

The International Humanitarian Law Handbook for Australian Government Officials





Battle of Solferino, 1859. © INTERFOTO/Alamy.

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Foreword

Why do Government Officials need to know about IHL? *Because even wars have limits*

At the heart of international humanitarian law (IHL) is a simple and compelling idea: even wars have limits.

To be effective however these limits must be well understood by public servants, in particular policy-makers, legislators, law-enforcement officers and diplomats. Today, this basic but important idea is no less vital than it was at its inception more than one and half centuries ago. It is intended that this Handbook will contribute to a greater knowledge of IHL among Australian diplomats and public officials and encourage respect for 'the laws of war'.



Improvised ambulance during World War I in Nassfeld, Austria, 1915.
© ICRC/BIBLIOTHÈQUE NATIONALE, VIENNE.

Red Cross and IHL

In order to apply IHL, it is useful for government officials to understand the intrinsic historical connection between IHL and the establishment of the International Red Cross and Red Crescent Movement (hereafter, the Movement). When a young Swiss banker named Henry Dunant witnessed the aftermath of a bloody battle in Solferino, Italy in 1859, as many as 40,000 soldiers were dead or lay dying on the battlefield without medical attention. Dunant responded by organising local volunteers, under the banner “tutti fratelli” – we are all brothers – to treat their wounds, feed and comfort them, regardless of whether they were friend or foe. On his return to Geneva, he published a memoir proposing two ideas that rapidly gained currency. One was the creation of neutral 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 aiding the wounded on the battlefield.

Both innovations quickly bore fruit. In 1863, Dunant and others established a relief society for injured soldiers, the precursor to the modern-day International Committee of the Red Cross. The next year, legal rules, 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 for care for the wounded; defined medical services on the battlefield as neutral; and established the red cross emblem as a protective symbol.

Since then, IHL has continued to innovate and develop: the four updated Geneva Conventions of 1949 and later Additional Protocols regulate how wars can be fought and give the Movement specific roles that it is legally entitled to perform. The three emblems used today (the red cross, crescent and crystal) are regulated under international and domestic law and universally recognised as symbols which signify protection for certain places and people including hospitals, chaplains and medics.

Starting with this introductory guide, Australian Red Cross encourages our public officials to become champions of this life-affirming and life-saving regime. We stand ready to offer our further assistance in promoting these laws in peacetime and operationalising them in conflict. We call on you to ensure IHL is adequately implemented and enforced.



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Training government soldiers in the rules of war. Nurse attached to the infantry, picking up a wounded person from the opposite camp in East Sudan, 2005. © ICRC/Louis Virginie.

Chapter 1

Introduction to IHL

1.1 What is International Humanitarian Law?

IHL (also known as ‘laws of war’ or ‘law of armed conflict’) is a unique branch of international law which governs the conduct of hostilities and seeks to limit the harmful effects of armed conflict on people and objects. IHL requires that parties to an armed conflict protect certain categories of people and objects and restrict their methods and means of warfare. It consists of practical rules conceived out of the bitter experience of warfare. These rules strike a careful compromise between two principles: humanity and military necessity.



Rest home for ex-servicemen during World War I in Victoria, Australia, 1914–1918.
© ICRC/CR Australie.

IHL is found in international laws known as treaties or conventions as well as in customary law (these are rules which develop over time as a result of repeated State practice so common and accepted that they become international law).

The core IHL treaties containing the key principles of IHL are: the four *Geneva Conventions of 1949*, their three Additional Protocols and the *Hague Convention of 1899 and 1907*. 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 and brief description of the subject matter covered by the Geneva Conventions, Additional Protocols and core IHL treaties is provided on page 41–50.

IHL applies only in situations of armed conflict. Armed conflict is a legal term and there are two major types:

- international armed conflict (traditionally called ‘war’), which occurs when fighting breaks out between two or more States; and
- non-international armed conflict (often called ‘internal armed conflict’ or ‘civil war’) which is a situation when acts of violence occur regularly between the State military and other organised armed groups or between non-State armed groups. A single riot or violent political protest would not amount to a non-international armed conflict. Instead, the conflict must reach a minimum intensity of violence and the armed groups involved must have a minimum degree of organisation.

The classification of the conflict is highly relevant because IHL has a different set of rules depending upon whether the armed conflict being fought is international or non-international in character. 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 of the fight, need to be equally well-protected regardless of the character of the conflict.

IHL protects people who are not, or no longer, taking part in the fighting, such as civilians, wounded fighters, the sick, prisoners of war, detainees and 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 and places that are non-military in nature 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 which are indiscriminate. Indiscriminate attacks are those which cannot be directed at a specific military objective, or attacks which have effects that cannot be limited, such that they may strike military objectives and civilians or civilian objects without distinction. IHL does not allow the use of weapons that cause superfluous injury or unnecessary suffering, such as land mines and chemical weapons, and prohibits tactics that cause severe or long-term damage to the environment.

IHL regulates the conduct of parties engaged in an armed conflict, whether that conflict is international (between two or more States) or 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, the legality of the conflict or who started the fighting. IHL does not regulate the conditions under which States may resort to war or the legitimacy of the use of armed force; that is the domain of the United Nations Charter.



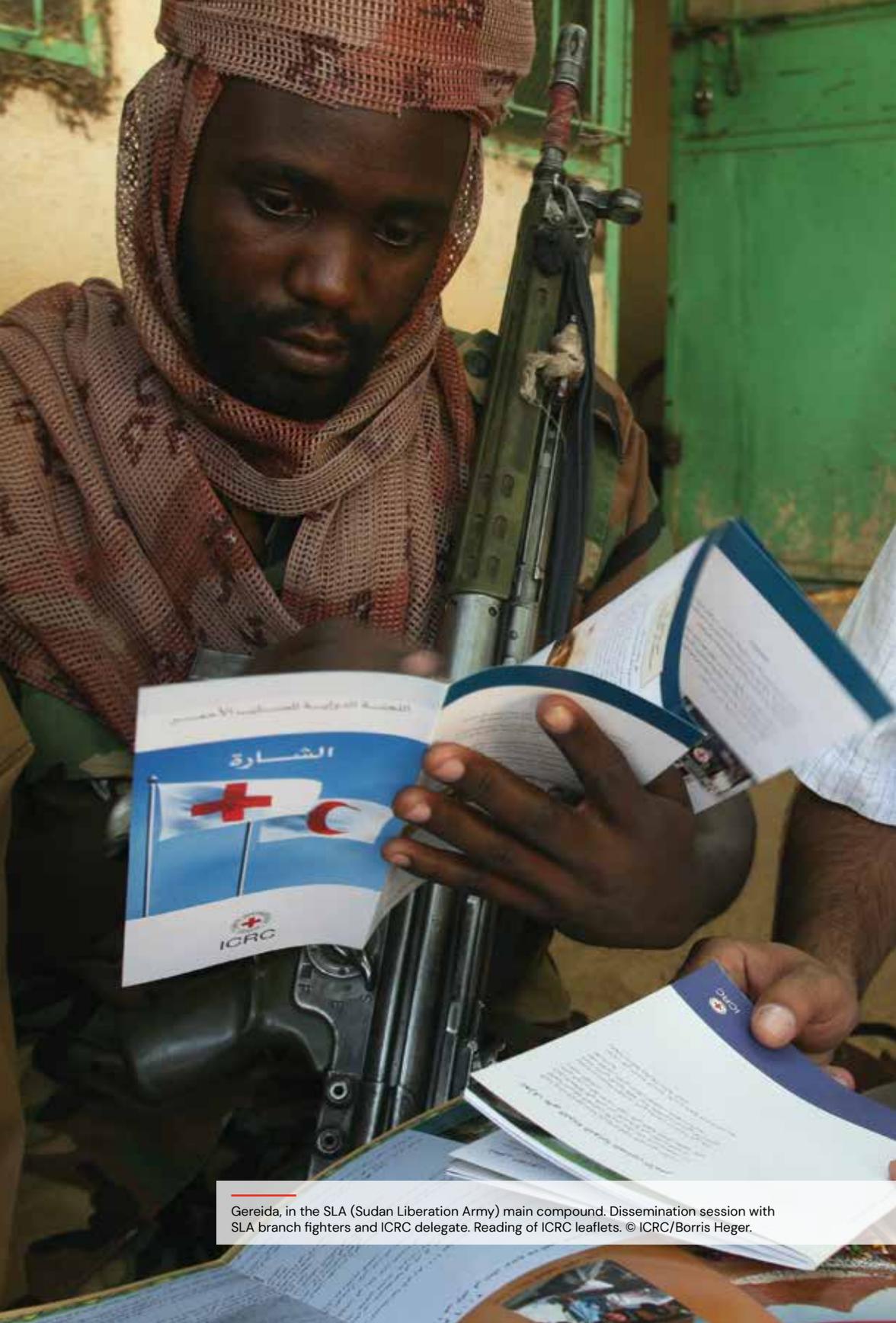
A warning sign in front of a collecting point for defused unexploded munitions in South Lebanon, 2006.
© ICRC/U. Meissner



Militaries of the Congolese army during a training session given by the ICRC on international humanitarian law in Kinshasa, Democratic Republic of the Congo, 2020.
© ICRC/Kevin Kaela



With support from the Libyan Red Crescent, the ICRC had begun a maritime transfer of people separated from their families by the conflict in Libya, 2011.
© ICRC/Ahmed Ruhayen.



Gereida, in the SLA (Sudan Liberation Army) main compound. Dissemination session with SLA branch fighters and ICRC delegate. Reading of ICRC leaflets. © ICRC/Borris Heger.

1.2 What are the Basic Rules of IHL?

Distinction

Parties to a conflict must distinguish between civilians and combatants in order to spare the civilian population and civilian property. Civilians are entitled to respect for their lives and for their physical and moral integrity and must be protected and treated with humanity. Attacks may be made only against military objectives.

Proportionality

Attacks against combatants or military objectives must comply with the proportionality rule. Any attack that is likely to cause incidental loss of civilian life, injury to civilians, and/or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated is prohibited. This means an advance assessment must be conducted that supports the conclusion that civilian losses are not expected to outweigh the foreseen military advantage.

Precautions

Parties to conflict must take constant care to spare civilians and civilian objects when carrying out operations. An attacking party must take all feasible measures to ensure that the targets are military objectives. Effective warning must be given of attacks that may affect the civilian population, unless circumstances do not permit. Parties to a conflict must also take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of an attack, e.g. military objectives must not be situated in the vicinity of civilian populations.

Unnecessary Suffering

The use of weapons, projectiles or methods of warfare that are likely to cause superfluous injury or unnecessary suffering is prohibited. This prohibition is directed specifically to the protection of combatants. Certain weapons are forbidden because they harm combatants in unacceptable ways. This rule is widely accepted although there is disagreement about the correct way to determine whether weapons cause such injury. In recent years, specific treaty regimes have prohibited the use of weapons which cause superfluous injury and unnecessary suffering, including land mines, chemical weapons and blinding lasers.

1.3 Why Government Officials Need to Know about IHL

All UN Member States, as State Parties to the four Geneva Conventions, have legal obligations during peacetime and in armed conflict to “respect and ensure respect for IHL” and to educate their armed forces and the general population about the rules of IHL under the four Geneva Conventions and their Additional Protocols.

In Australia, Australian Red Cross, with support from the Australian Government, disseminates IHL in peacetime to key stakeholder groups such as humanitarians, the medical sector, Australian businesses with operations in conflict-affected countries, and the general population while the Australian Defence Force takes primary responsibility for educating the armed forces. This prepares the Australian population to understand and respect the rules of IHL in the event of an armed conflict.

The Government engages actively with Red Cross on the development, implementation and dissemination of IHL in Australia. Since 1977, the formal mechanism for this dialogue has been the National IHL Committee. The Committee, whose membership comprises senior representatives from the Department of Defence, the Attorney-General’s Department and the Department of Foreign Affairs and Trade and Australian Red Cross, meets quarterly. Its mandate includes promoting dialogue and cooperation between Australian Red Cross and the Government on IHL principles, obligations and implementation, and considering the implications of contemporary developments in IHL.

Senior officials from DFAT, Defence and AGD with then CEO of Australian Red Cross and staff at the launch of the IHL Handbook for Parliamentarians at Parliament House, 2017.



1.4 States' Specific Obligations under IHL

The duty to implement IHL is primarily that of States, which have an unambiguous obligation to adopt a number of legal and practical measures to ensure full compliance with this body of law. These measures need to be taken by various government agencies including relevant ministries, the legislature, the courts, and the armed forces.

The Geneva Conventions and their Additional Protocols require that States take the following measures to ensure that the rules of IHL are fully respected:

1. to spread knowledge of the rules of IHL as widely as possible, both within the armed forces and the general population;
2. to suppress all IHL violations;
3. to adopt criminal legislation to punish those guilty of committing serious violations that are considered war crimes;
4. to ensure that persons, property and places specifically protected by the law are properly identified and marked in peacetime in preparation for any armed conflict, and preserved from harm;
5. to adopt measures to prevent the misuse of the red cross, the red crescent, the red crystal and other emblems and signs (e.g. the cultural property emblem);
6. to ensure that protected persons benefit from judicial and other fundamental guarantees during armed conflict;
7. to appoint and train persons qualified in IHL to facilitate the application of IHL, including to ensure the presence of legal advisers within the armed forces;
8. to provide for the establishment and/or regulation of:
 - National Red Cross and Red Crescent Societies and other voluntary aid societies,
 - civil defence organisations,
 - national information bureaux;
9. to take IHL into account when selecting military sites and in studying, developing, acquiring and adopting new weapons, means and methods of warfare;
10. to provide for the establishment of hospital zones, neutralized zones and demilitarized zones.





Medics from the Polish Red Cross work in a reception centre for refugees fleeing the armed conflict in Ukraine, in Przemysl, Poland 2022. © WHO/Noor Images/Kasia Strek.

1.5 What is the relevance of IHL to Australia?

Australia has been actively involved in a range of armed conflicts 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. In the Australian context, DFAT (International Law Branch), the Attorney-General's Department (Office of International Law) and Defence (Defence Legal) are engaged in providing advice on IHL. This area of international law must also be taken into account in decisions relating to the development, acquisition and use of specific weapons.

It is not only members of the ADF who may be deployed to conflict zones, but also representatives from the Australian Federal Police, government departments (such as DFAT), journalists and members of Australia's humanitarian sector (such as NGOs). Increasingly Australian businesses, particularly in the resources sector, are 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.

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 that the International Red Cross and Red Crescent Movement (Movement) plays in providing protection and assistance during periods 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 systems to implement it must be in place before the outbreak

of conflict. When conflict appears likely, it is often too late to begin providing instruction and there are a number of preventative measures which must be initiated during times of peace to ensure compliance is possible when IHL is needed. Preventative measures include the dissemination of IHL to the general population, the training of defence force personnel and the integration of international standards into domestic law and policy.



The President of the ICRC, Peter Maurer, delivering a speech during the Humanitarian Forum organised by the Australian Red Cross in Sydney, Australia, 2013. © ICRC/Isaac Gribberg

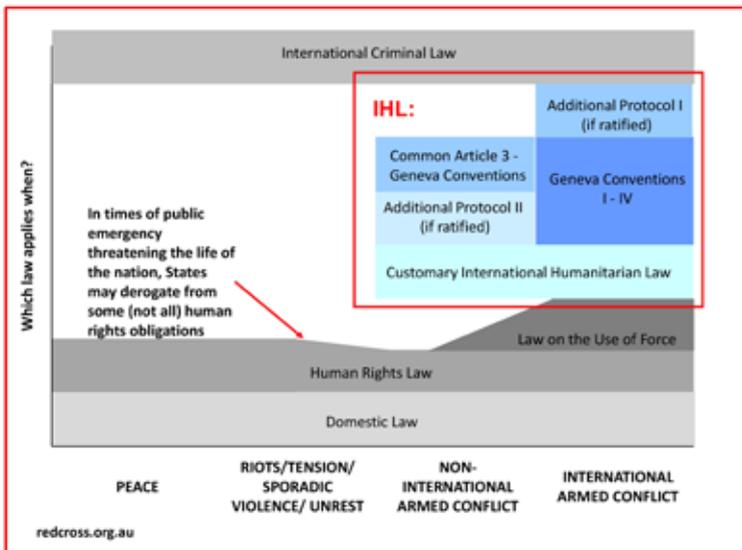
1.6 What is the relationship between IHL and human rights?

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. The principles of IHL and international human rights law have developed separately in treaties and customary international law.

IHL applies exclusively to times of armed conflict, both international and non-international, and is intended to minimise human suffering 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 and belong to every person as a consequence of being human. However, some human rights may be temporarily derogated (suspended) by governments in situations of public emergency, such as civil unrest. Unlike human rights law, no element of IHL can be suspended as this area of law was created for the specific situation of 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 which 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 lies first and foremost with States and both areas of law often require governments to implement international legal obligations domestically.



1.7 How IHL regulates detention in armed conflict

Beyond the general protection provided for those not taking part in armed conflict, IHL provides specific protection for those who are deprived of their liberty. The protections vary according to the classification of the conflict (international or non-international) and the status of the detained person. IHL regulates the treatment of detainees, the conditions of detention, provides for the right to a fair trial and sets out the grounds and process for detention. Together with international human rights law, IHL provides protections against unlawful and arbitrary detention.

Prisoners of War (POWs)

The Third Geneva Convention protects combatants when they become POWs, setting out their rights and the rules governing their treatment and release from detention in international armed conflict. The detention of POWs is not punishment but a means to prevent their participation in the conflict. At the cessation of active hostilities, POWs must be released and repatriated without delay, unless they are subject to criminal proceedings or are serving a criminal sentence. POWs must be treated humanely in all circumstances. IHL protects them from acts of violence, intimidation, insults and public curiosity. Minimum conditions of detention address accommodation, food, clothing, hygiene, medical care and the right to exchange news with their families.

Prisoners of war must be humanely treated and protected against violence and intimidation – Cambodia, 1995. © ICRC/Thomas Pizer.





Opening of a field hospital at Al Hol camp for internally displaced persons in North East Syria.
© ICRC/Mari Aftret Mortvedt.

Medical and religious personnel

The First and Second Geneva Conventions govern the detention of medical and religious personnel in international armed conflict.

Civilians

The Fourth Geneva Convention and Additional Protocol I govern the internment of civilians in international armed conflict. Internment constitutes the severest 'measures of control' that may be taken by a party to an armed conflict with respect to civilians. It is a security measure and may not be used as a form of punishment. Internees must be released once the reasons that necessitated internment cease to exist.

Non-international armed conflict

While non-international armed conflict is the more common form of contemporary conflict, the legal regime that applies to its conduct is much less developed than its international counterpart and remains contested. For this reason, the International Committee of the Red Cross (ICRC) has been encouraging the further development of the law in this area. However, it is settled law that common Article 3 of the Geneva Conventions and Additional Protocol II require that persons deprived of their liberty in connection with a non-international armed conflict be treated humanely in all circumstances.

This includes being afforded fair trials and fundamental guarantees, such as the prohibition against violence to the life and minimum safeguards to ensure the health and well-being of detained persons. This binds all parties to a conflict, whether they are States or organised non-State armed groups. This regime is especially important because there is no prisoner of war status in non-international armed conflicts.

1.8 How IHL regulates certain weapons

The ICRC weapon contamination team and the Libyan Red Crescent staff count unexploded ordnances they have collected in Sirte, Libya, 2012.
© ICRC/Xiangqun Hu.



Parties to a conflict and members of their armed forces do not have an unlimited choice of methods and means of warfare. 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 are not capable of complying with the obligation to **distinguish between civilians and combatants or those which inflict superfluous injury or unnecessary suffering upon combatants**. The use of weapons which cause widespread, long-term and severe damage to the natural environment is also prohibited.

Categories of weapons that have been deemed heinous, or otherwise have effects which could cause superfluous injury or unnecessary suffering, are either prohibited or heavily regulated. Over the years specific treaties have been created which prohibit or restrict the use of such weapons including in relation to biological, chemical and incendiary weapons and blinding lasers.

Ordnance examples used in ICRC explosive ordnance recognition training course, Interlaken, Switzerland, 2018.
© ICRC/Chloé Perceval.



1.9 What happens when IHL is violated?

States party to IHL treaties are legally bound to comply with the rules and undertake 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 of the Geneva Conventions and must be punished. IHL also requires States to search for persons accused of grave breaches, regardless of where they 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 by their subordinates and to take measures to punish those under their control who commit grave breaches.

As well as domestic prosecutions, the international community has established a number of international tribunals, which aim 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 hybrid 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 pursuant to the *Rome Statute* with the goal of ending impunity for the perpetrators of the most serious crimes of international concern. It is the first permanent body that has jurisdiction over serious international crimes, including war crimes (whether committed in an international or non-international armed conflict), genocide, crimes against humanity and the crime of 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 have jurisdiction when a State is unwilling or unable to prosecute those accused of serious international crimes within their jurisdiction. A State will usually have jurisdiction over an accused person if the accused is a national of that State or the criminal act occurred on the territory of that particular State.

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)*.



Australia presiding over the first session of the UN Security Council in January 1946.

1.10 What is the UN Security Council's Role in Relation to IHL?

Under the UN Charter, the UN Security Council (UNSC) has primary responsibility for the maintenance of international peace and security including during situations of armed conflict. In this role, the UNSC can adopt resolutions authorising the use of military force and, on the other hand, calling on military forces to cease conducting hostilities. These types of resolutions are generally considered as legally binding on all Member States of the UN. The UNSC also adopts resolutions and holds special meetings to encourage States and non-State actors to uphold IHL, and to highlight different aspects of IHL that are not being respected. In addition, UNSC resolutions can provide clarity on particular issues in IHL – for example, UNSC Resolutions 2139 and 2165 (both adopted in 2014) recognise that starvation of a population in a non-international armed conflict is prohibited under international humanitarian law.

The UN General Assembly (UNGA) has also reaffirmed the importance of IHL in numerous resolutions. The UNGA regularly adopts resolutions calling on States to implement and respect IHL and since 1982 has adopted biannual resolutions on the status of the Additional Protocols to the 1949 Geneva Conventions. While UNGA resolutions are not legally binding, they help to raise awareness of important issues.



Some of the key UNSC resolutions on IHL include:

UNSC Resolution 1261/1999: Protection of children in armed conflict

UNSC Resolution 1269/1999: Responsibility of the Security Council in the maintenance of international peace and security (including protection of civilians in armed conflict)

UNSC Resolution 1325/2000: Women, Peace and Security (includes ensuring protection of women in armed conflict and their participation in relevant decision-making processes including peace negotiations)

UNSC Resolution 1366/2001: Role of the Security Council in the prevention of armed conflicts (inter alia, the Security Council invites the Secretary-General to refer cases of violations of IHL and potential conflict situations to the Council, in order to contribute to better conflict prevention)

UNSC Resolution 1502/2003: Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones

UNSC Resolution 1820/2008: Women, Peace and Security (condemns the use of sexual violence as a tool of war)

UNSC Resolutions 2139, 2165 and 2191 (2014): Middle East (call for protection of civilians and ensuring humanitarian access in Syria)

UNSC Resolution 2150/2014: Threats to international peace and security (calls for prevention and combating of genocide and other serious crimes under international law)

UNSC Resolution 2175/2014: Protection of civilians in armed conflict (focuses on protection of humanitarian personnel and United Nations personnel)

UNSC Resolution 2222/2015: Protection of civilians in armed conflict (focuses on protection of journalists, media professionals and associated personnel)

UNSC Resolution 2286/2016: Protection of civilians in armed conflict (focuses on protection of the wounded and sick, medical personnel and humanitarian personnel exclusively engaged in medical duties, their means of transport and equipment, as well as hospitals and medical facilities)

UNSC Resolution 2347/2017: Protection of cultural property in armed conflict (calls for strengthening of domestic legislative and investigative frameworks)

Spotlight on Australia's role on the UNSC



Then Foreign Minister Julie Bishop speaking at UN headquarters in New York in March 2018. © UN/Manuel Elias.

While a member of the UNSC in 2013–2014, Australia put the need to protect civilians and establish humanitarian responses to conflicts at the forefront of decision making by the Council. For example, it arranged for the UNSC to be briefed regularly on the humanitarian and human rights dimensions of the conflict in Syria, including its devastating impact on the civilian population. This led to a series of agreements on the need for enhanced humanitarian access and better protection of civilians including a Presidential Statement adopted in October 2013 and UNSC Resolutions 2139, 2165 and 2191 adopted in 2014. UNSC Resolution 2165 enabled UN agencies to deliver humanitarian assistance across borders without the consent of the Syrian authorities – the first resolution of its kind.

In 2016, Australia co-sponsored UNSC Resolution 2286 on the 'Protection of Civilians in Armed Conflict', which condemns attacks on medical personnel and infrastructure and calls for compliance with the applicable rules of international humanitarian law. During the UNSC Open Debate on the Protection of Civilians Australia joined a Group of Friends statement to reconfirm that "all those who are engaged exclusively in medical work must be respected and protected". This work complements the Government's work with the Movement as a diplomatic partner on the Healthcare in Danger campaign to better protect medical workers, patients and facilities in armed conflict.

1.11 IHL and Humanitarian Action in Conflict

State parties to the Geneva Conventions and its Additional Protocols recognise the right of civilians who are caught in an armed conflict to receive humanitarian assistance that is independent, impartial and neutral in character.

In an international armed conflict, this includes the right of free passage of items necessary to the survival of the civilian population and the obligation of occupying powers to ensure essential supplies or relief from outside sources. Additional Protocol I further specifies that impartial humanitarian relief should be accepted by parties to the conflict. In a non-international armed conflict, relief actions that are exclusively humanitarian and impartial in nature should be permitted, subject to the consent of the State concerned (except in situations of occupation).

In practice, the ability of humanitarian organisations to provide assistance varies considerably, depending on the nature of the conflict and the ability of the organisations to negotiate access with States and armed actors. While humanitarian personnel have specific protections under IHL, these provisions are frequently ignored in contemporary armed conflicts. This severely restricts the access of humanitarian organisations and the ability of civilians to receive the assistance and protection to which they are legally entitled.

When providing assistance and protection to civilians in situations of armed conflict the Australian Government regularly works with humanitarian partners including the ICRC, the World Food Programme, UN agencies such as the United Nations High Commissioner for Refugees (UNHCR), Australian and foreign NGOs, and Australian Red Cross.



Humanitarian aid is delivered by Syrian Arab Red Crescent volunteers to the suburbs of Damascus.
May, 2015. © IFRC/I. Malla.

1.12 The importance of working with stakeholders

It is useful to acknowledge relevant IHL rights and obligations when liaising with stakeholders, not just during a crisis, but also in day-to-day interactions with the military, civil society, local government and international organisations as IHL treaties require States to take measures to promote awareness of IHL.

It is also important that the wider community understands and supports the limitations on the use of military power which IHL imposes so that they may hold States to account.

IHL protects not only people, but also objects, including cultural property, which could include places of worship, works of art and historic monuments, recognising the importance that such objects have to communities as part of their history and cultural identity. **When working with civil society and local government in the context of aid or public diplomacy activities, an additional outcome of supporting such projects could be spreading awareness and strengthening respect for IHL**, particularly in regions where armed conflicts exist, as well as during periods immediately following armed conflict.

Interactions with civil society international organisations, including United Nations' agencies, offer a useful opportunity to exchange views on IHL. Often the work of international organisations may intersect with relevant IHL issues, so it is important to be aware of the key civil society organisations that work on issues of relevance to IHL, and to make early calls to establish lines of contact. If IHL issues do arise, having these relationships will assist in exchanging information and views on developments on the ground.



Representatives from WFP, UNHCR, UN OCHR and the Australian Red Cross at Talisman Sabre, Enoggera Barracks, Brisbane, 2015. © ARC.

1.13 The Special Relationship between IHL and the International Red Cross and Red Crescent Movement

From its 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 vision of the same person – Henry Dunant. In his treatise, *A Memory of Solferino*, Dunant called for the formation of a non-aligned volunteer organisation as well as laws to mitigate suffering in battle.

Beyond the historical relationship, the most important IHL treaties – the 1949 Geneva Conventions and their Additional Protocols – contain numerous provisions that give elements of the Movement specific roles they are legally entitled to perform during times of armed conflict. For example, under IHL, the ICRC has the *right to visit prisoners of war during an international armed conflict*, and *National Societies (such as Australian Red Cross) 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 with a legal mandate to assist victims during times of armed conflict.

The highest deliberative body of the Movement, the International Conference, includes all three elements of the Movement and all States, like Australia, which are party to the Geneva Conventions. Typically, the Australian delegation to the International Conference includes representatives from the Departments of Foreign Affairs and Trade, Defence and Attorney-General.



International Conference Resolutions and Pledges:

Resolutions are joint commitments to advance humanitarian action agreed between the Movement and States party to the Geneva Conventions at International Conferences of the Red Cross Red Crescent Movement. In addition, participants at the International Conference such as the Australian government and Australian Red Cross, can pledge, bilaterally or multilaterally, 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.



A team of ICRC and Syrian Arab Red Crescent cross a front line in Aleppo, Syria, 2015. © ICRC/S.N.

Resolutions and statements from this important Conference have identified the ICRC as the ‘guardians and promoters’ of IHL and require National Societies, such as Australian Red Cross, to disseminate and educate the public and particular interest groups about the significance of IHL. These commitments build upon the obligations and responsibilities that governments have granted National Societies in the 1949 Geneva Conventions and the 1977 Additional Protocols. Additional information on the next International Conference can be found at <https://rcrcconference.org/>.

National Societies of the Movement have been established since 1864. Australian Red Cross began as a branch of the British Red Cross on 13 August 1914, following 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 “a voluntary aid society, 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.

National Societies are not considered NGOs 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. They therefore have an affiliation with the national government.

Convention

pour l'amélioration du sort des Militaires
blessés dans les armées en campagne.

La Confédération Suisse, Son Al-
tesse Royale le Grand Duc de Bade, Sa
Majesté le Roi des Belges, Sa Majesté le Roi
de Danemark, Sa Majesté le Roi d'Espagne, Sa
Majesté l'Empereur des Français, Son Altesse
Royale le Grand Duc de Saxe, Sa Majesté le
Roi de Sardaigne, Sa Majesté le Roi des Pays-Bas,
Sa Majesté le Roi de Portugal, et des Algarves,
Sa Majesté le Roi de Prusse, Sa Majesté le Roi
de Wurtemberg, également unanis de leur plein et
entier accord, les uns inséparables de la guerre,
de supprimer les rigueurs inutiles et d'améliorer le sort
des militaires blessés sur les champs de bataille, ont résolu
de conclure une Convention à cet effet et ont nommé pour
leurs Plénipotentiaires, savoir:

La Confédération Suisse:
le Sieur Guillaume Henri Dufour, Grand
Officier de l'Ordre Impérial de la Légion

1864-GENÈVE

1864

Secondly, its auxiliary role means that it has a unique, though distinctly independent relationship with national, state and local public authorities, working at all times in accordance with the Movement's Fundamental Principles. This particular role is important when National Societies, such as Australian Red Cross, disseminate IHL and in their work during emergencies and national disasters. Recently created guidelines on international disaster response law specifically mention the critical role of National Societies of the Movement.

Thirdly, National Societies are not NGOs 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, in Australia the *Geneva Conventions Act* 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. Similar legislation or delegated authority is provided to other National Societies.

Through 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 promote the implementation of IHL within their own countries by discussing and supporting the adoption of relevant instruments, commenting on draft legislation, explaining to legislators and the public the need to implement IHL by adapting national legislation, raising awareness of protection of the emblems, monitoring use of the emblems, reporting misuses of the emblem to the relevant government authority and taking part in military training and exercises. 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.

Chapter 2

The Movement and its role in War



Australian Red Cross visiting a camp hospital during World War II, 1939–1945. © ICRC/CR Australie.

2.1 What is the International Red Cross and Red Crescent Movement?

The International Red Cross and Red Crescent Movement is a global humanitarian network of roughly 80 million people that helps those facing disaster, conflict and health and social problems.

Red Cross People include volunteers, members, supporters and staff spanning almost every country and territory in the world. It has three main components:

- The International Committee of the Red Cross (ICRC)
- The International Federation of Red Cross and Red Crescent Societies (IFRC or the Federation)
- 192 member Red Cross and Red Crescent Societies (National Societies)

All three components of the Movement are governed by its Statutes and Regulations (Statutes of the International Red Cross and Red Crescent Movement adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995 and 2006). They are connected through mandatory adherence to the seven Fundamental Principles.

The Movement's guiding principle is Humanity. It supports communities to become stronger and safer through development projects, disaster preparedness and response and humanitarian activities delivered in peacetime and during armed conflict.

The Principles of 'Impartiality' and 'Neutrality' require the Movement to not discriminate in its work and not take sides in controversies of any kind. The Movement is also Independent however it works in cooperation with governments, public authorities, donors, other humanitarian organisations and the private sector to assist vulnerable people around the world.

Governments are critical partners in addressing humanitarian needs. While they are not members of the Movement, as state parties to the universally ratified Geneva Conventions, they too work towards prosecuting the humanitarian agenda of the Movement, for example through the National IHL Committee and at the International Conference of the Red Cross and Red Crescent. At these conferences, held every four years in Geneva, global humanitarian priorities are identified, and significant bilateral and multilateral commitments are made between the Movement and governments that may shape the government's engagement with the National Society or ICRC in their territory.

Representatives of Commonwealth governments, National Societies and ICRC gathered at the Fourth Commonwealth IHL Conference, hosted by Australian Red Cross, the Australian Government and ICRC in Canberra, July 2015 © ICRC/Mark Graham.



2.2 What are the roles of the different elements of the Red Cross?

The International Committee of the Red Cross (ICRC), the International Federation of Red Cross Red Crescent Societies (IFRC) and National Societies are independent bodies. Each has its own individual status and exercises no authority over the others. However, they have agreed mechanisms for ensuring their actions are well coordinated and fit a common policy framework.

ICRC

The ICRC is an impartial, neutral and independent organisation. Its exclusively humanitarian mission is to protect the lives and dignity of victims of war and other situations of violence and to provide them with assistance.

During situations of conflict, the ICRC is responsible for directing and coordinating the Movement's international relief activities. It also promotes the importance of international humanitarian law and draws attention to universal humanitarian principles.

As the custodian of the Geneva Conventions, the ICRC has a permanent mandate under international law to speak with all sides of a conflict to advocate respect for the rules of war; call for the protection of civilians; ensure aid reaches those in need, including by facilitating and supporting the humanitarian work of Movement members in line with the provisions of the law; visit prisons, organise relief operations, reunite separated families and undertake other humanitarian activities during armed conflicts. The ICRC also works to meet the needs of internally displaced people, raise public awareness of the dangers of mines and explosive remnants of war, and trace people who have gone missing during conflicts.

The ICRC's headquarters are in Geneva, Switzerland, and the organisation has more than 20,000 staff in 100 countries around the globe. A number of the ICRC's operational activities are carried out in cooperation with National Societies.



Badakhshan, Faizabad.
View of the city from an
ICRC vehicle.
© ICRC/ SAMIMI, Masoud.

The Federation

The Federation or the IFRC is a global humanitarian organisation with the status of an international organisation in the UN system.

It currently has 192 member National Societies. Each recognises the constitutional authority of the Federation's Governing Board to set policy in agreed humanitarian fields, and to support cooperation between National Societies and with other institutions. The primary role of the Federation is to coordinate and direct international assistance following natural and human-made disasters in non-conflict situations. Its mission is to improve the lives of vulnerable people by mobilising the power of humanity.

The Federation works with National Societies to respond to catastrophes around the world. Its relief operations are combined with development work, including disaster preparedness programs, health and care activities, and the promotion of humanitarian values. It supports programs on risk reduction and fighting the spread of communicable diseases, such as HIV, tuberculosis, influenza and malaria.



IFRC staff work alongside Australian Government personnel and members of the Indonesian defence force to unload aid delivery, Sulawesi. © ICRC.

The organisation also works to combat discrimination and violence, promote humanitarian principles and values, and provide assistance to migrants. Through its UN observer status, it is, at the multilateral level acknowledged in the international community as the representative of the interests of National Societies.

National Societies

National Red Cross and Red Crescent Societies exist in 192 countries, embodying the work and principles of the International Red Cross and Red Crescent Movement. National Societies rely heavily on volunteers, particularly at the community level, to perform their humanitarian and development work.

A National Society is neither part of a government department, entity of the State nor a non-governmental organisation (NGO). From its inception, a National Society has a different status and relationship referred to as an “auxiliary” role with its government and public authorities, and in the UN system has a specially reserved status not accorded to NGOs.

Before a State’s National Society can become part of the Movement, ten conditions need to be met in accordance with the Statutes of the Movement. The first is that the State must have agreed to be bound by the 1949 Geneva Conventions. A State must then legally recognise the National Society in domestic law and all National Societies act as auxiliaries to the public authorities of their own countries in the humanitarian field. The Australian Red Cross Society is one of the 192 societies operating worldwide. It was recognised as a National Society in 1927 and incorporated by *Royal Charter* in 1941. The role and status of National Societies is discussed further below.

Sydney, Opera House, 2013. Red cross and red crescent symbols formed by volunteers of the Australian Red Cross during the Council of Delegates. © CR Australie/S.N.



2.3 What is the 'auxiliary role'?

The auxiliary role of the Red Cross is a term used to describe the specific and distinctive partnership a National Society should have with public authorities in providing humanitarian services. Through this independent and auxiliary role, National Societies and States negotiate clearly defined roles and responsibilities in providing risk reduction and disaster management activities; health and social programs; the promotion of IHL and International Disaster Response Law; and humanitarian values. In times of armed conflict, National Societies are mandated to carry out their humanitarian activities in accordance with the Movement's Fundamental Principles, including to assist the affected civilian population and support the armed forces' medical services where appropriate.

This specific auxiliary relationship is recognised in the Statutes of the Movement and is reflected in domestic legal systems. It is one of the major distinguishing features that sets the Movement apart from the UN, NGOs and other organisations that provide humanitarian services.

The practical implications of the auxiliary role differ from country to country, however the common thread is that National Societies are reliable partners for national and local public authorities, and have a strong capacity to mobilise human and material resources at the community level.

This unique relationship with government does not imply that the government directs the work of a National Society. When a government legally recognises the National Society, it also acknowledges that the Society will operate in accordance with the Fundamental Principles.

The Fundamental Principle of 'Independence' is very clear: 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. Directions for the different types of work to be carried out by National Societies come from the International Conferences, General Assembly, Council of Delegates, Movement strategy documents and the internal decisions of National Societies themselves about how best to address the needs of their own communities.

In conclusion, auxiliary status is a balanced relationship with reciprocal responsibilities and mutual benefits. There is a need for strong dialogue between a National Society, its government and public authorities at all levels to ensure that each other's needs and limitations are understood.



Iran, March 2021. Volunteers and staff from the Iran Red Crescent Society (IRCS) are deployed to land and air borders to screen arrivals and refer people with suspected COVID-19 to medical centers. In line with its auxiliary role to public authorities IRCS is playing a central role in the country's pandemic response. © IRCS.

2.4 The protective emblems of the red cross, red crescent and red crystal

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!'



The Red Cross, Red Crescent and Red Crystal Emblems - ICRC 2007. © Fédération/Jorge Perez.

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)* (Geneva Conventions Act). Any use of the emblems without the authorisation of the Minister for Defence is a criminal offence under section 15 of this legislation. This internationally mandated protection is distinct from intellectual property rights: copyright law does not apply and the emblem, or a design including the emblem, cannot be registered as a trademark.

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 signals that protection must be provided in situations where the red cross or the red crescent emblems may not be considered impartial.

In 2006, Australia introduced amendments to the *Geneva Conventions Act 1957 (Cth)* and the *Criminal Code Act 1995 (Cth)* to protect the red crystal as a third emblem of protection. As such all three protective emblems have the same legal status and afford the same protections.

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 peacetime 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 accordance with the *Geneva Conventions Act*. The emblem is used as part of the Australian Red Cross logo and not applied prominently on buildings or vehicles as this would signify protective use reserved only for situations of armed conflict.

National Societies are mandated to cooperate with their Governments to promote awareness and protect the emblems. As such, Australian Red Cross and the Department of Defence work collaboratively to educate and inform the Australian public and members of the ADF of the protected status of the emblems and the permitted uses.

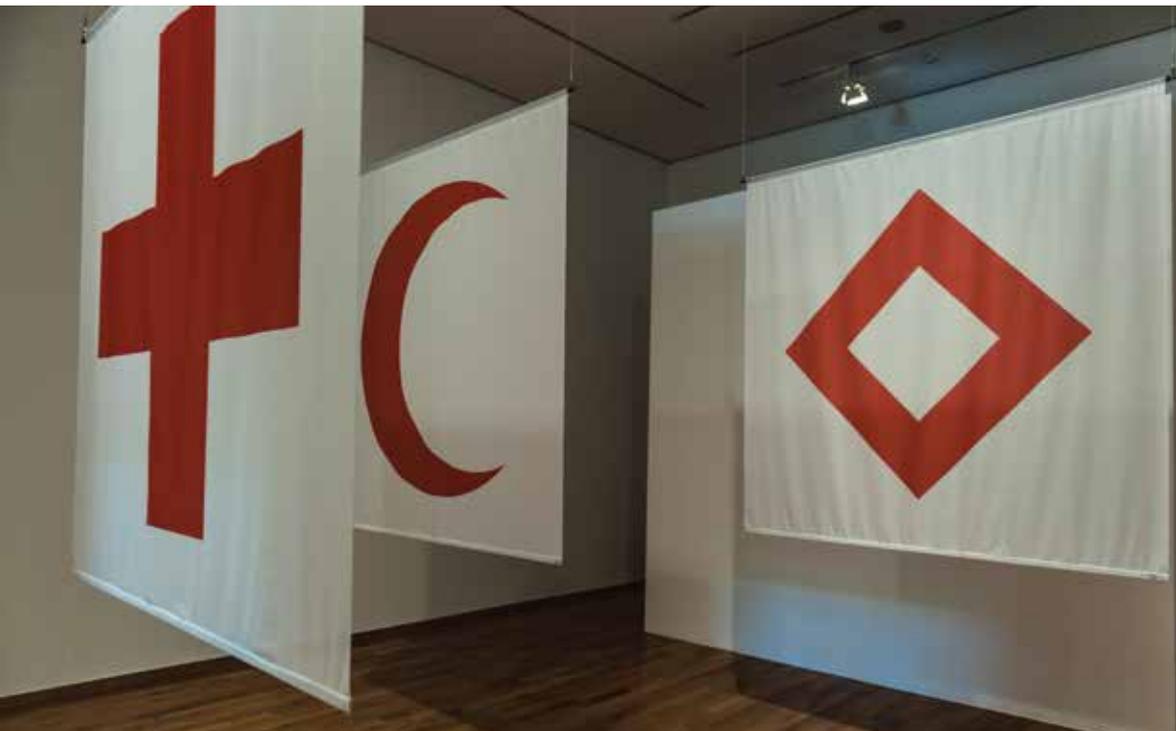
In Australia, hospitals and street signs pointing to hospitals should use a white cross on a blue background, not the red cross. First aid stations and first aid kits should be marked with a white cross on a green background, not the red cross. The intention is simple – to keep the red cross apart and 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.

Any Australian person or corporation wishing to use the emblem must receive the prior consent of the Minister for Defence. The vast majority of requests for consent under the Act are received by the Defence Department either as a result of the work of the Australian Red Cross or as a result of an attempt to register a trademark. Where the proposed use of the emblem, designate, image or wording covered by the Act is consistent with the requirements of the Conventions or Protocol I, it is recommended that the Minister for Defence give consent. It is ultimately a matter for the Minister to determine whether or not consent is provided. Abuse of the emblems is a strict liability offence that carries a penalty of 10 penalty units.

Where there are concerns with the proposed use of the emblem, or “red cross” wording, the Department of Defence engages with the applicant to inform and educate on the concerns with the proposed use and the requirements of the Act, Conventions and Protocol I. Where appropriate, the Department of Defence will seek the assistance or views of the Australian Red Cross (in respect of emblems, other than the Heraldic Emblem of the Swiss Confederation). Where the emblem or image relates to the Heraldic Emblem of the Swiss Confederation, the Department of Defence may take into consideration trademarks registered in Switzerland or consult with the Swiss Embassy in Australia to inform its recommendation to the Minister for Defence.

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 numerous companies who misuse the emblem each year. 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. Under the *Geneva Conventions Act* a prosecution for misuse of emblem may be instituted with the written consent of the Attorney-General.

It is in the interests of all Australians, military and civilian, to ensure the emblems’ protective status in situations of armed conflict is understood and respected in Australia. Any suspected misuses of the emblem in Australia, including those online, should be reported via email to Australian Red Cross.





A boy gets humanitarian aid for his family during the huge Movement response in East Kesweh, Syria. © IFRC/Ibrahim Malla.

Chapter 3

Overview of Key IHL Treaties and Enforcement

The four Geneva Conventions have been universally ratified, that is by all States worldwide, and their Additional Protocols widely adopted, these form the backbone of IHL. In addition to the treaty law, rules of customary international law have evolved as a result of repeated State practice in the belief that such practice is legally required. These rules help to fill gaps in the treaty law particularly with respect to conduct in non-international armed conflicts. The ICRC publishes a useful database of customary law rules of IHL which is regularly updated, it can be found at <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>.

Australia has ratified most treaties relating to IHL and has in place many laws that incorporate the international obligations assumed under these treaties into domestic law. These are outlined below.



3.1 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.



Note on the implementation of the Geneva Conventions

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 (Cth)*

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.



Cluster munitions still intact in their cases, which failed to explode in Phonsavan, Xieng Khouang province, Laos, 2008.
© ICRC/Jim Holmes.

3.2 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 (Cth)*. 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.

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 (Conventional Weapons Convention)

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.

Australia has signed and ratified the Conventional Weapons Convention and its five protocols. Although these are not the subject of dedicated implementing legislation, Australia's compliance with the provisions of the Convention and its protocols is ensured through relevant whole-of-Government policy, including comprehensive reporting procedures.

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

Prohibits the development, stockpiling and use of chemical weapons for States parties to the Convention.

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

Prohibits anti-personnel mines (landmines) for those States that are party to the Convention.

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 (Cth)*, 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.

The Australian Government formally ratified the Arms Trade Treaty in 2014.



Arms Trade Treaty, 2013

Australia Signature 3 June 2013

Ratification 3 June 2014

Creates common international standards for the transfer of conventional arms and related items. This includes prohibitions in certain circumstances, such as where the items would be used in the commission of war crimes. The Arms Trade Treaty also requires States Parties not to authorise exports of conventional arms or related items if, despite any possible risk mitigation measures, there is an overriding risk of certain negative consequences, such as the items being used to commit or facilitate a serious violation of IHL or international human rights law, as applicable.

The treaty does not specifically ban a particular weapon; it regulates the international trade of conventional arms and related items. It entered into force on 24 December 2014 and is given domestic legal effect in Australia through, amongst other laws, the *Customs Act 1901 (Cth)*.

Treaty on the Non-Proliferation of Nuclear Weapons, 1968

Australia Signature 27 February 1970

Ratification 23 January 1973

The Treaty commits State Parties to nuclear non-proliferation, nuclear disarmament, and peaceful uses of nuclear energy. The Treaty also establishes a safeguards system under the responsibility of the International Atomic Energy Agency.

Treaty on the Prohibition of Nuclear Weapons, 2017

Entered into force 22 January 2021

Australia is not a signatory (current as at May 2022)

Prohibits the development, testing, production, manufacture, acquisition, possession, transfer, use or threat of use and stationing of nuclear weapons or other nuclear explosive devices, or assisting other States to do so.

The treaty requires State parties to declare whether it owns, possesses or controls nuclear weapons, then, if applicable, commit to de-commissioning and destroying them, enter a safeguard agreement with the International Atomic Energy Agency and submit to verification procedures. It also includes provisions on victim assistance and environmental remediation.

3.3 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 by, for example, refraining 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 (current as at May 2022)

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 (current as at May 2022) but a number of its provisions are addressed by the Criminal Code and the Protection of Movable Cultural Heritage Act 1986 (Cth) which makes it an offence to import foreign cultural material that was illegally exported from its country of origin.

The Treaty creates a new category of 'enhanced protection' for cultural property of the greatest importance for humanity, strengthens the repression of violations, and also extends its application to non-international armed conflicts.

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.



The cultural property emblem in front of the city of Tyre, Lebanon, 2007. © ICRC / Marko Kocic.

3.4 Treaty enforcement mechanisms

Statute of the International Criminal Court (Rome Statute), 1998

Australia Signature 9 December 1998

Ratification 1 July 2002

Establishes a permanent international criminal court with jurisdiction for the crime of genocide, war crimes and crimes against humanity.

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. However, *Australia's Geneva Conventions Act 1957* still applies to war crimes committed before 2002 committed in international armed conflicts.

Amendments to the Rome Statute 2010

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 over which the Court has had jurisdiction from 17 July 2018.

Australia has not yet ratified or accepted either amendment.

Non-Violence, or the Knotted Gun, a sculpture by Carl Fredrik Reuterswärd.



Epilogue:

Introduction to International Disaster Response Law

International Disaster Law is not part of IHL (which operates only in times of armed conflict), but is complementary to it and increasingly relevant for Government Officials as Australia regularly supports national response efforts to disasters, particularly in our region.



Above: The Red Cross Society of China responding to Typhoon Lekima in Zhejiang, China, 2019. © RCSC.

Left: Australian Red Cross is providing urgent humanitarian support to the communities affected by the NSW and QLD floods in 2022. © ARC.



A Japanese Red Cross Society volunteer taking care of children after the Great Kantō earthquake in Honshū, Japan, 1923. © Japanese Red Cross.



Goods distribution to drought-affected children in Kenya 2006. © Kenya Red Cross Society.



Australian Aid is delivered to Fiji following Cyclone Pam, 2015. © NZRC/Hanna Butler.

4.1 What is IDRL?

As natural hazards increase in frequency and intensity, the need for strong, inclusive and well implemented disaster laws are key to an effective disaster management system that limits their impact. Disaster Law (often referred to as International Disaster Response Law or IDRL), refers to the laws and regulations, which address the roles and responsibilities required to manage and respond to disasters, minimise the impact of disasters and reduce disaster risks.

Most countries have some form of disaster management system underpinned by one or more laws. These establish institutions, mandates, policies and procedures to support the disaster management cycle, namely: prepare and mitigate; respond effectively and efficiently to reduce loss of life, personal injury and economic impacts; and support recovery and reconstruction.

Disaster management laws and regulations are primarily a national concern, and can be guided at regional and international levels – particularly regarding inputs on international assistance, climate change action, urbanisation and sustainable development. Experience shows that without the appropriate legal instruments to deal with disaster response, authorities can be overwhelmed by relief operations and vital aid can be delayed.

There is no binding international treaty regulating disaster risk management, nor any clear rules of customary international law. There are some non-binding international agreements (such as the *Sendai Framework for Disaster Reduction 2015 – 2030* and *Good Humanitarian Donorship*) and regional agreements in place (such as the *ASEAN Agreement on Disaster Management and Emergency Relief*) regulating and guiding regional coordination on disaster response within ASEAN member states. There are also a number of soft law guides such as *UNGA Resolution 46/182* and *World Customs Organization Resolution of the Customs Co-operation Council on the Role of Customs in Natural Disaster Relief*, as well as the *Federation IDRL Guidelines* that can provide useful guidance. There is also a body of voluntary guidelines governing humanitarian action between humanitarian actors and disaster-affected people, such as the *Core Humanitarian Standard*, *Sphere Handbook Humanitarian Charter and Minimum Standards in Humanitarian Response* and the *Code of Conduct for the RCRC Movement and NGOs in Disaster Relief*.



Australian Red Cross volunteer providing psychosocial support in the wake of the Australian Bushfires in Victoria, Australia, January 2020. © ARC.

4.2 What is the Movement's mandate in IDRL?

As a global humanitarian network of community-based, volunteer-driven National Societies, the Federation and its membership have a unique perspective on disaster law. Since 2001, the Federation has had a program of research and consultation to support members in providing advice and support to their authorities. Following extensive consultations with governments, National Societies, international organisations and NGOs, the Federation drafted the *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (IDRL Guidelines). While not legally binding, they were agreed upon by all States at the 30th International Conference of the Red Cross and Red Crescent in 2007, which Australia endorsed.

The IDRL Guidelines are designed to assist States to strengthen their own laws, policies and procedures as they relate to international and national disaster response. In 2011 the Federation, together with the UN Office for Coordination of Humanitarian Affairs (OCHA) and the Inter-Parliamentary Union (IPU), developed a pilot *Model Act for the Facilitation and Regulation of International Disaster Assistance* to provide further support to States in implementing the IDRL Guidelines.

States and the Movement have committed themselves through resolutions of the International Conferences to work in partnership to promote stronger and more effective disaster management laws.

The IFRC Disaster Law Programme assists National Societies to support their authorities in developing and applying state-of-the-art disaster-related legislation, policies and procedures. The disaster law work of IFRC operates on an international mandate provided by all State parties to the Geneva Conventions.

National Societies, like the Australian Red Cross, play an integral part in preparing for, responding to and recovering from natural disasters as part of its auxiliary role. In Australia, this involves Australian Red Cross engaging in activities ranging from recruiting and training emergency service volunteers; managing evacuation centres; undertaking outreach visits to affected communities; actively contributing to government emergency management planning and policy; and running the National Registration and Inquiry System for evacuees and people enquiring about family and friends.

There are also a number of examples in recent years when joint appeals between all levels of government and Australian Red Cross resulted in overwhelming public response to emergencies such as bush fires and floods. At times when there is the greatest need, Australian Red Cross is able to provide its extensive network of volunteers, its long standing reputation as well as its domestic and international experience of dealing with disasters.

4.3 What is the relevance of IDRL for Australia?

Australia regularly supports national response efforts following international large-scale disasters, particularly in the Indo-Pacific region. Government officials need to ensure the following factors are considered as part of an Australian response to a disaster overseas:

Existence of domestic disaster risk management law, and whether it provides for:

- Offer and acceptance of international assistance (including how and when offers are received, and notice is given);
- Immigration and Customs procedures – including expedited processes in times of disasters;
- Recognition of international professional qualifications and registration of licenses (including drivers' licenses);
- Liability procedures for international responders in the affected country;
- Coordination procedures to ensure complementary efforts and to avoid duplication;
- Possible avenues for dialogue on rules, roles and responsibilities with relevant government ministries; and
- The role of disaster risk management law and policy frameworks in community resilience initiatives.



**Australian
Red Cross**


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For further information

<https://www.redcross.org.au/ihl-courses>

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Cover photo:

Lebanon, 1983. Ambulance damaged in cross-fire during fighting between Israeli and Palestinian forces.

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