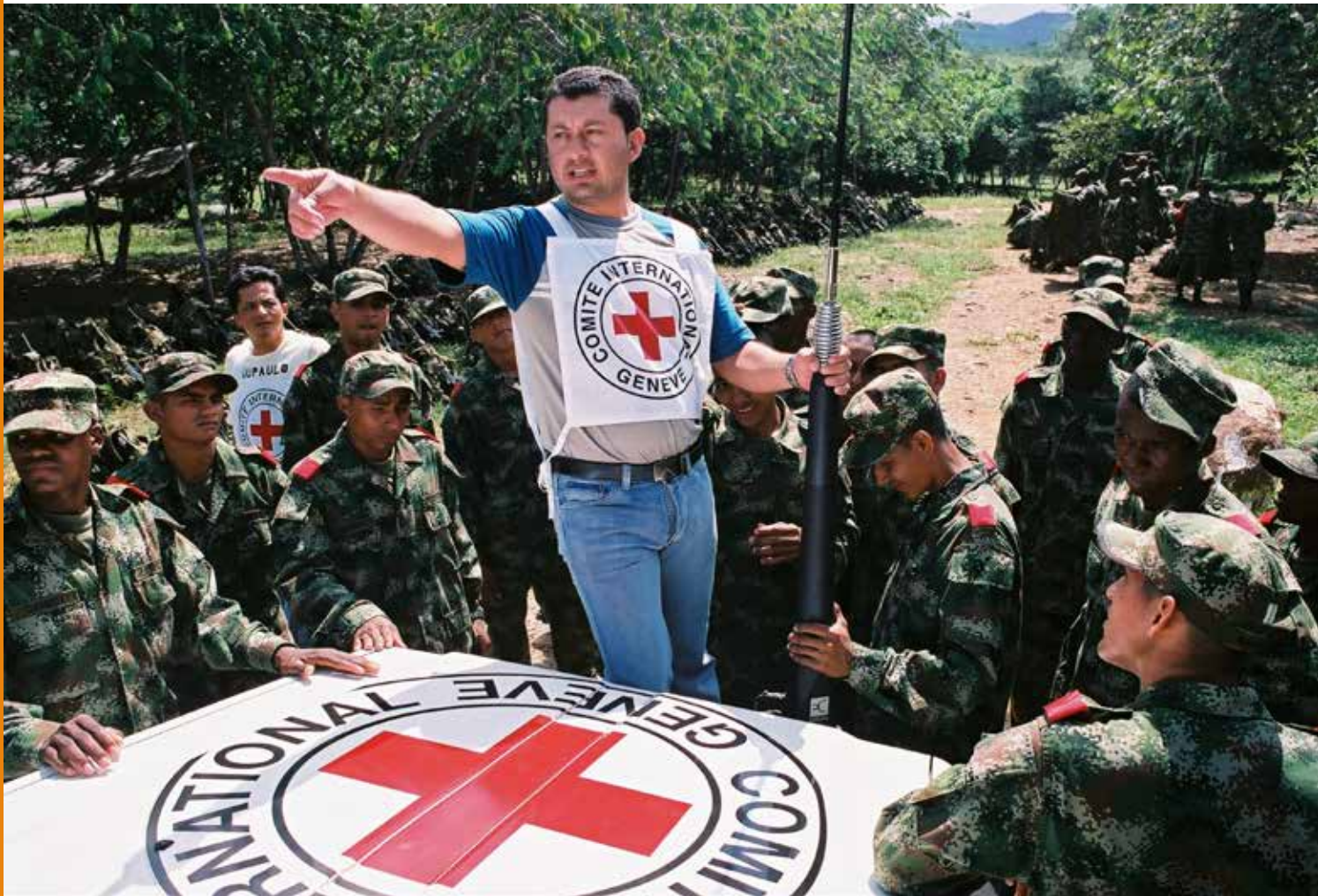


IMPLEMENTING INTERNATIONAL HUMANITARIAN LAW: FROM LAW TO ACTION



International humanitarian law (IHL) – also called the “law of war” or the “law of armed conflict” – sets out detailed rules that seek for humanitarian reasons to limit the effects of armed conflict. It protects those who are not, or are no longer, taking part in the fighting, and sets limits on the means and methods of warfare. IHL is a universal set of rules. It consists of international treaty and customary rules that are specifically meant to resolve humanitarian issues arising directly from armed conflict, both international and non-international. The 1949 Geneva Conventions and their Additional Protocols of 1977 and 2005 are its core treaties. The Geneva Conventions have been accepted by all States, and acceptance for the Additional Protocols is growing. These fundamental instruments are supplemented by various other treaties. Becoming party to these agreements is only a first step, but it is a vital one. Additional efforts are required to implement the rules contained in these instruments – to put the law into effect.

WHAT DO WE UNDERSTAND BY IMPLEMENTATION?

The term ‘implementation’ covers all the measures that must be taken to ensure that the rules of IHL are fully respected. It is not enough to apply these rules after the fighting has begun. There are measures that must be taken in both wartime and peacetime. These measures are necessary to ensure that:

- both civilians and military personnel are familiar with the rules of IHL;
- the structures, administrative arrangements and personnel required to ensure compliance with the law are in place;
- IHL is enforced;
- violations of IHL are prevented, and when they do occur, that perpetrators are punished.

WHO SHOULD IMPLEMENT 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 for ensuring full compliance with this body of law. These measures may need to be taken by one or more government ministries, the legislature, the courts, the armed forces, or other State agencies.

There may also be a role for professional and educational bodies, and for the National Red Cross or Red Crescent Society or other voluntary organizations.

Measures have also been taken at an international level to deal with serious violations of IHL. An International Fact-Finding Commission has been set up and States are encouraged to use its services. International criminal tribunals and other special courts have been set up to deal with serious violations committed in specific contexts of armed conflict. A permanent international criminal court, with jurisdiction over the most serious crimes, was created by the 1998 Rome Statute.

However, it is States that continue to bear primary responsibility for fully implementing the law; they must also adopt pertinent measures at a national level, including means to prosecute and punish perpetrators of serious violations of IHL.

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WHAT NEEDS TO BE DONE?

The 1949 Geneva Conventions and their Additional Protocols require the taking of a broad range of measures. These are among the most important ones:

1. to have the Conventions and their Additional Protocols translated into the national language(s) and communicate to other High Contracting Parties the official translations and any laws and regulations adopted to ensure their implementation;
2. to spread knowledge of their provisions as widely as possible, both within the armed forces and the general population;
3. to suppress all violations, and to adopt criminal legislation to punish those guilty of committing violations that are considered to be the most serious, known as “grave breaches” and regarded as war crimes;
4. to ensure that persons, property and places specifically protected by the law are properly identified and marked, 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 provided for in the Conventions and their Additional Protocols;
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 the Conventions and the Protocols, in particular 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 organizations,
 - 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.

The treaty provisions that might require such measures, or in fact do require them, are set out in the table below.

Other IHL-related treaties also require States Parties to adopt specific implementation measures.

Some of these measures require the adoption of legislation or regulations. Others require the development of educational programmes, the recruitment and/or training of personnel, the production of identity cards and other documents, the setting up of special structures, and the introduction of planning and administrative procedures.

All these measures are essential for ensuring effective implementation of the Geneva Conventions and their Additional Protocols, and of other relevant international instruments and customary IHL.¹

HOW CAN THIS BE DONE?

Assessments of existing law to identify gaps related to obligations deriving from IHL instruments, careful planning and regular consultations among different government agencies, the armed and security forces and civil society are crucial for ensuring the full implementation of IHL.

Many States have created a group of experts – often known as the national committee or commission on IHL – to facilitate implementation of IHL and coordinate activities in this area. They

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consist of representatives from government ministries, other State agencies, national organizations, professional bodies and others with responsibilities or expertise in the field of IHL and its implementation. In many instances, these entities act as an inter-ministerial and multidisciplinary advisory body on IHL-related issues for political and military authorities and decision-makers.²

In some countries, the National Red Cross or Red Crescent Society may also be able to offer assistance in such areas as implementing IHL and promoting knowledge of it.

At their request, the International Committee of the Red Cross, through its Advisory Service on IHL, provides advice and assists States in acceding to or ratifying relevant international instruments and in implementing them domestically. The Advisory Service can be contacted through the nearest ICRC delegation or at the address below.

Advisory Service on IHL
International Committee of the Red Cross
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Email GVA_advisoryservice@icrc.org

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¹ For more details on obligations arising from those treaties, see the pertinent technical documents, including factsheets on specific treaties, which can be found on the ICRC's website, at <https://www.icrc.org/en/war-and-law/ihl-domestic-law/national-committees>




² For more information on national IHL committees, please refer to the ICRC Advisory Service factsheet entitled <https://www.icrc.org/en/document/national-committees-implementation-international-humanitarian-law-o>

Key Articles of the 1949 Geneva Conventions and their Additional Protocols of 1977 and 2005 that require the adoption of specific national implementation measures

	1949 GENEVA CONVENTIONS				1977 ADDITIONAL PROTOCOLS		2005 ADDITIONAL PROTOCOL
	First	Second	Third	Fourth	I	II	III
Translation	48	49	41,128	99,145	84		
Dissemination and training	47	48	41,127	99,144	80, 82-83, 87	19	17
VIOLATIONS							
General provisions	49-54	50-53	129-132	146-149	85-91		6
War crimes	49-50	50-51	129-130	146-147	11, 85-90		
Compensation					91		
PROTECTION							
Fundamental guarantees	3, 12	3, 12	3, 13-17	3, 27-34	11, 75-77	4-5, 7	
Judicial and disciplinary guarantees; rights of prisoners and detainees	3	3	3, 5, 17, 82-90, 95-108, 129	3, 5, 31-35, 43, 64-78, 99-100, 117-126	44-45, 75	6	
Medical and religious personnel	40, 41	42		20	15-16, 18	10, 12	2, 5
Medical transports and facilities	19, 36, 39, 42-43	22, 24-27, 38-39, 41, 43		18, 21-22	12, 18, 21-23	12	
Cultural property					53	16	
Dangerous forces					56	15	
Identity cards	27, 40, 41, Annex II	42, Annex	17, Annex IV	20	18, 66-67, 78-79		
					Annexes I&II		
Capture and internment cards			70, Annex IV	106, Annex III			
Use/Misuse of emblems, signs or signals	44, 53-54	44-45			18, 37-38, 66, 85, Annex I	12	2, 3, 4, 6
EXPERTS AND ADVISERS							
Qualified persons					6		
Legal advisers					82		
ORGANIZATIONS							
National Societies	26			63	81	18	3
Civil defence				63	61-67		
Information bureaux			122-124	136-141			
Mixed medical commissions			112, Annex II				
MILITARY PLANNING							
Weapons / Tactics					36		
Military sites					57-58		
PROTECTED ZONES AND LOCALITIES	23, Annex I			14, 15	59-60, Annex I		

MISSION

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 armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

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