

# ICRC Advisory Service

## Implementing IHL in Small States Overcoming Obstacles

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Port Vila, Vanuatu

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# Presentation Overview

- ▶ 1. ICRC Mission and IHL
- ▶ 2. ICRC Advisory Service
- ▶ 3. Database on IHL National Implementation
- ▶ 4. National Committees on IHL
- ▶ 5. New Developments
- ▶ 6. Practical suggestions for Small States



# 1. ICRC Overview

## Mission Statement:

- ▶ **The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance.**
- ▶ It directs and coordinates the international relief activities conducted by the Movement in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement.



## 2. ICRC Advisory Service Role and Objectives

### Role:

- ▶▶ To advise governments on all national measures necessary to ensure full implementation of their obligations under IHL

### Objectives:

- ▶▶ Ratification of IHL treaties (T)
- ▶▶ National implementation of obligations under these treaties (L)
- ▶▶ Promote this work through National Committees on IHL (C)



# ICRC Advisory Service Structure

The ICRC established the Advisory Service on International Humanitarian Law (IHL) in 1996 on the request of States, notably at the:

- 26<sup>th</sup> International Conference of the Red Cross and Red Crescent (December 1995)
- ▶ Part of the Legal Department of ICRC, consists of:
  - ▶▶ Legal Advisers
  - ▶▶ Documentation Centre and Database



# Advisory Service Publications

- ▶ Fact Sheets (covering over 30 issues)
- ▶ Ratification kits (for the principal treaties)
- ▶ Guidelines and Model Laws
- ▶ Biennial Reports
- ▶ Reports of Experts' Meetings
- ▶ Manual on National IHL Implementation (to come)



# Advisory Service Activities - Technical Assistance

- ▶ Studies of national law (compatibility studies)
- ▶ Country Fact Sheets
- ▶ Legal advice regarding implementation requirements
- ▶ Drafting assistance
- ▶ Translation of IHL treaties and documentation



# Advisory Service Activities

## Information Exchange

- ▶ Documentation on national implementation measures
- ▶ Database on national implementation measures (including publication on website)
- ▶ Collaboration with treaty bodies and similar institutions on implementation (eg ICC, UNESCO, UN DDA, GICHD, OPCW, OHCHR)





# Advisory Service

## Treaty Promotion – principal treaties

- ▶ **1949 Geneva Conventions and Three Additional Protocols**
- ▶ **1954 Cultural Protocol Convention and its 2 Protocols (1954 and 1999)**
- ▶ **1972 Biological Weapons Convention – BWC, and 1925 Geneva Protocol**
- ▶ **1976 Environmental Modification Convention**
- ▶ **1978 Geneva Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction – CWC**
- ▶ **1980 Conventional Weapons Convention ("CCW") and its 5 protocols (to 2004)**
- ▶ **1993 Chemical Weapons Convention – CWC**
- ▶ **1997 Anti-personnel Landmines Convention**
- ▶ **1998 ICC Statute**
- ▶ **2000 Child Soldiers Protocol, CRC**



# Model Laws

- ▶ Ottawa AP Legislation
- ▶ Geneva Conventions
- ▶ Emblem Legislation
- ▶ Commonwealth ICC Legislation
- ▶ BWC / 1925 Protocol legislation
- ▶ Chemical Weapons (OPCW)
- ▶ To come: CCW, HCP, ENMOD, Child Soldiers





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Kuala Lumpur

Toni Camen  
Mexico City

Robert Young  
Abidjan

Larry Maybee  
New Delhi

Jamie Williamson,  
Pretoria

Nicole Hogg  
Sydney

Delegations: 81  
Employees: 1,325  
National staff: 10,335

# THE ICRC AROUND the WORLD 2004

### 3. Database on IHL implementation

- ▶ [www.icrc.org](http://www.icrc.org)
- ▶ Then to National IHL Database on left-hand side



**ALL****GENERAL COMMENT****IMPLEMENTING  
LAWS &  
REGULATIONS**

by State

by keyword

**NATIONAL CASE LAW**

by State

by keyword

**NOTE**

This database provides documentation and commentaries concerning the implementation of international humanitarian law at the national level. The number of States included will steadily increase over time.

The content is drawn from information available to the ICRC Advisory Service on International Humanitarian Law. It illustrates possible approaches to incorporating IHL in national legislation but does not seek to provide a comprehensive picture of the situation.

English is used throughout the database (apart from official texts in French and Spanish, which appear in the original language).

Any comments on the database are welcome and should be sent to: International Committee of the red Cross

Advisory Service on IHL  
19, av. de la Paix  
CH-1202 Geneva  
Switzerland

e-mail:

[advisoryservice.gva@icrc.org](mailto:advisoryservice.gva@icrc.org)**AVERTISSEMENT**

Cette base de données contient des textes et des commentaires relatifs à la mise en œuvre nationale du droit international humanitaire. Le nombre d'États couverts augmentera progressivement.

Le contenu est fondé sur les informations dont disposent les Services consultatifs en droit international humanitaire du CICR. Il s'agit d'une illustration des différents aspects et possibilités de la mise en œuvre nationale de ce droit et non d'un état des lieux qui se voudrait exhaustif.

La langue utilisée est l'anglais (à l'exception des textes officiels en espagnol ou en français, qui figurent en version originale).

Toute remarque sur la base de données est la bienvenue et peut être adressée à:

Comité international de la Croix-Rouge  
Services consultatifs en DIH  
19, av. de la Paix  
CH-1202 Genève  
Suisse

e-mail:

[advisoryservice.gva@icrc.org](mailto:advisoryservice.gva@icrc.org)**NOTA**

Esta base de datos contiene textos y comentarios relativos a la aplicación del derecho internacional humanitario a nivel nacional. El número de Estados que abarca aumentará progresivamente.

El contenido se basa en las informaciones de que dispone el Servicio de Asesoramiento en Derecho Internacional Humanitario del CICR. Ilustra distintos aspectos y posibilidades de la incorporación de ese derecho en las legislaciones nacionales, sin pretender ser exhaustiva en la materia.

El idioma empleado es el inglés (con excepción de los textos oficiales en español y francés, que figuran en versión original).

Agradeceremos toda observación sobre esta base de datos, que rogamos envíen a:

Comité Internacional de la Cruz Roja  
Servicio de Asesoramiento en DIH  
19, av. de la Paix  
CH-1202 Ginebra  
Suiza

correo electrónico:

[advisoryservice.gva@icrc.org](mailto:advisoryservice.gva@icrc.org)

**▶ New Zealand****▶ Nicaragua****▶ Nigeria****▼ Norway**

- ▶ Constitution of the Kingdom of Norway, 1814 (extracts)
- ▶ General Penal Code, 1902 (extracts)
- ▶ Criminal Procedure Act, 1981 (extracts)
- ▶ Act No. 38 of 24 June 1994 relating to the incorporation into Norwegian law of the UN Security Council Regulation on the establishment of international tribunals for crimes committed in the former Yugoslavia and Rwanda
- ▶ Act No. 65 of 15 June 2001 relating to the implementation of the Statute of the International Criminal Court of 17 July 1998 (the Rome Statute) in Norwegian law
- ▶ Military Penal Code, 1902 (extracts)
- ▼ Act No. 10 of 6 May 1994 relating to the implementation of the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction
  - ▼ Introduction
    - Sect. 1 [Prohibited acts]
    - Sect. 2 [Privileges and immunities]
    - Sect. 3 [Inspections of locations]
    - Sect. 4 [Application of the Act to Svalbard, Jan Mayen, etc.]
    - Sect. 5 [Penalties]
    - Sect. 6 [Entry into force]
    - Regulations relating to the implementation of the Convention
  - ▶ Act No. 54 of 17 July 1998 relating to the implementation of the Convention on the prohibition of the use, stockpiling production and transfer of anti-personnel mines and on their destruction
  - ▶ Directive on assessments under international law of weapons and means and methods of warfare

**▶ Oman****▶ Panama****▶ Peru****▶ Philippines (the)****▶ Poland****▶ Republic of Korea (the)**

## 4. National Committees on IHL

- ▶ 82 Countries now have National Committees
- ▶ Made up of representatives from government ministries (eg defence, justice, foreign affairs, education, internal affairs, humanitarian orgs., media)
- ▶ Should include qualified legal personnel
- ▶ RC/RC national societies are typically members
- ▶ Other appropriate persons, eg from the academic community can be members as well
- ▶ Flexible structures



# Functions of an IHL National Committee

- ▶ Evaluating existing national law in the light of existing obligations under the Conventions
- ▶ Makes recommendations to improve regulation and legislation
- ▶ Dissemination activities
- ▶ Relations with armed forces
- ▶ Providing interpretation
- ▶ Emblem review





# New Developments

## ▶ **Not Covered Here**

- ▶ Third Protocol to the Geneva Conventions, and new model legislation
- ▶ ICC and their first trial
- ▶ Certain Conventional Weapons Convention and the Entry into Force of Protocol V
- ▶ Biological Weapons Convention law and 6<sup>th</sup> Review Conference

- ▶ **1. Cluster Munitions**
- ▶ **2. Direct Participation in Hostilities guidelines**
- ▶ **3. Renewal of UNSCR 1540**
- ▶ **4. Commonwealth IHL RC / RC Meeting August 2007**



# Cluster Munitions

- ▶ Oslo process
- ▶ Wellington, NZ one of the venues
- ▶ Target is a new instrument by end 2008



# Direct Participation in Hostilities

- ▶ On-going work for the past 5 years
- ▶ Trying to give guidance, clarification for the meaning of "direct participation in hostilities" (DPH)
- ▶ If you undertake DPH, you are targettable
- ▶ If not, you are not a target
- ▶ Not intended to be a new treaty
- ▶ Still being discussed internally
- ▶ Notions include – (1) act's consequences must adversely affect opposing military, (2) direct causal link needed between act and consequences, (3) act must be designed to bring consequences



# Renewal of UNSCR 1540 Committee

- ▶ In 2004, UN SCR 1540 required States to report on measures taken to punish and prevent non-State actors who developed, produced, transferred etc, biological, chemical and nuclear weapons
- ▶ In late April 2006, the UN Security Council adopted resolution 1673, which extended the work of the Committee for two years
- ▶ Adopted a report which gives an overview of the measures taken by the reporting States so far, including the adoption of penal legislation relating to these weapons.
- ▶ Useful for those involved in the development of Biological or Chemical weapons implementing legislation



# Commonwealth IHL Red Cross / Red Crescent Meeting

- ▶ August 2007, Wellington, NZ
- ▶ National Societies and government representatives from Commonwealth States to attend, follow-up from London 2003 and Nairobi 2005
- ▶ Focus will be on preparation for the 30<sup>th</sup> RC / RC Conference, including pledges made and to make



## 6. Small States, overcoming obstacles

- ▶ Smaller States often have fewer resources
- ▶ Number of reporting and implementation obligations is high
- ▶ Special imperative to not re-invent the wheel each time!
- ▶ Can rely on other States, IGOs, NGOs for assistance



# Practical suggestions on various IHL treaties

- ▶ 1949 Geneva Conventions – Grave breaches etc
  - ▶▶ Use model law: Kiribati, Tonga, Palau, RMI, FSM
- ▶ 1977 Protocols – grave breaches, etc
  - ▶▶ Use model law: FSM, Samoa, Solomon Islands, Tonga, Vanuatu



# Practical suggestions – IHL treaties

- ▶ Ottawa – use the model law, with reference to a few other jurisdictions (Possible states are Kiribati, Nauru, Cook Islands, Samoa, Solomon Islands)
- ▶ Biological weapons – use the ICRC / Vertic model law (Fiji, Solomon Islands, Tonga, Vanuatu)





# IHL treaties, implementation

- ▶ Chemical weapons – use the OPCW kit, they will assist you in this
- ▶ ICC – Fiji, Nauru, Samoa
- ▶ National IHL Committees (not a legal obligation, but we recommend it), all but NZ and Australia
- ▶ CCW and Environmental Modification Techniques, Cultural Property, Child Soldiers – models are coming



# The End

[www.icrc.org](http://www.icrc.org)

