



Promoting respect for international humanitarian law

A handbook for parliamentarians

the
power of
humanity







Promoting respect for international humanitarian law

“Throughout the world we are seeing increasingly complex conflicts that have lasting and often devastating humanitarian consequences. To know and understand international humanitarian law and its purpose is critical, for these are the laws that protect civilians and maintain some semblance of humanity in the midst of armed conflict.”

Judy Slatyer, CEO Australian Red Cross

Cover Photo ADF Major Kylie Fardell examines a civilian in the Australian Medical Hospital in Dhanni, on the Pakistan side of the Kashmir Line of Control, following the earthquake in November 2005. *Photo: © Department of Defence*

Three injured soldiers are evacuated to the medical facilities in Tarin Kot, after an improvised explosive attack during a route clearance in the Chora Valley, Southern Afghanistan: 23 September 2011. *Photo: © Department of Defence*

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What can I do to promote respect for international humanitarian law (IHL)?

You can:

- 1** Encourage Australia to sign all IHL treaties
- 2** Adopt domestic legislation implementing IHL
- 3** Address violations of IHL around the world
- 4** Promote protection of the red cross emblems and report misuses in your constituency
- 5** Support the promotion of IHL by:
 - Contacting your local Australian Red Cross IHL program
 - Encouraging the study of IHL at universities in your state
 - Attending local IHL events
- 6** Join Parliamentary Friends of Red Cross to learn more about the work of Australian Red Cross



 **Australian Red Cross**
THE POWER OF HUMANITY

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Syrian Arab Red Crescent

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Syrian Arab Red Crescent

Foreword



Convoy of humanitarian aid being delivered by Syrian Arab Red Crescent supported by IFRC to the suburbs of Yalda, Babila and Bet Sahem in Damascus. May, 2015. Photo: IFRC/I. Malla

Even wars have limits

The idea expressed by international humanitarian law is simple and compelling: even wars have limits.

This basic but important idea is no less significant in today's world than it was over 150 years ago when the first Geneva Convention was drafted. Australian Red Cross is proud to produce this handbook which we hope will contribute to a greater understanding of IHL among all parliamentarians and public officials and encourage active promotion and respect for 'the law of war'.

Red Cross and IHL

IHL and the establishment of the International Red Cross and Red Crescent Movement (the Movement) are intimately connected. In 1859, young Swiss banker Henry Dunant witnessed a bloody battle in Solferino, Italy. As many as 40,000 men were dead or lay dying on the battlefield without medical attention. Dunant responded by organising local people to treat the soldiers' wounds, feed and comfort them. When he returned to Geneva, Switzerland, he proposed two ideas. One was the creation of national relief societies to assist armed forces' medical services in time of war. The other was a treaty that would commit governments to protect those giving help to the wounded on the battlefield.

To promote these ideas, in 1863 Dunant and others established what was later to become the International Committee of the Red Cross (ICRC). The following year, legal rules inspired by the Red Cross and known as the first Geneva Convention were created. Both these rules and the Red Cross share the same goal: to prevent and mitigate human suffering. The Convention provided care for the wounded; defined medical services on the battlefield as neutral; and established the red cross on a white background as a protective emblem.

Since then IHL has continued to develop: the 1949 Geneva Conventions and their Additional Protocols give elements of the Movement specific roles which they are legally entitled to perform during times of armed conflict. The emblems used by the Movement (the red cross, red crescent and red crystal) are legally regulated under international and domestic law and are universally recognised as symbols which offer protection.

We have prepared this handbook to assist public officials to develop greater awareness of this life-saving legal regime.

Why IHL and parliamentarians?

While the executive arm of Government has primary responsibility for Australia's IHL obligations, Parliament has a critical role to play in enacting the legislation that ensures IHL is legally binding throughout Australia – for government, public officials and civil society.

As a parliamentarian you can review executive ratifications or accessions to IHL treaties, support the development of new IHL instruments and allocate adequate resources for IHL training.

IHL is of direct importance to your constituents. This is especially true for personnel serving with Australian armed forces and their families, and for those Australians coming from conflict-affected countries, whose families may still be at risk of harm.

Parliamentarians play a crucial role as opinion leaders within the broader community and have unique opportunities to raise matters of concern and educate the public on important international legal principles. We encourage you to use your influence to promote respect for IHL and for the red cross emblem, a symbol of impartial humanitarian assistance, to ask constituents to report emblem misuses and promote understanding of its protective intent.

A valued relationship

Australian Red Cross values the assistance received for our humanitarian work in Australia and internationally from representatives in state, territory and national parliaments. In turn, our doors are always open to answer questions and offer confidential briefings on IHL matters of interest. We also warmly acknowledge those Australian parliamentarians who are Parliamentary Friends of Red Cross. This handbook is intended to contribute to the goal expressed in its title: promoting respect for international humanitarian law, thereby strengthening the underlying message of the Geneva Conventions - that even wars have limits.



Michael Legge
President
Australian Red Cross



Judy Slatyer
CEO (Secretary General)
Australian Red Cross



Please, no weapons
allowed in the h



مسموح بحمل الاسلحة
في المستشفى

Questions and answers about IHL



What is international humanitarian law?

International humanitarian law (IHL) is a set of rules which seek to limit the effects of armed conflict on people and objects. Also known as the law of war or law of armed conflict, IHL protects certain categories of people and restricts the methods and means of warfare.

IHL protects people who are not, or no longer, taking part in the fighting, such as civilians, the wounded, the sick, prisoners of war, detainees, shipwrecked, medical and religious military personnel. These categories of people are entitled to respect for their lives and parties to a conflict must provide them with assistance and treat them humanely at all times without discrimination. For example, civilians must not be the object of an attack; the wounded and sick must be collected and cared for; prisoners and detainees must be treated humanely and benefit from judicial guarantees.

IHL protects objects such as hospitals, ambulances and cultural property including places of worship, works of art and historic monuments. Under IHL it is also prohibited to destroy infrastructure necessary for the survival of the civilian population (such as drinking water supplies) and works containing dangerous forces (such as nuclear power stations).

IHL limits the type of weapons and military tactics that can be used during armed conflict. It is prohibited to use weapons or methods of warfare that do not distinguish between those taking part in the fighting

(combatants) and those that are not (civilians as well as civilian property). IHL does not allow the use of weapons which cause superfluous injury or unnecessary suffering, and also prohibits tactics which cause severe or long-term damage to the environment.

IHL applies only in times of armed conflict, both international (between two or more States) and non-international (between a State and one or more non-State armed groups, or between only non-State armed groups). Once a conflict has begun IHL applies to all sides regardless of the reasons for the conflict or who started the fighting. IHL is an area of law which is, above all, practical and strikes a careful balance between humanitarian concerns and military requirements.

IHL is found in international treaties or conventions as well as in customary law (rules which develop over time as a result of repeated State practice motivated by the belief that the practice is legally required). The core IHL treaties, containing the key principles of IHL, are the four Geneva Conventions of 1949 and their three Additional Protocols. However there are other relevant treaties which deal with matters such as the regulation of specific weapons, the prosecution of war criminals and the protection of cultural property. A list of these treaties with a short summary is provided on page 35 of this handbook.

The key messages of IHL are:

Do not attack people who do not, or no longer, take part in armed conflict.

Do not use weapons that do not distinguish between civilians and combatants, or cause unnecessary suffering and damage.

What is the relationship between IHL and human rights?

IHL and international human rights law both strive to protect the lives and dignity of individuals.

Despite these two legal systems being complementary, they are also distinct, have developed separately and are contained in different treaties.

IHL applies exclusively to times of armed conflict, both international and non-international, and is intended to respond to humanitarian problems that arise during warfare. International human rights law applies at all times and sets standards for States' treatment of individual and collective rights and freedoms. Human

rights are inherent entitlements that belong to every person as a consequence of being human. However, some human rights may be temporarily suspended by governments in situations of public emergencies, such as armed conflict. Unlike human rights law, no element of IHL can be suspended as this area of law was created for a specific emergency, namely armed conflict.

Both IHL and international human rights law aim to protect human life, prohibit torture and cruel treatment, prescribe basic judicial guarantees, prohibit discrimination and provide for access to food and medical treatment. In addition, IHL contains rules that deal with issues not found in human rights law such as the conduct of hostilities, combatant and prisoner of war status and the protection of the red cross, red crescent and red crystal emblems. Similarly, international human rights law deals with issues that are not regulated by



IHL, such as the rights to assemble, to vote and to strike, and freedom of the press. The duty to implement IHL and human rights law lies first and foremost with States. Both areas of law often rely on governments adopting legislation to create domestic obligations.

What about IHL and terrorism?

IHL does not provide a definition of terrorism, nor does it decide the legitimacy of the cause of any group involved in a conflict. IHL prohibits most acts committed during armed conflict which would be commonly considered 'terrorism'. Acts such as indiscriminate attacks, attacks on civilians and civilian objects, attacks on places of worship and the taking of hostages are expressly prohibited. In addition, the Geneva Conventions and their Additional Protocols, strictly prohibit acts committed during armed conflict which aim to spread terror among the civilian population. The general requirement to distinguish between civilians and combatants lies at the very heart of IHL. There is no legal significance in describing acts of violence against civilians or civilian objects in situations of armed conflict as 'terrorist' because these already constitute serious violations of IHL.

There appears to be a growing tendency among States to consider any act of violence carried out by a non-State armed group in armed conflict as being 'terrorist' by definition, even when certain acts of violence may be lawful under IHL. Labelling attacks against military objectives during an armed conflict as terrorism may create conflicting obligations of States at the international level. This would be contrary to the reality of armed conflicts and the

What is armed conflict?

IHL is used to reduce suffering during times of armed conflict.

Armed conflict is a legal term and there are two major types – international armed conflict (traditionally called 'war') and non-international armed conflict (often called 'internal armed conflict' or 'civil war').

International armed conflict occurs when fighting breaks out between two or more States.

Non-international armed conflict is a situation when acts of violence occur regularly between the State military and other organised armed groups or only between non-State armed groups. A single riot or violent political protest would not amount to armed conflict.

IHL has a different set of rules depending upon the type of armed conflict being fought.

The regime regulating international armed conflict is more detailed than that dealing with non-international armed conflict. However there is increasing recognition that civilians, and all who are outside the fight, need to be equally well protected regardless of the character of the conflict.



rationale of IHL which does not prohibit attacks against lawful targets. Moreover, designating acts that are not unlawful under IHL as 'terrorist' may discourage IHL compliance by non-State armed groups parties to civil conflicts. Any motivation they may have to fight in accordance with IHL might erode if, irrespective of the efforts they may undertake to comply with IHL, all of their actions are deemed unlawful.

In addition, some measures adopted by States to counter terrorism have the potential to inadvertently criminalise lawful humanitarian activities such as the dissemination of IHL and the delivery of impartial aid. Legislation prohibiting 'material support', 'assistance' or 'association' with those categorised as designated terrorist organisations by the UN, regional organisations and States should exclude neutral and impartial humanitarian work conducted without adverse distinction and designed to meet the needs of vulnerable populations.

Terrorist acts can occur during armed conflict or in times of peace. As IHL only applies in situations of armed conflict, it does not regulate terrorist acts committed in peacetime (when human rights standards apply). However, if the response to terrorist acts takes the form of an armed conflict then IHL applies to the conduct of hostilities.

How does IHL regulate certain weapons?

IHL enshrines the principle that there are legal limitations on the weapons and tactics used in armed conflict. Combatants are prohibited from using weapons which do not distinguish between civilians and combatants or those which inflict unnecessary suffering upon

combatants. The use of weapons which cause widespread, long-term and severe damage to the natural environment is also prohibited.

Some particular categories of weapons have been deemed so heinous that the international community has agreed to prohibit them. Over the years specific treaties have been created which prohibit or restrict the use of certain weapons such as biological, chemical, blinding laser or incendiary weapons or dumdum bullets (ammunition which explodes or flattens easily in the human body). The basic principles found in the Geneva Conventions and their Additional Protocols were central to global campaigns to ban anti-personnel mines and prohibit the use of cluster munitions, and underlie the agreement on the effects of explosive remnants of war. In each case, an international treaty has been adopted: the 1997 Ottawa Treaty, 2008 Oslo Convention and the 2003 Protocol V to the Convention on Certain Conventional Weapons (details of these IHL treaties are contained on pages 41 and 42).

The Movement consistently calls for the respect of IHL principles with regard to the use of all weapons. In 2011 and 2013 at its biennial statutory meetings, all components of the Movement resolved to work towards the elimination of nuclear weapons. The Movement found it difficult to envisage how any use of nuclear weapons could be compatible with the rules of IHL. Since then, a number of major global initiatives have been undertaken by governments and civil society, including a series of intergovernmental conferences on the humanitarian impact of nuclear weapons.

Who and what do the red cross, red crescent and red crystal emblems protect?

The red cross, red crescent and red crystal are international emblems of protection in situations of armed conflict. The emblems identify people or facilities engaged in the provision of medical or humanitarian assistance, and in any language they mean 'don't shoot!'

Those who wear or work under the emblems are to be protected at all times. Protected people include military medical and religious personnel as well as Red Cross and Red Crescent staff and volunteers. Medical sites, vehicles and equipment belonging to these groups are also marked and protected. Only these groups of people can use the protective emblems. Deliberately misusing the emblems to gain a military advantage is a war crime known as perfidy.

The Geneva Conventions oblige States to adopt national legislation governing the use of the emblems in times of war and times of peace. In Australia, the emblems are protected under the

Geneva Conventions Act 1957 (Cth). Any use of the emblems without the authorisation of the Minister for Defence is an offence under section 15 of this legislation.

Despite the red cross and red crescent emblems being universal and exclusively humanitarian symbols, they have sometimes been wrongly perceived as having religious, cultural and political associations. This has affected respect for the emblems and has diminished the protection they offer to people using the emblem and those that they are assisting in conflict.

The solution, endorsed by governments and the Movement, was the creation of a third emblem, known as the red crystal. This third humanitarian emblem enhances protection in cases where neither the red cross nor the red crescent emblems are respected as impartial.

In 2006, Australia introduced amendments to the *Geneva Conventions Act 1957 (Cth)* and the *Criminal Code Act 1955 (Cth)* to protect the red crystal as a third emblem of protection.

National Societies such as Australian Red Cross can also use the emblem in peacetime to indicate that a person or object is linked to the Movement, is providing humanitarian services and works in accordance with the Movement's Fundamental Principles. In Australia, this usage is permitted under delegated authority from the Minister for Defence.

In Australia, hospitals and street signs pointing to hospitals should use a white cross on a



blue background, not the red cross. First aid stations and first aid kits should be marked with a white cross on a green background, not the red cross. The intention is simple - to keep the red cross apart and used only for its true international purpose. Every time the red cross emblem is misused, the protective status of the emblem is reduced, and the lives of those who depend on the emblem's protection during armed conflict are placed in greater danger. Protection of, and respect for, the red cross, red crescent and red crystal emblems is therefore a vital component of IHL.

National Societies are mandated to cooperate with their Governments to promote awareness and protect the emblems. As such, Australian Red Cross works closely with

the Department of Defence to strengthen protection of the emblems in Australia. Australian Red Cross staff and volunteers contact many companies who may have misused the emblem and work with them to remove the misuse. The purpose is to ensure the protective meaning of the emblems is understood and respected by all Australians. The vast majority of cases are due to simple lack of understanding and are resolved quickly. Only the Minister for Defence has the capacity to prosecute individuals for misusing the emblems in Australia.

It is in the interests of all Australians, including parliamentarians, to ensure the emblems' protective status in situations of armed conflict is understood and respected in Australia.



What happens when IHL is violated?

States parties to IHL treaties are legally bound to comply with the rules and must do everything in their power to respect and ensure respect for IHL. Serious violations of IHL constitute war crimes and individuals at all levels of society can be held individually criminally responsible.

The primary responsibility for the prosecution of those accused of war crimes rests with States. Certain specific acts found in the Geneva Conventions and Additional Protocol I, such as wilful killing, torture or inhuman treatment and other acts which wilfully cause great suffering or injury to body or health, such as rape,

are known as grave breaches and must be punished. IHL also requires States to search for persons accused of grave breaches, regardless of where these were committed, and either bring them before their own courts or hand them over for trial in another State. States are also obliged to require military commanders to prevent the commission of war crimes and to take measures against those under their control who commit grave breaches.

As well as domestic prosecutions, the international community has established a number of international tribunals to supplement national courts. During the 1990s the United Nations created two ad hoc tribunals to deal specifically with crimes committed in the former Yugoslavia and Rwanda. In some instances, States have created mixed domestic/ international mechanisms to prosecute those accused of war crimes, such as the Extraordinary Chambers in the Courts of Cambodia and the Special Court for Sierra Leone. These enable national courts to play a role in the administration of local justice with international support.

The International Criminal Court (ICC) was established in 2002 with the goal of ending impunity for the perpetrators of the most serious crimes. It is the first permanent body that has jurisdiction over serious international crimes, including war crimes (whether committed in an international armed conflict or non-international armed conflict), genocide, crimes against humanity and the crime of



Left: A 'Field of Tears' cemetery and memorial site, Kosovo, 3 July 2014. On 27 April 1999, in the village of Mejë/Meja, 376 persons were killed. Most of their human remains were discovered in Batajnica gravesite, Serbia as well as in other gravesites in Kosovo. Photo: ICRC/ N. S. Cohen

Right: Peru White Coffins: On 27 October 2014 the Prosecutor's Office in Ayacucho, Huamanga returned the mortal remains of 80 people who disappeared between 1983 and 1984. The bodies had been exhumed and identified earlier in 2014. Photo: ICRC/ N. S. Cohen

aggression. It is not to be confused with the International Court of Justice, also in The Hague, which adjudicates disputes between States. The ICC is intended to complement national courts; it will only operate when a State is unwilling or unable to prosecute those accused of serious international crimes within their jurisdiction.

Australia has a number of laws which deal with this subject matter, including the *War Crimes Act 1945 (Cth)* and the *Geneva Conventions*

Act 1957 (Cth). Australia has also passed legislation to allow domestic prosecution and co-operation with international institutions including the *International Criminal Court Act 2002 (Cth)*, *International Criminal Court (Consequential Amendments) Act 2002 (Cth)* and the *International War Crimes Tribunal Act 1995 (Cth)*. Criminal sanctions for war crimes, crimes against humanity, genocide and crimes against the administration of justice of the ICC are found in the *Criminal Code Act 1995 (Cth)*.



What is the relevance of IHL to Australia?

In recent times Australia has been actively involved in a range of armed conflicts and situations of tension within the region and around the globe.

Members of the Australian Defence Force (ADF) are required to understand the rules contained in IHL and to respect the limitations placed on the conduct of hostilities. Legal officers within the ADF are trained to provide advice on IHL. This area of international law must also be taken into account in decisions relating to the acquisition and use of specific weapons. It is important for the ADF to understand the rights of protected persons for humanitarian reasons, a sound knowledge of the responsibilities under IHL is essential to ensure personnel are aware of the criminal consequences.

It is not only members of the ADF who are deployed to conflicts but also representatives from the Australian Federal Police, government departments (such as Department of Foreign Affairs and Trade (DFAT)), journalists and members of Australia's humanitarian sector (such as non-governmental organisations (NGOs)). Increasingly the Australian business sector, particularly in the resources industry, is also establishing operations in fragile States where possible conflict presents a real risk. With such active and varied involvement in conflict zones it is critical that Australians working in such environments understand and respect their rights and responsibilities under IHL for their own, and others', protection.

Whilst the term 'armed conflict' has a specific and legal meaning there are a number of instances when a situation may not reach the 'threshold' of fighting required for categorisation as an armed conflict. However, the 'spirit' of IHL may still apply. Australia provides assistance in regional environments where all individuals deployed need to comprehend and apply the basic principles found in IHL, such as the correct treatment of the civilian population and the processing of detainees. It is important to understand the traditional role of the Movement outlined in the Geneva Conventions such as visiting detainees and providing Red Cross family messages to those separated by conflict or disaster.

Australia has an active humanitarian sector which delivers assistance to those in need globally, in particular during times of war. IHL contains many legal rights and obligations relating to the provision of impartial humanitarian assistance, making IHL a valuable tool for these organisations. For the general community knowledge of the unique role the Movement plays in providing protection and assistance during times of armed conflict and tensions is important, as is an understanding of the legally correct use of the protective emblems. For IHL to be useful in times of war it must be understood and respected during times of peace. When conflict appears likely, it is often too late to begin providing instruction and there are a number of preventive measures which must be initiated during times of peace to ensure compliance is possible when IHL is needed.

Villagers from Charmestan, Uruzgan Province, Afghanistan, speak with leaders from the Afghan National Army and their Coalition Force mentors about the presence of a new Patrol Base in the area; Patrol Base Mohammed.
24 December 2010 Photo: © Department of Defence

Finally, as the international community becomes more focused on the prosecution of war crimes, the need for a comprehensive domestic legal and policy framework to deal with these matters within Australia remains relevant. As a country that prizes social cohesion and

respect for the rule of law, and which draws strength from the diversity of its population, demonstrating both capacity and will to prosecute accused war criminals is in Australia's long and short-term interests. For all these reasons IHL has enduring relevance to Australia.



What is the relationship between IHL and the International Red Cross and Red Crescent Movement?

From its very creation in 1863, the Movement has had a strong connection to IHL. The creation of the Movement and the birth of modern IHL were the results of the vision of the same person – Henry Dunant.

As well as the historical relationship, the most important treaties in the area of IHL - the 1949 Geneva Conventions and their Additional Protocols - contain numerous provisions that give elements of the Movement specific tasks they are legally entitled to do during times of armed conflict. For example, under IHL the ICRC has the right to visit prisoners of war, and National Societies must be allowed to carry out humanitarian activities. This legal connection between an international humanitarian organisation and a specific area of international law is unique and provides the Movement a legal mandate to assist victims during times of armed conflict.

International Conference Resolutions and Pledges:

Resolutions are joint commitments to advance humanitarian action agreed between the Movement and States parties to the Geneva Conventions at International Conferences of the Red Cross and Red Crescent. In addition, participants at the International Conference such as the Australian government and Australian Red Cross, may enter a joint pledge to advance particular humanitarian priorities. This is a demonstration of the auxiliary relationship between National Societies and their public authorities. All parties to the International Conference are expected to report back on their implementation of resolutions and their pledges.

Auxiliary Role:

This describes the relationship between a National Society and its government. A National Society must be granted the status of a voluntary aid society, auxiliary to the public authorities in the humanitarian field. This legal relationship allows a National Society to offer to support its government by providing humanitarian assistance in an independent, impartial, neutral manner – delivering services to the most vulnerable in conformity with the Movement's seven Fundamental Principles (see page 51).

The highest deliberative body of the Movement, the International Conference of the Red Cross and Red Crescent, includes the three elements of the Movement (the ICRC, the International Federation of the Red Cross and Red Crescent Societies and the National Societies) and States which are a party to the Geneva Conventions, including Australia. Resolutions and statements from this important Conference have identified the ICRC as the 'guardians and promoters' of IHL and furthermore require National Societies, such as Australian Red Cross, to disseminate and educate the public and particular interest groups about the significance of IHL.

Australian Red Cross began as a branch of the British Red Cross on 13 August 1914, shortly after the outbreak of World War I. Australian Red Cross was recognised as a National Society in 1927 and incorporated by Royal Charter in 1941. The Charter establishes Australian Red Cross as auxiliary to the public authorities in the humanitarian field and reinforces the obligation for the National Society to act, amongst other things, in times of armed conflict on behalf of all war victims and prevent and alleviate human suffering with complete impartiality.

An ICRC employee is installing a mine awareness sign at the Berezovoye check point in the Donetsk region of Ukraine, 9 November 2015. *Photo: ICRC/S. Ishynov*



Australian Red Cross is not an NGO for three distinct reasons.

Firstly, National Societies of the Movement can only be recognised as such if their State is a party to the Geneva Conventions and has enacted legislation to grant authority for the National Society to be constituted.

Secondly, its auxiliary role means that it has a unique, though distinctly independent relationship with commonwealth, state

and local public authorities, working at all times in accordance with the Movement's Fundamental Principles (see page 51). This particular role is important when Australian Red Cross disseminates IHL and in its work during emergencies and national disasters. Recently created guidelines on international disaster response law specifically mention the critical role of National Societies such as Australian Red Cross.



Thirdly, Australian Red Cross is not an NGO because of the legal status of the emblems used by the Movement (the red cross, red crescent and red crystal). The emblems are not ‘logos’. Rather they are legally regulated under international and domestic law and can only be used in very specific circumstances. As noted earlier, the *Geneva Conventions Act 1957 (Cth)* makes it an offence to misuse the emblems. Under the Royal Charter 1941 which

incorporates Australian Red Cross, the society is authorised to use the red cross emblem.

Due to its continued engagement in IHL, the Movement ensures that this area of law remains relevant to contemporary conflicts. In particular, the ICRC monitors IHL issues around the world and uses its considerable technical expertise in IHL to work with States to clarify, develop and strengthen the law. National Societies, such as Australian Red Cross, promote the implementation of IHL within their own countries. For example, Australian Red Cross discusses and supports the adoption of relevant instruments, comments on draft legislation and explains to legislators and the public the need to do so. Australian Red Cross personnel participate in military training and exercises and raises awareness of the protection of the emblems, monitors use and reports misuses of the emblems to the Department of Defence. The operational and practical work of the Movement in assisting victims during times of armed conflict around the world adds credibility to the legal connection between the Movement and IHL.

Due to its special international legal status and obligation to adhere to its Fundamental Principles, the Movement has a specific way of working, in that it does not take sides in hostilities or engage in controversies. In many situations the ICRC works in a confidential manner dealing directly with State and non-State actors rather than making concerns public in the first instance. Similarly, National Societies, in their involvement in humanitarian advocacy, focus their work upon respect for all and assistance without discrimination rather than any engagement in domestic politics.



Heath McCallum, ACT IHL Coordinator conducting a dissemination presentation with Chaplains from the ADF, 2016
Photo: Australian Red Cross



What can parliamentarians do?



A mosque damaged in the fighting, Azaz in Syria.
23 April 2013. Photo: ICRC/T. A. Voeten

There are a range of actions parliamentarians can take to promote respect for IHL. These include ensuring that Australia is a party to IHL treaties; adopting legislation to effectively implement IHL obligations domestically; protecting the emblems; and supporting the dissemination of IHL in the community.

Ensure Australia is a party to IHL treaties

By becoming a party to IHL treaties, a State not only legally binds itself to the provisions, but symbolically strengthens the principles contained in this area of international law. The fact that every State in the world is a party to the four Geneva Conventions of 1949 demonstrates that these treaties have the support of the entire international community, giving them great authority.

When a State becomes party to an international treaty, it must inform the legal depository of the treaty. The role of parliamentarians throughout the whole process is important. Members of parliament can bring to the attention of the Executive IHL treaties to which the State is not a party; they can urge the Executive to sign the IHL treaty within or outside the Parliament and can inform their electorate about the matters involved in the treaty in an effort to advance the cause of ratification or accession.

Under the Australian Constitution the power to enter into a treaty is an executive power. In practice the Commonwealth Parliament plays a role. All treaties are tabled in both houses of Parliament prior to binding treaty action being taken, with exceptions for urgent or sensitive treaties. The Government also

tables a National Interest Analysis that notes the reasons Australia should become a party to the treaty. The Joint Standing Committee on Treaties considers and provides advice on tabled treaties and National Interest Analyses. For more information on the Australian process see DFAT's webpage on Australia's Treaty Making Process.

Create implementing legislation

Some States, when becoming a party to a treaty, automatically incorporate the provisions of that treaty into domestic law. However other States, including Australia, must create implementing legislation to give domestic effect to these international obligations.

One of the most important elements of IHL to be incorporated into domestic law is the capacity to prosecute individuals who violate IHL. It is first and foremost up to national courts to punish war criminals. Most of the time States can only punish their own citizens or the perpetrators of crimes committed on their own territory. However, the international community has determined that some crimes are so serious that an exception has been made to this principle. Certain treaties, such as the Geneva Conventions, oblige States to search for and prosecute war criminals regardless of their nationality or where they committed their crimes. Alternatively the State may extradite them to another State which has made an extradition request and indicated its willingness to prosecute. This principle is referred to as 'universal jurisdiction'.

Other IHL treaties, such as the conventions banning anti-personnel mines and cluster munitions, require action such as legislation banning the use, development or storage of those weapons.

Parliamentarians are crucial in the process of creating implementing legislation for IHL treaties.

To start with, if the Government is slow in the creation of such legislation, parliamentarians on all sides can ask the Government to explain why there are delays and encourage the process to continue. If dialogue fails, parliamentarians 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 their constituency on the importance of the issues involved.

Protect the red cross, red crescent and red crystal emblems

There are three distinct and equally important emblems for assisting victims during times of armed conflict: the red cross, red crescent and red crystal. In a highly globalised environment misuse of the emblems can impact upon their legitimacy and undermine their effectiveness. Accordingly, the Geneva Conventions oblige States to prevent any misuse of the emblems, not just during armed conflict.

Parliamentarians play an important role in promoting respect for the emblems by ensuring their countries have legislation prohibiting misuse and taking action when instances of misuse come to their attention. In discussions with their constituents and as leaders within the community, parliamentarians may have opportunities to promote information about the correct use of the emblems and even be involved in finding positive solutions to resolve situations of misuse.

Australia uses the red cross emblem and has legislated to ensure respect for this important symbol. It is a criminal offence in Australia to use the emblem without the permission of the Minister for Defence. Australian Red Cross has authority from the Minister to use the red cross emblem in a small design to indicate its activities and under certain circumstances for fundraising campaigns.

How do states become party to a treaty?

The two most common ways to become a party to a treaty are signing and then ratifying a treaty or acceding to it.

Signature and ratification

Treaties are usually open for signature for a limited period, from the close of drafting until they enter into force.

A State which signs a treaty has an obligation not to behave in any way that is contrary to the object and purpose of the treaty. However to be legally binding a State must ratify the treaty it has signed. Some treaties allow States to issue reservations to certain elements of the treaty on the condition that these reservations are not 'incompatible with the object and purpose of the treaty'.

Accession

If a State wishes to become a party to a treaty after it is in force, it does so by accession. This has the same effect as ratification. The only difference is the timeframe.

Spread knowledge of IHL

The Geneva Conventions and their Additional Protocols require States to take measures to disseminate knowledge of IHL as widely as possible in both times of peace and war. Such education is obviously vital for members of the armed forces so that they incorporate the rules into military behaviour and are aware of their legal obligation to comply. It is also important that the wider community understands the principles of IHL and supports the protections and limitations on the use of military power which IHL provides. As well, the public needs to be aware of the protective status of the emblems and the prohibition of misuse.

The State is responsible for ensuring that dissemination of the Conventions is undertaken as widely as possible. This includes the training of its military forces in IHL and parliamentarians can monitor whether this is carried out effectively. Parliamentarians may have the authority and the opportunity to promote informed discussion of IHL topics in the community. For example, Australian Red Cross sometimes asks parliamentarians for promotional assistance and involvement in dissemination events because, as leaders within the community, they are well placed to provide legitimacy to important IHL related messages.

An ICRC employee speaks to members of the ELN armed group in the Choco Department, Colombia about the principles of international humanitarian law and the obligation to respect the lives of the civilian population, health personnel, and the sick or wounded. 17 February 2014.

Photo: Getty Images/ICRC/J. Arrendondo

Other important tasks and facts to know

Universal respect

Australia, as a state party to the Geneva Conventions, is required not only to respect but 'ensure respect for' IHL. This means that when the rules of IHL are breached, pressure should be exerted to put a stop to such violations. This duty can include reminding the State involved of its obligations under IHL and demonstrating that violations will not be tolerated. Parliamentarians may be in a position to advocate for specific inquiries to be established or propose statements expressing Parliament's concerns. Members of Parliament are often in situations where they can champion the cause of IHL not just nationally but internationally.

National IHL committee

Like many countries, Australia has established a National IHL committee which consists of members of relevant departments within government (including DFAT, Attorney-General's Department and Department of Defence) as well as Australian Red Cross and eminent experts on IHL. This committee aims to promote dissemination, education and debate about IHL in Australia, as well as encourage knowledge of the Movement's Fundamental Principles and the correct use of the emblems. It promotes the fulfillment of Australia's international obligations under IHL by supporting the ratification and implementation of IHL treaties and conventions, assisting the development of government policy on IHL, and encouraging international respect for and implementation of IHL. It is important that Members of Parliament are aware of this mechanism and the benefits and expertise an IHL committee brings to Australia's capacity to implement IHL obligations.







Selected IHL treaties and their application in Australia

Wreckage of a civilian bus carrying Somali refugees through the Al Waht district of Aden, hit during the conflict in Yemen. 22 May 2015. *Photo: ICRC/B. Lamon*

Australia has ratified numerous treaties relating to IHL and has in place many laws that implement the international obligations assumed under these treaties into domestic law.

Treaties on the protection of victims of war

Convention for the amelioration of the condition of the wounded and sick in armed forces in the field (First Geneva Convention), 1949

Australia Signature 4 April 1950; Ratification 14 October 1958 Protects wounded and sick combatants, the personnel attending them, the buildings in which they are sheltered and the equipment used for their benefit. Also regulates the use of the red cross and red crescent emblems.

Convention for the amelioration of the condition of wounded, sick and shipwrecked members of the armed forces at sea (Second Geneva Convention), 1949

Australia Signature 4 April 1950; Ratification 14 October 1958 Extends protection to shipwrecked combatants and regulates the conditions under which they can be assisted.

Convention relative to the treatment of prisoners of war (Third Geneva Convention), 1949

Australia Signature 4 April 1950; Ratification 14 October 1958 Protects members of the armed forces who have been taken prisoner. Sets forth the rules governing their treatment and establishes the rights and obligations of the detaining power.

Convention relative to the protection of civilian persons in time of war (Fourth Geneva Convention), 1949

Australia Signature 4 April 1950; Ratification 14 October 1958 Establishes the rules governing the protection of the civilian population, in particular the treatment of civilians in occupied territory, the treatment of those deprived of their liberty, and occupation in general.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), 1977

Australia Signature 7 December 1978; Ratification 21 June 1991 Broadens the protection extended to civilians and limits the means and methods of warfare.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), 1977

Australia Signature 7 December 1978; Ratification 21 June 1991 Contains the fundamental guarantees for persons not taking part in hostilities during a non-international armed conflict, and sets forth rules relating to the protection of civilians and objects and installations essential for their survival.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an additional distinctive emblem (Protocol III), 2008

Australia Signature 8 March 2006; Ratification 15 July 2009 Establishes a new emblem, commonly referred to as the red crystal, alongside the red cross and red crescent as a protective emblem.

To implement the Geneva Conventions, Australia enacted the *Geneva Conventions Act 1957 (Cth)*. This legislation was amended in 1991 after ratification of the first two Additional Protocols and in 2009 following ratification of Additional Protocol III. The 1957 Act is limited to crimes committed during international armed conflicts. It deals with a range of issues, including the regulation of the use of the red cross emblem and the determination of prisoner of war status. The provisions allowing for the domestic prosecution of those accused of grave breaches of the Conventions and Additional Protocol I were repealed in 2002 and moved to the *Criminal Code Act 1995*.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000

Australia Signature 21 October 2002; Ratification 26 September 2006 Requires States Parties to take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Convention for the Protection of All Persons from Enforced Disappearance, 2006

Australia has not yet acceded to this convention. Defines and prohibits enforced disappearances. It seeks to combat impunity, prevent disappearances and creates rights for victims and recognises victims as members of the family of the disappeared person. The convention applies in all circumstances including during times of armed conflict. The treaty came into force on 23 December 2010.

Convention on the Rights of Persons with Disabilities, 2006

Australia Signature 30 March 2007; Ratification 17 July 2008 Defines protections to ensure that persons with disabilities enjoy the same standards of equality, rights and dignity as everyone else including, in accordance with IHL, States taking all necessary measures to provide for the protection and safety of persons with disabilities during situations of armed conflict.

A former combatant in his ceramic studio in Mozonte, Nicaragua. He lost his leg in 1991 when an anti-personnel mine exploded while he was working in a minefield after the Nicaraguan Revolution.

Photo: Getty Images/ICRC/S.Liste



Treaties restricting the use of, or prohibiting certain weapons

Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction, 1972

Australia Signature 10 April 1972; Ratification 5 October 1977

Prohibits State Parties from developing, producing, stockpiling or otherwise acquiring or retaining:

1. microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
2. weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

Australia has two pieces of relevant domestic law addressing the obligations contained within this convention – the *Crimes (Biological Weapons) Act 1976 (Cth)* and the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*. The 1976 Act deems it unlawful to develop, produce, stockpile, retain or acquire certain biological agents, toxins and biological weapons. The 1995 legislation prohibits the supplying or exporting of goods or services for weapons of mass destruction programs.

RAAF Explosive Ordnance Disposal personnel relocate a World War II 500-pound bomb for destruction at a beach on the island of Espiritu Santo, Vanuatu during Operation Render Safe, 2015. Photo: © Department of Defence



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, 1980 and amended in 2001

Australia Signature 8 April 1982; Ratification 29 September 1983 and Acceded to the amendment on 3 December 2002

Establishes the framework for the protocols prohibiting the use of certain weapons. There are currently five protocols under this Convention.

Protocol I: Protocol on non-detectable fragments, 1980

Australia Signature 8 April 1982; Ratification 29 September 1983

Prohibits the use of weapons that injure by fragments that cannot be detected by X-rays.

Protocol II: Protocol on prohibitions or restrictions on the use of mines, booby-traps and other devices, 1980 and amended in 1996

Australia Signature 8 April 1982; Ratification 29 September 1983 and Acceded to amendment on 22 August 1997

Prohibits the use of mines, booby-traps and other devices against the civilian population and restricts their use against military targets. The amended Protocol further extends the prohibition of those devices and extends its scope to internal conflicts.

Protocol III: Protocol on prohibitions or restrictions on the use of incendiary weapons, 1980

Australia Signature 8 April 1982; Ratification 29 September 1983

Prohibits the use of incendiary weapons against civilians and civilian objects and restricts their use against military targets.

Protocol IV: Protocol on blinding laser weapons, 1995

Australia Signature 22 August 1997; Ratification 22 August 1997

Prohibits the use of laser weapons that are specifically designed to cause permanent blindness.

Protocol V: Protocol on explosive remnants of war, 2003

Australia Acceded 4 January 2007

Allocates responsibility for explosive remnants of war and facilitates the marking and clearance, removal or destruction of explosive remnants of war such as unexploded artillery shells, mortar shells, hand grenades, cluster munitions, bombs and similar weapons which are often found after the end of active hostilities.

Although Australia has signed and ratified the Conventional Weapons Convention and its five protocols, they are not the subject of dedicated implementing legislation.

Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, 1993

Australia Signature 13 January 1993; Ratification 6 May 1994 Bans chemical weapons.

Australia has enacted the *Chemical Weapons (Prohibition) Act 1994 (Cth)* which identifies a range of offences including the development, acquisition, stockpiling, transfer or use of chemical weapons.

Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction (Ottawa Convention), 1997

Australia Signature 3 December 1997; Ratification 14 January 1999 Bans anti-personnel mines (landmines).

The *Anti-Personnel Mines Convention Act 1998 (Cth)*, implements the Ottawa Convention and makes it an offence (punishable by 10 years imprisonment) to place, possess, develop, produce, acquire, stockpile or transfer these weapons, as well as to fail to deliver them up to the authorities for destruction or permanent deactivation.

Convention on Cluster Munitions (Oslo Convention), 2008

Australia Signature 3 December 2008; Ratification 8 October 2012 Prohibits the use, production, stockpiling, and development of cluster munitions that cause severe structural damage, injury, loss and death to civilian populations during armed conflict.

Through the *Criminal Code Amendment (Cluster Munitions Prohibition) Act 2012*, Australia banned the use, promotion, supply or development of cluster munitions, which, like landmines, fail to distinguish between combatants and civilians. The penalty for any violation of the Act is 10 years imprisonment.

Arms Trade Treaty, 2013

Australia Signature 3 June 2013; Ratification 3 June 2014 Creates common international standards for the transfer of conventional arms and includes prohibitions when there is a defined risk that war crimes or serious violations of international human rights laws will occur.

This treaty does not specifically ban a particular weapon; it regulates the international trade of arms to countries engaged in armed conflict where the use of the weapons has a foreseeable risk of contributing to violations of IHL. *The Arms Trade Treaty* entered into force on 24 December 2014 and is given domestic legal effect in Australia through amendments to, amongst other laws, the *Customs Act 1901 (Cth)*.



Treaties on the protection of certain objects and the natural environment

Convention for the protection of cultural property in the event of armed conflict, 1954

Australia Signature 14 May 1954; Ratification 19 September 1984

Protects movable and immovable property such as monuments of architecture, art or history, works of art, manuscripts, archaeological sites, collections of books, archives, scientific material and other objects of artistic, historical or archaeological interest and the buildings intended to preserve or exhibit these. Requires that States safeguard cultural property within their own territory during peacetime including by prohibiting and preventing theft, misappropriation and vandalism. During armed conflict States are to respect cultural property within their own territory as well as within the territory of others and refrain from directing acts of hostility against cultural property.

Protocol for the protection of cultural property in the event of armed conflict, 1954

Australia has not yet acceded to this protocol.

Provides for the prevention of the export of cultural property from occupied territory, and for the safeguarding and return of such property

Second Protocol for the protection of cultural property in the event of armed conflict, 1999

Australia has not yet acceded to this protocol but a number of its provisions are addressed by the Criminal Code and the Protection of Movable Cultural Heritage Act makes it an offence to import foreign cultural material that was illegally exported from its country of origin.

Creates a new category of 'enhanced protection', strengthens the repression of violations and applies also to internal conflicts.

The 2016 Review of the Protection of Cultural Heritage Act supports the adoption of both Protocols.

Convention on the prohibition of military or any other hostile use of environmental modification techniques, 1976

Australia Signature 31 May 1978; Ratification 7 September 1984

Prohibits the military or any other hostile use, as a weapon of war, of environmental or geophysical modification techniques having widespread, lasting or severe effects.



Treaty enforcement mechanisms

Statute of the International Criminal Court (Rome Statute), 1998 and amended in 2010

Australia Signature 9 December 1998; Ratification 1 July 2002

Establishes a permanent international criminal court with jurisdiction for the crime of genocide, war crimes, crimes against humanity and for the crime of aggression. The crime of aggression was defined by the States Parties in Kampala in 2010, but the Court's jurisdiction over this crime will not commence until 2017.

Following ratification of the Rome Statute, the introduction of the *International Criminal Court (Consequential Amendments) Act 2002* provided for amendment to the *Criminal Code Act 1995*, to allow for domestic prosecution of a broad range of war crimes, including acts committed in non-international armed conflict. The ICC does not have retrospective jurisdiction, meaning that the Court can only prosecute crimes committed after 1 July 2002; the domestic legal infrastructure implementing the Rome Statute covers only such crimes. However, the Geneva Conventions Act 1957 would still apply to war crimes committed before 2002 but only in international armed conflicts.

Two amendments to the Rome Statute were introduced following the review conference of the States Parties in 2010. The first extended the criminalisation of the use of certain weapons during non-international armed conflict, where they were prohibited in international conflicts. The second amendment defined the crime of aggression and will not have effect prior to 2017.

Australia has not yet acceded to either amendment.







Credits

The first edition of this handbook was prepared by Australian Red Cross in 2008. The handbook draws significantly on 'Respect for International Humanitarian Law - Handbook for Parliamentarians' which was prepared and published by the International Committee of the Red Cross and the Inter-Parliamentary Union in 1999. Australian Red Cross expresses its continued appreciation to those bodies.

We would also like to thank the Office of International Law at the Attorney-General's Department for its advice and input during the drafting of this edition and for continuing to support the Australian Red Cross International Humanitarian Law program through projects such as this publication.

This guide is dedicated to Ms Bev Patterson whose extraordinary 24 years of service to the Australian Red Cross International Humanitarian Law program between 1991 and 2015 included significant contributions to this handbook.

ADF medic Private Lee Attwood tends to the injured ankle of a village elder prior to a series of meetings in Uruzgan province, Afghanistan. December 2011.

Photo: © Department of Defence

Glossary/acronyms

IHL	International Humanitarian Law
ICRC	International Committee of the Red Cross
The Federation	International Federation of the Red Cross and Red Crescent Societies
The Movement	The International Red Cross and Red Crescent Movement
National Societies	190 National Red Cross and Red Crescent Societies, such as Australian Red Cross Society
Fundamental Principles	Guiding principles of the International Red Cross and Red Crescent Movement (see page 51)
ICC	International Criminal Court
NGO	Non-governmental organisation
Emblem	Red cross, red crescent or red crystal
Humanitarian agencies	United Nations, NGO and Red Cross/Red Crescent
1949 Geneva Conventions	The four universally accepted international treaties containing laws for the protection of certain individuals during times of armed conflict
1977 Additional Protocols	Two international treaties expanding the terms of the 1949 Geneva Conventions
2005 Additional Protocol	International treaty creating the third protective emblem of the Movement, the red crystal

Further information on the internet

Australian Red Cross	www.redcross.org.au/ihl
International Committee of the Red Cross	www.icrc.org
International Federation of the Red Cross	www.ifrc.org
International Criminal Court	www.icc-cpi.int

Australian Red Cross is part of the International Red Cross and Red Crescent Movement

The Movement has millions of committed members and volunteers worldwide, making it the largest global humanitarian network.

The Movement consists of three components: the International Committee of the Red Cross (ICRC) with a focus upon assisting during times of armed conflict; 190 Red Cross and Red Crescent National Societies (such as Australian Red Cross) providing humanitarian services to people in their own countries and internationally; and the International Federation of Red Cross and Red Crescent Societies (Federation) which co-ordinates the assistance provided by National Societies during times of natural disasters.

The ICRC, the Federation and all National Societies are guided in their work by seven Fundamental Principles. These were adopted over 50 years ago in 1965 and in 1991 the first three were recognised by the UN as core principles for all humanitarian responses:

Humanity

The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality

In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence

The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service

It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity

There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality

The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.

How can I become a supporter?

Red Cross relies on committed volunteers, members and donors.

You can support Red Cross by:

- 1 *giving* monthly, leaving a bequest in your will or making a one-off donation;
- 2 *visiting* your local Red Cross store;
- 3 *donating* blood.

redcross.org.au or call **1800 811 700**

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