

# International law

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# INTERNATIONAL LAW

## PROMOTING THE UNIVERSALITY OF INTERNATIONAL HUMANITARIAN LAW AND ITS FULL IMPLEMENTATION

- Advisory Service on International Humanitarian Law
- Issues concerning weapons
- International humanitarian law and human rights law

## DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

- Review Conference of the 1980 Convention on Certain Conventional Weapons
- Elements of crimes
- Study on customary rules of international humanitarian law

The protection of victims of war is largely dependent on respect for international humanitarian law (IHL). In accordance with the mandate conferred on it by the international community, the ICRC strives to promote compliance with and contribute to the development of IHL. In 2001 the ICRC continued making confidential representations to the parties to conflict in cases where this body of law was being violated. When new hostilities broke out, such as the conflict in Afghanistan, the ICRC reminded the parties involved of their obligations under IHL.

In order to be in a better position to bring protection and assistance to victims of armed conflict and other situations of violence, the ICRC concluded new headquarters agreements with East Timor, Eritrea, Jordan, Liberia, Mexico and Tanzania. By the end of 2001, some 69 such agreements were in existence. The purpose of these agreements, which grant the ICRC various privileges and immunities, is to enable the organization and its staff to work in an entirely independent manner.

Both at headquarters and in the field, the ICRC encourages States to ratify the various humanitarian instruments in order to promote their universal acceptance.<sup>1</sup> The ICRC's Advisory Service on International Humanitarian Law provides States with technical advice to help them adopt national measures to implement these treaties.

<sup>1</sup> See Annex.

Experts from the ICRC's Legal Division attended numerous conferences and seminars on issues such as refugees and displaced people in order to make IHL better known, to stress the relevance of its provisions and to draw attention to the special role of the ICRC. When new legal instruments are being drafted, IHL must be taken into account and the ICRC makes sure that this is the case where necessary. In particular, the ICRC took an active part in the process which resulted in the extension of the scope of application of the 1980 Convention on Certain Conventional Weapons (CCW) to internal armed conflict.

In order to respond more effectively to needs in terms of protection of the civilian population, the ICRC closely monitored all forms of armed violence and the manner in which States and/or the international community reacted. It analysed the various situations that arose to see whether humanitarian rules needed to be adapted. For example, the issue of territories administered by multinational forces were examined by the Legal Division.

The horrific events of 11 September in the United States and the ensuing campaign against terrorism raised a number of questions and concerns on the legal level. One issue was whether IHL was in fact adequate and appropriate to deal with what was described by some as a new type of conflict. The objective of IHL is to limit violence in conflict situations. It protects all individuals who in one way or another are in the hands of the enemy from arbitrary treatment and abuse. Terrorist acts committed in the framework of armed conflict are prohibited by IHL. However, IHL is not a body of law designed to prevent acts of terror in all circumstances and to combat terrorism in general. The real issue as regards IHL is not a lack of applicable provisions but failure to respect the most fundamental rules. If these rules were to be observed, the suffering caused by armed conflict would be far less intense.





## PROMOTING THE UNIVERSALITY OF INTERNATIONAL HUMANITARIAN LAW AND ITS FULL IMPLEMENTATION

### Advisory Service on International Humanitarian Law

In order to promote respect for IHL, in 1996 the ICRC set up its Advisory Service on International Humanitarian Law to provide national authorities with assistance in the process of adherence to humanitarian treaties and implementation of IHL within their domestic legal systems. To carry out that major and urgent task, it works in close cooperation with governments, National Red Cross and Red Crescent Societies, national committees on IHL, and international organizations and specialized agencies.

#### Meetings on international humanitarian law

In 2001 the Advisory Service organized and took part in a number of workshops, discussion groups and seminars, at both national and regional level, to promote as extensive a debate as possible on subjects relating to the national implementation of IHL. It was involved in national meetings held in Argentina, Armenia, Austria, Egypt, Georgia, India, Kazakhstan, Kyrgyzstan, Jordan, Lesotho, Mexico, Moldova, Mongolia, Nepal, Panama, Poland, the Republic of Korea, Venezuela, Yemen and elsewhere. Depending on the audience (government representatives, members of national committees on IHL, university professors, legal advisers within the armed forces, for example), its contribution to these meetings focused on national implementation of IHL in general, or on more specific issues such as the repression of violations, the drafting of laws to protect the red cross and red crescent emblems, and the protection of cultural property.

The Advisory Service also took part in several regional meetings. The second seminar for member States of the Caribbean Community (CARICOM), organized by the Advisory Service in Trinidad and Tobago in February 2001, provided an opportunity to consider means of strengthening implementation of IHL and to examine possibilities for cooperation and assistance in the region. At the regional meeting on national implementation of IHL and related inter-American conventions, held jointly by the Organization of the American States (OAS) and the ICRC in Costa Rica in March 2001, participants underscored the need to further strengthen IHL through ratification of treaties, dissemination of the humanitarian rules among all sectors of society and effective implementation of those rules within each State. The first regional meeting on the implementation of IHL in Egypt, organized in May by the League of Arab States, the Egyptian Ministry of Justice and the Advisory Service, concluded with the adoption of a plan of action and the establishment of a coordinator's office for national implementation of IHL within the Arab League. South Africa hosted the fourth joint regional seminar on implementation of IHL and cultural heritage law, organized by the ICRC and UNESCO in June with a view to increasing the level of ratification and implementation of relevant treaties among South African Development Community (SADC) States and Madagascar.

In response to a general demand from States, the Advisory Service also focused on organizing and participating in seminars dealing with implementation of the Rome Statute, which established the International Criminal Court (ICC) as a permanent institution with jurisdiction over the most serious crimes of international concern. Accordingly, a second regional conference held by the Advisory Service for the Commonwealth of Independent States (CIS) in the Russian Federation in March 2001 discussed issues relating to ratification of the Rome Statute. Following a presentation given by the Advisory Service at a

meeting in the United Kingdom in November, senior officials of Commonwealth Ministries of Justice recommended that matters relating to ratification and implementation of IHL treaties and the Rome Statute feature permanently on their agenda. The participation of the Advisory Service at a number of conferences on the ICC convened by the Council of Europe and the European Union offered new opportunities to create incentive for the implementation of IHL among the States members of both organizations. Contacts were also maintained with NGOs such as the International Coalition for the International Criminal Court, mainly in order to coordinate efforts to promote the Rome Statute.

#### Advice on national legislation

For IHL to be fully respected, it is of paramount importance that States adopt domestic legislation to implement its rules, in particular those relating to the repression of war crimes and governing the use of the red cross and red crescent emblems and other distinctive signs and signals. The Advisory Service therefore gives technical assistance and advice on the drafting, adoption and amendment of such legislation. In 2001, its expertise was requested by most of the Latin-American States, which were particularly active in drafting and implementing legislation in the field of IHL. Assistance was also given to Armenia, Egypt, Jordan and Nepal, among others, in drafting legislation on the emblem, to Botswana and Sri Lanka in drafting Geneva Conventions Acts, and to South Africa in implementing the Ottawa Convention on landmines.



## Analysis of legislation and case law

New national legislation and case law relating to IHL were collected and analysed by the Advisory Service, and published twice a year in the *International Review of the Red Cross*. It is worth mentioning in particular that legislation for protection of the emblem was adopted by Azerbaijan, Brazil, Kazakhstan, Panama, Tajikistan, Turkmenistan and Zimbabwe. Burkina Faso and Mauritius passed laws prohibiting anti-personnel mines, while South Korea adopted legislation implementing the CCW. New legislation implementing the Rome Statute of the ICC was adopted by Denmark, Norway, Scotland, Switzerland and the United Kingdom.

## National committees

National committees responsible for the implementation of IHL include representatives of the various ministries concerned, and national entities and specialists appointed for that purpose. They are an effective means of promoting respect for this body of law in the States where they have been set up. Their establishment has therefore always been encouraged by the Advisory Service, which also assists them in their work. In 2001 national committees were set up in Cape Verde, Kenya, Lesotho, Lithuania, Malawi, Mauritius, Peru, the Seychelles, Slovakia, and Trinidad and Tobago, bringing their number to around 60. Other States envisage following suit in the near future. The second regional meeting of European national committees was held in Hungary in February. It provided a forum for exchanges of views and discussion on the role and mandate of the IHL committees, their achievements since their first meeting in 1999, and ways and means of increasing their efficiency and enhancing their position vis-à-vis their national authorities.

## Publications

Two major publications were brought out by the Advisory Service in 2001 to contribute to the effort being made by many governments to implement IHL. *Punishing Violations of International Humanitarian Law at the National Level* provides common-law States with a guide on the enforcement of IHL through national criminal and military law. As a follow-up to the meeting of experts on the protection of cultural property in the event of armed conflict, held in Geneva in October 2000, the French version of the meeting's report was published in 2001. The English and Spanish versions are due to be issued in 2002. The report includes practical advice to assist States in implementing the rules protecting cultural property, which was drafted by the Advisory Service pursuant to discussions during the meeting and in consultation with invited experts. A series of new fact sheets on the implementation of IHL-related treaties, such as the conventions on chemical and biological weapons and environmental modification techniques, and on issues such as legal protection of children in armed conflict, the relationship between human rights law and humanitarian law, civil defence and new weapons, were produced in 2001, while many existing fact sheets were revised. By the end of 2001, updated entries on national legislation and case law relating to 60 countries were incorporated into the ICRC database on national implementation of IHL and could be accessed through the ICRC's Website.

## Issues concerning weapons

### Anti-personnel landmines

The ICRC remained committed to its efforts to put an end to the scourge of anti-personnel landmines and to bring about universal adherence to and full implementation of the Ottawa treaty banning these weapons. Through its delegations around the world it provided information materials on the treaty for States considering adherence and legal advice for States already party to the treaty. The ICRC also took an active part in the annual meeting of States Parties held in Managua, Nicaragua, and in intersessional meetings in Geneva on implementation of the treaty's provisions relating to mine awareness and clearance, victim assistance and stockpile destruction. ICRC information kits on the development of national legislation were distributed to all States Parties to ensure that treaty obligations were translated into national law. The ICRC helped prepare and participated in regional meetings on the Ottawa treaty hosted by Mali for all African States in February and by Poland for regional States in June 2001.





## Legal reviews of new weapons, methods and means of warfare

For several years the ICRC has been involved in ensuring that all States consider the lawfulness of new weapons and methods and means of warfare, as required by Article 36 of 1977 Additional Protocol I. In January 2001 a seminar on the subject was held in Switzerland for legal and medical experts from 20 countries. The meeting examined existing national procedures for such reviews and, in particular, the use of medical data on the effects of weapons on health. Further cooperation among States and a rigorous multidisciplinary approach in the conduct of legal reviews were encouraged. Following the seminar, several States established review mechanisms or were in the process of doing so. The ICRC also raised this issue in the context of the 2001 Review Conference of the CCW, which endorsed its efforts to urge States which had not yet done so to establish legal review mechanisms.

## Explosive bullets

The need for compliance with the 1868 St Petersburg Declaration prohibiting the use of explosive bullets was highlighted by the ICRC in bilateral contacts and multilateral fora throughout 2001. In September the ICRC submitted a report to States party to the CCW on the serious implications in this regard of the proliferation of certain 12.7 mm multipurpose bullets which are known to explode in human tissue and of sniper rifles of the same calibre. The CCW Review Conference took note of the ICRC's report and encouraged States to take appropriate action on this matter.

## Small arms and light weapons

The issue of small arms and light weapons was high on the agenda of the United Nations and regional organizations such as the Organization of African Unity (OAU), the OAS and the Organization for Security and Cooperation in Europe (OSCE) in 2001. The ICRC coordinated the involvement of components of the International Red Cross and Red Crescent Movement in the UN Conference in July on combating the illicit trade in small arms and light weapons, which resulted in a programme for national, regional and global action in this field. The ICRC's contribution to these efforts was to highlight the grave implications of unregulated arms availability for IHL and for humanitarian assistance operations, a concern which was recognized by States in the programme adopted by the Conference. The ICRC's ongoing efforts to promote consideration by arms-exporting States of the intended recipient's level of respect for humanitarian law began to yield results. References to respect for IHL were included in documents on small-arms issues adopted by the European Union, the NATO Parliamentary Assembly, the OAU and the OSCE, and also in the national arms export regulations of Germany and the United Kingdom.

## International humanitarian law and human rights law

In 2001, the ICRC's Legal Division engaged in a range of activities aimed at clarifying and strengthening the convergence of IHL and human rights law. The ICRC took part in the annual session of the UN Commission on Human Rights and also followed the proceedings of its Sub-Commission on the Promotion and Protection of Human Rights. As well as monitoring negotiations on resolutions of interest to the ICRC, such as those relating to the rights of women, children and internally displaced people, the ICRC made statements in plenary on these and other topics, including the work of its Advisory Service.

In the intersessional period, the ICRC contributed to negotiations within the Commission's working group in charge of drafting an optional protocol to the Convention against Torture. It also played a role in discussions on the draft Convention on Enforced Disappearances and liaised with the Independent Expert whose task it was to prepare a report for the Commission on the legal framework applicable to this phenomenon. The Special Rapporteur on the Right to Food, in consultation with the ICRC, included substantive segments on humanitarian law in his reports to the Commission's 2001 session and, in particular, to the 2001 session of the UN General Assembly. The ICRC also actively contributed to intersessional work on draft human rights guidelines for transnational corporations and other business enterprises, which the Sub-Commission on the Promotion and Protection of Human Rights is due to examine at its next meeting.



Throughout 2001, the ICRC continued working with other international organizations and NGOs on issues of concern to both humanitarian and human rights actors. This involved providing legal expertise on IHL, participation in numerous seminars and conferences, and giving courses on IHL. The ICRC continued to participate in the Inter-Agency Standing Committee (IASC) reference group on humanitarian action and human rights, which made substantive progress on a comprehensive manual on the protection of rights through humanitarian action. The manual is expected to be finalized in early 2002. The reference group is preparing accompanying materials on the relationship between humanitarian and human rights law.

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was held in Durban, South Africa, in August-September. The ICRC took part in the seminars on various topics and the regional preparatory meetings that preceded the Conference, and attended the Conference itself. Its aim was to remind governments and others involved in the process that non-discrimination was a basic tenet of IHL as well as human rights law. Issues of concern to the ICRC were addressed in the final Conference documents, and an article on non-discrimination and armed conflict was published in the *International Review of the Red Cross*.

Throughout the 56th session of the UN General Assembly the ICRC paid particular attention to developments regarding the legal protection afforded by the 1994 Convention on the Safety of United Nations and Associated Personnel. The ICRC was invited to attend meetings of the ad hoc Committee that will examine this issue in 2002. The role of IHL and possibility that the 1994 Convention might be extended to personnel not previously covered were the main matters under review.

## DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

### Review Conference of the 1980 Convention on Certain Conventional Weapons

The Second Review Conference of States Parties to the 1980 Convention on Certain Conventional Weapons, held in Geneva in December 2001, helped demonstrate the importance and potential of this instrument. The Conference took several decisions in response to initiatives launched by the ICRC in late 2000.

First and foremost, States Parties agreed to an amendment making all existing protocols applicable to non-international armed conflict. Previously, only amended Protocol II (mines, booby-traps and similar devices) applied to such situations. Protocol I (non-detectable fragments), Protocol III (incendiary weapons) and Protocol IV (blinding laser weapons) applied only to situations of international armed conflict. This decision of the Review Conference reflected States' awareness of the need to ensure that the protection offered by the Convention remains relevant to the type of conflict most prevalent today.

The Conference also established a group of governmental experts to address the problem of "explosive remnants of war". The aim of this initiative was to reduce the large numbers of civilian deaths and injuries caused each year by unexploded munitions such as artillery shells, cluster bombs, grenades, landmines, rockets and other similar devices. While there had been substantial progress in dealing with the effects of anti-personnel mines, the broader problems created by explosive remnants of war had not been addressed thus far. The expert group is due to begin its work in May 2002, and it is hoped that States Parties will begin negotiating a legally binding instrument on the matter in early 2003.

These results followed extensive work by the ICRC in Geneva and around the world to help governments prepare for the Review Conference, as well as its own active participation in the Conference's preparatory process. The ICRC first proposed the adoption of a new protocol to the CCW on explosive remnants of war and extension of the Convention to internal armed conflicts at an ICRC meeting for States Parties in September 2000. As an organization with observer status in the CCW process, the ICRC was active in briefing States Parties at formal and informal preparatory meetings, drafting papers on the nature of the problem of explosive remnants of war, and highlighting the need and the legal basis for extension of the scope of the Convention. Throughout the year ICRC delegates and representatives of National Red Cross and Red Crescent Societies gave briefings on these subjects in capitals all over the world.

The ICRC also organized several regional meetings and government briefings to discuss proposals submitted to the Review Conference. In June, the ICRC and the Hungarian government convened a regional meeting of experts in Budapest attended by 23 Central and Eastern European government officials and the President designate of the Review Conference. In October, a conference held jointly by the ICRC and Economic Community of West African States (ECOWAS) in Abuja, Nigeria, promoted adherence to the CCW and the active involvement of West African governments in the Review Conference. Later that month an ICRC-hosted briefing on the CCW was held in Addis Ababa, Ethiopia, for ambassadors accredited to the OAU.





## Elements of crimes

As a follow-up to the work of the Preparatory Commission for the ICC, which finalized the Court's rules of procedure and evidence of crimes in 2000, the ICRC prepared a commentary on elements of war crimes. This commentary was based on the working documents the ICRC had produced for the Preparatory Commission. It contains a description of the *travaux préparatoires* and an extensive compilation of sources pertinent to the definition of war crimes, and will be published jointly by Cambridge University Press and the ICRC in 2002. Its aim is to provide judges, prosecutors and lawyers with the background information they need for proper implementation of IHL in future prosecutions for war crimes under the Rome Statute.

## Study on customary rules of international humanitarian law

The ICRC continued its study on customary rules of IHL, which was mandated by the 26th International Conference of the Red Cross and Red Crescent. The final publication will consist of two volumes: Volume 1, entitled *Rules*, and Volume 2, entitled *Practice*. The first will contain a list of rules found to be customary, with a short commentary on why they were so found and indications from practice, where available, as to the scope of application and interpretation of the rules in question. Where uncertainty still exists, trends in practice are outlined. The second volume was drafted in 2000 and has since been submitted to readers both within and outside the ICRC. This volume contains a summary of practice in the area of IHL compiled over five years of research and is divided into six parts: principle of distinction; specific protection regimes; methods of warfare; weapons; treatment of civilians and combatants *hors de combat*; implementation and enforcement. This volume continued to be edited, proofread and updated in 2001.