the harm likely to result either from that act or from a coordinated military operation of which that act constitutes an integral part.
3. There must be a **belligerent nexus**. This means that the act must be specifically designed to directly achieve the required threshold of harm in support of a belligerent party and to the detriment of another.

The wounded, sick and shipwrecked

IHL stipulates the following treatment of wounded, sick and shipwrecked people, regardless of their civilian or military status:

- They must be treated humanely. It is therefore strictly prohibited to murder them, exterminate them or subject them to any other inhuman or degrading treatment such as torture or medical experiments.
- They must be protected from dangers and threats, in particular from reprisals, looting, pillage and ill-treatment.
- They must be searched for and collected without delay so as to be protected from the effects of the hostilities.
- They must receive any required medical care as soon as possible. Priority treatment must be provided solely on the basis of medical need, and no one must be discriminated against for reasons of loyalty, nationality, gender, race or religion.

In addition to their obligation to provide medical care to wounded, sick and shipwrecked people, the States party to the Geneva Conventions must:

- allow civilian and military medical units to carry out their work in conflict situations;
- refrain from attacking medical units so that they can operate in conflict zones (medical personnel must be considered neutral);
- take similar steps to protect ambulances and hospitals, which can be identified with the red cross, red crescent or red crystal emblem;
- designate in advance which ships will be used as hospital ships in time of war, as it is difficult to requisition and equip such ships once conflict has broken out; and
- take the same measures for medical aircraft.

People detained or interned in connection with an armed conflict

In addition to the general protections that IHL provides to people who are not or are no longer involved in hostilities, people who are deprived of their liberty are specifically protected as well. The two main forms of long-term detention in armed conflicts are internment (administrative detention for security reasons) and detention (for purposes of criminal proceedings).

Prisoners of war in international armed conflicts

Prisoners of war are usually members of the armed forces of one of the parties to a conflict who have been captured by the enemy. The Third Geneva Convention also mentions other categories of people who are entitled to prisoner-of-war status or to treatment as prisoners of war, such as members of militias and volunteer corps that are part of the armed forces or resistance movements. There is no prisoner-of-war status in non-international armed conflicts. However, the parties to such conflicts may jointly decide to apply by analogy the rules applicable in international armed conflicts.

IHL confers special rights and protections on prisoners of war. They must be treated humanely in all circumstances and protected against all acts of violence, intimidation, insults and public curiosity. They are entitled to respect for their lives, dignity, personal rights and political, religious and other convictions. IHL also sets out minimum detention conditions, covering issues such as accommodation, food, clothing, hygiene and medical care. Prisoners of war have a right to exchange news with their families.

The parties to a conflict must release all prisoners of war without delay after the end of active hostilities unless they decide to prosecute and detain them for war crimes or other violations of IHL. In such cases, however, the prisoners must be granted a fair trial and cannot be given an inhumane sentence if found guilty.

Civilian internees in international armed conflicts

A party to a conflict may intern civilians for imperative security reasons and must release them as soon as these reasons no longer exist.

Civilian internees must be informed of the reasons for their internment and must be able to have their internment reconsidered without delay by a court or an administrative board. If the internment is upheld, the internee has a right to have it reviewed at least twice a year.

The rules governing the treatment of civilian internees are very similar to those that apply to prisoners of war. Some of the conditions are more favourable, such as when it comes to reuniting separated family members.

People deprived of their liberty in non-international armed conflicts

People who are deprived of their liberty in a non-international armed conflict must be treated humanely and without discrimination in all circumstances. Their status is governed by Article 3 common to the four Geneva Conventions and Articles 4, 5 and 6 of Additional Protocol II. The protections provided in Additional Protocol II apply to people interned or detained for reasons related to an armed conflict as well as to people facing prosecution for criminal offences related to an armed conflict.

These rules, although less detailed and clear than the rules protecting prisoners of war and civilian internees in international armed conflicts, are nevertheless binding upon all States and non-State armed groups.

General protection of civilians

Under IHL, parties to a conflict must make an effort to protect civilians and civilian objects and must never target them. Yet, particularly in today's armed conflicts, civilians commonly bear the brunt of the fighting.

In contemporary conflicts, it is not rare for civilian victims to outnumber military victims. To make matters worse, control over the population is often one of the major issues at stake in confrontations, and civilians sometimes become a direct target. This situation is the result of a number of factors, including a rise in religious and ethnic animosity, collapsing state structures, the struggle for control over natural resources, the widespread availability of weapons, the spread of terrorism, and the growing number of asymmetric conflicts (conflicts in which the parties have unequal military capacities).

The insufficient protection of civilians in armed conflicts often stems from a failure by parties to respect IHL rather than from shortcomings in the rules of IHL.

Protecting civilians means, in a broad sense, ensuring that the authorities and the armed groups comply with their obligations under IHL and related human rights law. The Fourth Geneva Convention and the Additional Protocols of 1977 pay particular attention to civilians, who are vulnerable not only to military operations but also to the abuse of power and other outrages. In that framework, IHL guarantees fundamental rights for each individual.

Specific protections for civilians

Citizens of a country taking part in the conflict who find themselves in enemy territory

People in this situation must be allowed to return to their country of origin unless doing so would endanger the State's security or economy. If they decide not to go back or have not been granted the right to return to their country, they must be treated like foreigners in times of peace. They may be interned or placed under house arrest if necessary, but they must be able to appeal such measures.

Civilians living under armed occupation

Civilians living under occupation are covered by specific rules aimed at protecting them from abuses by the occupying power and at keeping the situation in the occupied territory as it was at the time of the invasion. IHL seeks to preserve the status quo because, under international law, armed occupation is considered to be a temporary situation. In such situations, civilians are granted certain rights and cannot be punished because of their status. It is, for example, prohibited to expel the inhabitants from the occupied territory or to move them from one part of the territory to another. The occupying power cannot settle its own citizens in the occupied territory, nor can it change the territory physically by destroying houses or infrastructure (unless there are military reasons for doing so).

Women and children

Women and children are especially vulnerable in situations of armed conflict, and the rules governing their treatment are designed to address their specific needs.

Children must receive the care and attention they require. For the parties to an armed conflict, this includes:

- ensuring that children under 15 do not take part directly in hostilities;
- if children have become orphaned or separated from their families because of an armed conflict, ensuring that they are properly cared for;
- ensuring that children are not left to their own resources, can freely exercise their religion and can pursue their education;
- when children have to be imprisoned, keeping them separate from adults (unless they are held together with their family);
- refraining from applying the death penalty to anyone who was under the age of 18 at the time of the offence;
- if children are evacuated to a foreign country, facilitating their return to their family and their country.

For more information, see "[Children](#)" in Part 3.

Parties to an armed conflict must also be attentive to the specific needs of women in terms of protection, health and assistance. Pregnant women and young mothers must

be given particular attention, and women must be protected from sexual violence. Incarcerated women must be under the immediate supervision of other women. If pregnant women and mothers of dependent children are arrested in relation to an armed conflict, their case must be given priority and they must not be given the death penalty.

Fundamental guarantees for anyone affected by armed conflict

The following practices are prohibited under any circumstances:

- violent acts that harm the life, health or physical or mental well-being of persons, in particular murder, torture, corporal punishment and mutilation;
- outrages upon personal dignity, in particular humiliating or degrading treatment, rape, forced prostitution and any form of indecent assault;
- hostage-taking;
- collective punishment;
- the threat to commit any of the above acts.

These fundamental guarantees are backed by judicial guarantees, which apply in criminal proceedings, and procedural safeguards, which protect the rights of people detained in other circumstances, such as internment or administrative detention.

Judicial guarantees and procedural safeguards

The judicial guarantees and procedural safeguards set forth under IHL are a set of rules designed to ensure that individuals in the power of a party to a conflict receive a fair trial and are not unlawfully or arbitrarily deprived of their fundamental human rights and freedoms.

These rules are set down in the Geneva Conventions and Additional Protocols I and II and apply in both international and non-international armed conflicts. They are minimum requirements that do not in any way prevent more favourable treatment.

These rules apply at all times and in all places to the States party to the Geneva Conventions and their Additional Protocols. The States must ensure that their obligations under these instruments are incorporated in their domestic legislation, for example in their code of criminal procedure and rules of procedure and evidence and/or in their constitution.

There can be no derogation to these rules, even in cases where State security or military necessity would seem to require it. A failure to fulfil the judicial and procedural guarantees represents, in most cases, a grave breach of IHL.

The main judicial guarantees are the following:

- the principle of individual criminal responsibility;
- the principle of no crime and no punishment without a law;
- the principle of no double jeopardy (i.e. being tried more than once for the same offence);

- the right of the accused to be judged by an independent and impartial court and without undue delay;
- the right of the accused to be informed of the nature and cause of the alleged offence;
- the rights and means of defence, for example the right to be assisted by a freely chosen, qualified lawyer;
- the right to free legal assistance;
- the right of the accused to have the assistance of an interpreter;
- the right of the accused to communicate freely with counsel;
- the right of the accused to sufficient time and facilities to prepare his or her defence;
- the right of the accused to examine witnesses;
- the presumption of innocence;
- the right of the accused to be present at his or her trial;
- the right of the accused not to testify against himself or herself or to confess guilt;
- the right of the accused to have the judgment pronounced publicly;
- the right of the accused to be informed of the right of appeal.

Procedural safeguards include:

- the right to information about the reasons for internment/administrative detention;
- the right to be registered and held in a recognized place of internment/administrative detention;
- the review of the lawfulness of internment/administrative detention, carried out by an independent and impartial body;
- the right to periodical review of the lawfulness of continued detention;
- the right to medical care and attention required by the condition of the internee/administrative detainee.

What places and objects does IHL protect and how?

Certain places and objects, such as hospitals, ambulances and cultural property (which includes places of worship, works of art and historic monuments), are protected by IHL and must not be attacked. IHL also prohibits attacking or destroying objects indispensable to the survival of the civilian population (e.g. food and drinking water facilities) and works containing dangerous forces (e.g. dams and nuclear power stations).

IHL sets out a number of clearly recognizable “distinctive emblems” – such as the red cross, red crescent and red crystal – that are used to identify protected people and objects.

Medical units and transports

The Geneva Conventions and their Additional Protocols include the obligation for States to respect and protect health-care facilities, personnel and transports assigned to medical purposes in all circumstances. These protections are necessary to ensure the wounded and sick are able to receive medical care. Health-care facilities, personnel and transports can be identified by the red cross, red crescent or red crystal. They must not be attacked unless they are used to commit acts hostile to the enemy and after a warning has been issued.



Cultural property

Cultural property refers to places and objects dedicated to religion, art, science or education, and includes historic and architectural monuments as well. Special care must be taken to avoid damaging cultural property. The destruction of cultural property can be seen as an attempt to destroy the cultural identity of an entire society. The struggle to defend the cultural property of a population, and hence promote respect for its dignity, is therefore an integral part of the humanitarian operation aimed at protecting that population. The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, together with its Protocols, was enacted to protect cultural property, which can be identified with the emblem defined in the convention, a blue and white shield.



The natural environment

Armed conflict can inflict widespread, long-term and severe damage on the environment, including from the use of certain weapons. IHL seeks to protect the environment from such damage.

Works and installations containing dangerous forces

Works and installations containing dangerous forces refer to structures like dams, dykes and nuclear plants. Even if they are turned into military objectives, they must not be attacked because that could unleash dangerous forces and cause extensive loss of civilian life. Works and installations containing dangerous forces may be identified by a symbol consisting of three bright orange circles.



Who is bound by IHL?

Parties to an armed conflict

All parties to an armed conflict must respect IHL at all times.

States

All States party to IHL treaties and instruments are formally required to comply with them, whether the States are party to an armed conflict or not. They must do everything in their power to respect and ensure respect for IHL.

Non-State armed groups

Non-State armed groups, as parties to non-international armed conflicts, are bound by Article 3 common to the Geneva Conventions and Additional Protocol II if the State to which they belong is party to these treaties. In any case, these groups are bound by the customary rules of IHL that apply to non-international armed conflicts.

National liberation movements

National liberation movements fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination may undertake to apply the Geneva Conventions and Additional Protocol I by means of a unilateral declaration to the depositary of these treaties (the Swiss Federal Council).

Collective security operations

Multilateral forces established by the United Nations or other international organizations are bound by IHL the moment they use force against State armed forces (in an international armed conflict) or non-State armed groups (in a non-international armed conflict).

Individuals

IHL applies to everyone in times of conflict – combatants and civilians alike. Individuals who fail to comply may be held criminally accountable under certain circumstances. A number of national and international courts have recognized the duty to criminally prosecute individuals who fail to comply with IHL.

How are IHL violations prevented?

The implementation of IHL – turning the rules into action – is first and foremost the responsibility of the States party to the Geneva Conventions and their Additional Protocols. This responsibility is set forth in Article 1 common to the four Geneva Conventions, which requires States to respect and ensure respect for the Conventions in all circumstances.

Some implementation measures require States to enact legislation or regulations. Others require States to develop educational programmes for the armed forces as well as the general public, recruit and/or train personnel, create identity cards or other documents, establish ad hoc structures, and put into place planning and administrative procedures. States must also endeavour to prevent violations.

Preventive measures include:

- spreading knowledge of IHL (dissemination);
- translating IHL treaties into the national language(s);
- transforming IHL into domestic law wherever necessary and adopting legislative and statutory provisions to ensure respect for IHL;
- incorporating IHL into military manuals;
- training people to facilitate the implementation of and respect for IHL, and appointing legal advisers in the armed forces;
- ensuring respect for the red cross, red crescent and red crystal emblems;
- preventing war crimes and punishing those who commit them; and
- establishing effective sanctions for other IHL violations.

How are IHL violations punished?

IHL sets out detailed rules aimed at protecting the victims of armed conflict and restricting the means and methods of warfare. It also establishes mechanisms to ensure that these rules are respected. In particular, IHL holds individuals responsible for violations that they commit or that they order to be committed. It requires that those responsible for serious violations be prosecuted and punished as criminals.

War crimes

States are required to prevent and put a stop to all violations of IHL. In addition, they are subject to specific obligations when it comes to “grave breaches” in international armed conflicts. Grave breaches represent some of the most serious violations of IHL and are specific acts listed in the Geneva Conventions and Additional Protocol I. They include acts such as wilful killing, torture, inhuman treatment and wilfully causing great suffering or serious injury to body or health. Grave breaches are regarded as war crimes.

War crimes also comprise other serious violations of the laws and customs of war, including those that occur in a non-international armed conflict. The most complete current codified list of war crimes is defined in Article 8 of the Statute of the International Criminal Court.

National prosecution

States have a primary responsibility to arrest, prosecute and punish perpetrators of war crimes. When States become party to the Geneva Conventions or Additional Protocol I, they agree to enact the laws needed at the domestic level to prosecute individuals suspected of committing grave breaches or ordering them to be committed. They are also required to prosecute these individuals in their own courts or, if appropriate, hand them over for trial in another State, and to criminally prosecute other war crimes. Indeed, under Article 1 common to the four Geneva Conventions, States have accepted the obligation to respect and ensure respect for the rules of IHL.

Regarding the criminalization of serious IHL violations more specifically, a State party to the four Geneva Conventions and Additional Protocol I has the obligation to “enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches”⁴ of these instruments. The grave breaches regime stipulates that States Parties must search for persons alleged to have committed, or to have ordered to be committed, those violations of the Conventions and Additional Protocol I defined as “grave breaches”. States are also required to bring such persons, regardless of their nationality, before their own courts or hand them over for trial by another State Party concerned.

On the basis of customary law, States must investigate all war crimes allegedly committed by their nationals or armed forces, or on their territory, as well as other war crimes over which they have jurisdiction, and, if appropriate, prosecute the suspects.⁵

Examples of war crimes

- Wilful killing.
- Torture or inhuman or degrading treatment, including biological experiments.
- Wilfully causing great suffering or serious injury to body or health.
- Intentionally making the civilian population or individual civilians the object of an attack.
- Using human shields.
- Unlawful deportation or transfer or unlawful confinement.
- Hostage-taking.
- Wilfully depriving a prisoner of war or other protected person of the right to a fair and regular trial.
- Making improper use of the red cross, red crescent or red crystal emblems or other protective signs resulting in death or serious personal injury.
- Perfidiously wounding or killing individuals belonging to a hostile nation or army.
- Pillaging public or private property.

⁴ Art. 49, GC I; Art. 50, GC II; Art. 129, GC III; Art. 146, GC IV; and Art. 85(1), AP I.

⁵ See rule 158 in the ICRC’s study on customary IHL: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules, ICRC, Geneva / Cambridge University Press, Cambridge, 2005, available at <http://www.icrc.org/customary-ihl/eng/docs/home>.

In addition to the specific obligations regarding grave breaches and other war crimes, every State party to the four Geneva Conventions must also “take measures necessary for the suppression of all acts contrary to the provisions of the [Conventions] other than the grave breaches”.⁶ Suppression can, for example, take the form of penal sanctions or disciplinary sanctions.

Universal jurisdiction

Generally, domestic criminal law applies only to crimes committed on a State’s territory or by its own nationals. However, some crimes – including war crimes – are so serious that any person suspected of having committed them in either an international or non-international armed conflict should be sought and prosecuted regardless of the person’s nationality or where the crime took place. This principle, known as universal jurisdiction, is essential in the effort to put an end to war crimes, prevent them from going unpunished and deny safe haven to alleged perpetrators. More and more States have adopted domestic legislation enabling their courts to prosecute people who have committed international crimes – such as war crimes committed in international or non-international armed conflicts – in a different State, on the basis of universal jurisdiction.

The effective implementation of States’ obligations under IHL specifically requires that each State party to the Geneva Conventions and Additional Protocol I extends universal jurisdiction to include the list of grave breaches of these instruments in its national legislation. This obligation requires States to investigate and, if warranted, bring to trial individuals alleged to have committed, or to have ordered to be committed, grave breaches, whenever the States are aware that such individuals are present on their territory or in places under their jurisdiction.

Other international instruments place a similar obligation on States Parties to vest some form of universal jurisdiction in their courts over serious violations of the rules contained in these instruments. These include, for example, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Second Protocol of 1999, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance.

In addition, State practice and *opinio juris* have helped to consolidate a customary rule whereby States can vest their courts with universal jurisdiction over other serious violations of IHL.⁷ These include, in particular, serious violations of Article 3 common to the four Geneva Conventions and of Additional Protocol II as well as other war crimes, such as those listed in Article 8 of the Statute of the International Criminal Court. On numerous occasions over the past 20 years, universal jurisdiction has provided the basis for domestic courts, in States that have enacted the necessary legislation, to try individuals alleged to have committed war crimes and other crimes in international and non-international armed conflicts.

6 Art. 49, GC I; Art. 50, GC II; Art. 129, GC III; Art. 146, GC IV; and Art. 85(1), AP I.

7 See the ICRC’s study on customary IHL: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules, ICRC, Geneva / Cambridge University Press, Cambridge, 2005, available at <http://www.icrc.org/customary-ihl/eng/docs/home>.

States are required to take the following specific actions to prosecute and punish war crimes:

First, a State must enact national legislation prohibiting and punishing grave breaches of the Geneva Conventions and Additional Protocol I, either by adopting a separate law or by amending existing criminal laws. Such legislation must cover all people, regardless of nationality, who commit grave breaches or order them to be committed and must include violations that result from a failure to act when under a legal duty to do so. It must cover acts committed both within and outside the territory of the State. It must also provide sanctions scaled to the severity of the crimes.

Second, a State must search for those alleged to be responsible for grave breaches. It must prosecute such people before its own courts or extradite them for trial in another State. It must investigate and, if appropriate, prosecute all war crimes allegedly committed by its nationals or armed forces, or on its territory, as well as other war crimes over which it has jurisdiction.

Third, a State must require its military commanders to prevent grave breaches and other war crimes and to take action against those under their control who commit them.

Fourth, States should assist each other in connection with criminal proceedings relating to grave breaches and other war crimes.

Fifth, a State must also take measures necessary for the suppression of all acts contrary to the provisions of IHL other than war crimes. Suppression can, for example, take the form of penal or disciplinary sanctions.

International prosecution

In order to bring about a more effective system of enforcement aimed at preventing, halting and punishing the most serious international crimes – including war crimes – a number of international criminal tribunals have been established.

The United Nations Security Council has established two international criminal tribunals to try certain crimes – including violations of IHL – committed within the territory of the former Yugoslavia and in connection with the events in Rwanda. With the official closure of the International Criminal Tribunal for Rwanda at the end of 2015 and the International Criminal Tribunal for the former Yugoslavia approaching the end of its mandate, their essential functions will be taken over by the Mechanism for International Criminal Tribunals.

“Mixed” courts such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia have also been established. Such courts combine features of both international and domestic trial systems. Other courts are still being created.⁸

⁸ These include the Special Criminal Court in the Central African Republic, the Kosovo Relocated Specialist Judicial Institution and the Extraordinary African Chambers in Senegal.

Moreover, a permanent International Criminal Court (ICC) competent to try serious violations of IHL that constitute war crimes (Article 8 of the Statute of the ICC) was created through an international agreement in 1998. The ICC started to operate in 2002 after 60 States ratified the ICC Statute.

These courts supplement the suppressive mechanisms provided for under international law and are a major step forward in efforts to prevent and punish serious violations of IHL and international human rights law (IHRL). There is a continued international focus on the ICC and its work but, as made clear in the preamble to the ICC Statute, States maintain primary responsibility for criminally prosecuting those responsible for international crimes, including war crimes. The ICC's jurisdiction can only be invoked if a State is unable or unwilling to genuinely prosecute individuals falling within its jurisdiction. This is the principle of complementarity under the ICC Statute. States party to the ICC Statute are therefore expected to adopt legislation authorizing domestic prosecution of international crimes. States party to the ICC Statute must also take steps to facilitate judicial cooperation with the ICC.

Crimes over which the ICC has jurisdiction

Genocide (Article 6)

The ICC Statute defines genocide as any of the following acts committed to destroy, in whole or in part, a national, ethnical, racial or religious group:

- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children from the group to another group.

This definition reinforces Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

Crimes against humanity (Article 7)

Under the ICC Statute, crimes against humanity are acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

The acts listed in Article 7 are:

- murder;
- extermination;
- enslavement;
- deportation or forcible transfer of the population;

- imprisonment or severe deprivation of physical liberty in violation of fundamental rules of international law, in connection with any act referred to in Article 7 or any crime within the jurisdiction of the Court;
- torture;
- rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- the enforced disappearance of persons;
- the crime of apartheid; and
- other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

War crimes (Article 8)

Under the ICC Statute, the ICC has jurisdiction over the following war crimes committed during international and non-international armed conflicts:

- most grave breaches of the Geneva Conventions committed against protected persons and objects under the Conventions;
- acts constituting other serious violations of the laws and customs of war applicable in international armed conflict;
- serious violations of Article 3 common to the four Geneva Conventions, i.e. acts committed against persons taking no active part in hostilities or placed *hors de combat*; and
- acts constituting other serious violations of the laws and customs of war applicable in armed conflicts of a non-international character.

The list in Article 8 includes acts such as rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence, as well as using children under the age of 15 to participate actively in hostilities.

During the 2010 ICC Review Conference in Kampala, Article 8 was amended to include the use of chemical weapons and expanding bullets in *non-international armed conflicts* in the definition of war crimes. The use of such weapons in *international armed conflicts* was already a war crime under the Statute.

Some grave breaches of the Geneva Conventions and the Additional Protocols are not specifically referred to in Article 8 of the ICC Statute. These include an unjustifiable delay in repatriating prisoners of war, apartheid-related practices (although apartheid itself is considered a crime against humanity), and indiscriminate attacks against installations containing dangerous forces that would affect civilians or civilian objects. A table showing war crimes under the ICC Statute and their source in IHL is available at <https://www.icrc.org/en/document/war-crimes-under-rome-statute-international-criminal-court-and-their-source-international#.VM-YBuk5D5o>.

Crime of aggression (Article 8 bis)

During the 2010 ICC Review Conference, amendments were adopted that added the individual crime of aggression to the ICC Statute. This crime refers to the planning, preparation, initiation or execution of an act of aggression by a person in a leadership position.

An act of aggression is defined as the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State without the justification of self-defence or the authorization of the UN Security Council (for more on this, see *jus ad bellum* and *jus in bello* in "[What is international humanitarian law?](#)"). Under the amendment, a number of acts qualify as aggression:

- the invasion, military occupation or annexation by the use of force of the territory of another State;
- the bombardment or use of weapons against the territory of another State;
- the blockade of the ports or coasts of another State;
- an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;
- the use of the armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement;
- placing a State's territory at the disposal of another State for perpetrating an act of aggression against a third State; and
- the sending of armed bands, groups, irregulars or mercenaries to carry out acts of aggression against another State.

The ICC's jurisdiction over the crime of aggression will not take effect until the States Parties activate it, which can happen from 1 January 2017.

What is the difference between IHL and IHRL?

International humanitarian law (IHL) and international human rights law (IHRL) both strive to protect the lives, health and dignity of individuals.

IHL and IHRL are two complementary but separate branches of international law. They developed over time independently of each other and are contained in different sources. While their scope of application overlaps, their compliance mechanisms are distinct.

IHL applies only in times of international or non-international armed conflict and seeks, for humanitarian reasons, to limit the effects of war on people and objects. IHRL applies at all times – in situations of armed conflict and in peacetime. IHL is binding on

all parties to an armed conflict, including State armed forces and organized non-State armed groups. IHRL is only binding on governments in their relations with individuals.

Every human being is entitled to human rights. However, certain human rights may be suspended temporarily in situations that threaten the life of the nation, including war. IHL, on the other hand, does not allow for any derogations because it deals solely with the exceptional situation of armed conflict.

IHL and IHRL overlap in a number of areas:

- protecting human life;
- prohibiting torture and cruel, inhuman and degrading treatment;
- prohibiting slavery and servitude;
- ensuring basic judicial guarantees;
- the right to food;
- the right to health care.

Both IHL and IHRL recognize individual criminal responsibility for:

- war crimes, as defined under IHL; and
- genocide and crimes against humanity, as defined under both IHL and IHRL.

Part 2: The role of parliamentarians in implementing IHL

Jonglei State, Waat, South Sudan. A war-wounded patient has been taken out of an ICRC plane after been evacuated by a medical team. ©ICRC/ Jacob Zocherman



How is IHL implemented?

The implementation of IHL is first and foremost the responsibility of States. This responsibility is set forth in common Article 1 of the Geneva Conventions, which requires States to respect and ensure respect for the Conventions in all circumstances. This means that States must take a number of legal and practical measures meant to ensure respect for the rules of IHL.

What measures can parliamentarians take to build a comprehensive national legal framework on IHL?

Become party to IHL treaties and related instruments

By becoming party to an IHL or IHL-related treaty, States agree to be legally bound by its provisions. The fact that every State in the world is party to the Geneva Conventions demonstrates that these treaties have the support of the entire international community, which gives them great authority.

Parliamentarians play a key role in the process by which a State becomes party to international treaties and in the national implementation of the rules and principles they embody. There are a number of things you can do as a parliamentarian:

- Become familiar with the legal process to become party to international treaties and with the tools at your disposal.
- Determine whether your State is party to existing IHL and IHL-related treaties.
- If your State has not ratified or acceded to these instruments, consider posing a written or oral question to the government.
- If your government has not signed a treaty, use parliamentary procedure to ask your government to explain why and to encourage it to start the process of ratification or accession without delay.
- If your government has signed the treaty but has delayed the process of ratification, use parliamentary procedure to ask why your government is delaying and to encourage it to accelerate the process. Use your right to legislative initiative to submit a bill on the matter.
- If your government opposes ratification or accession, try to find out why in detail. If necessary, help to eliminate doubts, preconceived notions and misunderstandings, and use your political network to accelerate the process. Advocate with your electorate to advance the cause of ratification or accession.

When should IHL be implemented?

IHL only applies during armed conflicts, yet the measures needed to implement it must be enacted in both wartime and peacetime. Preventive measures in particular must be put into place in times of peace. This is the best way of achieving full respect for IHL in the event of a conflict.

- If your State was created by partition or by the disintegration of another State, the treaties to which the predecessor State had acceded do not automatically bind your State. Your State can succeed to the predecessor State's obligations, accede to IHL and IHL-related treaties as a new State, or indicate its intention not to be bound by the treaties concluded by the predecessor State.

Parliamentarians can also make sure that ratification of or accession to an IHL or IHL-related treaty is not accompanied by any reservation aimed at limiting the scope of the treaty, or by any objections or declarations of understanding. What you can do depends on the case at hand:

- If the government has sent parliament a request for ratification or accession accompanied by reservations limiting the scope of the treaty, objections or declarations of understanding, and you have ascertained that such limits are groundless, use parliamentary procedure to challenge this approach.
- If the government's reservations limiting the scope of the treaty, its objections or its declarations of understanding are no longer valid, use parliamentary procedure to inquire into the government's intentions and take action with a view to having the restrictions lifted. You can also use your right of initiative to propose that those restrictions be lifted.

Parliamentarians can also make sure that certain specific declarations that can be made with regard to an IHL treaty are indeed made when the treaty is ratified or acceded to, or later.

Specific declarations to be made when ratifying certain treaties

Protocol I additional to the Geneva Conventions: States becoming party to Protocol I additional to the Geneva Conventions can accept, according to Article 90 of the Protocol, the competence of the International Humanitarian Fact-Finding Commission.

Convention on Certain Conventional Weapons (CCW): States must declare their consent to be bound by at least two of the Convention's five Protocols.

Protocol IV to the CCW: States becoming party to Protocol IV to the CCW (blinding laser weapons) can make a declaration specifying that the Protocol shall apply "in all circumstances", including in non-international armed conflicts.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict: States ratifying or acceding to the Protocol must submit a binding declaration that sets forth the minimum age at which they will permit voluntary recruitment into their national armed forces and a description of the safeguards they have adopted to ensure that such recruitment is not forced or coerced.

Checklist for parliamentarians

- Make sure your State is party to the treaties listed in “What are the main IHL treaties and related instruments?” of this handbook.
- If your State has become party to those treaties, check that it has made the specific declarations mentioned above.
- Make sure that when your State ratifies or accedes to a treaty, it does not issue reservations or make declarations of understanding that:
 - are contrary to the object and purpose of the treaty;
 - undermine the substance of the treaty.
- Regularly check to make sure that the reservations or declarations of understanding made by your State when it ratified or acceded to the treaty are still valid or if they should be reconsidered.
- For all of the above, do not hesitate to:
 - ask the relevant government service for information;
 - put questions to the government;
 - open a parliamentary debate;
 - seek the support of the public.

Adopt implementing legislation

Under some legislative systems, an IHL treaty will take effect in national law automatically, i.e. as soon as the State has announced that it has become party to it. In such cases, national legislation must be brought into line with the treaty at some point, either before or after it takes effect. In some countries, on the other hand, the treaty will not enter into force until the international rules it contains are incorporated into national legislation. The State will not officially become party to the treaty until that time. In any event, national legislation must be adapted without delay. This may require minor or major changes to existing laws, or it may call for entirely new ones. These laws constitute the legal framework, which must then be fleshed out with detailed rules.

If necessary, parliamentarians can use parliamentary procedure to ensure that the government sends draft legislation or amendments to existing legislation to parliament within a reasonable amount of time. If the dialogue fails, they can use their right of initiative and draft legislation themselves. When legislation is introduced by the government or otherwise, parliamentarians can actively participate in the deliberations and educate citizens on the importance of the issues involved.

For more information

Parliamentarians can request advice and assistance from national and international IHL experts.

The ICRC's Advisory Service on IHL is available to help parliamentarians and parliamentary legislative and documentation services by providing information, advice and guidelines. A national implementation database bringing together domestic legislation and case law is also available at <https://www.icrc.org/ihl-nat>. Model laws on IHL-related themes are available at <https://www.icrc.org/eng/resources/documents/legal-fact-sheet/national-implementation-model-laws.htm>.

At the national level, national Red Cross and Red Crescent societies, as well as national IHL committees (in States where they exist), can provide additional support (see "What is the role of parliamentarians in encouraging national implementation of IHL?").

What practical measures can parliamentarians take to ensure that IHL is implemented at the national level?

Approve the necessary funding

Parliamentarians may be asked to approve the financial resources for a national action plan designed to encourage respect for IHL or for a programme relating to the implementation of IHL or IHL-related training.

The funding approved must be sufficient to cover the costs for training armed and security forces, administrative authorities and health-care personnel in the rules of IHL. When an armed conflict breaks out, the consequences on the population can be disastrous if those professionals have not been properly trained.

The courts must also have the resources they need to play their part if the rules of IHL are violated.

See "How can parliamentarians reduce vulnerability in conflict-affected States through flexible, predictable and sustainable funding for humanitarian action?" below for more information on funding.

Protect the emblems

Under the Geneva Conventions and their Additional Protocols, States must protect and regulate the use of the red cross, red crescent and red crystal emblems for States party to Additional Protocol III, in particular by adopting legislation to that effect.

The emblems are used in wartime to identify and protect the medical services of the armed forces as well as civilian hospitals, so that they can provide relief to victims

without hindrance. Without such clearly identifiable signs, the medical services could easily be targeted or mistaken for combatants. The emblems are also used to identify people and objects associated with national Red Cross and Red Crescent societies, the International Federation and the ICRC, in times of peace and war.

Who is entitled to use the red cross, red crescent and red crystal emblems?

During a conflict, the emblems may be used as a **protective device** by:

- the medical services and religious personnel of the State's armed forces;
- civilian hospitals;
- the medical services of national Red Cross and Red Crescent societies;
- all civilian medical and religious personnel on occupied territory, in areas where fighting is taking place, or if authorized by the competent authorities to display the emblem;
- other recognized and authorized voluntary aid societies, under the same terms as those applied to national Red Cross and Red Crescent societies;
- the International Federation of Red Cross and Red Crescent societies;
- the ICRC.

In peacetime, the emblems may be used as an **indicative device** by:

- entities, people or objects associated with one of the components of the International Red Cross and Red Crescent Movement (a national Red Cross or Red Crescent society, the International Federation of Red Cross and Red Crescent Societies, and the ICRC);
- ambulances and first-aid stations, under certain conditions.

For IHL to be effective, the red cross, red crescent and red crystal emblems must be used properly. Any misuse of the emblems tends to weaken their protective effect during an armed conflict, thereby undermining the effectiveness of the humanitarian assistance provided to victims. This is why no misuse can be tolerated. The Geneva Conventions require the States to adopt specific national laws in this regard.

What constitutes misuse of the emblem?

- **Imitation**, meaning the use of a sign that, because of its form and/or colour, could lead to confusion with the emblem.
- **Usurpation**, meaning the use of the emblem by entities or persons who are not entitled to do so, such as businesses, drug stores, and private doctors.
- **Perfidy**, which consists of using the emblem in times of conflict to protect combatants or military material.

It is the responsibility of the States to draw up detailed regulations on the use of the emblem. Each State must therefore adopt measures that designate an emblem and a national authority competent to regulate its use, and draw up a list of entities entitled to use it.

States must also adopt national legislation prohibiting and punishing the unauthorized use of the emblems, in particular the perfidious use, which is a war crime.

Parliamentarians play a key role in this whole process. In discussions with their constituents and as leaders within the community, politicians may have the opportunity to promote information about the emblems and even be involved in finding positive solutions to resolve situations of misuse.

A model law has been drawn up which can serve as a useful reference document in adopting national legislation (Annex 4).

Checklist for parliamentarians

- Check whether legislation exists protecting the red cross, red crescent or red crystal emblem.
- If this is not the case, make sure that appropriate legislation is adopted.
- If the existing legislation is inadequate or out of date, make sure that it is brought up to date.
- Should you have any doubts about the kind of legislation to adopt, do not hesitate to contact the ICRC Advisory Service. You can also refer to Part 4 of this handbook, which contains a model law.
- Make sure that the necessary regulations are adopted so that the law can be applied.
- Make sure that the legislation and corresponding implementing regulations:
 - define and recognize the protective emblem;
 - identify the national authority competent to draw up regulations on the use of the emblem;
 - identify which entities are entitled to use the emblem as a protective device and which are entitled to use it as an indicative device (see list above);
 - provide measures for identifying areas in which the emblems may be used;
 - provide measures for identifying the body/bodies in charge of ensuring respect for the use of the emblem;
 - define the sanctions applicable in the event of imitation, usurpation or perfidious use.
- You as a parliamentarian should:
 - make sure that the executive branch establishes a reliable way of detecting misuse of the emblem;
 - in the event of armed conflict, make sure that the provisions protecting the emblem are indeed applied and that any misuse of the emblem is effectively punished.

Spread knowledge of IHL

IHL treaties require States to spread knowledge of the treaties as widely as possible both within the armed forces and among the general public. This dissemination process must begin in peacetime to ensure the underlying humanitarian principles become second nature.

Integrate IHL into doctrine, education and training, and instructing the armed forces

IHL governs the conduct of hostilities. If it is to be fully respected, those waging war must be aware of its rules and principles so as to incorporate them into their behaviour. This is why it is vital that every member of the armed forces be trained in IHL.

Members of armed forces, whatever their rank or their function, must receive complete instruction in IHL. It is not sufficient for them to sit through an occasional short course on the law. IHL principles must be a truly integral part of military codes, doctrines and training programmes. One of the best ways of instructing troops in IHL is to incorporate a “humanitarian dimension” into manoeuvres with a view to bringing soldiers face to face with the types of situations that they may subsequently have to manage.

Under IHL, legal advisers must be trained during peacetime so that they are available in times of conflict to advise military commanders on the application of the rules of IHL. The presence of such experts has been made more urgent by the growing complexity of this branch of the law. These experts also have a role to play in dispensing appropriate instruction to the armed forces.

IHL and the armed forces

The ICRC has put together IHL training programmes of varying levels to meet the needs of States’ armed forces. They include:

- short talks/lectures in military academies;
- workshops for instructors;
- seminars for senior combat officers and legal advisers;
- international-level military courses;
- online IHL training modules.⁹

More information is available at <https://www.icrc.org/en/what-we-do/building-respect-ihl/dialogue-weapon-bearers>.

Heighten awareness of IHL among the general public and specialized audiences

If the rules of IHL are to be respected, they must be known not only to those who must apply them directly, but to the entire population as well. Promoting the rules of IHL among civil servants and government officials, in academic circles, in primary and secondary schools, in medical circles and among the media is essential to creating a culture of IHL and promoting compliance.

9 For a selection of teaching materials, see <https://www.icrc.org/en/online-training-centre>.

There are many ways of teaching the general public about IHL. Posters, television spots and cinema advertisements, lectures and seminars can all be effective. School textbooks can also be used to introduce students to this body of law.

For more information and resources on teaching IHL

The ICRC provides a number of resources to support the dissemination of IHL:

- an e-learning course on IHL (<https://www.icrc.org/eng/war-and-law/law-and-policy/online-training-centre.htm>);
- an e-learning course on the legal framework for protecting health-care facilities and personnel (<http://www.icrcproject.org/elearning/health-care-in-danger/beta/>);
- an online casebook containing all the teaching material needed to set up a practice-oriented course on IHL (<https://www.icrc.org/casebook/index.jsp>).

The role of parliamentarians

Legislation can be adopted setting forth general guidelines for efforts to disseminate IHL. Alternatively, specific laws (e.g. on defence or the media) can include provisions concerning the promotion of IHL.

Most of the time, however, dissemination is chiefly the responsibility of the ministries concerned (usually the defence ministry) and of the executive branch in general. In such cases, therefore, the role of parliamentarians is to monitor dissemination. They should make sure that the executive branch has done everything possible to train the armed forces and heighten the awareness of the general public.

Parliamentarians should also make sure that the appropriate budgets include funds specifically set aside for training the armed forces and instructing the population at large in IHL.

By virtue of their public positions, parliamentarians often have the authority and the means to promote IHL themselves, for instance by making speeches about the importance of national legislation implementing IHL, the country's long-term interest in respecting the rules of IHL, and the danger represented by violating those rules. They can also write newspaper articles, work with civil society and, whenever possible, advocate for vigorous national implementation of IHL.

Checklist for parliamentarians

- Make sure that the executive branch has done what is required for the armed forces to be familiar with IHL.
- Make sure that:
 - all members of the armed forces receive training in IHL that is adapted to their rank or function;
 - all members of the armed forces have access to information summarizing the basic principles of IHL;
 - members of the armed forces regularly participate in manoeuvres in which the humanitarian dimension has been explicitly taken into account;
 - all members of the armed forces engaged in a conflict or sent abroad, including for peacekeeping operations, receive training in IHL specifically adapted to the requirements of their mission;
 - programmes of military instruction reflect the principles of IHL;
 - legal advisers duly trained in the application of IHL are made available to the armed forces.
- Make sure that military codes and doctrine are in conformity with the obligations of IHL and provide that:
 - people not or no longer participating in the fighting are treated with humanity and without discrimination;
 - assistance is delivered to the wounded, the sick and the shipwrecked without any adverse discrimination;
 - medical activities in armed conflicts are defined and protected;
 - military and/or civilian medical units are authorized to work in conflict situations and are immune from attack;
 - any attack against medical staff or goods is strictly prohibited;
 - any constraint or abusive treatment of the civilian population is prohibited;
 - civilians brought to trial have the right to certain procedural guarantees, and sentences are determined on the basis of the law;
 - prisoners of war are treated without discrimination and their upkeep is guaranteed free of charge;
 - prisoners of war have access to the relevant treaties of IHL;
 - prisoners of war brought to trial have the right to procedural guarantees, and sentences are determined on the basis of the law;
 - the minimum legal age for enrolment in the armed forces is not under 18 years;
 - civilians and civilian objects are protected from military operations;
 - women and children are accorded particular respect and protection;
 - the weapons made available to the armed forces are not prohibited by IHL;
 - the health and physical or mental integrity of internees is not compromised;
 - combatants are obliged to distinguish themselves from the civilian population;

- civilians and soldiers enjoy fundamental guarantees;
- hostilities are conducted with a view to protecting the environment;
- attacks against works and installations containing dangerous forces are prohibited;
- journalists are protected and carry specific identity cards.
- Make sure that the general public is aware of IHL.
- Make sure that, whenever possible, the following sectors of the population have received information on IHL:
 - civil servants and government officials;
 - judges and law professionals;
 - academic circles;
 - children and young people, in particular in high-school and university programmes;
 - medical circles;
 - the media.
- If the executive branch's efforts are insufficient, do not hesitate to:
 - put questions to the government on the matter;
 - make representations to government members encouraging them to expand dissemination activities;
 - call a vote on a framework law providing guidelines on dissemination.
- In the event of armed conflict, make sure that efforts to promote knowledge of IHL are maintained and strengthened.

What measures can parliamentarians take to ensure that violations of IHL are punished?

Becoming party to IHL treaties and related instruments and adopting appropriate implementing legislation is unfortunately not sufficient to guarantee respect for IHL. States must have, under domestic law, the capacity to prosecute and punish those who are responsible for serious violations. States must also take all feasible measures to prevent and stop violations whenever they occur, especially by ensuring that effective sanction mechanisms are in place.

The best thing would be if the belligerents respected IHL from the outset, but the experience of war has shown that knowledge of the rules and goodwill do not suffice. Trying and punishing people who seriously violate IHL by committing war crimes are therefore not only a legal and moral obligation but also an effective means of deterrence. Impunity paves the way for further atrocities. For violations of IHL to be prosecuted, criminal legislation must define the crimes and their punishment. Indeed, it is a principle of criminal law that no one can be punished for an act that was not a crime at the time it was committed. It is therefore absolutely necessary to draft legislation that covers serious violations of IHL and ensures that judicial guarantees are respected. On the question of punishment, see also "[How are IHL violations punished?](#)".

IHL treaties, although they mention violations that must be punished, do not specify the sentences to be handed down and do not define jurisdiction. It is therefore up to the States to choose the means, with due regard to the specific requirement under IHL and their national legal culture.

Parliamentarians must first ensure that their country has the legislative means of punishing violations of IHL. If that is the case, they must then ensure – preferably in time of peace – that this legislation and the rules for its application are in conformity with the norms of IHL. If there is no legislation or if that legislation and the existing rules are inadequate, parliamentarians can put questions to the government on the matter, or use their right of parliamentary initiative to remedy the situation. The parliamentary debate on the content of the law can in particular determine which courts are competent to try violations of IHL law and the scope of their jurisdiction, and what kind of penalties apply.

Parliament has an important role to play with regard to the administration of justice, in particular:

- ensuring that members of the judiciary receive adequate instruction in IHL;
- giving the judiciary the means to discharge its mission; and
- in the event of war crimes, making sure that the justice system functions well, that it is not subject to pressure or interference on the part of the executive branch, and that justice is administered within a reasonable timeframe.

Checklist for parliamentarians

- Make sure that your country has adopted legislation punishing violations of IHL and that this legislation is known, for example by being published in the official gazette.
- Make sure that this legislation is in conformity with the rules of IHL. If this is not the case, do not hesitate to:
 - make inquiries of the relevant government services;
 - put questions to the government on the subject;
 - start a parliamentary debate on the need to punish violations of IHL in general or any specific violation that is not or is inadequately covered by national legislation;
 - make members of the executive branch aware of the need to prosecute violations of IHL;
 - start a discussion on what legislation punishing violations of IHL should contain.
- If your State is party to the Geneva Conventions, make sure it has adopted legislation that:
 - lists and punishes violations constituting grave breaches under the terms of the Conventions;

- provides that people suspected of having committed, ordered or tolerated grave breaches must be sought, prosecuted or extradited, irrespective of their nationality or where the crime was committed.
- If your State is party to Additional Protocol I, make sure that it has adopted legislation that:
 - lists and punishes violations constituting grave breaches under the terms of Protocol I;
 - provides that persons suspected of having committed, ordered or tolerated grave breaches that are considered war crimes under Protocol I must be sought, prosecuted or extradited, irrespective of their nationality or the place where the crime was committed.
- If your State is party to treaties restricting the use of or prohibiting certain weapons, make sure that legislation is adopted punishing violations of these treaties.
- In any event, no matter what the legislation, make sure that the law adopted:
 - guarantees that any person tried and sentenced for a violation of IHL has the right to a fair trial by an impartial and regularly constituted court following standard procedures in compliance with generally recognized judicial guarantees;
 - defines the nature and severity of applicable criminal sanctions;
 - designates the bodies responsible for defining sentences and applying punishment; and
 - recognizes the individual criminal liability not only of those who committed the breaches but also of those who ordered that they be committed and those who failed to take proper measures to prevent their subordinates from committing them.

What is the role of parliamentarians in encouraging national implementation of IHL?

Establish national bodies on IHL

National IHL committee

The implementation of IHL is an important task requiring long-term efforts. Some national authority has to be in charge. For this reason, many States have successfully created specific IHL bodies, often called national IHL committees. Because the implementation of IHL is primarily the responsibility of the executive branch, such committees often consist of inter-ministerial working groups. They have a consultative role, without decision-making power. Their aim is rather to advise and assist the government in implementing and spreading knowledge of IHL. In some countries the legislative and judicial branches are also represented in such bodies.

National IHL committees or similar bodies provide for a formal structure guaranteeing that efforts from different ministries, for instance those of defence, health and justice, are coordinated and that initiatives to bring national legislation in line with IHL are comprehensive, sustained and coherent.

There are no specific rules on how to set up a national IHL committee or a similar body. The key point is that the committee must be able to provide advice and effective assistance to the government in terms of IHL national implementation and policy. This can be done, in particular, by evaluating existing laws, judicial decisions and administrative provisions, submitting advisory opinions and formulating recommendations in this regard. National IHL committees can also play a major role in promoting and spreading knowledge of IHL.

One of the best means of making sure that the national IHL committee is effective is to ensure that it is made up of people with the necessary authority, including representatives from ministries concerned with IHL, military personnel, members of national Red Cross or Red Crescent societies, and IHL experts such as legal advisers, doctors, university professors and civil society members.

It is also important for the national IHL committee to have permanent status, clearly defined working methods and sufficient resources so that it can carry out its activities over the long term.

States are under no legal obligation to establish a national IHL committee, but experience shows that such bodies can greatly facilitate the implementation of IHL.

Contacting other national IHL committees

It can be particularly fruitful to contact other national IHL committees, especially those in the same region or in States with similar legal and political systems.

The ICRC maintains a list of national IHL committees and similar bodies, available at https://www.icrc.org/en/document/table-national-committees-and-other-national-bodies-international-humanitarian-law#.VD0gfmD_tWI.

The initiative to create a national IHL committee can come from the executive branch itself. In that case, parliamentarians simply have to ensure that the committee works well and has the resources it needs.

If the executive branch does not create a committee, parliamentarians can take action either by creating one by legislative means or by exerting pressure on the executive branch to set one up.

Checklist for parliamentarians

- Strongly encourage the executive branch to set up a national IHL committee or similar body.
- If it does not, do not hesitate to:
 - make inquiries of the relevant government services;
 - put questions to the government on the matter;
 - make representations to government members encouraging them to set up a committee.
- If your efforts are fruitless, work towards establishing a committee by legislative means.
- If your country has a national IHL committee, check whether its mandate includes the following aspects, and do not hesitate to raise the issue and encourage their inclusion if not:
 - the obligation to report on IHL issues to the parliament;
 - the possibility to recommend the adoption of legislative measures regarding IHL;
 - the responsibility to follow up on the implementation of legislative provisions on IHL.
- No matter what the situation, do not hesitate to get in touch with:
 - The ICRC, which has a list of national IHL committees;
 - other parliaments, which can tell you about their experiences.

Parliamentary body on IHL

To build their parliament's capacities on IHL-related issues, parliamentarians can encourage the establishment of a parliamentary body dealing with matters pertaining to IHL.

If it is not possible to set up this type of parliamentary committee, parliamentarians can encourage the establishment of a subcommittee or any other body in conformity with existing procedure, the mandate and procedures of which will have to be clearly defined. Issues to be addressed include any actions to be taken with other parliamentary committees (in view of the multidisciplinary nature of IHL), special links with the national IHL committee, and the ability to conduct hearings.

Parliamentarians can also encourage the establishment of an informal group of parliamentarians who are especially interested in matters of IHL, with said group to act as the driving force for parliamentary action or even as a parliamentary watchdog in this area.

Finally, parliamentarians can promote contact with similar parliamentary bodies in other countries in order to share experiences and improve national action by drawing on the examples of others. The Inter-Parliamentary Union can help with this.

Build partnerships with relevant stakeholders

International cooperation

Under Article 1 common to the Geneva Conventions, States Parties undertake to “respect and ensure respect for” the rules of the Conventions. This means that States must not only respect IHL within their borders, but also ensure its respect throughout the world. This is why international cooperation, in addition to national implementation, is essential to ensuring that IHL rules are turned into action.

In this context, members of parliament not only have to take account of the rules set down in international treaties, but also debate the issues in multilateral political forums (e.g. regional and universal parliamentary organizations). This drives the development of IHL. They can also help, directly or indirectly, in drafting international rules.

IPU Committee to Promote Respect for International Humanitarian Law - mobilizing parliaments around the world for IHL

IPU Committee to Promote Respect for International Humanitarian Law was set up following the adoption in 1993 of an IPU resolution on Respect for international humanitarian law and support for humanitarian action in armed conflicts. The initial objective of the Committee was to mobilize parliaments and the parliamentary community vis-à-vis the ratification of international conventions and protocols related to IHL, and the necessary implementation required at the national level. In essence, the Committee works to strengthen parliamentary action, building on partnerships and solidarity between members of parliament across the world.

IPU Committee is tasked with promoting respect for international humanitarian law and refugee protection. It monitors ratification of the relevant international instruments and their implementation at the national level. It makes parliaments aware of matters requiring parliamentary action and supports parliamentary action at the international and national levels. Over the years, it has placed particular attention on issues related to the domestication of international humanitarian law; the question of missing persons; protection and respect for refugees and their rights; ending statelessness, internally displaced persons and anti-personnel landmines.

The Committee produces tools for parliaments to support them in their work, such as handbooks for parliamentarians produced in cooperation with the ICRC or UNHCR, its partners since its inception. It carries out missions to enhance its understanding of the situation on the ground in certain humanitarian crises, to which it promotes an effective parliamentary response. It holds hearings with parliamentary delegations from countries in crisis situations or dealing with specific IHL issues. To mobilize the parliamentary community, it produces annual reports which it presents to IPU governing bodies and supports the development of resolutions on IHL issues to keep the political momentum.

To facilitate their work, parliamentarians can find information on IHL-related laws and case law from States party to the Geneva Convention on the ICRC's national implementation database <https://www.icrc.org/ihl-nat>.

Aid in the effectiveness of international compliance mechanisms

Efforts to secure the guarantees accorded to the victims of armed conflict also go through international mechanisms. Their purpose is to make sure that IHL is respected and that violations are punished.

In addition to treaties providing for international or hybrid criminal courts and tribunals (see “How are IHL violations punished?” in Part 1), the Geneva Conventions and Additional Protocol I (AP I) provide for compliance mechanisms in the event of an international armed conflict. These mechanisms include the Protecting Powers system, the enquiry procedure and the International Fact-Finding Commission provided in Article 90 of AP I (see below). Arms treaties, including the Anti-Personnel Mine Ban Convention, the Convention on Certain Conventional Weapons and the Convention on Cluster Munitions, provide for reporting mechanisms aimed at monitoring States Parties’ compliance with their obligations under these treaties.

Mechanisms to monitor compliance with IHL

Protecting powers are neutral States or States not party to a conflict which have been designated by a party to the conflict and accepted by the enemy party and have agreed to carry out the functions assigned to a protecting power under IHL. These tasks include visiting protected people, overseeing relief missions and evacuations, receiving applications from protected people, providing assistance in judicial proceedings against protected people, conveying information, documents and relief goods, and offering their good offices.

Enquiry procedures must be instituted in response to alleged violations if requested by a party to a conflict and if the parties concerned agree on the procedure to be followed.

The **International Humanitarian Fact-Finding Commission**, established under Article 90 of Additional Protocol I, may inquire into alleged serious violations of the Geneva Conventions and Additional Protocol I and facilitate through its good offices the restoration of respect for IHL. It can act only if the States taking part in the proceedings have accepted its competence by depositing the appropriate declaration. In other situations, the Commission may initiate an enquiry at the request of a State party to the conflict, but only with the consent of the other State or States concerned. The reports it submits to States are confidential. For more information on the Commission, see <http://www.ihffc.org/index.asp?Language=EN&page=home>.

In case of serious violations of IHL, States party to the Geneva Conventions and Additional Protocol I must **cooperate with the United Nations** and act in conformity with the United Nations Charter.

The **ICRC** also plays a role in monitoring compliance by virtue of its mandate.

Parliamentarians have a role to play in ensuring that compliance mechanisms are able to be effectively deployed in their country, in particular by encouraging their State to take advantage of such mechanisms.

If their country is party to Additional Protocol I, parliamentarians can make sure that it has made a declaration accepting the competence of the International Humanitarian Fact-Finding Commission. If such is not the case, they can put questions to the government on this issue, open a parliamentary debate on the need to deposit a declaration of recognition (which will contribute significantly to the implementation of IHL), and inform the public of the role of the Commission.

Take practical action to obtain universal respect for IHL

A series of measures of varying importance can be taken to ensure respect for IHL:

- **Fact-finding:** when regions become inaccessible owing to a conflict, and to avoid a situation of impunity for lack of information, efforts must be made to find out, in precise and objective terms, if IHL is being respected or violated. In the latter case, it must be ascertained when, in what circumstances and where. Expressing concern about violations of IHL and showing the parties to conflicts that their behaviour is being observed and judged in terms of international law is one way of reminding them of their obligations. In this context, political credibility depends on trustworthy information. There must not be the slightest hint of partiality.
- **Carrying out an enquiry:** in addition to traditional sources of information (eyewitness accounts, the press), the most reliable means of verifying allegations of violations of IHL is to set up an enquiry. The enquiry can take several forms. It may involve a simple administrative enquiry or the creation of a parliamentary commission of enquiry.

A commission of enquiry could also be established by a regional or universal inter-parliamentary organization, such as the Inter-Parliamentary Union.

A parliamentary commission of enquiry can also be set up to conduct information-gathering missions, at the invitation of another State, in order to gain insight into a particular situation.

- **Acting on reliable information to remedy the situation:** once trustworthy information has been collected, a diplomatic dialogue can be engaged with the parties concerned on the basis of this information. Indeed, making a State that has failed to meet its obligations under IHL – maybe because it does not know about them or for lack of means – aware of the facts can be a first step in bringing about a change in behaviour. If dialogue does not suffice to remedy the situation, the observations and conclusions reached must be rendered public to prevent violators of IHL from believing that violations have no political cost. By making the alleged violations public, the political authorities can be prompted to act more responsibly. Generally speaking, political debate and public awareness-raising on the need to bring a halt to violations of IHL and on how to achieve that aim should be encouraged.

- **Exhorting the political authorities to put an end to the violations:**

parliamentarians can play a very important role in this respect. They may, for instance, condemn violations of IHL in public statements. Nevertheless, public debate and condemnation are not always sufficient. Sometimes more coercive measures are necessary. It is at this point that third-party States must assume their responsibilities and use their influence to ensure respect for IHL. The first step a State can take to bring a halt to violations of IHL is, for example, to exert diplomatic pressure in the form of protests. More coercive measures can, and perhaps should, be taken later.

The role played by parliamentarians varies according to the type of measure taken, but parliamentarians can be involved in any of the above-mentioned steps.

Checklist for parliamentarians

- Check that your State has deposited a declaration recognizing the competence of the International Fact-Finding Commission (see the model declaration in Annex 3).
- Pay close attention to respect for IHL in any conflict, whether or not your State is involved.
- For this, do not hesitate to set up a “parliamentary watchdog committee,” a parliamentary body (commission or subcommission) or group of members of parliament whose task it is specifically to ensure that:
 - the orders given and political declarations made contain nothing that could be interpreted as encouraging anyone to violate IHL;
 - any violations are punished with due respect for procedural guarantees.
- If there is a possibility or even the slightest hint that IHL has been violated by one or several States in a conflict, consider the possibility of:
 - asking your government to demand an explanation from the State alleged to have committed the violation(s);
 - suggesting that a neutral or international parliamentary commission be set up, perhaps via the Inter-Parliamentary Union or a regional inter-parliamentary organization;
 - if your State and the State alleged to have committed violations of IHL have filed a declaration accepting the competence of the International Fact-Finding Commission, asking your government to call on the Commission to carry out an enquiry;
 - encouraging the executive branch to engage in diplomatic dialogue with the State in question on the basis of the information collected.
- If you have reliable information on violations of IHL, do not hesitate to:
 - engage in dialogue with the authorities at fault on the basis of the information obtained;

- engage in political debate on the best means of bringing a halt to the violations;
- launch a parliamentary debate, including within the Inter-Parliamentary Union or a regional inter-parliamentary organization, with a view to obtaining their positions on the violations of IHL.
- If all else fails, do not hesitate to prompt the executive branch to make representations to the State at fault with a view to obtaining respect for the rules of IHL.
- If those representations do not work, do not hesitate to ask the executive branch to adopt more coercive measures, such as:
 - different forms of diplomatic pressure;
 - non-renewal of trade privileges or agreements;
 - reducing or suspending public aid to the State in question;
 - participating in any other measure(s) taken by the relevant multilateral regional or universal organizations.

What are the other implementing measures provided for by IHL?

IHL treaties oblige States to take a number of additional implementing measures in the broad sense of the term. This reflects the need to translate IHL into national legislation, procedures, policy and infrastructure. These measures include:

- translating IHL treaties into the national language(s);
- taking into account IHL when selecting military sites and developing weapons and military tactics;
- ensuring that protected persons, property and places are properly identified, marked and protected;
- producing identity cards and other documents for protected persons;
- providing for the establishment of hospital zones, neutralized zones and demilitarized zones;
- providing for the establishment and regulation of national Red Cross and Red Crescent societies and other voluntary aid societies, civil defence organizations and national information bureaus.

Although responsibility for adopting appropriate regulations lies with the executive branch and the different ministries concerned, it is up to parliamentarians to make sure that the necessary measures have been taken within a reasonable amount of time and that they are regularly re-evaluated and, if necessary, updated.

Checklist for parliamentarians

- Make sure that all IHL treaties have been translated, if necessary, into your national language(s).

If your State is party to the Geneva Conventions and their Additional Protocols:

- Make sure that medical personnel are properly identified, and that they:
 - have arm bands identifying them as medical personnel;
 - have special identity discs bearing the emblem.
- Find out how well the national infrastructure has been adapted in order to comply with IHL, by making sure that:
 - medical zones and establishments are designated as such and are identified by means of the emblem, that they are located in areas where they do not risk being affected by military operations and that their infrastructure has been prepared;
 - the ships which will function as hospital ships in time of armed conflict have been designated as such;
 - medical aircraft have been properly identified;
 - places of internment have been chosen in keeping with IHL;
 - regulations on the organization and functioning of internment camps are in conformity with IHL;
 - the internal set-up of the camps is defined in accordance with IHL;
 - military sites and targets are not located near the civilian population;
 - military and security zones have been identified as such;
 - ambulances and hospitals have been clearly identified with the red cross or red crescent emblem;
 - in the event of conflict, information bureaus on prisoners of war and protected persons are immediately set up;
 - a procedure exists for making sure that any new weapon brought into use is in conformity with IHL;
 - works and installations containing dangerous forces are properly identified and whenever possible not near any military objective;
 - the civilian population is moved away from military objectives;
 - in the event of conflict, demilitarized zones are designated in agreement with the adverse party.
- Make sure that qualified staff and legal advisers in the armed forces are trained in IHL.

If your State is party to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict:

- Make sure that military codes and doctrine provide for the protection of cultural property.

- Make sure that the use of the distinctive sign for cultural property is properly regulated.
- Find out whether infrastructure has been properly adapted and make sure that cultural property is appropriately marked.

In all cases:

- If the efforts of the executive branch are not sufficient, do not hesitate to:
 - put questions to the government;
 - make representations to the executive branch and relevant ministries with a view to speeding up the adaptation of infrastructure;
 - take other appropriate measures.
- If necessary, call a vote on a framework law providing guidelines for regulatory action by the executive branch.
- Make sure that sufficient budgets are approved for any measures requiring expenditures.
- In the event of conflict, make sure that the measures applying IHL continue to be scrupulously respected.

What can parliamentarians do to facilitate humanitarian action?

International humanitarian operations are carried out to protect and assist conflict victims and to alleviate their suffering.

Under international law, States bear the primary responsibility for ensuring that the basic needs of civilians under their control are met. However, if States are unable or unwilling to discharge their responsibilities, IHL provides for relief action to be taken by others, such as humanitarian organizations, subject to the consent of the State concerned. In order to carry out their tasks, humanitarian organizations must be granted rapid and unimpeded access to the people affected.

The legal framework pertaining to humanitarian assistance can be found in the Geneva Conventions and the Additional Protocols of 1977 as well as in customary IHL. IHL rules on humanitarian access and assistance establish first that relief actions may be authorized – and in a situation of occupation must be authorized – when the civilian population is without adequate supplies. Second, IHL sets out in detail the conditions governing such operations, with a view to facilitating the delivery of humanitarian relief to the people affected.

Obligation to undertake relief action

The relevant provisions of Additional Protocols I and II stipulate that relief activities “shall be undertaken” when the population lacks supplies essential for its survival, thereby

clearly establishing a legal obligation. However, they further provide that such obligation is subject to the consent of the State concerned (except during occupation). Thus, a balance has to be found between two apparently contradictory requirements: on the one hand, relief action must be undertaken, and on the other, the consent of the State concerned has to be obtained.

The conditions for giving consent vary with the context:

- In international armed conflicts – when they are not taking place in occupied territories – the parties concerned must not withhold consent on arbitrary grounds: any impediment(s) to relief action must be based on valid reasons. In particular, if it is established that a civilian population is threatened with starvation and a humanitarian organization that provides relief on an impartial and non-discriminatory basis is able to remedy the situation, a party is obliged to give consent.
- In non-international armed conflicts, the same rules outlined above apply. It remains a matter of debate, however, whether the consent of the territorial State would be needed if the relief is for civilians in the territory controlled by the non-State armed group.
- In occupied territories, the occupying power has a duty to ensure that the population is provided with food and medical supplies. In particular, it should bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate. If all or part of the population of an occupied territory is not provided with sufficient supplies, the occupying power is under an obligation to give consent to relief schemes to aid the population.

What are the conditions under which humanitarian relief must be delivered?

The second set of rules concerns the conditions under which humanitarian relief must be delivered. These are as follows:

- **Humanity, impartiality and non-discrimination:** the provisions of IHL require assistance that is impartial and humanitarian in character and conducted without any adverse distinction. This means, notably, that relief must be given to all persons in need, regardless of the party to which they belong, and regardless of their religion, gender, and so on.
- **Control:** parties allowing the passage of relief may control its delivery, notably by setting out the technical arrangements, including provisions for inspection, governing such passage.

What can parliamentarians do to facilitate humanitarian action in time of armed conflict?

They should do all they can to facilitate humanitarian operations undertaken by impartial humanitarian organizations such as the ICRC. In practical terms, this means that parliamentarians should:

- make sure that their country expedites visa procedures for humanitarian personnel;

- facilitate transportation by air, land and sea;
- offer tax exemptions;
- ensure protection of humanitarian personnel, facilities and relief supplies;
- remove all bureaucratic obstacles impeding humanitarian efficiency;
- support humanitarian operations with contributions in cash, kind and services.

How can parliamentarians reduce vulnerability in conflict-affected States through flexible, predictable and sustainable funding for humanitarian action?

The proliferation and increased specificity of needs in humanitarian action, which is seen in expanded caseloads (internally displaced persons and refugees) and vulnerable groups (victims of sexual violence, migrants, the elderly and disabled) have led the ICRC and other humanitarian actors to step up their response to more acute and diverse humanitarian needs. Achieving this ambition in the coming years while upholding the principles that guide its neutral, impartial and independent humanitarian action will be an ongoing challenge.

In IHL, humanitarian action is the sum of all activities to protect and bring relief to people affected by conflict and other situations of violence. The ultimate aim of humanitarian action is to save lives, alleviate suffering and protect human dignity. This encompasses both short- and long-term action and activities that in other circumstances might be understood as development activities, but which are in fact indistinguishable from humanitarian relief activities in complex and chronic conflict situations.

While recent increases in funding for humanitarian action are a reflection of the significant needs resulting from current conflicts, they are also a symptom of the inability of the international community to properly remediate these conflicts through viable, peaceful and sustainable political solutions. The result is a vicious circle of recurrent instability and conflict. Conflicts create intense pressures on already fragile States, increase their vulnerability to shocks (which may be generated by violence or natural hazards), and breed more poverty, instability, criminality and violence.

In the face of such complexity, the strict distinction made between emergency response during a conflict, post-conflict early recovery and development work is counterproductive because it is out of touch with the way many conflicts progress and the vulnerabilities they create. Therefore, the divide between humanitarian relief and development assistance is increasingly artificial and even detrimental; it does not reflect the real needs of and risks for the people and communities affected.

An effective response consists of promptly reacting to emergency needs and, at the same time, investing in key infrastructure and services to keep the conditions of affected people from deteriorating further. In many situations, emergency response and development activities should therefore be not consecutive but simultaneous. They must be anchored in a longer-term approach that aims to build coping capacities in a sustainable way.

As far as the ICRC is concerned, an important challenge lies in the fact that donor governments continue to distinguish between humanitarian relief and development programming and financing. Indeed, the organization's short- and medium-term activities in health, food, water, sanitation, legal institutions and infrastructure play an important role in preventing the reversal of longer-term development gains, in both fragile States and disadvantaged parts of middle-income States. The ICRC is committed to this combined approach in protracted conflicts, attempting to meet urgent life-saving needs while strengthening the systems that will provide for people's long-term needs.

For the ICRC's combined approach to be effective, especially in complex, chronic conflicts, the organization must be highly flexible in its operations. This flexibility requires, among other things, unearmarked contributions. Growing pressures on national budgets, however, coupled with the divide between humanitarian and development financing, mean that securing predictable, flexible and sustainable funding for a meaningful humanitarian response to pressing and growing needs remains a critical challenge. The ICRC stands ready to rethink, together with the public authorities (e.g. donor governments, parliamentarians), how States can invest intelligently in humanitarian relief. There is a clear need for new models of longer-term funding, which will help reduce the vulnerabilities of people affected by long and complex conflict situations.

Checklist for parliamentarians

- Recognize the need to reframe the discussion around humanitarian financing and move beyond the ideological and theoretical divide between humanitarian and development aid. A more pragmatic discourse around short-term and long-term humanitarian needs would be more appropriate and help overcome humanitarian and development funding silos.
- Promote the need for effective humanitarian funding (unearmarked) to protect principled humanitarian organizations from being limited by political agendas. Funds need to be disbursed on the basis of need and in accordance with an exclusively humanitarian agenda.
- Support sustainable humanitarian action in protracted armed conflicts that meets people's urgent life-saving emergency needs whilst maintaining a minimum level of basic services and infrastructure (water, food, health facilities and power grids) capable of providing for longer-term needs.
- Improve your understanding of humanitarian challenges in order to better inform your decisions concerning humanitarian and development budgets (allocations, approvals, increases or cuts).
- Encourage parliamentary debates about key humanitarian issues, and seek the views of the ICRC leadership on the potential direct and indirect impact your decisions will have on vulnerable communities in armed conflicts and other situations of violence.
- Recognize the role that a combined humanitarian/development approach plays in preventing the reversal of development gains and the relevance of such an approach to improving the situation of vulnerable communities and to meeting the Sustainable Development Goals.

Part 3: A topic-based approach

Panzi hospital, Bukavu, Democratic Republic of the Congo. Women victims of sexual violence are waiting for a consultation with a psychologist. ©ICRC/Wojtek Lembryk



IHL and terrorism

How does IHL treat terrorism?

IHL does not provide a definition of “terrorism” but prohibits most actions committed in armed conflicts that would commonly be considered “terrorist” if committed in peacetime. These include indiscriminate acts of violence, deliberate attacks against civilians and civilian objects, the use of “human shields”, attacks on places of worship, and hostage-taking. Indeed, the general requirement for persons fighting in an armed conflict to distinguish between civilians and combatants is the cornerstone of IHL. In addition, IHL specifically prohibits “[c]ollective penalties and likewise all measures of (...) terrorism” (Article 33 of the Fourth Geneva Convention), “acts of terrorism” (Article 4 of Additional Protocol II) and acts that aim to spread terror among the civilian population. These provisions do not prohibit lawful attacks on military targets which may spread fear among civilians, but they outlaw attacks that are specifically aimed at terrorizing civilians. The acts mentioned above may also constitute war crimes that must be universally prosecuted. It is to be noted that IHL rules prohibiting the types of attacks against civilians or civilian objects mentioned above apply in both international and non-international armed conflicts.

Terrorist acts may occur during armed conflict or in times of peace. As IHL applies only during armed conflict, it does not address terrorist acts or the manner in which States respond to terrorist acts committed in peacetime. Such acts are subject to domestic and international law, in particular human rights law. However, if the fight against acts of terrorism takes the form of an armed conflict (that is, reaches the threshold of an armed conflict), then IHL applies to the acts committed in connection with that armed conflict, and the State’s response must comply with the rules of IHL. Indeed, as part of their obligations under IHL, States must prevent and punish acts of terrorism that constitute war crimes.

The ICRC’s perspective on the “war on terrorism”

When armed force is used, only the facts on the ground are relevant for determining the legal classification of the situation. Some situations may be classified as an international armed conflict, and others as a non-international armed conflict, while various acts of violence may not reach the threshold of armed conflict. The ICRC does not share the view that the measures and operations taken at the international level to prevent and combat terrorist attacks, often called the “global war on terror”, really constitute a global war. Based on available facts and the application of IHL to those facts, the ICRC believes that no armed conflict of a global reach, either international or non-international, is taking place at present or has taken place in recent years. The ICRC takes a case-by-case approach to violence and maintains that IHL applies only where violence reaches the threshold of armed conflict. Where it does not, other bodies of law are applicable. Indeed, the ICRC does not share the view that the applicability of IHL spreads beyond the territory of the parties to the conflict in a way that would allow the targeting of individuals associated with armed groups around the world. Because “terrorism” is a complex phenomenon not necessarily linked or amounting to an armed conflict, it would be more appropriate to speak of a “multifaceted fight against terrorism”.

Generally speaking, States can take several measures to prevent and punish terrorist acts, such as intelligence gathering, police and judicial cooperation, extradition, criminal sanctions, financial investigations, the freezing of assets and diplomatic and economic pressure on States accused of aiding suspected terrorists. Most of these measures are not commonly considered acts of war.

Terrorism and humanitarian action

Some non-State armed groups involved in non-international armed conflicts are listed by States, regional organizations or the United Nations as terrorist organizations. To disrupt the financing of such organizations, States have adopted international and domestic laws and policies that make it a criminal offence to provide “support”, “service” and/or “assistance” to people or groups involved in terrorist acts, or to “intentionally associate with” such people or groups. While the exact content and scope of the offences vary from one State to another, most States have adopted a broad definition of such crimes, which may be interpreted to apply to any humanitarian activity involving contact with people or entities associated with terrorism. This has a chilling effect on humanitarian activities, potentially criminalizes some humanitarian actors and may create obstacles to the funding of humanitarian work.

The criminalization of humanitarian action is, in particular, incompatible with the mandate of the ICRC which, as specifically provided by Article 3 common to the Geneva Conventions, can offer its services to the parties to a non-international armed conflict, including non-State armed groups. In addition, this would run counter to the principles at the heart of the International Red Cross and Red Crescent Movement’s action such as neutrality (the ICRC and the other components of the Movement would not be neutral if they were obliged to take sides and carry out activities for the sole benefit of one party to an armed conflict) and impartiality (for instance, if the ICRC or national Red Cross and Red Crescent societies could not provide medical services to people who belong to or are under the control of a “terrorist” non-State armed group).

Measures adopted by governments to criminally punish acts of terrorism should be crafted in a way that does not impede humanitarian action:

- Legislation creating criminal offences of “material support”, “service” and “assistance” to or “association” with persons or groups involved in terrorism should exclude from the scope of such offences activities that are exclusively humanitarian and are conducted without adverse distinction.
- When States introduce anti-terrorism clauses in funding agreements, they should formulate them in a way that does not lead to restrictions on the funding of humanitarian organizations and that allows the unimpeded work of neutral, independent and impartial humanitarian actors.
- It should be recognized that the ICRC’s mandate allows it to engage with non-State armed groups and that measures penalizing such activities or laws broadly criminalizing “service” or “support” to terrorism could hamper the ICRC’s humanitarian action in situations where the armed groups party to a non-international armed conflict are designated “terrorist organizations”.

What is the role of parliamentarians?

Parliamentarians must ensure that their country's legislation and the rules for its application are in conformity with the norms of IHL regarding acts of terrorism. In particular, they must ensure that their country has effective laws punishing violations of IHL, including war crimes, and that national legislation providing for the State's response to acts of terrorism respects the rules of IHL.

Parliamentarians should also make sure that their anti-terrorism legislation is specific enough not to criminalize or impede humanitarian action and that sufficient support, including financial, is provided by the government to facilitate the activities of humanitarian actors.

If there is no legislation or if the existing rules are inadequate, parliamentarians should take all relevant measures to remedy the situation, including questioning the government, parliamentary initiatives and parliamentary debates on the content of the law.

In terms of non-legislative measures to fight terrorism, although the responsibility for adopting regulations lies with the executive branch and the different ministries concerned, parliamentarians can make sure that the measures taken are sufficient, compatible with their country's obligations under IHL and IHRL, regularly re-examined and, if necessary, updated.

Checklist for parliamentarians

- Make sure that your country has adopted anti-terrorism legislation that is in conformity with the rules of IHL and IHRL, in particular regarding the punishment of violations of IHL, including acts of terrorism that constitute war crimes.
- Make sure that your national anti-terrorism legislation does not impede humanitarian action, and that it:
 - excludes from the range of offences of "material support", "service" and "assistance" to or "association" with persons or groups involved in terrorism, activities that are exclusively humanitarian and conducted without adverse distinction;
 - recognizes the ICRC's mandate with regard to non-State armed groups and specifically excludes the ICRC's activities from the scope of the offenses mentioned above.
- If there is no legislation or if the legislation is insufficient, do not hesitate to:
 - make inquiries of the relevant government authorities;
 - put questions to the government on the subject;
 - start a parliamentary debate on the need to facilitate humanitarian action and to punish acts of terrorism as violations of IHL in a way that is consistent with the rules of IHL;
 - start a discussion on what national legislation should contain regarding acts of terrorism.

- Make sure that the measures taken by the executive branch to fight terrorism are appropriate with regard to IHL and IHRL.
- Make sure that sufficient support is provided to humanitarian organizations. In particular, ensure that your government does not include “anti-terrorist” funding conditions or restrictions in donor agreements. If they do, make sure that the clauses provide the necessary exceptions so as not to impede the provision of humanitarian services.
- If the efforts of the executive branch are not sufficient, do not hesitate to:
 - put questions to the government;
 - make representations to the executive branch and relevant ministries on the rules of IHL regulating acts of terrorism;
 - take any other appropriate measures.
- If necessary, call a vote on a framework law providing guidelines for regulatory action by the executive branch.

Rape and other forms of sexual violence during armed conflicts

The prohibition against rape and other forms of sexual violence under IHL

Throughout history, sexual violence has been widespread in armed conflict and often viewed as an unavoidable consequence of warfare. Rape and other forms of sexual violence persist as a devastating phenomenon with damaging consequences for victims – women, men, boys and girls – as well as their families and whole communities. The term “sexual violence” is used to describe acts of a sexual nature imposed by force, or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power directed against any victim – man, woman, boy or girl. Taking advantage of a coercive environment or of the victim’s incapacity to give genuine consent is also a form of coercion. Sexual violence encompasses rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, and any other form of sexual violence of a comparable gravity.

Such acts rarely occur in isolation. They form part of a pattern of abuse and violence, which includes killing, child recruitment, destruction of property and looting. Sexual violence can be used as a form of reprisal, to create fear or as a form of torture. It may also be used systematically, as a method of warfare, aimed at destroying the social fabric.

Rape and other forms of sexual violence, when committed in the context of an international or non-international armed conflict, constitute violations of IHL. In line with their obligation to respect and ensure respect for IHL, States must prevent and criminalize rape and other forms of sexual violence in their domestic legal systems. States also have an obligation to investigate and prosecute or, as applicable, extradite the authors of such crimes, and to ensure that victims have access to health care, justice and reparations.

Rape and other forms of sexual violence are prohibited under treaty law (the Fourth Geneva Convention, as well as Additional Protocols I and II) and customary law applicable in both international and non-international armed conflict.

The Statute of the International Criminal Court includes rape and some other forms of sexual violence in the list of war crimes and in the list of acts that constitute crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population.

Rape and other forms of sexual violence may also constitute other international crimes. Rape would typically constitute torture, for instance, when it is intentionally inflicted by a State official in order to obtain a confession from the victim.

Sexual violence can also constitute an act of genocide, such as when it is an imposed measure intended to prevent births within the group through sexual mutilation or sterilization, for example. Rape can also be a measure intended to prevent births, such as in patriarchal societies when a woman is deliberately impregnated by a man of another ethnic group with the intent to have her give birth to a child who will consequently not belong to the mother's group.

States should take measures to ensure that the prohibition against rape and other forms of sexual violence is enshrined in their domestic legal system. When an act of rape or some other form of sexual violence amounts to one of the grave breaches of the Geneva Conventions or Additional Protocol I (such as torture, inhuman treatment, or wilfully causing great suffering or serious injury to body or health), parliamentarians should demand an investigation and the prosecution of the perpetrators as required by the grave breaches system. Furthermore, under customary IHL, serious violations of IHL in international or non-international armed conflicts constitute war crimes over which States party to the four Geneva Conventions have the right to invoke universal jurisdiction. Parliamentarians could therefore demand that such jurisdiction be invoked.

What is the role of parliamentarians?

In order to comply with their obligation to ensure respect for IHL, States are required to disseminate IHL, including the prohibition against rape and other forms of sexual violence. Parliamentarians should participate in this process. Dissemination should take place both during peacetime and in time of war, and should reach, at the very least, military personnel, civil servants and law enforcement agents. The prohibition against rape and other forms of sexual violence should also be taught in military training and included in military and police manuals or their equivalent.

It is important for victims of rape and other forms of sexual violence to have access to medical, psychosocial and psychological care. Parliamentarians, through various measures, should help ensure that such services are provided without interference and with respect for the principle of medical confidentiality. Rape and other forms of sexual violence are medical emergencies with potentially severe physical and psychological consequences for victims. It is thus crucial that victims have unimpeded access to

good-quality, timely and impartial medical care within 72 hours to reduce, for example, the risk of infections.

Parliamentarians should also make sure that economic assistance is made available to victims to ensure that their immediate basic needs are met, since rape and other forms of sexual violence in armed conflict can have devastating effects on victims' lives, including their ability to earn a living and to provide for themselves.

Parliamentarians should work to make it possible for victims of rape and other forms of sexual violence to seek justice without any adverse consequences for themselves. They should have easy access to a lawyer and be able to initiate proceedings – ideally, free of charge, but if that is not feasible, at a reasonable cost. Law enforcement authorities, prosecutors and judges should be properly trained to deal with the specific vulnerability of victims of rape and other forms of sexual violence.

Parliamentarians should make sure that protective measures, such as closed-door hearings and written depositions, are provided to victims while ensuring a fair trial and due process. Under both IHL and IHRL, as applicable, reparations must be made available for victims.

Checklist for parliamentarians

- Make sure that rape and other forms of sexual violence are prohibited at the national level.
- Make sure that domestic legislation provides for the effective investigation and ethical documentation of sexual violence in order to ensure access to justice for victims and bring perpetrators to justice.
- Make sure that your State disseminates IHL, including the prohibition against rape and sexual violence.
- Make sure that domestic legislation requires law enforcement authorities, prosecutors and judges to be properly trained to deal with the specific vulnerabilities of victims of rape and other forms of sexual violence.
- Make sure that measures are implemented at the national level to ensure effective protection for and assistance to victims of rape and other forms of sexual violence. The measures should provide that:
 - unimpeded access to medical, psychosocial and psychological services is provided without interference and with respect for the principle of medical confidentiality;
 - protection from rape and other forms of sexual violence is ensured by addressing security and safety concerns;
 - both socio-economic assistance and reparations programmes are made available to victims;
 - victims of rape and other forms of sexual violence have access to justice without adverse consequences.

For more information on sexual violence in armed conflicts, please see:

ICRC, “Prevention and criminal repression of rape and other forms of sexual violence during armed conflicts” factsheet, available at:
<https://www.icrc.org/en/document/prevention-and-criminal-repression-rape-and-other-forms-sexual-violence-during-armed>

ICRC, “Q&A: sexual violence in armed conflict”, available at:
<https://www.icrc.org/en/document/sexual-violence-armed-conflict-questions-and-answers>

Protecting health care in conflict situations

Legal standards of protection for the provision of healthcare

In times of armed conflict, IHL provides rules to protect access to health care. These rules bind States and non-State armed groups. In situations that do not reach the threshold of armed conflict, only IHRL and domestic law apply. In principle, IHRL applies at all times, although States may decide to derogate from it.

Violence – both actual and threatened – against health-care personnel, facilities and medical transports during armed conflicts and other emergencies is widespread and affects individuals, families and entire communities. In view of the potential number of people affected by it and its effects on chronic and acute needs, it is probably one of the most serious humanitarian issues that has to be addressed by the international community.

Under IHRL, States party to the relevant treaties have, in all circumstances (i.e. in peacetime as well as during armed conflict), an obligation to maintain a functioning health-care system. They must also maintain access to essential health facilities, goods and services, access to essential food, basic shelter, housing and sanitation, and an adequate supply of safe and potable water as well as essential drugs. In doing so, they must respect the principles of non-discrimination and equitable access. States must also design and implement public health strategies. Similar provisions exist in IHL, requiring States to provide food and medical supplies to the population.

Although both IHL and IHRL allow States to fulfil their obligations in accordance with the resources available to them, a lack of resources does not per se justify inaction. When resources are extremely limited, States should adopt low-cost programmes that target the most disadvantaged and marginalized members of the population.

The wounded and sick and health-care personnel must not be attacked, arbitrarily killed or ill-treated. Under IHL, all parties to an armed conflict have a basic obligation to provide the wounded and sick with medical care and attention as far as practicable, without any adverse distinction and with the least possible delay. Thus, medical care and attention must be provided, irrespective of the party with which a wounded or sick person is associated, and irrespective of the person’s race, religion, political opinions

and other similar criteria. Distinctions may only be made on purely medical grounds. Finally, no one may be intentionally denied medical assistance.

The specific protection provided by IHL for medical personnel, units and transports is derived from the basic obligations to respect, protect, collect and care for the wounded and sick. For instance, since the obligation to ensure adequate care for the wounded and sick includes handing them over to a medical unit or permitting their transfer to a place where they can be adequately cared for, arbitrary measures impeding their access to health care violate this obligation.

Medical personnel, facilities and transports – whether military or civilian – engaged in exclusively humanitarian tasks may not be attacked, damaged or harmed in any way or at any time. Thus, in the conduct of hostilities, attacks deliberately directed against them and indiscriminate attacks that affect them are prohibited on the basis of the obligation to respect and protect. Also prohibited are attacks that may be expected to cause excessive incidental harm to medical personnel, facilities and transports relative to the direct and concrete military advantage anticipated. States party to IHL treaties have an obligation to both prevent and punish such attacks against protected persons and installations.

Access to health-care facilities and medical transports must not be arbitrarily limited, and denying access must be avoided as much as possible. Under IHL, the obligation to respect medical personnel, facilities and transports performing their exclusively medical functions also means that the ability to perform those functions is not unduly impeded; this implies a prohibition on arbitrarily preventing the passage of medical personnel and supplies.

Finally, States also need to ensure the domestic implementation and dissemination of the international laws and regulations governing the indicative and protective uses of the red cross, red crescent and red crystal emblems, including the rules on preventing and punishing misuse of the emblems.

What is the role of parliamentarians?

Most States consider health care a constitutional right and have adopted legislation on access to it, regulations for the health-care system and related laws or acts applicable in specific situations such as natural disasters and other emergencies. In the majority of cases, however, normative frameworks do not define their scope of application, since they do not explicitly refer to situations of armed conflict and other emergencies and thus remain comparatively general.

Parliamentarians thus have a key role to play in proposing amendments to current legislation, introducing bills and putting questions to the government on the subject of the protection of health care in situations of armed conflict and other emergencies. The various measures in which they can play a part are described below.

Legal and regulatory measures should be implemented with respect not only to the protection of the emblems under the Geneva Conventions and their Additional Protocols but also with regard to the protection at the domestic level of the wounded and sick, health-care personnel and facilities, and medical transport.

When it comes to the use of the distinctive emblems protected under the Geneva Conventions and their Additional Protocols, the responsibility for authorizing the use of the red cross, red crescent and red crystal emblems and for preventing misuse and abuse rests with the State. The State must regulate their use in accordance with the Geneva Conventions and their Additional Protocols. States therefore need to implement international laws and regulations governing the indicative and protective use of the emblems and promote these laws and regulations. They must also reinforce measures aimed at controlling both the use of the emblems and the mechanisms designed to prevent their misuse. Finally, States are required to take specific measures to prevent the misuse of the emblems by the armed forces.

Parliamentarians should make sure that all necessary measures related to the use of the distinctive emblems have been taken.

Checklist for parliamentarians

Wounded and sick, health-care personnel, facilities, transports

- Encourage the relevant domestic authorities to set up a national system for collecting data on instances of violence against health-care personnel, facilities, medical transports and patients.
- Ask the executive branch and other parliamentarians to include the right to health care in the national constitution.
- Make sure that criminal and administrative law penalizes violations of international law norms protecting health care and that appropriate sanctions exist for any attacks or other acts of violence against health-care personnel.
- Make sure that measures are implemented at the national level to ensure an effective system for enforcing individual criminal responsibility and for punishing crimes against the wounded and sick, medical personnel, medical units and medical transports.
- Make sure that domestic legislation requires proper identification for medical personnel, and in particular that they:
 - have arm bands identifying them as medical personnel;
 - have special identity discs bearing the distinctive emblem.
- Make sure that domestic legislation provides that the national infrastructure is in conformity with IHL and that:
 - medical zones and establishments are designated as such and are identified by means of the emblem, that they are located in areas where they do not risk being affected by military operations and that their infrastructure has been preserved;

- ships that will function as hospital ships in time of armed conflict have been designated as such;
- medical aircraft have been identified;
- ambulances and hospitals have been clearly identified with the emblem.
- Ask the executive branch and other parliamentarians to implement measures to make sure that the armed and security forces, civil servants, health-care personnel and the population at large are trained in or otherwise made aware of issues related to IHL and applicable domestic legislation.

Emblems (see “What practical measures can parliamentarians take to ensure that IHL is implemented at the national level?”)

- Make sure that internal measures, including legislative ones, are adopted to identify and regulate the use of the distinctive emblems protected under the Geneva Conventions and their Additional Protocols that have been recognized and are protected by the State; determine which national authorities are competent to regulate and monitor the use of the emblems; decide which entities are entitled to use the emblem; and identify the uses for which permission is required.
- Make sure that domestic legislation is adopted prohibiting and punishing the unauthorized use of the distinctive emblems and their names at all times for any form of personal or commercial use, and prohibiting imitations or designs that could be mistaken for the emblems.
- If your State has national emblem legislation:
 - ensure that the national legislation covers not only the protection of the emblems but also protection for the wounded and sick, health-care personnel and facilities, and medical transports.
- Make sure that qualified staff and legal advisers in the armed forces are trained in the application of IHL and IHRL.
- If the efforts of the executive branch are not sufficient, do not hesitate to:
 - put questions to the government;
 - open a parliamentary debate;
 - seek the support of the public;
 - approach the executive branch and relevant ministries with a view to speeding up the adaptation of infrastructure;
 - take any other appropriate measures.
- If necessary, call a vote on a framework law providing guidelines for regulatory action on the protection of health care, in particular in conflict situations, by the executive branch.
- Make sure that sufficient budgets are approved for any measures requiring expenditures.
- In the event of conflict, make sure that the measures put in place to ensure IHL is properly applied continue to be scrupulously respected.

For more information on the domestic implementation of rules protecting the provision of health care in armed conflict and other emergencies, please see:

ICRC, “The implementation of rules protecting the provision of health care in armed conflict and other emergencies: A guidance tool”, Annex XIX of the guide *Domestic implementation of IHL*, available at <https://www.icrc.org/en/document/implementation-rules-protecting-provision-health-care-armed-conflicts-and-other-emergencies>

ICRC, *Domestic normative frameworks for the protection of health care*, available at <https://www.icrc.org/eng/resources/documents/publication/p4215.htm>

ICRC, “Respecting and protecting health care in armed conflicts and in situations not covered by international humanitarian law” factsheet, available at <https://www.icrc.org/en/document/respecting-and-protecting-health-care-armed-conflicts-and-situations-not-covered>

ICRC, “The protection of the red cross, red crescent and red crystal emblems” factsheet, available at <https://www.icrc.org/en/document/protection-red-cross-red-crescent-and-red-crystal-emblems-factsheet>.

IHL and the challenge of new technologies

In recent years, a wide array of new technologies have entered the modern battlefield, giving rise to new means and methods of warfare, such as cyber attacks, armed drones and robots (which include autonomous weapons). While there can be no doubt that IHL applies to them, applying pre-existing legal rules to new technologies raises new challenges regarding compliance.

Legal reviews of new means and methods of warfare

Under Article 36 of Additional Protocol I, every State Party is required to assess whether the use of any new weapons or methods of warfare that it studies, develops, acquires or adopts would, in some or all circumstances, be prohibited by international law, including IHL. This obligation applies to all new weapons as well as to the way in which they are intended to be used. It is also particularly relevant in light of the rapid development of new technologies of warfare, notably those relying on information technology and robotics.

The aim of Article 36 is to prevent the use of weapons that would violate international law in any circumstances and to impose restrictions on the use of weapons that would violate international law in some circumstances, by determining their lawfulness before they are developed, acquired or otherwise incorporated into a State’s arsenal.

Article 36 is supplemented by Article 82 of Additional Protocol I, which requires that legal advisers be available at all times to advise military commanders on IHL and “on the appropriate instruction to be given to the armed forces on this subject”.

States have an interest in assessing the legality of new weapons, including new technologies of warfare, regardless of whether they are party to Additional Protocol I. Legal reviews are a critical and almost indispensable measure enabling States to comply with IHL by ensuring that their armed forces are capable of conducting hostilities in accordance with their international obligations. This approach can also help ensure that new weapons are not used prematurely under conditions in which respect for IHL cannot be guaranteed.

For more information on how States can establish or improve procedures to determine the legality of new weapons and methods of warfare in accordance with Article 36 of Protocol I additional to the Geneva Conventions, see *A guide to the legal review of new weapons, means and methods of warfare: measures to implement article 36 of additional protocol I of 1977*, available at <https://www.icrc.org/eng/resources/documents/publication/p0902.htm>.

Cyber warfare

There is no authoritative definition of the notion of “cyber warfare”, which has been used by different people to mean different things. The term cyber warfare is used here to refer to operations against a computer or a computer system through a data stream when used as a means or method of warfare in the context of an armed conflict as defined under IHL.

To date, cyber warfare has fortunately not had disastrous humanitarian consequences. However, if the computers or networks of a State are attacked, infiltrated or blocked, civilians could be deprived of essentials such as drinking water, medical care and electricity. While the military potential of cyber space is not yet fully understood, it appears that cyber attacks against infrastructure essential to the well-being of the population, or even against transportation systems, dams or nuclear plants, are technically possible. Such attacks could have far-reaching consequences on the well-being, health and lives of hundreds of thousands of people.

Furthermore, given the interconnectivity of cyber space, the attacking party may be incapable of distinguishing between military and civilian computer systems when launching a cyber attack. It may in fact be impossible to target only the military computer network. It may also be difficult to evaluate the reverberating effects on civilian networks if military computer networks are attacked.

The interconnectedness of military and civilian networks poses a significant practical challenge in terms of protecting civilians from the dangers of cyber warfare. This challenge underscores the importance for States that develop or acquire cyber-warfare capabilities – whether for offensive or defensive purposes – to assess their lawfulness under IHL. Indeed, the fact that a particular military capability is not specifically regulated does not mean that it can be used without restrictions. Like any new technology used as a means or method of warfare in armed conflict, cyber warfare is subject to the limits imposed by IHL, in particular the prohibition on directing attacks against civilian objects and the prohibition on indiscriminate and disproportionate

attacks. This is not to deny that there might be a need to develop the law further as technologies evolve or their humanitarian impact is better understood. That will have to be determined by States.

Autonomous weapons

During the past 15 years, there has been a sharp increase in the development and use of robotic systems by armed forces. These include various armed and unmanned systems that operate in the air, on land and in the water (including on and under the high seas). Although the gradual increase in the sophistication of military machinery and in the physical distance of soldiers from the battlefield is a phenomenon as old as war itself, recent developments in robotics and computing combined with military operational demands raise the prospect of reducing, or removing altogether, direct human control over weapon systems and the use of force.

There is no internationally agreed definition of autonomous weapon systems,¹⁰ but the various definitions that are proposed share the notion of a weapon system that can independently select and attack targets. On this basis, the ICRC has proposed “autonomous weapon systems” as an umbrella term covering any type of weapon system, whether operating in the air, on land or at sea, with autonomy in its “critical functions” – meaning a weapon that can select (i.e. search for or detect, identify and track) and engage (i.e. intercept, use force against, neutralize, damage or destroy) targets without human intervention. After initial activation, it is the weapon system itself, using its sensors, programming and weapon(s), that carries out the targeting processes and actions that are ordinarily controlled directly by humans.

Based on the state of current and foreseeable robotics technology, ensuring that autonomous weapon systems can be used in compliance with IHL poses a formidable technological challenge. This is especially true if these weapons are assigned more complex tasks and deployed in more dynamic environments than has been the case until now.

Key challenges include whether the weapon system would be capable of autonomously distinguishing military objectives from civilian objects, combatants from civilians, and active combatants from those who are hors de combat. Another key challenge is whether a weapon could be programmed to detect and evaluate the many contextual factors and variables required to determine whether the attack may be expected to cause incidental civilian casualties and/or damage to civilian objects, or a combination thereof, which would be excessive relative to the concrete and direct military advantage anticipated, as required by the rule of proportionality. Likewise, the ability to program a weapon to cancel or suspend an attack if it becomes apparent that the target is not a military one or is subject to special protection or that the attack may be expected to violate the rule of proportionality, as required by the rules on precautions in attack, appears to be a formidable challenge.

¹⁰ The terminology used to describe such systems includes “lethal autonomous weapon systems (LAWS)”, “lethal autonomous robots (LARs)” and “killer robots”.

Thus, for autonomous weapon systems intended for use in situations where they are likely to encounter protected people or objects, there are serious doubts as to whether it is technically possible to program the weapons to carry out the complex, context-dependent assessments required by the IHL-based rules of distinction, proportionality and precaution in attack. These are inherently qualitative assessments in which uniquely human reasoning and judgement will continue to be required.

In view of these challenges, the ability to develop and use autonomous weapon systems that comply with IHL in all but the narrowest of scenarios and the simplest of environments is far from certain, at least for the foreseeable future. In this respect, it seems evident that overall human control or oversight over the selection of targets and the attack will continue to be required to ensure respect for IHL. The kind and degree of human control or oversight required to ensure an autonomous weapon system is in conformity with IHL will depend on several factors, including the type of system, the tasks it is designed to carry out, the environment in which it is intended to be used, and the types of targets it is programmed to attack.

Irrespective of compliance with IHL, a fundamental question at the heart of the debate over autonomous weapon systems is whether the principles of humanity and the dictates of public conscience would allow machines to make life and death decisions in armed conflict without human involvement. The debates of recent years among States, experts, civil society and the public have shown that there is a deep sense of discomfort with the idea of any weapon system that places the use of force beyond human control.

Drones

Autonomous weapons must be distinguished from drones – also known as unmanned aerial vehicles (UAVs) or remotely piloted aircraft (RPA) – which are remote-controlled weapons. Drones are typically operated and controlled by a crew located outside of the area of combat. Drones currently in use require human operators to select targets and activate, direct and fire the weapons concerned.

The use of drones has given rise to a number of concerns and fuelled many debates. Advocates of their use argue that they have made attacks more precise and that this has resulted in fewer casualties and less destruction. But it has also been asserted that drone attacks have erroneously killed or injured civilians on too many occasions. This issue is the subject of ongoing debate owing, among other things, to a lack of information on the effects of most drone strikes. Furthermore, the potential psychological impact of drones is a concern for several humanitarian organizations, including the ICRC. What is the level of stress induced by drones? What are the consequences of their constant presence in the skies on the mental health of the people living in areas below? Unfortunately, first-hand information is not always available, especially when drones are used in areas where security constraints make it difficult to conduct an independent and thorough evaluation of their impact.

Under IHL, there is no specific rule or prohibition on RPAs. As is the case for manned combat aircraft, their use is governed by the rules on the conduct of hostilities, and there is nothing specific to drones that would prevent these rules from being applied when drones are used in an armed conflict. The responsibility for complying with IHL lies with the drone operators, their commanders and the party to the conflict to which they belong. In contrast, it would appear that the use of drones in the scope of law enforcement could only be permitted in exceptional circumstances, given the strict limits on the use of force imposed by the law-enforcement framework.

What is the role of parliamentarians?

Protocol I additional to the Geneva Conventions does not define how the review of new weapons and methods of warfare is to be carried out. It is thus the responsibility of every State Party to adopt the necessary administrative, regulatory and other measures. Whatever the review mechanism chosen, States are encouraged to adopt a multidisciplinary approach that takes into account, as appropriate, the advice of military, legal, medical, scientific and environmental experts. They should also carry out the review at the earliest possible stage, which may be when the new weapon or method of warfare is being studied or developed or when it is acquired or adopted. In any case, the review must take place before it is used.

In States that have a national IHL committee, parliamentarians could encourage this committee to support the adoption of national review procedures (see “What is the role of parliamentarians in encouraging national implementation of IHL?” in Part 2).

Significant procedural issues that will merit consideration in establishing a review mechanism include determining which national authority is to be made responsible for the review, who should participate in the review process, the stages of the development process at which reviews should occur, and the procedures relating to decision-making and record-keeping. The establishment of a formal procedure means setting up a permanent mechanism ready to be used to carry out reviews of new weapons whenever these are being studied, developed, acquired or adopted. Parliamentarians can make sure that the relevant considerations are taken into account when review mechanisms are set up.

The review mechanism can be established by, and made accountable to, the government department responsible for studying, developing, acquiring or adopting new weapons, typically the ministry of defence or its equivalent. Alternatively, the review mechanism could be established by the government itself and implemented by an inter-departmental entity. Whatever the establishing authority, care should be taken to ensure that the reviewing body is capable of carrying out its work in an impartial manner, in accordance with the law and on the basis of relevant expertise. Parliamentarians can make suggestions and requests to ensure the review will be irreproachable in terms of quality and credibility. They can also play an important role in making sure that the weapons reviewed are in full compliance with IHL by insisting on a multidisciplinary approach to the review. This means drawing on the advice of military, legal, medical and environmental experts, as well as specialists in robotics

and information technology. Parliamentarians should also make sure that the executive branch undertakes the review at the earliest possible stage, which may be when new weapons and methods of warfare are being studied or developed or when they are acquired or adopted (but, in any case, prior to their use).

Responsibility for carrying out the review may be entrusted to a special body or committee made up of permanent representatives of relevant sectors and departments. Parliamentarians are encouraged to participate in committees and bodies in charge of the review of new weapons. Whether the reviewing authority is an individual or a committee, it must have the appropriate qualifications, including thorough knowledge and a full understanding of IHL.

Each of the authorities responsible for studying, developing, acquiring, modifying or adopting a weapon should be required to submit the matter to the reviewing authority for a review at the stages identified above. This can be done, for example, through a notification or a request for an advisory opinion or for a review. In addition, the reviewing authority itself could have the authority to undertake assessments on its own initiative.

Checklist for parliamentarians

- Find out how well the national infrastructure has been adapted in order to comply with IHL, by making sure that:
 - a procedure exists to verify that any new weapon brought into use is in conformity with IHL;
 - the review procedure for new weapons draws on the advice of qualified legal advisers in IHL as well as a multidisciplinary team of experts.
- Make sure that the authorities and bodies in charge of the development or acquisition of new weapons submit the new weapon for review in accordance with the procedure in place.
- Make sure that qualified staff and legal advisers in the armed forces are trained in the application of IHL, in particular regarding the rules governing the development and use of new weapons and methods of warfare.
- If no review authority is in place or if it does not function well or is not being advised properly, do not hesitate to:
 - put questions to the government;
 - approach the executive branch and relevant ministries with a view to speeding up improvements;
 - take any other appropriate measures.
- If necessary, call a vote on a framework law providing guidelines for regulatory action by the executive branch.
- Make sure that sufficient budgets are approved for any measures requiring expenditures.
- In the event of conflict, make sure that the measures put in place to ensure IHL is properly applied continue to be scrupulously respected.

More information on IHL and new technologies is available at <https://www.icrc.org/en/war-and-law/weapons/ihl-and-new-technologies>.

You may also wish to consult:

The “New technologies and warfare” issue of the International Review of the Red Cross (Vol. 94, No. 886, summer 2012), available at <https://www.icrc.org/eng/resources/international-review/review-886-new-technologies-warfare/index.jsp>

ICRC, “New weapons” factsheet, available at <https://www.icrc.org/en/document/new-weapons-factsheet>

IPU, “Cyber warfare: A serious threat to peace and global security,” resolution adopted by the 132nd Assembly, April 2015, available at <http://www.ipu.org/conf-e/132/res-1.htm>.

Humanitarian activities and the protection of personal data

The use of personal data in the humanitarian context

In the performance of humanitarian activities, humanitarian actors are required to collect and process information containing personal data. Such information and data may include extremely sensitive allegations of abuse and violations, the disclosure of which may generate risks for the victims, witnesses, their families and the people collecting them. It would also constitute a breach of their right to privacy and personal data protection. This is why it is fundamental for humanitarian actors to protect personal data.

Protecting the personal data of victims of armed conflicts and other situations of violence is an integral part of protecting and assisting them.

Activities in which the ICRC and the national Red Cross and Red Crescent societies come into the possession of personal data include:

- restoring family links;
- protecting individuals in detention;
- building respect for IHL;
- providing medical assistance and orthopaedic services;
- forensic activities;
- weapon decontamination;
- ensuring economic security;
- water and habitat activities;
- archiving.

What is the role of parliamentarians?

Legal basis for processing/transfers

Under data protection laws, personal data can only be processed on specific legal grounds. The best known legal basis is generally consent, but others may be available. Data protection laws also provide for restrictions on transfers of personal data to third-party countries and international organizations.

Access to the personal data of possible victims of armed conflicts and other situations of violence is crucial to ensure that the ICRC and the other components of the International Red Cross and Red Crescent Movement are in a position to carry out their mandate under IHL and the Statutes of the Movement.

Victims of armed conflicts and other situations of violence whose data may be needed for humanitarian reasons may not be in a position to provide consent. Maybe they are separated from their families and being sought, for example, or missing, unconscious, or too vulnerable to be in a position to make a fully free and informed decision as to the processing of their personal data.

Parliamentarians should therefore support the establishment of legal bases other than consent for access to data and ensure that there is sufficient clarity in the law that such alternative legal bases cover humanitarian activities, including those carried out pursuant to IHL and the Statutes of the Movement.

Parliamentarians should also make sure that the transfer of data to third-party countries and international organizations is permissible in these types of cases.

Data subject access rights

Data protection laws generally provide the right for a data subject – i.e. the person concerned – to access all the personal data held on that person by a data controller. Limitations to this right are generally permissible based on important grounds of public interest and/or the protection of the vital interests of that same data subject and/or another person.

Confidentiality is essential to gaining access to and protecting people who are in danger or affected by violence and/or armed conflict. For example, in order to maintain its access to detainees, the ICRC needs to be able to rely on its standard working methods, which include confidentiality and the related privilege of non-disclosure of confidential information under international law. This may require ICRC to restrict data subjects' rights to access certain confidential reports containing their personal data when such reports are covered by the privilege of non-disclosure. This is meant to protect the data subject's life, integrity and dignity, or the life, integrity and dignity of others. Where such reports are sent by ICRC to authorities, the authorities must also be allowed, in line with international law, to restrict data subject access rights.

Parliamentarians should therefore make sure that, in such cases, a mechanism exists to restrict data subject access rights.

Purpose limitation

Personal data must be processed in full transparency for a clearly specified purpose. Once the purpose is specified, personal data cannot be processed for any other purpose incompatible with it, unless a new legal basis can be found.

Humanitarian organizations process data for exclusively humanitarian purposes and for the administrative reasons related to those humanitarian purposes. Yet humanitarian organizations that do not enjoy the privileges, immunities and status of an international organization may come under pressure from the authorities to provide certain personal data to the authorities for law enforcement purposes, for example, or to deal with migration flows. This use of data is incompatible with the purpose for which data was collected and is a direct threat to humanitarian work.

Parliamentarians should ensure that unambiguous safeguards are set up to address this issue.

Protecting the ICRC

Parliamentarians must ensure that their State's national legislation on data protection effectively protects the ICRC's right to confidentiality and facilitates its humanitarian activities as provided for in the international legal instruments underpinning its mandate. If that legislation and the existing rules are inadequate, parliamentarians can put questions to the government on the subject or use their right of parliamentary initiative to remedy the situation. Through a parliamentary debate, parliamentarians can, for example, highlight the ICRC's absolute privilege of non-disclosure of the information and data it collects and the particularity of its mandate, as well as the way these should be reflected in national legislation on data protection.

Checklist for parliamentarians

- If your State has national legislation on data protection, make sure it contains provisions:
 - authorizing the processing and transfer of personal data to the ICRC and the other components of the International Red Cross and Red Crescent Movement;
 - providing for sufficient clarity that data subject access rights are to be restricted on important grounds of public interest where this is necessary to protect information covered by the ICRC's privilege of non-disclosure;
 - safeguarding purpose limitation in the area of humanitarian activities, and preventing data collected and processed for humanitarian purposes from being used for other, incompatible purposes.

- If the existing legislation is inappropriate, do not hesitate to:
 - put questions to the government on the subject;
 - initiate a parliamentary debate on the need to provide special treatment to the ICRC and to facilitate its activities;
 - approach the executive branch and relevant ministries with a view to making the needed changes to national legislation on data protection;
 - start a discussion on what new provisions it should contain;
 - take any other appropriate measures.

Children

Legal standards for the protection of children

In the event of an international or non-international armed conflict, children who are not members of the States' armed forces or organized non-State armed groups are covered by the general protections afforded to civilians against the effects of hostilities, unless they directly participate in hostilities. Given the particular vulnerability of children, the Third and Fourth Geneva Conventions and the Additional Protocols of 1977 lay down a series of rules according children special protection; children who take a direct part in hostilities do not lose that special protection. The Additional Protocols, the 1989 Convention on the Rights of the Child and its 2000 Optional Protocol on the Involvement of Children in Armed Conflict also set limits on children's participation in hostilities.

The fourth Geneva Convention includes specific provisions for children, but it is Additional Protocol I that lays down the principle of special protection: "Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason" (Article 77).

Participation by children in hostilities can take several forms, ranging from providing support to combatants (such as bringing them weapons and munitions and carrying out reconnaissance missions) to being recruited and used as combatants in the national armed forces or armed groups. The Additional Protocols of 1977 were the first international treaties to cover such situations. Additional Protocol I requires States to take all feasible measures to prevent children under 15 from taking a direct part in hostilities. It expressly prohibits their recruitment into the armed forces and encourages States Parties, when recruiting among those aged from 15 to 18 years old, to give priority to the oldest ones (Art. 77). Additional Protocol II goes further, prohibiting both the recruitment and the participation – direct or indirect – in hostilities by children under 15 years of age.

In the event of an international armed conflict, children not taking part in the hostilities are covered by provisions of the Fourth Geneva Convention relative to the protection of civilians and by Additional Protocol I. They are protected by the fundamental

guarantees that these treaties provide, in particular the right to be treated humanely and the prohibition against murder, coercion, corporal punishment, torture, collective punishment and reprisals. They are also protected by the rules of Additional Protocol I concerning the conduct of hostilities, including both the principle of distinction and the prohibition on attacks against civilians.

In the event of a non-international armed conflict, children are also covered by the fundamental guarantees for persons not taking a direct part in the hostilities. They are further protected by the principle that “[t]he civilian population as such, as well as individual civilians, shall not be the object of attack” (Article 13, paragraph 2 of Additional Protocol II).

Furthermore, the 1989 Convention on the Rights of the Child, which has been almost universally ratified, covers all fundamental rights of the child. Among various related articles, Article 38 of the Convention urges States Parties to take all feasible measures to ensure that children below the age of 15 do not take a direct part in hostilities. Article 38 of the Convention also provides that, in recruiting those aged between 15 and 18 years old, priority should be given to the oldest among them.

The Optional Protocol on the Involvement of Children in Armed Conflict, adopted on 25 May 2000, strengthens protections for children in armed conflict. It states that:

- States Parties must take all feasible measures to ensure that members of their armed forces who have not reached the age of 18 do not take a direct part in hostilities;
- compulsory recruitment into the armed forces of persons under 18 years of age is prohibited;
- States Parties shall raise the minimum age for voluntary recruitment from 15 years (this rule does not apply to military academies);
- armed groups distinct from the national armed forces should not, under any circumstances, recruit people under the age of 18 (whether on a compulsory or voluntary basis) or use them in hostilities; and
- States Parties must prohibit and criminalize such practices at the domestic level (Article 4).

National implementation of protective measures

In addition to ratifying the treaties protecting children in armed conflicts, States have an active role to play in their implementation at the national level. They are required to take and apply national measures, whether in legislative form or another form, that conform to their legal and judicial systems. Priority should be given to implementing the following rules:

- States party to the Optional Protocol on the Involvement of Children in Armed Conflict must take legislative measures prohibiting and criminalizing both the compulsory recruitment into the national armed forces of people under 18 years of age and the compulsory or voluntary recruitment or use of people under 18 by armed groups distinct from national armed forces.

- States party to the Convention on the Rights of the Child or to Additional Protocol I should take legislative measures prohibiting the recruitment and the direct participation in hostilities of children under 15 and ensuring that priority in recruitment be given to the oldest among those aged between 15 and 18.
- The principle of complementarity, according to which the ICC has jurisdiction in situations where a State is unable or unwilling to prosecute, dictates that States party to the ICC Statute should ensure that their national criminal legislation makes it possible to prosecute people for conscripting or enlisting children under 15 years of age or for using children as active participants in hostilities. National legislation should also establish individual criminal responsibility for the perpetrators of these crimes as well as command responsibility for all commanders who fail to prevent or punish them. States should ensure that these crimes are not covered by any amnesty law.

Also, States party to Additional Protocols I and II should take legislative or other measures to ensure that any child under 15 years of age who is arrested, detained or interned for reasons relating to an armed conflict enjoys the special protections provided by IHL. Children who have been unlawfully recruited and who are accused of having committed domestic or international crimes during an armed conflict should be regarded primarily as victims rather than perpetrators and treated as such.

Dissemination and further development of national legislation

A large-scale effort to promote knowledge of and respect for IHL is required in order to ensure the rights of children are respected. Concerning IHL, States are legally obliged to raise awareness of these rights through dissemination activities. These could include incorporating the concept of child-specific protections in peacetime training and exercises at all levels of the armed and national security forces and/or in the curriculum of universities and specialized institutes. In the same vein, campaigns should be run to raise awareness among the general public and among children of both genders on the forms and consequences of children participating directly or indirectly in hostilities as well as on the particular effects of armed conflict (including association with armed forces or armed groups) on children and their families and communities.

The ICRC's Advisory Service supports States in their efforts to develop legislative, administrative and practical measures aimed at implementing domestically the international rules protecting children affected by armed conflict. To this end, the Advisory Service produced two reference documents:

- *Model legislative provisions on the recruitment or use of children in armed conflict*, intended to be used by States as guidance when drafting or amending national legislation prohibiting the recruitment or use of children in armed conflict, available at <https://www.icrc.org/en/document/model-legislative-provisions-recruitment-or-use-children-armed-conflict-model-law>;
- *Guiding principles for the domestic implementation of a comprehensive system of protection for children associated with armed forces or armed groups*, which aim at clarifying existing State obligations, facilitating respect

for existing obligations and promoting, disseminating and implementing the relevant provisions available at <https://www.icrc.org/en/document/domestic-implementation-comprehensive-system-protection-children-associated-armed-forces-or>.

For more information on children in armed conflicts, please see:

IPU/UNICEF, *Child protection: A handbook for parliamentarians* (see the section on children and war), 2004, available at www.ipu.org/pdf/publications/childprotection_en.pdf

ICRC, “Legal protection of children in armed conflict” factsheet, available at <https://www.icrc.org/en/document/legal-protection-children-armed-conflict-factsheet>

ICRC, *Children associated with armed forces or armed groups*, available at <https://www.icrc.org/eng/resources/documents/publication/p0824.htm>.

Refugees

Refugees are people who are at risk, or have been victims, of persecution in their country of origin and have subsequently crossed an international border. Internally displaced persons (see section below) have also had to flee their homes but have not crossed an international border.

Refugees are protected by refugee law – mainly the Convention Relating to the Status of Refugees (1951) and its 1967 Protocol (Protocol Relating to the Status of Refugees), the Convention Governing the Specific Aspects of Refugee Problems in Africa (1969) and the Cartagena Declaration on Refugees (1984) – and human rights law, and particularly by the principle of non-refoulement.

Article 1 of the Convention Relating to the Status of Refugees, as modified by the 1967 Protocol, defines a refugee as any person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

The Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration on Refugees have adopted a broader definition that includes people fleeing events that seriously disrupt public order, such as armed conflict and other situations of violence.

Refugees are also protected by IHL when they are in a State involved in an armed conflict. In addition to the general protections afforded to civilians by IHL, refugees receive special protection under the Fourth Geneva Convention and Additional Protocol I to the Geneva Conventions. For instance, Article 44 of the Fourth Geneva Convention states that Detaining Powers should not treat as enemy aliens those refugees who do

not, in fact, enjoy the protection of any government. Article 73 of Additional Protocol I adds that refugees must be regarded as protected persons in all circumstances and without any adverse distinction.

For more information on refugees and the role of parliamentarians, please see:

IPU/UNHCR, *Refugee protection: A guide to international refugee law*, 2001, available at <http://www.unhcr.org/3d4aba564.html>

ICRC, *International humanitarian law: Answers to your questions*, 2015, available at <https://shop.icrc.org/international-humanitarian-law-answers-to-your-questions-261.html>

Convention Relating to the Status of Refugees (1951) and its 1967 Protocol (Protocol Relating to the Status of Refugees), available at <http://www.unhcr.org/3b66c2aa10.html>

Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), available at <http://www.unhcr.org/45dc1a682.html>

Cartagena Declaration on Refugees (1984), available at <http://www.unhcr.org/45dc19084.html>

Internally displaced persons

The United Nations Guiding Principles on Internal Displacement (1998) define “internally displaced persons (IDPs)” as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.

There is however no universal treaty that specifically addresses the protection needs of IDPs. The Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), which entered into force in December 2012, is the first international treaty to address the matter of protection and assistance for IDPs. IDPs are protected by various bodies of law, including domestic law, human rights law and – if they are in a State involved in armed conflict – IHL.

IHL contains many provisions concerning the prevention of displacement and the protection of IDPs – mainly in the Fourth Geneva Convention and Additional Protocols I and II, as well as in customary law. IHL expressly prohibits compelling civilians to leave their place of residence unless their security or imperative military reasons so demand.

The rules of IHL aimed at protecting civilians, if respected, can prevent displacement and the suffering that follows and provide for the protection of persons forced to flee. While displaced, these communities struggle to meet their essential needs amid serious hardship; they may also face tensions with host communities, unsafe or

unhealthy living conditions and the risk of being forced to return to unsafe areas. Particular mention should be made of the rules prohibiting:

- direct attacks on civilians and civilian objects as well as indiscriminate attacks;
- starving the civilian population and destroying objects indispensable to its survival;
- collective punishment, such as the destruction of dwellings.

All these rules are recognized under customary IHL and apply during both international and non-international armed conflict.

States are required to implement the rules of IHL governing the protection of civilians in their domestic legal system.

For more information on internally displaced persons and the role of parliamentarians, please see:

IPU/UNHCR, *Internal displacement: Responsibility and action*, 2013, available at <http://www.unhcr.org/525bee0c9.html>

ICRC, “Internally displaced persons and international humanitarian law” factsheet, available at <https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law-factsheet>

ICRC, *International humanitarian law: Answers to your questions*, 2015, available at <https://shop.icrc.org/international-humanitarian-law-answers-to-your-questions-261.html>

Missing persons

Both IHL – in particular the Geneva Conventions, the Additional Protocols of 1977 and customary IHL – and IHRL seek to ensure that people do not go missing and, when they do, to clarify their fate and whereabouts.

In situations of international armed conflict, parties to the conflict must take all possible measures to elucidate the fate and whereabouts of missing persons. This includes for example establishing an information bureau and graves registration service; delivering news and mail between members of armed forces or groups and their families and between persons deprived of their liberty for reasons related to the armed conflict and their families; recording all available information relating to the dead and the personal details of persons deprived of their liberty; and handling human remains appropriately.

In situations of non-international armed conflict, Article 3 common to the four Geneva Conventions contains no specific provisions on missing persons. The general protection afforded to persons not or no longer taking a direct part in hostilities, however, applies to them. In particular, they “shall in all circumstances be treated humanely” and shall be protected from the acts prohibited by common Article 3(a), (b), (c) and (d). Article 8 of Additional Protocol II requires that “whenever circumstances permit, and particularly

after an engagement, all possible measures shall be taken (...) to search for the dead, prevent their being despoiled, and decently dispose of them”.

Under rules 112, 116 and 117 of the ICRC Customary International Humanitarian Law study,¹¹ all parties to international and non-international armed conflicts must take all possible measures to account for persons reported missing and to search for, collect, identify and evacuate the dead.

Various IHRL instruments are relevant to preventing and protecting against forced disappearance (e.g. the Inter-American Convention on Forced Disappearance of Persons). However, the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) is the first universal treaty to include specific obligations for States Parties. More specifically, the Convention requires that States Parties take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate their remains, handle them respectfully and return them, and to investigate acts of forced disappearance and bring those responsible to justice.

In general, the issue of disappearances and of States’ obligations in this regard has been broadly dealt with and developed in the jurisprudence of regional bodies, such as the Inter-American Court of Human Rights and the European Court of Human Rights.

Both IHL and IHRL give rise to two general obligations incumbent upon States and parties to an armed conflict: the obligation to clarify the fate and whereabouts of missing persons and the obligation to prevent people from going missing. The first also implies respect for the families’ right to know the fate and whereabouts of their relatives. In addition, States need to ensure domestic measures are adopted to protect personal data, respond to the needs of the families of missing persons and identify and manage human remains.

Under both IHL and IHRL, the obligation to clarify the fate and whereabouts of missing persons also implies respecting the families’ right to know the fate of relatives reported missing, their whereabouts or the circumstances and cause of their death.¹² This right should be explicitly recognized for individual family members. In addressing this right, States must take the necessary measures to investigate cases of disappearance and keep families informed throughout the process.

Additionally, regardless of the applicable legal framework, tasks such as searching for burial sites and exhuming human remains are an essential part of clarifying the fate and whereabouts of missing persons. Recovering and identifying the bodies of missing persons would, for example, allow the families to hold a proper funeral, conduct religious and culturally appropriate ceremonies and get some closure.

11 See the ICRC’s study on customary IHL: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules, ICRC, Geneva / Cambridge University Press, Cambridge, 2005, available at <http://www.icrc.org/customary-ihl/eng/docs/home>.

12 Art. 32, AP I; Art. 24, ICPPED.

The primary responsibility for preventing disappearances and ascertaining what has happened to people reported missing lies with State authorities. Therefore, it is fundamental that parliamentarians adopt domestic legislation to prevent disappearances and address the fate and whereabouts of missing persons. This includes for example, recognizing the legal status of missing persons and establishing centralized procedures to search for and identify human remains and ensure that they are properly handed over to their relatives.

For more information on the issue of missing persons, please see:

IPU/ICRC, *Missing persons: A handbook for parliamentarians*, 2009, available at https://www.icrc.org/eng/assets/files/other/icrc_002_1117.pdf

ICRC, “Missing persons and their families” factsheet, available at <https://www.icrc.org/en/document/missing-persons-and-their-families-factsheet>

Persons with disabilities

Persons with disabilities include those who have physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

According to the World Report on Disability,¹³ over one billion people – some 15% of the world’s population – live with some form of disability. The prevalence of disability is growing due to an ageing global population and increases in chronic health conditions. Children with disabilities, some of them socially excluded since birth, are one of the most vulnerable groups and are disproportionately denied the right to an education and often suffer from institutionalization, violence, abuse, exploitation and abandonment.

Patterns of disability in each country are influenced by trends in health, the environment and other factors. These include road traffic accidents, natural disasters, armed conflict, armed violence, nutrition and substance abuse, as well as patterns of health and social protection systems.

The UN Convention on the Rights of Persons with Disabilities (UNCRPD) is the first human rights convention of the twenty-first century. It was adopted by the United Nations General Assembly in December 2006, opened for signature in March 2007 and entered into force in May 2008. It has been signed by 160 States, while 162 States have ratified or acceded to it. The Convention represents a human rights framework covering a wide range of civil, political, economic, social and cultural rights. It has a strong social and economic development dimension and includes a reference to IHL. It seeks to achieve a disability-inclusive society by removing the many barriers (physical, information- and communication-related, policy, legal, institutional, attitudinal and economic). The Convention seeks to address discrimination, change perceptions and combat stereotypes and prejudice. Article 11 of the UNCRPD is of particular interest with regard to IHL as it refers to

¹³ World Report on Disability, World Health Organization and World Bank, 2011.

situations of risk and humanitarian emergencies. It recognizes obligations under IHL and IHRL and requires that all necessary measures be taken to protect people with disabilities in situations of risk, including situations of armed conflict and humanitarian emergencies as well as natural disasters. Moreover, the Geneva Conventions protect those who become disabled owing to an armed conflict. In addition, several weapon-related treaties¹⁴ contain provisions on victim assistance.

The ICRC and the national Red Cross and Red Crescent societies in 189 countries have an auxiliary role vis-à-vis the public authorities, to which they bring their experience and expertise in delivering services to the most vulnerable. They can also play a crucial role at the national level, supporting governments in their reporting requirements and in implementing the UNCRPD, particularly with respect to Article 11 of that Convention.

The UNCRPD also reinforces the importance of respecting human rights in the process of assisting survivors of weapon contamination and their families. Consequently, all affected States, and States in a position to assist, should be inspired by the UNCRPD in meeting their respective responsibilities under the Anti-Personnel Mine Ban Convention, Protocol V to the Convention on Certain Conventional Weapons, and the Convention on Cluster Munitions.

For more information on the rights of people with disabilities, please see:

IPU/OHCHR, *From exclusion to equality: Realizing the rights of persons with disabilities*, 2007, available at www.ipu.org/PDF/publications/disabilities-e.pdf.

Private military and security companies

Private military and security companies (PMSCs) are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, providing armed guards and protecting people and objects; maintaining and operating weapon systems; prisoner detention; and advising or training local forces and security personnel.

The status of the employees of PMSCs in an armed conflict is determined by IHL on a case-by-case basis. The nature and circumstances of the functions in which they are involved are of particular importance. Unless they are incorporated in the armed forces of a State or have combat functions for an organized armed group belonging to a party to the conflict, the employees of PMSCs are civilians. Accordingly, they may not be targeted, and they are protected against attack unless and for such time as they take a direct part in hostilities.

If, however, the employees of PMSCs carry out acts that amount to taking a direct part in hostilities (see “[Who does IHL protect and how?](#)” in Part 1), they lose protection from attack while participating. If captured, they can be tried for merely participating in hostilities, even if they have not committed any IHL violations. Guarding military bases against attacks

¹⁴ See, for example, the Convention on Cluster Munitions and the Anti-Personnel Mine Ban Convention.

from the opposing party, gathering tactical military intelligence and operating weapon systems in a combat operation are examples of direct participation in hostilities.

Thus, if they are taking part in situations of armed conflict, PMSC employees must respect IHL and may be held criminally responsible for any violations they commit. This holds true whether they are hired by States, international organizations or private companies.

Following a joint initiative of Switzerland and the ICRC, the 2008 Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict (Montreux Document) was endorsed by 17 States.¹⁵ This document reaffirms the existing legal obligations of States with regard to PMSCs and recommends a catalogue of good practices for implementing existing legal obligations. On 16 December 2014, Montreux Document participants launched the Montreux Document Forum. The Forum is designed to support outreach and the exchange of best practices on regulating PMSCs and to continue the work of implementing and promoting the Document.

Responsibility of States that hire PMSCs

States cannot absolve themselves of their obligations under IHL by contracting PMSCs. States must ensure that employees of these companies respect IHL. Important measures for achieving this include:

- requiring the employees to be properly trained in IHL; and
- requiring that PMSCs' rules of engagement and standard operating procedures comply with IHL.

If PMSC employees violate IHL, the contracting State may be responsible if the violations can be attributed to it as a matter of international law. States must ensure that mechanisms exist to hold PMSC employees accountable for violations of IHL.

Responsibility of States in whose territory PMSCs are incorporated or operate

States in whose territory PMSCs are incorporated or operate are particularly well placed to influence their behaviour through national law.

One way for a State to exercise some control and oversight could be by establishing a licensing or regulatory system. Key elements of a national regulatory framework could include determining which services may or may not be provided by PMSCs or their employees. States could thus force PMSCs to meet certain criteria before granting them a license. The criteria should include the requirement to:

- train their staff in IHL;
- adopt standard operating procedures and rules of engagement that respect IHL, and set up appropriate disciplinary measures.

¹⁵ ICRC, The Montreux Document on private military and security companies, 2009, available at <https://www.icrc.org/eng/resources/documents/publication/p0996.htm>. As of 19 April 2016, 53 States and three international organizations supported the Montreux Document.

The State could also make approval for every contract dependent on the nature of the proposed activities and the situation in the country where the PMSC will operate. It could impose sanctions for operating without the necessary authorizations or for operating in violation thereof. Sanctions could include withdrawal of the operating license, loss of bond and criminal penalties, for example.

Such a regulatory system should be complemented by an effective system for prosecuting those accused of violating IHL.

For more information on PMSCs and the role of parliamentarians, please see:

IPU/Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Parliamentary oversight of the security sector*, 2003, available at [http://www.dcaf.ch/Project/DCAF-IPU-Handbook-on-Parliamentary-Oversight-of-the-Security-Sector/\(show\)/publications](http://www.dcaf.ch/Project/DCAF-IPU-Handbook-on-Parliamentary-Oversight-of-the-Security-Sector/(show)/publications)

ICRC, “International humanitarian law and private military/security companies”, available at <https://www.icrc.org/eng/resources/documents/fag/pmsc-faq-150908.htm>

Nuclear weapons

There is no comprehensive or universal prohibition on the use of nuclear weapons. The Nuclear Non-Proliferation Treaty of 1968 primarily aims to prevent the spread of nuclear weapons and to advance the goal of nuclear disarmament.

However, in 1996, the International Court of Justice, in an advisory opinion, confirmed that IHL applied to nuclear weapons, particularly the IHL principle of distinction and the prohibition against causing unnecessary suffering. In applying these and related rules to nuclear weapons, the Court concluded that “the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law”. The Court was, however, unable to decide whether the use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the survival of the State was at stake.

The continued existence of nuclear weapons remains a serious concern, especially in light of their potential humanitarian consequences. In this regard, in 2011, the Council of Delegates of the International Red Cross and Red Crescent Movement (consisting of the ICRC, the International Federation of Red Cross and Red Crescent Societies and all the national Red Cross and Red Crescent societies) adopted a resolution, “Working towards the elimination of nuclear weapons”, which outlines the Movement’s position on nuclear weapons. In this resolution the Council expressed that it was difficult to envisage how any use of nuclear weapons could be compatible with the rules of IHL, in particular the rules of distinction, precaution and proportionality. It also appealed to all States to ensure that nuclear weapons were never again used and to pursue with urgency and determination negotiations to prohibit and eliminate nuclear weapons through a binding international agreement, in accordance with their existing commitments and obligations. In 2013, the Council of

Delegates adopted a second resolution outlining a four-year action plan to guide the Movement's work on this issue.¹⁶

In recent years, States have been giving increased attention to the serious humanitarian impact of nuclear weapons. New research has helped to highlight the immediate and long-term effects of the use of any nuclear weapon, including the potential consequences of an accidental detonation. For decades the discourse about nuclear weapons focused on their military and security aspects and concerns about their proliferation. However, States are expanding the debate to include their catastrophic humanitarian consequences and IHL implications. At the same time, many States and organizations are increasing or re-emphasizing calls for the negotiation of a treaty to prohibit and eliminate nuclear weapons once and for all.

The 2013 Oslo Conference on the Humanitarian Impact of Nuclear Weapons was a pivotal event. It was the first time that governments came together in a global forum to discuss the consequences of nuclear weapons in humanitarian terms. Follow-up meetings were held in Nayarit, Mexico (February 2014) and Vienna, Austria (December 2014). These meetings helped to further the international community's understanding of the potential consequences of the use of nuclear weapons on civilians, the environment and the planet as a whole. Among other things, they showed that, while the capability to develop ever more powerful nuclear weapons has grown since 1945, the capacity in most countries and at the international level to provide adequate assistance in response to a nuclear detonation is severely lacking. The meetings also helped to remind us that, in addition to the suffering that befell the people of Hiroshima and Nagasaki in 1945, many others continue to suffer the effects of nuclear weapons testing. This growing discourse confirms that nuclear disarmament remains a humanitarian imperative.

For more information on nuclear weapons and disarmament, please see:

IPU/Parliamentarians for Nuclear Non-Proliferation and Disarmament, *Supporting nuclear non-proliferation and disarmament*, 2012, available at <http://www.pnnd.org/resources/ipu-pnnd-handbook>

ICRC, *Nuclear weapons*, <https://www.icrc.org/en/war-and-law/weapons/nuclear-weapons>.

¹⁶ ICRC, "Working towards the elimination of nuclear weapons: Four-year action plan", 2013, available at <https://www.icrc.org/eng/resources/documents/publication/p1140.htm>

Part 4: Model instruments and reference material

Managua, Nicaragua. Conference of Central American armed forces. The Honduran, Guatemalan, Salvadoran, Nicaraguan and Dominican armed forces take part in the workshop on rules governing military operations. ©ICRC/Miguel Ramirez



More model instruments are available in the ICRC manual *The Domestic Implementation of International Humanitarian Law*, <https://www.icrc.org/eng/resources/documents/publication/pdvd40.htm>.

Annex 1: Model instruments of ratification or accession to international conventions

States signatory:
Model instrument of ratification
<Acceptance or approval>

WHEREAS the Convention was adopted at on
and opened for signature at on ,
WHEREAS the said Convention has been signed on behalf of the Government of
. on ,
NOW THEREFORE I, [name and title of the head of State, head of Government or
minister of foreign affairs], declare that the Government of
. , having considered the above-mentioned
Convention, ratifies [accepts, approves] the same Convention and undertakes
faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF I have signed this instrument of [ratification, acceptance,
approval] at on

[Signature] + [seal]

Non-signatory States:
Model instrument of accession

WHEREAS the Convention was adopted at
. on ,
NOW THEREFORE I, [name and title of the head of State, head of Government or
minister of foreign affairs], declare that the Government of
. , having considered the above-mentioned Convention, accedes to the
same Convention and undertakes faithfully to perform and carry out the stipulations
therein contained.

IN WITNESS WHEREOF I have signed this instrument of accession at
. on

[Signature] + [seal]

Annex 2: Model instruments of ratification or accession to IHL treaties

The 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 and its Protocols

Note: To become a party, a State must deposit an instrument of ratification, acceptance, approval or accession with the United Nations Secretary-General, the treaty's depositary, at the following address:

United Nations
Treaty Section, Office of Legal Affairs
New York, NY 10017
United States of America

Moreover, in order to become a party to the Convention on Certain Conventional Weapons, a State must declare its consent to be bound by at least two of the Convention's five Protocols.

Model A – for States Parties to the 1980 Convention

WHEREAS the 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 (with Protocols I, II and III) was adopted at Geneva on 10 October 1980,

WHEREAS the State of deposited its instrument of ratification of/acceptance of/approval of/accession to the same Convention and expressed its consent to be bound by Protocols I, II and III annexed thereto on [date],

WHEREAS Review Conferences or Meetings of States party to the same Convention duly adopted Protocol IV on 13 October 1995, Protocol II as amended on 3 May 1996, the amendment to Article 1 of the Convention on 21 December 2001, and Protocol V on 28 November 2003,

NOW THEREFORE I, [name and title of the head of State, head of Government or minister for foreign affairs], declare that the Government of [name of State], having considered the above-mentioned instruments, consents to be bound by [Protocol I, Protocol II as amended on 3 May 1996, Protocol III, Protocol IV, Protocol V]¹⁷ and ratifies/accepts/approves/accedes to the amendment to the Convention and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed and sealed this instrument.

Done at ... [place], on this ... day of ... [date] ...

[Signature]

.....

Head of State or prime minister or minister for foreign affairs

[Seal]

17 States party to the Convention that have already consented to be bound by at least two of the Protocols will need to modify the instrument accordingly.

Model B – for non-party States

WHEREAS the 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 (with Protocols I, II and III) was adopted at Geneva on 10 October 1980,

WHEREAS Review Conferences or Meetings of States party to the same Convention duly adopted Protocol IV on 13 October 1995, Protocol II as amended on 3 May 1996, the amendment to Article 1 of the Convention on 21 December 2001, and Protocol V on 28 November 2003,

NOW THEREFORE I, [name and title of the head of State, head of Government or minister for foreign affairs], declare that the Government of, having considered the above-mentioned Convention, its Protocols and the Amendment to the Convention, accedes to the Convention and to the amendment to the Convention, consents to be bound by [Protocols I, II as amended on 3 May 1996, III, IV, V] and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed and sealed this instrument.

Done at ... [place], on this ... day of ... [date] ...

[Signature]

.....

Head of State or prime minister or minister for foreign affairs

[Seal]

The Statute of the International Criminal Court

Note: A State may become a party to the ICC Statute by depositing its instrument of ratification/acceptance or approval with the United Nations Secretary-General. The instrument must be sent to the following address:

*Secretary-General
United Nations Headquarters
Secretariat Building
New York, NY 10017
United States of America*

Whereas the Rome Statute of the International Criminal Court was adopted at Rome on 17 July 1998,

Now therefore I, [name and title of the head of State, head of Government or Minister for Foreign Affairs], declare that the Government of [name of State], having considered the above-mentioned Statute, accepts/approves/accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed and sealed this instrument.

Done at ... [place], on this ... day of ... [date] ...

[Signature]

.....

Head of State or prime minister or minister of foreign affairs

[Seal]

Annex 3: Suggested declarations

Declaration of recognition of the competence of the International Fact-Finding Commission

International Fact-Finding Commission (Protocol I, Article 90)

Optional clause

The Government of [name of the country] declares that it recognizes ipso facto and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the International Fact-Finding Commission to enquire into allegations by such other Party, as authorized by Article 90 of Protocol I additional to the Geneva Conventions of 12 August 1949.

IN WITNESS THEREOF, I have signed and sealed this instrument.

Done at ... [place], on this ... day of ... [date] ...

[Signature]

.....

Head of State or Prime Minister or Minister for Foreign Affairs

[Seal]

Declaration for States declaring their consent to be bound by Protocol IV of the 1980 CCW

Option no. 1 (recommended), model declaration of understanding

"It is the understanding of the Government of
..... that the provisions of Protocol IV shall
apply in all circumstances."

Option no. 2, model declaration

"The Government of
..... will apply the provisions of Protocol IV in all
circumstances."

Option no. 3, model declaration

"The Government of will apply the provisions of Protocol IV to both international armed conflicts and non-international armed conflicts as defined in Article 3 common to the Geneva Conventions of 1949."

Annex 4: Model laws

A. Model Legislative Provisions on the Recruitment or Use of Children in Armed Conflict

For a commented version of this model law, please refer to Annex XVII of the ICRC manual *The domestic implementation of international humanitarian law*.

Option 1 ("straight 18" approach)

1. *Recruitment or use of children in armed conflict*

No person shall:

- (a) recruit, conscript or enlist a person under the age of 18 years into armed forces or groups;
- (b) use a person under the age of 18 years in hostilities.

2. *Penalties*

Any person who contravenes Section 1 shall be liable on conviction to a term of imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.

Option 2 (narrower treaty and custom-based approach)

1. *Forcible recruitment of persons under the age of 18 years*

No person shall forcibly or compulsorily recruit a person under the age of 18 years into the armed forces.

2. *Conscripting persons under the age of 15 years or using them in hostilities*

No person shall:

- (a) recruit, conscript or enlist a person under the age of 15 years into the armed forces;
- (b) use a person under the age of 15 years in hostilities.

3. *Recruitment into or use in armed groups of persons under the age of 18 years*

No person shall:

- (a) recruit a person under the age of 18 years into an armed group;
- (b) use a person under the age of 18 years in hostilities.
- (c) This section does not apply to the recruitment or use of persons under the age of 18 years by the armed forces.

4. *Penalties*

4.1 Any person who contravenes Section 1 shall be liable on conviction to a term of imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.

4.2 Any person who contravenes Section 2 shall be liable on conviction to a term of

imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.

4.3 Any person who contravenes Section 3 shall be liable on conviction to a term of imprisonment not exceeding XXX years or to a fine not exceeding XXX units, or both.

5. Regulations for recruitment into the armed forces

5.1 Members of the armed forces who have not attained the age of 18 years shall not directly participate in hostilities.

5.2 Persons between 15 and 17 years of age may be voluntarily recruited into the armed forces of a State, provided that the following safeguards are maintained:

- (a) Members of armed forces who have not attained the age of 18 years do not take a direct part in hostilities.
- (b) Such recruitment is genuinely voluntary.
- (c) Such recruitment is carried out with the informed consent of the person's parents or legal guardians.
- (d) Such persons are informed of the duties involved in such military service.
- (e) Such persons provide a reliable proof of age prior to acceptance into military service.

5.3 In recruiting those persons who have attained the age of 15 years but who have not attained the age of 18 years, priority will be given to those who are oldest.

B. Model law on the Emblems: National Legislation on the Use and Protection of the Emblem of the Red Cross, Red Crescent and Red Crystal

For a commented version of this model law, please refer to Annex II of the ICRC manual *The domestic implementation of international humanitarian law*.

I. General rules

Article 1 Scope of protection

Having regard to:

- the Geneva Conventions of 12 August 1949, their Additional Protocols I and II of 8 June 1977, including Annex I to Additional Protocol I as regards the regulations concerning identification of medical units and transports, and Additional Protocol III of 8 December 2005;
- the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the national societies, as adopted by the 20th International Conference of the Red Cross, and subsequent amendments;
- Resolution 1 of the 29th International Conference of the Red Cross and Red Crescent (Geneva, 20–21 June 2006);
- the law (decree, or other act) of [date] recognizing the [national society of ...];

the following are protected by the present law:

- the emblems of the red cross, the red crescent and the red crystal on a white ground;
- the designations “red cross”, “red crescent” and “red crystal”;
- the distinctive signals for identifying medical units and transports.

Article 2 *Protective use and indicative use*

1. In time of armed conflict, the emblem used as a protective device is the visible sign of the protection conferred by the Geneva Conventions and their Additional Protocols on medical personnel and medical units and transports. The dimensions of the emblem shall therefore be as large as possible.
2. The emblem used as an indicative device shows that a person or an object is linked to an institution of the International Movement of the Red Cross and Red Crescent. The emblem shall be of a small size.

II. Rules on the use of the emblem

A. Protective use of the emblem

Article 3 *Use by the medical service of the armed forces*

1. Under the control of the ministry of defence, the medical service of the armed forces of [name of the State] shall, both in peacetime and in time of armed conflict, use the emblem of the [name of the emblem to be used] to mark its medical personnel, medical units and transports on the ground, at sea and in the air. Medical personnel shall wear armlets and carry identity cards displaying the emblem. These armlets and identity cards shall be issued by ... [e.g. ministry of defence]. Religious personnel attached to the armed forces shall be afforded the same protection as medical personnel and shall be identified in the same way.
2. Where this may enhance protection, the medical services and religious personnel attached to the armed forces may, without prejudice to their current emblem, make temporary use of either of the other distinctive emblems recognized by, and enjoying equal status under, the Geneva Conventions and their Additional Protocols.

Article 4 *Use by hospitals and other civilian medical units*

1. With the express authorization of the ministry of health and under its control, civilian medical personnel, hospitals and other civilian medical units, as well as civilian medical transports, assigned in particular to the transport and treatment of the wounded, sick and shipwrecked, shall be marked by the emblem, used as a protective device, in time of armed conflict.
2. Civilian medical personnel shall wear armlets and carry identity cards displaying the emblem. These armlets and identity cards shall be issued by ... [ministry of health].
3. Civilian religious personnel attached to hospitals and other medical units shall be identified in the same way.

Article 5 *Use by the [national society of ...]*

1. The [national society of ...] is authorized to place medical personnel and medical units and transports at the disposal of the medical service of the armed forces. Such personnel, units and transports shall be subject to military laws and regulations and may be authorized by the ministry of defence to display as a protective device the emblem of the red cross [red crescent or red crystal], or, where this may enhance protection, to make temporary use of either of the other

distinctive emblems recognized by, and enjoying equal status, under the Geneva Conventions and their Additional Protocols.

Such personnel shall wear armlets and carry identity cards, in accordance with Article 3, paragraph 2, of the present law.

2. The national society may be authorized to use the emblem as a protective device for its medical personnel and medical units in accordance with Article 4 of the present law.

B. Indicative use of the emblem

Article 6 *Use by the [national society of ...]*

1. The [national society of ...] is authorized to use the emblem as an indicative device in order to show that a person or an object is linked to the national society. The dimensions of the emblem shall be small, so as to avoid any confusion with the emblem employed as a protective device.
2. The [national society of ...] may, in accordance with national legislation and in exceptional circumstances and to facilitate its work, make temporary use of the red crystal.
3. The [national society of ...] shall apply the "Regulations on the use of the emblem of the Red Cross or the Red Crescent by the national societies".
4. National societies of other countries present on the territory of [name of the State] shall, with the consent of the [national society of ...], be entitled to use the emblem under the same conditions.

C. International Red Cross and Red Crescent organizations

Article 7 *Use by the international organizations of the International Red Cross and Red Crescent Movement*

1. The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies may make use of the emblems of the Red Cross and Red Crescent at any time and for all their activities.
2. The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies, and their duly authorized personnel, may make use of the red crystal in exceptional circumstances and to facilitate their work.

III. Control and penalties

Article 8 *Control measures*

1. The authorities of [name of the State] shall at all times ensure strict compliance with the rules governing the use of the emblems of the red cross, the red crescent and the red crystal, the names "red cross", "red crescent" and "red crystal", and the distinctive signals. They shall exercise strict control over the persons authorized to use the said emblems, names and signals.
2. They shall take every appropriate step to prevent misuse, in particular:
 - by disseminating the rules in question as widely as possible among the armed forces, the police forces, the authorities and the civilian population;

- by issuing instructions to national civilian and military authorities on the use of the distinctive emblem in accordance with the Geneva Conventions and their Additional Protocols and by providing for the necessary criminal, administrative and disciplinary sanctions in cases of misuse.

Article 9 Misuse of the emblem as a protective device in time of armed conflict

1. Anyone who has wilfully committed or given the order to commit acts resulting in the death of, or causing serious harm to the body or health of, an adversary by making perfidious use of the red cross, the red crescent, or a distinctive signal, has committed a war crime and shall be punished by imprisonment for a period of [...] years. Perfidious use of the red crystal under the same conditions shall be subject to the same penalty.

Perfidious use means appealing to the good faith of the adversary, with the intention to deceive him and make him believe that he was entitled to receive or was obliged to confer the protection provided for by the rules of international humanitarian law.

2. Anyone who in time of armed conflict has used wilfully and without entitlement the red cross, the red crescent, or the red crystal or a distinctive signal, or any other sign or signal which constitutes an imitation thereof or which might lead to confusion, shall be punished by imprisonment for a period of [... months or years].

Article 10 Misuse of the emblem as an indicative device in peacetime and in time of armed conflict

1. Anyone who, wilfully and without entitlement, has made use of the emblem of the red cross, the red crescent or the red crystal, the words "red cross", "red crescent" or "red crystal", a distinctive signal or any other sign, designation or signal which constitutes an imitation thereof or which might lead to confusion, irrespective of the aim of such use;
anyone who, in particular, has displayed the said emblem or words on signs, posters, announcements, leaflets or commercial documents, or has affixed them to goods or packaging, or has sold, offered for sale or placed in circulation goods thus marked;
shall be punished by imprisonment for a period of [... days or months] and/or by payment of a fine of [amount in local currency].
2. If the offence is committed in the management of a corporate body (commercial firm, association, etc.), the punishment shall apply to the persons who committed the offence or ordered the offence to be committed.

Article 11 Misuse of the white cross on a red ground

Owing to the confusion which may arise between the arms of Switzerland and the emblem of the red cross, the use of the white cross on a red ground or of any other sign constituting an imitation thereof, whether as a trademark or commercial mark or as a component of such marks, or for a purpose contrary to fair trade, or in circumstances likely to wound Swiss national sentiment, is likewise prohibited at all times; offenders shall be punished by payment of a fine of [amount in local currency].

Article 12 *Interim measures*

The authorities of [name of the State] shall take the necessary interim measures. The authorities may in particular order the seizure of objects and material marked in violation of the present law, demand the removal of the emblem of the red cross, the red crescent or the red crystal and of the words “red cross”, “red crescent” or “red crystal” at the cost of the instigator of the offence, and order the destruction of the instruments used for their reproduction.

Article 13 *Registration of associations, trade names and trademarks*

1. The registration of associations and trade names, and the filing of trademarks, commercial marks and industrial models and designs making use of the emblem of the red cross, the red crescent or the red crystal or the designation “red cross”, “red crescent” or “red crystal” in violation of the present law shall be refused.
2. Persons making use of the red crystal or the designation “red crystal”, or of any sign constituting an imitation thereof, prior to the adoption of Additional Protocol III shall be permitted to continue such use, provided that the said use shall not be such as would appear, in time of armed conflict, to confer the protection of the Geneva Conventions and their Additional Protocols, and provided that such rights were acquired prior to the entry into force of this Act.

Article 14 *Role of the [national society of ...]*

The [national society of ...] shall cooperate with the authorities in their efforts to prevent and repress any misuse. It shall be entitled to inform [competent authority] of such misuse and to participate in the relevant criminal, civil or administrative proceedings.

IV. Application and entry into force

Article 15 *Application of the present law*

The ... [ministry of defence, ministry of health] is responsible for the application of the present law.

Article 16 *Entry into force*

The present law shall enter into force on [date of promulgation, etc.].

C. Legislation for Common Law States on the 2008 Convention on Cluster Munitions

For a commented version of this model law, please refer to Annex XII of the ICRC manual on the *Domestic implementation of international humanitarian law*.

Part I – Preliminary

1. Short title and commencement

- (1) This Act may be cited as the Cluster Munitions Act [INSERT YEAR].
- (2) This Act comes into force on [INSERT DATE/PROCEDURE].

2. Interpretation

In this Act –

- (1) “Abandoned cluster munitions” means cluster munitions or explosive sub munitions that have not been used and that have been left behind or dumped, and that are no longer under the control of the party that left them behind or dumped them. They may or may not have been prepared for use.
- (2) “Cluster munition” means a conventional munition that is designed to disperse or release explosive sub munitions each weighing less than 20 kilograms, and includes those explosive sub munitions. It does not mean the following:
 - (a) a munition or sub munition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
 - (b) a munition or sub munition designed to produce electrical or electronic effects;
 - (c) a munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded sub munitions, has all of the following characteristics:
 - (i) each munition contains fewer than ten explosive sub munitions;
 - (ii) each explosive sub munition weighs more than four kilograms;
 - (iii) each explosive sub munition is designed to detect and engage a single target object;
 - (iv) each explosive sub munition is equipped with an electronic self-destruction mechanism;
 - (v) each explosive sub munition is equipped with an electronic self-deactivating feature.
- (3) “Cluster munition contaminated area” means an area known or suspected to contain cluster munition remnants.
- (4) “Cluster munition remnants” means failed cluster munitions, abandoned cluster munitions, unexploded sub munitions and unexploded bomblets.
- (5) “Cluster munition victims” means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realization of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities.
- (6) “Convention” means the 2008 Convention on Cluster Munitions.
- (7) “Dispenser” means a container that is designed to disperse or release explosive bomblets and which is affixed to an aircraft at the time of dispersal or release.
- (8) “Explosive sub munition” means a conventional munition that in order to perform its task is dispersed or released by a cluster munition and is designed to function by detonating an explosive charge prior to, on or after impact.
- (9) “Explosive bomblet” means a conventional munition, weighing less than 20 kilograms, which is not self-propelled and which, in order to perform its task, is dispersed or released by a dispenser, and is designed to function by detonating an explosive charge prior to, on or after impact.
- (10) “Failed cluster munition” means a cluster munition that has been fired, dropped, launched, projected or otherwise delivered and which should have dispersed or released its explosive sub munitions but failed to do so.

- (11) "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.
- (12) "Self-destruction mechanism" means an incorporated automatically-functioning mechanism which is in addition to the primary initiating mechanism of the munition and which secures the destruction of the munition into which it is incorporated.
- (13) "Transfer" involves, in addition to the physical movement of cluster munitions into or from national territory, the transfer of title to and control over cluster munitions, but does not involve the transfer of territory containing cluster munition remnants.
- (14) "Unexploded bomblet" means an explosive bomblet that has been dispersed, released or otherwise separated from a dispenser and has failed to explode as intended.
- (15) "Unexploded sub munition" means an explosive sub munition that has been dispersed or released by, or otherwise separated from, a cluster munition and has failed to explode as intended.

Part II – Prohibitions and offences

3. Prohibited conduct

- (1) Subject to Section 6, no person shall use cluster munitions.
- (2) Subject to Section 6, no person shall, directly or indirectly –
 - (a) develop or produce cluster munitions;
 - (b) acquire cluster munitions;
 - (c) possess, retain or stockpile cluster munitions;
 - (d) transfer cluster munitions to anyone.
- (3) Subject to Section 6, no person shall assist, encourage or induce anyone to engage in any activity referred to in paragraphs (1) and (2) above.
- (4) Paragraphs (1) and (2) of this Article apply, *mutatis mutandis*, to explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft.
- (5) This Act does not apply to mines.

4. Offences and penalties

- (1) Any person who contravenes Section 3 shall be guilty of an offence and liable upon conviction to:
 - (a) in the case of an individual, imprisonment for a term not exceeding [] years or to a fine not exceeding [] or both;
 - (b) in the case of a body corporate, a fine not exceeding [].
- (2) Where an offence under paragraph (1) of this Section, which is committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to any negligence on the part of, any director, manager or other similar officer of the body corporate, or any person who was purporting to act in such capacity, such person, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished in accordance with paragraph (1)(a) of this Section.

- (3) Any court, which convicts a person under paragraphs 1(a) or (b), may order that cluster munitions used or otherwise involved in the commission of the offence be forfeited to the State.

5. Extra-territorial application

Section 3 extends to conduct outside the territory of [INSERT COUNTRY NAME] by citizens of [INSERT COUNTRY NAME] and bodies corporate incorporated under the laws of [INSERT COUNTRY NAME].

6. Exceptions: permitted conduct

Section 3 does not apply to:

- (1) acquisition, possession, retention or transfer of cluster munitions, explosive sub munitions and explosive bomblets in accordance with a permission in force under Section 11;
- (2) the possession, retention or transfer of cluster munitions explosive sub munitions and explosive bomblets by a member of the [INSERT NAME OF ARMED FORCES], a police officer, a court official, a customs official or any other such person appointed by the Minister by notice in writing in the course of that person's duties for the purpose of:
 - (a) the conduct of criminal proceedings;
 - (b) rendering cluster munitions harmless;
 - (c) retaining cluster munitions for future destruction;
 - (d) delivering cluster munitions to [INSERT NAME OF AUTHORITY/PERSON DESIGNATED BY THE MINISTER] for destruction.

Part III – Collection and destruction of cluster munitions

7. Notification of cluster munitions

Any person who knowingly possesses cluster munitions and/or explosive bomblets, explosive sub munitions or cluster munition remnants otherwise than in accordance with section 6, must, without delay, notify [INSERT NAME OF AUTHORITY/PERSON DESIGNATED BY THE MINISTER] to enable arrangements to be made for collection and destruction.

8. Destruction of cluster munitions

Subject to Section 10, the minister shall ensure:

- (1) the destruction of all stockpiled cluster munitions, explosive bomblets and explosive sub munitions owned or possessed by [INSERT COUNTRY NAME] or under its jurisdiction and control;
- (2) the collection and destruction of all cluster munitions notified under Section 7.

9. Cluster munition contaminated areas

Where an area is identified as a cluster munition contaminated area or is suspected to be a cluster munition contaminated area, the minister shall ensure the following, as soon as possible, in areas under the State's jurisdiction or control;

- (1) a survey, assessment and recording of the threat posed by cluster munition remnants, making every effort to identify all cluster munition contaminated areas;

- (2) an assessment and prioritization of needs in terms of marking, protection of civilians, clearance and destruction, and take steps to mobilize resources and develop a national plan to carry out these activities;
- (3) the taking of all feasible steps to ensure that all cluster munition contaminated areas are perimeter-marked, monitored and protected by fencing or other means to ensure the effective exclusion of civilians;
- (4) the clearance and destruction of all cluster munition remnants; and
- (5) the conduct of risk reduction education to ensure awareness among civilians living in or around cluster munition contaminated areas of the risks posed by such remnants.

10. Victim assistance

In consultation with the relevant ministries, the minister shall ensure compliance with the obligations of the Convention regarding risk education and victim assistance, in particular to;

- (1) assess the needs of cluster munition victims;
- (2) develop, implement and enforce any necessary national laws and policies;
- (3) develop a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors;
- (4) take steps to mobilize national and international resources;
- (5) not discriminate against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs;
- (6) closely consult with and actively involve cluster munition victims and their representative organizations;
- (7) designate a focal point within the government for coordination of matters relating to the implementation of this Article;
- (8) strive to incorporate relevant guidelines and good practices, including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

11. Permission to acquire, retain or transfer

- (1) The minister may, in writing, grant permission for a specified number of cluster munitions, explosive bomblets and explosive sub munitions to be retained or acquired, for the development of, or training in techniques for the detection, clearance or destruction of cluster munitions explosive bomblets and explosive sub munitions, or for the development of cluster-munition counter-measures, but the number of such items shall not exceed the minimum number absolutely necessary for these purposes.
- (2) The transfer of cluster munitions to another State Party for the purpose of destruction, as well as for the purposes described in paragraph 1 of this Section, is permitted.

Part IV – Information-gathering powers

12. Request for clarification

The minister, if in receipt of a Request for Clarification by another State Party, relating to a matter of compliance with the provisions of the Convention, shall provide, through the Secretary-General of the United Nations, within 28 days, all information that would assist in clarifying the matter.

13. Obtaining information and documents

The minister may, by written notice served on any person, require such person to give the minister such information or documents as is specified in the notice if the minister has reason to believe that he or she has information or a document relevant to –

- (1) the administration or enforcement of this Act;
- (2) [COUNTRY's] obligation to report under Article 7 of the Convention;
- (3) [COUNTRY's] obligation to provide information under Article 8 of the Convention.

14. Failure to comply and providing false information

Any person who:

- (1) without reasonable excuse fails to comply with a notice served on him or her by the Minister;
 - (2) knowingly makes a false or misleading statement in response to a notice served on him or her
- shall be guilty of an offence and liable, on conviction, to imprisonment not exceeding
[] years or a fine of [] or both.

Part V – Administration of the act

15. Regulations

The [INSERT NAME OF REGULATION-MAKING AUTHORITY] may make regulations providing for such other matters as are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

16. Act binding on the State

This Act binds the State.

Schedule

Convention on Cluster Munitions

D. Model Geneva Conventions (consolidated) act

An Act to enable effect to be given to certain Conventions done at Geneva on 12 August 1949, to the Protocols additional I and II to those Conventions done at Geneva on 8 June 1977, and to Protocol additional III to those Conventions of 8 December 2005, and for related purposes

BE it enacted by [the Parliament of INSERT COUNTRY NAME] as follows –

Part I – Preliminary

1. Short title and commencement

- (1) This Act may be cited as the Geneva Conventions Act [INSERT YEAR].
- (2) This Act shall come into force on [INSERT DATE].

2. Interpretation

- (1) In this Act, unless the contrary intention appears –
 “court” does not include a court-martial or other military court;

“the First Convention” means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 1;

“the Second Convention” means the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annex to that Convention) is set out in Schedule 2;

“the Third Convention” means the Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 3;

“the Fourth Convention” means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 4;

“the Conventions” means the First Convention, the Second Convention, the Third Convention and the Fourth Convention;

“prisoners’ representative”, in relation to a particular protected prisoner of war at a particular time, means the person by whom the functions of prisoners’ representative within the meaning of Article 79 of the Third Convention were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war;

“protected internee” means a person protected by the Fourth Convention or Protocol I, and interned in [INSERT COUNTRY NAME];

“protected prisoner of war” means a person protected by the Third Convention or a person who is protected as a prisoner of war under Protocol I;

“the protecting power”, in relation to a protected prisoner of war or a protected internee, means the power or organization which is carrying out, in the interests of the power of which he or she is a national, or of whose forces he or she is, or was at any material time, a member, the duties assigned to protecting powers under the Third Convention, the Fourth Convention or Protocol I, as the case may be;

“Protocol I” means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), done at Geneva on 8 June 1977, a copy of which Protocol (including Annex 1 to that Protocol) is set out in Schedule 5;

“Protocol II” means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), done at Geneva on 8 June 1977, a copy of which Protocol is set out in Schedule 6;

“Protocol III” means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), done at Geneva on 8 December 2005, a copy of which Protocol is set out in Schedule 7;

“the Protocols” means Protocol I, Protocol II and Protocol III.

- (2) If the ratification on behalf of [INSERT COUNTRY NAME] of any of the Conventions or of either of the Protocols is subject to a reservation or is accompanied by a declaration, that Convention or that Protocol shall, for the purposes of this Act, have effect and be construed subject to and in accordance with that reservation or declaration.

Part II – Punishment of offenders against the conventions and protocol I

3. Punishment of grave breaches of the Conventions and Protocol I

- (1) Any person, whatever his or her nationality, who, in [INSERT COUNTRY NAME] or elsewhere, commits, or aids, abets or procures any other person to commit, a grave breach of any of the Conventions, of Protocol I or of Protocol III, is guilty of an indictable offence.
- (2) For the purposes of this section:
 - (a) a grave breach of the First Convention is a breach of that Convention involving an act referred to in Article 50 of that Convention committed against persons or property protected by that Convention;

- (b) a grave breach of the Second Convention is a breach of that Convention involving an act referred to in Article 51 of that Convention committed against persons or property protected by that Convention;
 - (c) a grave breach of the Third Convention is a breach of that Convention involving an act referred to in Article 130 of that Convention committed against persons or property protected by that Convention;
 - (d) a grave breach of the Fourth Convention is a breach of that Convention involving an act referred to in Article 147 of that Convention committed against persons or property protected by that Convention;
 - (e) a grave breach of Protocol I is anything referred to as a grave breach of the Protocol in paragraph 4 of Article 11, or paragraph 2, 3 or 4 of Article 85, of the Protocol; and
 - (f) a grave breach of Protocol III is any misuse of the third Protocol emblem amounting to perfidious use in the meaning of Article 85 paragraph 3 f) of Protocol I.
- (3) In the case of an offence against this section committed outside [INSERT COUNTRY NAME], a person may be proceeded against, indicted, tried and punished therefor in any place in [INSERT COUNTRY NAME] as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.

4. Punishment of grave breaches of the Conventions and Protocol I

- (1) Any person, whatever his or her nationality, who, in [INSERT COUNTRY NAME], commits, or aids, abets or procures any other person to commit, a breach of any of the Conventions or Protocols not covered by section 3, is guilty of an indictable offence.
- (2) Any national of [INSERT COUNTRY NAME] who, outside [INSERT COUNTRY NAME], commits, or aids, abets or procures the commission by another person of a breach of any of the Conventions or Protocols not covered by section 3 is guilty of an indictable offence.

5. Penalties and procedure

- (1) The punishment for an offence against section 3 or section 4 is:
 - (a) where the offence involves the wilful killing of a person protected by the relevant Convention or by Protocol I – imprisonment for life or for any lesser term; and
 - (b) in any other case – imprisonment for a term not exceeding 14 years.
- (2) An offence against section 3 or section 4 shall not be prosecuted in a court except by indictment by or on behalf of the [Attorney-General/Director of Public Prosecutions].

6. Proof of application of the Conventions or Protocols

If, in proceedings under this Part in respect of a breach of any of the Conventions or of either of the Protocols, a question arises under:

- (a) Article 2 or Article 3 of that Convention (which relate to the circumstances in which the Convention applies);

- (b) Article 1 or Article 3 of Protocol I (which relate to the circumstances in which that Protocol applies); or
- (c) Article 1 of Protocol II (which relates to the circumstances in which that Protocol applies);
- (d) Article 1 of Protocol III (which relates to the circumstances in which that Protocol applies);

a certificate under the hand of the [Minister of State for Foreign Affairs] certifying to any matter relevant to that question is prima facie evidence of the matter so certified.

7. Jurisdiction of courts

- (1) A person shall not be tried for an offence against section 3 or section 4 by a court other than the [INSERT NAME OF COURT].
- (2) The enactments relating to the trial by court-martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of courts-martial convened in [INSERT NAME OF COUNTRY] as if this Part had not been passed.

Part III – Legal proceedings in respect of protected persons

8. Notice of trial of protected persons to be served on protecting power, etc.

- (1) The court before which:
 - (a) a protected prisoner of war is brought up for trial for an offence; or
 - (b) a protected internee is brought up for trial for an offence for which that court has power to sentence him or her to imprisonment for a term of two years or more;

shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in sub-section (2), so far as they are known to the prosecutor, has been served not less than 3 weeks previously on the protecting power (if there is a protecting power) and, if the accused is a protected prisoner of war, on the accused and the prisoners' representative.

- (2) The particulars referred to in subsection (1) are:
 - (a) the full name, date of birth and description of the accused, including his or her profession or trade; and where the accused is a protected prisoner of war, the accused's rank and his or her army, regimental, personal and serial number;
 - (b) the accused's place of detention, internment or residence;
 - (c) the offence with which the accused is charged; and
 - (d) the court before which the trial is to take place and the time and place appointed for the trial.
- (3) For the purposes of this section, a document purporting:
 - (a) to be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and
 - (b) to be an acknowledgement of the receipt by that power, representative or person on a specified day of a notice described in the document as a notice under this section;

shall, unless the contrary is shown, be sufficient evidence that the notice required by subsection (1) was served on that power, representative or person on that day.

- (4) A court which adjourns a trial for the purpose of enabling the requirements of this

section to be complied with may, notwithstanding anything in any other law, remand the accused for the period of the adjournment.

9. Legal representation of certain persons

- (1) The court before which:
 - (a) any person is brought up for trial for an offence under section 3 or section 4 of this Act; or
 - (b) a protected prisoner of war is brought up for trial for any offence;shall not proceed with the trial unless –
 - (i) the accused is represented by counsel; and
 - (ii) it is proved to the satisfaction of the court that a period of not less than 14 days has elapsed since instructions for the representation of the accused at the trial were first given to the counsel;and, if the court adjourns the trial for the purpose of enabling the requirements of this subsection to be complied with, then, notwithstanding anything in any other law, the court may remand the accused for the period of the adjournment.
- (2) Where the accused is a protected prisoner of war, in the absence of counsel accepted by the accused as representing him or her, counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of paragraph (ii) of subsection (1), be regarded for the purposes of that subsection as representing the accused.
- (3) If the court adjourns the trial in pursuance of subsection (1) by reason that the accused is not represented by counsel, the court shall direct that a counsel be assigned to watch over the interests of the accused at any further proceedings in connection with the offence, and at any such further proceedings, in the absence of counsel either accepted by the accused as representing him or her or instructed as mentioned in subsection (2), counsel assigned in pursuance of this subsection shall, without prejudice to the requirements of paragraph (ii) of subsection (1), be regarded for the purposes of subsection (1) as representing the accused.
- (4) Counsel shall be assigned in pursuance of subsection (3) in such manner as may be prescribed in regulations or, in the absence of provision in the regulations, as the court directs, and counsel so assigned shall be entitled to be paid by [the Minister] such sums in respect of fees and disbursements as may be prescribed by regulations.

10. Appeals by protected prisoners of war and internees

- (1) Where a protected prisoner of war or a protected internee has been sentenced to imprisonment for a term of two years or more, the time within which the person must give notice of appeal or notice of application for leave to appeal [to INSERT NAME OF APPEAL COURT] shall, notwithstanding anything in any enactment relating to such appeals, be the period from the date of conviction or, in the case of an appeal against sentence, of sentencing, to the expiration of 10 days after the date on which the person receives a notice given –
 - (a) in the case of a protected prisoner of war, by an officer of [the Armed Forces]; or
 - (b) in the case of a protected internee, by or on behalf of the governor or other person in charge of the prison or place in which he or she is confined;that the protecting power has been notified of his or her conviction and sentence.

- (2) Where, after an appeal against the conviction or sentence by a court of a protected prisoner of war or a protected internee has been determined, the sentence remains or has become a sentence of imprisonment for a term of two years or more, the time within which the person must apply to the [Attorney General] for a certificate authorizing an appeal [to INSERT NAME OF APPEAL COURT] shall be the period from the date of the previous decision on appeal until seven days after the date on which the person receives a notice given by a person referred to in paragraph (a) or (b), as the case may require, of subsection (1) that the protecting power has been notified of the decision of the court on the previous appeal.
- (3) Where subsection (1) or (2) applies in relation to a convicted person, then, unless the court otherwise orders, an order of the court relating to the restitution of property or the payment of compensation to an aggrieved person shall not take effect, and a provision of a law relating to the revesting of property on conviction shall not take effect in relation to the conviction, while an appeal by the convicted person against his or her conviction or sentence is possible.
- (4) Subsections (1) and (2) do not apply in relation to an appeal against a conviction or sentence, or against the decision of a court upon a previous appeal, if, at the time of the conviction or sentence, or of the decision of the court upon the previous appeal, as the case may be, there is no protecting power.

11. Reduction of sentence and custody of protected prisoners of war and internees

- (1) In any case in which a protected prisoner of war or a protected internee is convicted of an offence and sentenced to a term of imprisonment, it shall be lawful for the [Attorney-General] to direct that there shall be deducted from that term a period, not exceeding the period, if any, during which that person was in custody in connection with that offence, either on remand or after committal for trial (including the period of the trial), before the sentence began, or is deemed to have begun, to run.
- (2) In a case where the [Attorney-General] is satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, either on remand or after committal for trial (including the period of the trial), for an aggregate period of not less than three months, it shall be lawful for the [Attorney-General] to direct that the prisoner shall be transferred from that custody to the custody of [an officer of the Armed Forces] and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the court at the time appointed by the remand or committal order.

Part IV – Misuse of the red cross and other emblems, signs, signals, identity cards, insignia and uniforms

12. Use of red cross, red crescent and other emblems, etc.

- (1) Subject to the provisions of this section, it shall not be lawful for any person, without the consent in writing of the [Minister of Defence or a person authorized in writing by the Minister to give consent under this section], to use or display for any purpose whatsoever any of the following:
 - (a) the emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation “Red Cross” or “Geneva Cross”;

- (b) the emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation "Red Crescent";
 - (c) the emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with, appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun";
 - (d) the emblem in red on, and completely surrounded by, a white ground, that is to say; a red frame in the shape of a square on edge (whether or not incorporating within its centre another emblem or sign or combination thereof in accordance with Article 3, paragraph 1 of Additional Protocol III), or the designation "Red Crystal", or the designation "third Protocol emblem";
 - (e) the emblem of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation;
 - (f) the sign of an equilateral blue triangle on, and completely surrounded by, an orange ground, being the international distinctive sign of civil defence;
 - (g) any of the distinctive signals specified in Chapter III of Annex I to Protocol I, being the signals of identification for medical units and transports;
 - (h) the sign consisting of a group of three bright orange circles of equal size, placed on the same axis, the distance between each circle being one radius, being the international special sign for works and installations containing dangerous forces;
 - (i) a design, wording or signal so nearly resembling any of the emblems, designations, signs or signals specified in paragraph (a), (b), (c), (d), (e), (f) (g) or (h) as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems, designations, signs or signals;
 - (j) such other flags, emblems, designations, signs, signals, designs, wordings, identity cards, information cards, insignia or uniforms as are prescribed for the purpose of giving effect to the Conventions or Protocols.
- (2) The [Minister of Defence or a person authorized in writing by the Minister to give consent under this section] shall not give such consent except for the purpose of giving effect to the provisions of the Conventions or Protocols and may refuse or withdraw such consent as necessary.
- (3) This section extends to the use in or outside [INSERT COUNTRY NAME] of an emblem, designation, sign, signal, design, wording, identity card, identification cards, insignia or uniform referred to in subsection (1) on any ship or aircraft registered in [INSERT COUNTRY NAME].

13. Offences and penalties

- (1) Any person who contravenes section 12(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding [INSERT MAXIMUM FINE] or to imprisonment for a term not exceeding [INSERT MAXIMUM PERIOD OF IMPRISONMENT] or both.
- (2) Where a court convicts a person of an offence against section 12(1), the court may order the forfeiture to the State of:

- (a) any goods or other article upon of in connection with which an emblem, designation, sign, signal, design or wording was used by that person; and
 - (b) any identity cards, identification cards, insignia or uniforms used in the commission of the offence.
- (3) Where an offence against section 12(1) committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, he or she, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (4) Proceedings under section 12(1) shall not be instituted without the consent in writing of the [Attorney-General].

14. Saving

In the case of a trade mark registered before the passing of this Act, sections 12 and 13 do not apply by reason only of its consisting of or containing an emblem specified in subparagraph 12(1) (b), (c) or (d) or a design resembling such an emblem, and where a person is charged with using such an emblem, sign or design for any purpose and it is proved that the person used it otherwise than as, or as part of, a trade mark so registered, it is a defence for the person to prove:

- (a) that the person lawfully used that emblem, sign or design for that purpose before the passing of this Act; or
- (b) in a case where the person is charged with using the emblem, sign or design upon goods or any other article, that the emblem, sign or design had been applied to the goods or that article before the person acquired them or it by some other person who had manufactured or dealt with them in the course of trade and who lawfully used the emblem, sign or design upon similar goods or articles before the passing of this Act.

Part V – Regulations

15. Regulations

[INSERT NAME OF REGULATION-MAKING AUTHORITY] may make regulations:

- (a) prescribing the form of flags, emblems, designations, signs, signals, designs, wordings, identity cards, information cards, insignia or uniforms for use for the purposes of giving effect to the Conventions or the Protocols or both, and regulating their use;
- (b) prescribing the penalty that may be imposed in respect of contravention of, or non-compliance with, any regulations made under paragraph (a) of this section, which may be a fine not exceeding [INSERT MAXIMUM FINE] or imprisonment for a term not exceeding [INSERT MAXIMUM PERIOD OF IMPRISONMENT] or both; and
- (c) providing for such other matters as are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

Schedule

1. The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949;
2. The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949;
3. The Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949;
4. The Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949;
5. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), done at Geneva on 8 June 1977;
6. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), done at Geneva on 8 June 1977;
7. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), done at Geneva on 8 December 2005.
8. Resolution 1 of the 29th International Conference of the Red Cross and Red Crescent (Geneva 20 – 21 June 2006).

ICRC and IPU in brief

The ICRC

The ICRC's mandate and mission

The work of the ICRC is based on the Geneva Conventions, their Additional Protocols, its Statutes – and those of the International Red Cross and Red Crescent Movement – and the resolutions of the International Conferences of the Red Cross and Red Crescent. The ICRC is an independent, impartial and neutral organization ensuring humanitarian protection and assistance for victims of armed conflict and other situations of violence.

It was on the ICRC's initiative that States adopted the original Geneva Convention of 1864. Since then, the ICRC, with the support of the entire Red Cross and Red Crescent Movement, has constantly urged governments to adapt IHL to changing circumstances, in particular to modern developments in the means and methods of warfare, so as to provide more effective protection and assistance for conflict victims. Today, all States are bound by the four Geneva Conventions, which, in times of armed conflict, protect wounded, sick and shipwrecked members of the armed forces, prisoners of war and civilians.

Over three-quarters of all States are currently party to the two 1977 Protocols additional to the Conventions. Protocol I protects the victims of international armed conflicts, and Protocol II the victims of non-international armed conflicts. In particular, these treaties have codified the rules protecting the civilian population against the effects of hostilities. Additional Protocol III of 2005 allows for the use of an additional emblem – the red crystal – by National Societies in the Movement.

The legal bases of any action undertaken by the ICRC are as follows:

- The four Geneva Conventions and Additional Protocol I confer on the ICRC a specific mandate to act in the event of international armed conflict. In particular, the ICRC has the right to visit prisoners of war and civilian internees. The Conventions also give the ICRC a broad right of initiative.
- In non-international armed conflicts, the ICRC enjoys a right of humanitarian initiative recognized by the international community and enshrined in Article 3 common to the four Geneva Conventions.
- In the event of internal disturbances and tensions, and in any other situation that warrants humanitarian action, the ICRC also enjoys a right of initiative, which is recognized in the Statutes of the International Red Cross and Red Crescent Movement. Thus, wherever IHL does not apply, the ICRC may offer its services to governments without that offer constituting interference in the internal affairs of the State concerned.

The ICRC's mission statement

The 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.

The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

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.

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Linkedin: <http://www.linkedin.com/company/icrc>
YouTube: <http://www.youtube.com/user/icrcfilms>

The ICRC Advisory Service on International Humanitarian Law

As a specialized structure of the ICRC, the Advisory Service assists States in implementing IHL at the national level. With a global network of legal advisers, the Advisory Service provides guidance to national authorities on specific domestic implementation measures needed to meet their IHL obligations, and it supports the work of national IHL bodies established to facilitate the implementation of IHL domestically. The Advisory Service also supports the exchange of information regarding national implementation measures. Besides providing legal advice and technical support, the Advisory Service helps in capacity building upon the request of national authorities and other entities concerned.

The Advisory Service works closely with national governments, taking into account their specific needs, political systems and legal traditions. Through its work it encourages all States to adopt IHL treaties and other relevant instruments and to put in place comprehensive national legislation.

The Advisory Service provides governments with legal advice and technical assistance through a global network of trained and experienced legal advisers. The Advisory Service maintains bilateral contacts with national authorities, organizes thematic expert

workshops and sponsors regional and international peer meetings for relevant State authorities. Its legal advisers work closely with National Red Cross and Red Crescent Societies, academic institutions and other groups and individuals concerned.

The ICRC offers specialized resources to facilitate the exchange of information on IHL laws, case law and other related measures. These resources are constantly expanding and include the ICRC database on the national implementation of IHL, which contains a collection of laws and case law dealing with IHL norms.

The Advisory Service cooperates with relevant international and regional organizations to foster understanding of IHL and to further the ICRC's work on IHL implementation. These organizations include the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Commonwealth Secretariat, the Council of Europe, the Organization of American States, the International Criminal Court and the Inter-Parliamentary Union.

For more information gva_advisoryservice@icrc.org

Selected resources

- ICRC, *International humanitarian law: Answers to your questions*, 2015, available at <https://shop.icrc.org/international-humanitarian-law-answers-to-your-questions-261.html>
- ICRC, *The domestic implementation of international humanitarian law*, available at <https://www.icrc.org/eng/resources/documents/publication/pdvd40.htm>
- Australian Red Cross, Promoting respect for international humanitarian law – a handbook for parliamentarians, available at <http://www.redcross.org.au/ihl-resources.aspx>
- ICRC, Discover the ICRC, available at <https://www.icrc.org/eng/resources/documents/publication/p0790.htm>.

Useful websites

ICRC: <https://www.icrc.org/en>

International Criminal Court: https://www.icc-cpi.int/EN_Menus/icc/pages/default.aspx

International Review of the Red Cross: <https://www.icrc.org/en/international-review>

International Humanitarian Fact-Finding Commission: <http://www.ihffc.org/index.asp?Language=EN&page=home>

List of States party to IHL treaties: <https://www.icrc.org/ihl>

ICRC database on the national implementation of IHL: <https://www.icrc.org/ihl-nat>

Model laws on IHL issues: <https://www.icrc.org/eng/resources/documents/legal-fact-sheet/national-implementation-model-laws.htm>

Law and policy platform: <https://www.icrc.org/en/war-and-law/law-and-policy>

For more information on treaties and customary law: <https://www.icrc.org/en/war-and-law/treaties-customary-law>

For more information on customary IHL: <https://www.icrc.org/customary-ihl/eng/docs/home>

For more information on training programmes for the armed forces: <https://www.icrc.org/en/what-we-do/building-respect-ihl/dialogue-weapon-bearers>

e-Learning course on IHL: <https://www.icrc.org/eng/war-and-law/law-and-policy/online-training-centre.htm>

For an updated collection of cases, documents and national laws on contemporary practice in IHL: <https://www.icrc.org/en/document/how-does-law-protect-war-online-platform>

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We are financed primarily by our Members out of public funds. Our headquarters are in Geneva, Switzerland.

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Acronyms

CCW	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
IAC	international armed conflict
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDP	internally displaced person
IHL	international humanitarian law
IHRL	international human rights law
NIAC	non-international armed conflict
PMSC	private military and security companies



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