



# INTEGRATING THE LAW



ICRC



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# **INTEGRATING THE LAW**



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# INTRODUCTION

Today, a large number of arms carriers – armed forces, security forces, police forces, non-State armed groups and private military or security companies – use force in very diverse situations. These range from maintaining law and order during peacetime to highly lethal combat operations. Arms carriers also use force in the intermediary situations referred to as “internal violence,” “tensions” or “disturbances.”

Law enforcement or combat duties entail considerable powers, such as the power to search people or their property and to use force – including firearms – to prevent a deadly offence or to put people out of action by wounding or killing them. However, such powers go hand in hand with equivalent responsibilities. The use of force is therefore not unlimited and always occurs within a specific legal framework. At the international level, these rules and legal standards are enshrined in international humanitarian law (IHL) and international human rights law (IHRL).

Many authorities and arms carriers around the world have undertaken

major efforts to ensure compliance with the applicable law during operations and some have achieved good results. However, violations still occur and the need is felt to share experiences and best practices in this field to further enhance compliance.

The International Committee of the Red Cross (ICRC) has been mandated by the international community to protect and assist the victims of armed conflict and other situations of violence. It also strives to prevent suffering by promoting IHL and a relatively small but essential part of what is known as IHRL, namely certain fundamental rules protecting people in situations of violence.

This booklet draws together the lessons learned by the ICRC over the past few decades and aims to provide authorities and the most senior personnel among arms carriers with an overview of what we have come to call the “integration” process. This is the process of transposing legal rules into concrete mechanisms or measures to ensure compliance and adopting the means

required to achieve this end. Integration is a continuous process. It must address doctrine, education, training and equipment issues and be backed up by an effective system of sanctions.

The document is divided into three parts. The first presents the legal framework applicable to the use of force and the responsibilities of the highest political authorities regarding its implementation and dissemination. The second refers more specifically to arms carriers and addresses technical aspects related to integrating the relevant law into doctrine, education, training and equipment, plus the crucial role that sanctions play. The third part discusses the ICRC's relationship with international law and the ways in which the organization can actively support efforts to promote lawful behaviour.

The booklet refers mainly to States and their responsibilities. However, the process and the main concepts and conclusions can be extended by analogy to non-State armed groups that commit themselves to respecting the law and have the capacity to effectively discharge their responsibilities over time.







# PART 1

## NATIONAL IMPLEMENTATION OF APPLICABLE LAW

## 1.1 Legal framework

Use of force is limited by IHL and by specific provisions of IHRL.

IHL and IHRL are complementary. Both strive to protect the lives, health and dignity of individuals, albeit from a different angle. Both also directly address issues related to the use of force.

IHL has been codified and developed to regulate the use of force in the exceptional situation of armed conflict; it aims to protect persons who are not (or are no longer) taking part in hostilities and imposes duties on all parties. IHRL protects the individual at all times, in peace and war alike; it benefits everyone and its principal goal is to protect individuals from arbitrary behaviour by their own governments. For these protections to be effective, international provisions must be reflected in national legislation.

Most human rights instruments allow governments to derogate, under strict conditions, from certain rights when confronted with a serious public threat (for instance, during internal disturbances or armed conflict). However, there is a “hard core” of basic rights from which governments cannot derogate under any circumstances. No deroga-

tions are permitted under IHL, as this branch of law was designed from the outset to strike a balance, in emergency situations, between the right to use force and the obligation to protect the rights and dignity of individuals. There is therefore no vacuum, and the use of force always occurs within a legal framework.

## International humanitarian law (IHL)

IHL is a set of rules that seek to limit the effects of armed conflict for humanitarian reasons. IHL protects persons who are not (or are no longer) participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as “the law of war” or “the law of armed conflict.”

The Geneva Conventions – revised and expanded in 1949 – lay down rules to protect the following groups of people:

- First Convention: sick and wounded on the battlefield
- Second Convention: sick, wounded and shipwrecked at sea
- Third Convention: prisoners of war
- Fourth Convention: civilians in time of war

The four Geneva Conventions are the most widely accepted international treaties and have achieved universal acceptance.

The rules governing the conduct of hostilities are set out in the Hague Conventions of 1899 and 1907. They limit the methods and means of warfare that parties to a conflict may use. In essence, they regulate the conduct of military operations in an armed conflict by defining proper and permissible uses of weapons and military tactics.

Rules on the protection of individuals and the conduct of hostilities were brought together and updated in the two Protocols additional to the Geneva Conventions adopted in 1977. Several other treaties complement these provisions, such as the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, the Convention on Certain Conventional Weapons of 1980, the 1997 Convention on the Prohibition of Anti-personnel Mines and on their Destruction, the 1998 Rome Statute of the International Criminal Court and the 2005 Protocol additional to the Geneva Conventions (Protocol III), establishing an additional emblem (commonly referred to as the

red crystal) alongside the red cross and the red crescent.

Treaties bind only those States that have agreed to be bound by them,

usually through ratification. These written obligations are complemented by customary law derived from a general practice accepted as law.

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## International human rights law (IHL)

IHL consists of a set of principles and rules, on the basis of which individuals or groups can expect certain standards of protection, conduct or benefits from the authorities, simply because they are human beings. The main universal IHL texts now in force include:

- The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948
- The International Covenant on Civil and Political Rights of 1966
- The International Covenant on Economic, Social and Cultural Rights of 1966
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment of 1984
- The Convention on the Rights of the Child of 1989

Regional instruments – such as the European Convention on Human Rights, the Organization of American States Charter or the African Charter on Human and Peoples' Rights – complement the universal treaties.

Professionals responsible for law enforcement should be particularly familiar with the United Nations Code of Conduct for Law Enforcement Officials (CCLEO, 1979) and the Basic Principles on the use of Force and Firearms by Law Enforcement Officials (BPUFF, 1990). These two documents do not set legally binding obligations and are therefore part of what is commonly known as “soft law.” However, they give useful guidance on specific issues related to the maintenance of law and order.

## **The “hard core”**

Certain fundamental rights laid down in IHRL instruments can never be derogated from. In particular, these include the right to life, the prohibition of torture and inhuman punishment or treatment, the prohibition of slavery and servitude, and the principle of legality and non-retroactivity of the law. Since IHL applies precisely to exceptional situations, the “hard core” of IHRL tends to converge with the fundamental and legal guarantees provided by IHL. Article 3 common to the four Geneva Conventions of 1949, applicable in non-international armed conflicts, provides a good summary of these “hard core” rights, setting the minimum basic rules regulating the use of force when internal violence attains the threshold of an armed conflict.

## 1.2 National implementation

To be effective, international treaties and conventions must be implemented in national legislation.

Becoming a party to international treaties and conventions is only a first step. States have a clear obligation to adopt measures implementing the international regulations they subscribe to. While this is true of any rules, it is even more crucial for rules governing warfare and law enforcement, rules which are meant to regulate the most intricate and intimate sphere of sovereignty: the use of force.

To prepare an environment conducive to compliance with the law, the political

leadership must take a whole range of measures and implement them through the hierarchy. Some of these measures are relevant to IHL and IHRL alike, while others are more specific to IHL.

The process is clearly interdisciplinary and normally involves several ministries, the legislature, the courts, armed forces or law enforcement bodies. It therefore needs careful planning by the highest political authorities and close coordination within several bodies.

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### Measures common to IHL and IHRL

Political authorities must take a number of measures, some of relatively common sense, others requiring complex implementation processes and specific expertise. The main measures are:

- to have the international treaties and conventions translated into national language(s);
- to spread knowledge of their provisions as widely as possible, both among arms carriers and among the population as a whole;
- to bring national legislation into line with the provisions of the international treaties and conventions and to enact criminal legislation prohibiting and punishing violations of the law, either by adopting a separate law or by amending existing legislation;
- to ensure that judicial and other fundamental guarantees are respected.

## **Specific measures required by IHL**

Implementation of IHL requires some additional measures to be taken. These include the following:

- ensuring that protected persons and objects are properly identified and marked;
- adopting measures to prevent the misuse of the red cross, the red crescent, the red crystal and other protective emblems or symbols specified in conventions and protocols;
- appointing and training persons, in particular legal advisers within the armed forces;
- providing for the establishment and/or regulation of National Red Cross or Red Crescent Societies and other voluntary aid societies, civil defence organizations and information bureaux (responsible for managing information about protected persons);
- locating military sites in such a way as not to endanger protected persons or objects.

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## A holistic approach

Several ministries are involved in the national implementation process, in addition to those of defence and internal affairs. The most relevant are the ministries of justice, finance, education, culture and foreign affairs. For instance, the ministry of culture will clearly be involved in applying the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. The ministry of education is required to prepare young people to understand the principles of IHL and IHRL. To address the problem of people going missing during armed conflict, administrative measures are also required, such as the establishment of a national information bureau (usually under the responsibility of the ministry of foreign affairs).

others with responsibilities or expertise in the field of implementation. Such bodies have generally proved to be an effective means of promoting national implementation.

Many States have established national humanitarian or human rights committees or similar bodies to steer the process. These decision-making and coordination platforms bring together representatives of government ministries, national organizations, professional bodies and

## 1.3 Responsibilities

The highest authorities are ultimately responsible for compliance with the law.

Concrete measures, means and mechanisms must be put in place to fulfil the obligations imposed by the law, including its wide dissemination and the prevention and repression of violations. The ultimate responsibility for this clearly lies in the hands of the highest authorities. This has been widely and explicitly laid down in the treaties composing IHL and IHRL.

While the political leadership and highest levels of the hierarchy of arms carriers bear overall responsibility, specific responsibilities in this realm are also attributed to other levels, in accordance with their respective duties and functions.

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### Under IHL

Clear responsibilities were recognized early in the different conventions. Hence, for instance, by ratifying the Hague Convention of 18 October 1907 Respecting the Laws and Customs of War on Land, States undertook to “issue instructions to their armed land forces which shall be in conformity with the Regulations respecting the laws and customs of war on land, annexed to the present Convention” (Art. 1).

The four Geneva Conventions of 12 August 1949 also make several references to States’ responsibilities. Beyond the general necessity to “respect

and to ensure respect for the present Convention in all circumstances” (Art. 1) other articles refer to the obligation to “disseminate the text as widely as possible” and to “include the study thereof in their programmes of military instruction.” More specifically, the Third Geneva Convention even provides for “any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war” to be “specially instructed” (Art. 127).

Protocol I of 8 June 1977 additional to the Geneva Conventions further details this obligation. It provides, *inter alia*,

that parties shall “without delay take all necessary measures for the execution of their obligations” and “give orders and instructions to ensure observance” and “supervise their execution” (Art. 80); that “any military [...] authorities [...] shall be fully acquainted with the text thereof” (Art. 83. 2); and that “commensurate with their level of responsibility, commanders ensure that members of the armed forces under their command are aware of their obligations” (Art. 87. 2).

Protocol II additional to the Geneva Conventions, applicable in non-international armed conflicts, stipulates that its content “shall be disseminated as widely as possible” (Art. 19). This obligation, like that of respecting the law, is therefore not limited to government forces but also applies to all armed groups taking part in hostilities.

The obligation to disseminate IHL and provide instruction on this subject to arms carriers has been so widely recognized that it has become customary.

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## Under IHL

Human rights instruments contain several references to States’ responsibility for implementing international treaties. For instance, the International Covenant on Civil and Political Rights of 1966 stipulates that “each State Party [...] undertakes to take the necessary steps [...] to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant” (Art. 2). To specify what is meant by “other meas-

ures,” United Nations Human Rights Committee General Comment No. 31 on the Covenant refers to the need to “adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations” (para. 7).

Similarly, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 asserts that each State Party

shall ensure “that all acts of torture are offences under its criminal law” (Art. 4) and “that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment” (Art. 10). In the Convention on the Rights of the Child, States Parties “undertake to make the principles and provisions [...] widely known, by appropriate and active means” (Art. 42).

General references to leadership responsibilities also appear in “soft law” documents like the UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials, which state for instance that the basic principles in that document “should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors,

lawyers, members of the executive branch and the legislature, and the public” (Introduction).

## 1.4 Reality check

Violations of the law do occur. Knowledge alone is no guarantee of compliance.

In spite of the existence of a whole set of international rules aimed at regulating the use of force, it must be recognized that violations of IHL and/or IHRL regularly occur. Practically all arms carriers commit such violations, even those with the longest experience and the most sophisticated training.

Of course, only negative behaviour makes the news, so it is virtually impossible to establish the amount of lawful behaviour. Still, the obligation for arms carriers to respect and ensure respect for the law persists. Moreover, even though violations do occur, the law remains a relevant and pertinent tool for protecting people in situations of armed conflict and internal violence.

To determine the measures, means and mechanisms required to avoid unlawful behaviour, it is crucial to understand the reasons behind violations. It is often argued that these occur because of a lack of knowledge of the applicable law. An in-depth analysis of the behaviour of arms car-

riers shows, however, that violations are also committed by people who know or even adhere to the basic principles of the law.

Experience shows that the failure to comply with the essential norms of IHL and IHRL can actually be ascribed to several factors, which often occur together. These include insufficient skills, faulty attitudes, wrongful behaviour, lack of adequate equipment, lack of will, inadequate knowledge or understanding of the law (its contents, scope or purpose) and lack of effective sanctions for violations.

Clearly, the crux of the problem is not that people do not know the law: the problem lies in translating knowledge into appropriate behaviour.



# **PART 2**

## **INTEGRATION**

## 2.1 The concept of integration

To prevent violations, the law must become an integral part of the conduct of operations.

Ratifying IHL or IHRL treaties and implementing them in domestic law are essential, necessary steps towards compliance. Disseminating their content as widely as possible is another important element of any strategy aimed at creating an environment conducive to lawful behaviour.

However, these measures are not sufficient. The behaviour of arms carriers during operations is shaped by four main factors: (1) doctrine, (2) education, (3) training and equipment, (4) sanctions. In order for operations to be conducted in compliance with the law, the law must therefore become an integral part of all four elements. This is what the ICRC calls the process of “integration.”

This is not to suggest that provisions of IHL or IHRL should systematically be included – or even quoted – in doctrine or manuals, nor to advocate that every arms carrier should be at ease with sometimes quite complex legal matters. The relevant law must be translated into concrete measures, means and mechanisms – at doctrine,

education, training and equipment and/or sanctions levels – conducive to compliance.

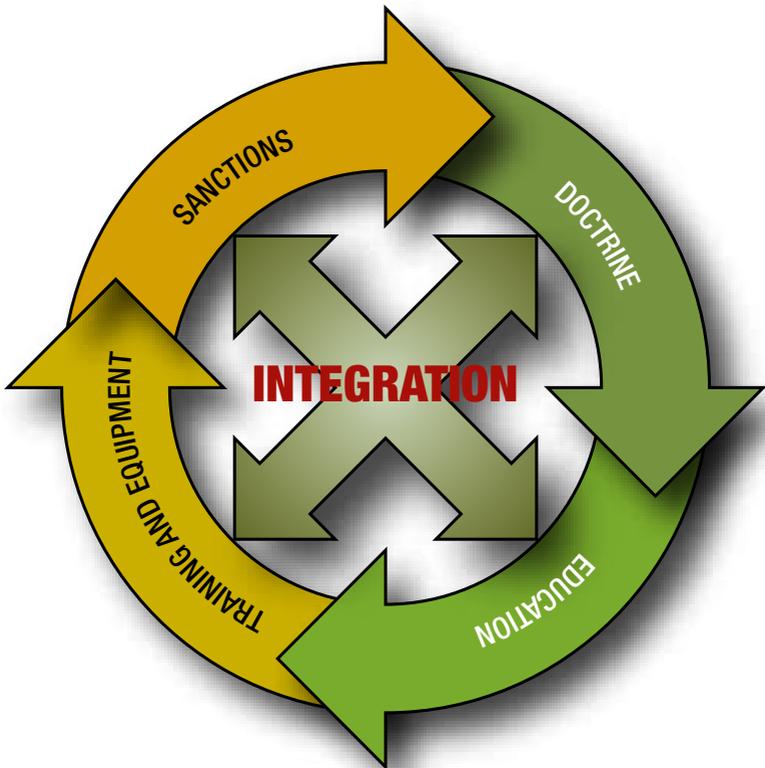
Law is actually a set of general rules, sometimes too general to serve as a guide for practical behaviour in combat or law enforcement. It is therefore necessary to interpret it, analyse its operational implications and identify consequences at all levels (see below).

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## Key elements of integration

Doctrine, education, training and equipment are intimately connected and change constantly, forming a kind of virtuous circle. Lessons learned during operations, together with changes in the law, equipment and the nature of

the threat and mission demand regular revision of all elements. Sanctions must also be enforced and regularly adapted. Integrating the law into the whole process is therefore a continuous, never-ending, circular process.



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## Taking action

Legitimate questions may arise as to how to apply IHL and IHRL in daily practice. It is crucial to understand the operational implications of each rule and to identify the action to be taken – at doctrine, education, training and equipment and/or sanctions levels – to ensure compliance.

The process of getting from the specific legal provisions to their practical application is illustrated below.

For each rule of IHL or IHRL covered here, we will first identify the main questions regarding its application in concrete situations and then provide a non-exhaustive list of actions to be taken.

**Legal provision**



**Operational implications**



**Consequences: measures, means and mechanisms to be adopted – at doctrine, education, training and equipment, and/or sanctions levels – to ensure compliance.**

## 2.2 Basic requirements

Political will and capacity constitute the basic prerequisites for integration.

Integration is a mid- to long-term process that requires a strategic vision and a global overview of the implications for the organization concerned: commitment at the highest level of command is therefore necessary. The process must clearly be a top-down one, and the commitment must go beyond the acceptance of the need to disseminate, teach or periodically give training in the law: it must send a strong, formal signal to all subordinate levels, setting compliance with the law as a clear priority for the organization. Words must clearly be backed by actions and, as personnel moves on, commitment must be periodically renewed to ensure the stability and continuity of the process.

To be successful, integration must take place in a favourable environment. The capacity of arms carriers to implement the process depends on some basic but crucial requirements: national legislation in accordance with the provisions of the relevant international law; criminal legislation for dissuasion and for the prevention and repression of violations; an effective chain of command and internal sanctions system; a stable edu-

cation and training structure; common doctrine, regardless of its name or form. For arms carriers, this basically amounts to possessing some kind of structure related to the four factors shaping behaviour in action (doctrine, education, training and equipment, and sanctions) that the integration process can act upon. Should one or more factors be weak or inexistent, the process of integration will only be partial and, probably, less effective.

The whole process is carried out within the existing structure and with the existing resources. High costs are not to be expected, no significant additional education and training time is needed, nor will it be necessary to increase the number of teachers, professors or trainers.

This process is more easily carried out during peacetime or when armed conflict has not reached high levels of intensity; when armed actors are engaged in major combat operations, other priorities will inevitably replace these long-term concerns.

## 2.3 The programme

Running a programme is the key to enhancing integration.

As a multidisciplinary, top-down process, integration involves the highest levels of the State, including the national leaders and a number of ministries besides those of defence, security or the interior (see Part I). Among arms carriers, all levels of the chain of command are to be involved, from the strategic down to the tactical. Top-level commanders must set the scene by insisting that the law be incorporated into the planning, organization and execution of all combat and/or law enforcement operations. This is normally achieved by issuing a written standing order.

However, issuing an order is not enough. The order must be translated into a concrete programme, project or plan of action. In turn, the programme needs to be properly managed; the authorities must therefore formally appoint an officer or one of their staff directorates for the task. Regular evaluation of the programme's achievements is also needed and will make it possible to adjust means and objectives during the process.

As threat and mission evolve and as operations constantly oblige arms carriers to adapt, learn lessons and take action accordingly, integration is a continuous and almost never-ending process. It must therefore be continuously sustained by the hierarchy.

## **Managing the programme**

Managing the complexity of an integration programme requires classical “project management” tools and skills. The programme is usually formalized in an official document. On the basis of an assessment of the existing level of integration, it defines objectives, together with responsibilities and deadlines for their achievement. The programme details the concrete steps to be taken, year by year, to achieve the planned goals, together with the appointments required to manage and carry out the various tasks.

Experience demonstrates that the creation of an international humanitarian law and/or human rights directorate tends to hinder, rather than accelerate the process. Indeed these directorates, often estranged from the rest of the chain of command, tend sometimes to become an end in themselves. It is vastly preferable to entrust this responsibility to the operations directorate, which is usually also responsible for training.

A monitoring and evaluation body should also be established, to oversee the implementation process and assess whether the partial objectives have been achieved. This task is usually assigned to the inspector general or to a body with equivalent powers. Depending on the intermediary results, adjustments to the plan of action should be submitted for approval to the top levels of the hierarchy.

## 2.4 Integration into doctrine

Doctrine must provide guidance for lawful behaviour.

Here, doctrine is understood as all standard principles that guide the action of arms carriers at strategic, operational and tactical levels, independently of the forms these principles take. It therefore encompasses all directives, policies, procedures, codes of conduct and reference manuals – or their equivalents – on which arms carriers are educated and trained during their careers, giving them a common vocabulary and shaping the decision-making process, tactics and behaviour in operations.

Integrating the law into doctrine is not achieved through the mere inclusion or quotation of rules and principles of applicable law in codes, manuals and procedures. The relevant principles of the law, together with the means and mechanisms to ensure respect for specially protected persons and objects, must become a natural and integral part of every component of doctrine.

The revision of manuals and procedures related to the decision-making process is essential to compliance with the law. The complexity of the challenges of

modern law enforcement or warfare speaks against leaving the responsibility for compliance with IHL and/or IHRL to one post within the staff. As for any operational or tactical matter, the appointed staff (personnel, intelligence, operations, logistics) must know how they are expected to discharge their responsibilities in this regard. Besides this, it is paramount to make sure that decision-making procedures provide the necessary mechanisms for information sharing and coordination, so that no issue is overlooked and the commander has all the necessary information available in a timely fashion.

Reference manuals for the different specialists and areas of action, at the different levels of the chain of command, must also be reviewed or adapted, so that orders, procedures and rules of engagement allow compliance with the law in the varied and complex situations faced during operations (e.g. presence of military objectives in populated areas, maintaining law and order during violent demonstrations).

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## Combat

### Legal provision

*Among others, the following types of attacks are to be considered as indiscriminate:*

*b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.*

(Additional Protocol I, Art. 51. 5 (b))



### Operational implications

How can one assess incidental loss and anticipated military advantage?

How can one rate each in relation to the other?

How can one strike a balance between the two?

How can one make sure that this is done for each and every decision?



### Consequences

**Doctrine must provide:**

- **definitions of military advantage and incidental damage;**
- **means of rating them when choosing between different courses of action available;**
- **mechanisms for achieving an effective balance and recommendations to the commander during the decision-making process;**
- **measures for recording the balance and the decision;**
- **specific responsibilities of intelligence and operations officers or others in this regard.**

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## Law enforcement

### Legal provision



*Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.*

(Code of Conduct for Law Enforcement Officials, Art. 3)

### Operational implications



In which circumstances may force be used?

How should force be applied to ensure a gradual and proportionate response?

How can one strike a balance between necessity and proportionality?

### Consequences

**Policies and procedures must provide:**

- **definitions of the principle of necessity and of the circumstances in which use of force is authorized;**
- **means and mechanisms allowing an effective balance in the decision-making process between necessity and proportionality;**
- **measures for recording the balance and the decision;**
- **specific responsibilities at the different levels of the chain of command with regard to the assessment of the situation and the progressive use of force in the response.**

## 2.5 Integration into education

Means and mechanisms for compliance with the law must become an integral part of all matters taught.

Education focuses on providing personnel with theoretical knowledge on what to do. Teaching the content of applicable law during education is one straightforward step. The number of teaching hours and the proportion of theory to practice must be tailored to the needs of the audience, according to their rank, service, branch or occupation. Teaching must always be as practical and as realistic as possible, but an increasingly academic approach can be adopted the higher the rank and level of responsibility of the audience.

But knowledge of the relevant law alone is not sufficient. The measures, means and mechanisms for compliance with the law, as set by revised doctrine and procedures, must permeate all matters taught. This does not mean that all courses must include a module on the applicable law or explicitly or constantly make reference to it. Wherever relevant, however, subjects should include realistic dilemmas related to compliance with the law, allowing all ranks to learn how to respect the law in a given situation.

## Combat

### Legal provision



*In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.*

(Additional Protocol I, Art. 57.1)

### Operational implications



What are the “civilian population, civilians and civilian objects”?

What concrete measures can be taken to respect them?

How can one ensure that these measures are applied at all times?

### Consequences

**Education must provide theoretical knowledge on:**

- **what exactly the “civilian population, civilians and civilian objects” are;**
- **the responsibilities within the chain of command (according to the different levels and specializations) for sparing protected persons and objects;**
- **preparing personnel to think of alternative courses of action;**
- **planning and conducting operations without putting protected persons and objects at risk;**
- **planning and conducting the evacuation of civilians;**
- **implementing safety distances;**
- **selecting weapons according to situation and observing their effects in order to limit incidental damage.**

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## Law enforcement

### Legal provision



*Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.*

(International Covenant on Civil and Political Rights, Art. 9,1)

### Operational implications



Under which circumstances can liberty be curtailed?

How can one ensure that arrests or detention are not arbitrary?

How can one strike a balance between use of force and the individual's right to security?

### Consequences

**Education must provide theoretical knowledge on:**

- **the circumstances under which arrest and detention are legal;**
- **what constitutes arbitrary arrest and detention;**
- **what procedures must be followed, according to the law, to ensure that arrest and detention are not arbitrary;**
- **responsibilities along the chain of command and according to specialization for tasks related to deprivation of freedom;**
- **means and mechanisms allowing lawful arrest and detention and for recording these actions.**

## 2.6 Integration into training

Training must include IHL and/or IHRL components in a realistic fashion.

The training of arms carriers focuses on providing personnel with practical experience of how to perform their functions while complying with the law. It enables officers, NCOs and the rank and file to acquire skills and experience, and must lead to acquiring the correct reflexes, until they become second nature. This can only be achieved by repeated practice, and the person best suited and the most effective for inculcating such behaviour is the direct superior.

It is of paramount importance that the principles of the law are included as realistically as possible in daily training, along with the measures, means and mechanisms for compliance, as provided by revised doctrine, tactics and procedures. Adding a few hours on IHL and/or IHRL to the existing training programme without modifying its content is far from effective.

It has been proven that the most effective instruction method is practical exercise: this approach enables participants to retain nearly 90% of the content, weeks later. The ratio of theoretical to practical instruction at each level of the hierarchy is

determined by ranks and responsibilities, but there is little doubt that training must be as practical and realistic as possible, as much for the success of future operations as for compliance with the law.

The effectiveness of training must also be constantly evaluated. Behaviour during operations remains the ultimate test, and after-action reviews are a key tool in assessing the effectiveness of the established means and mechanisms, but lessons learnt through daily training and exercises are also an essential component of the evaluation process. Should training demonstrate that the means and mechanisms established through the integration process are not adequate for enabling personnel to respect the law, corrective measures will need to be taken at doctrine and education levels and training be modified accordingly.

## Combat

### Legal provision

*Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.*

*Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.*

*Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.*

(Third Geneva Convention, Art. 19)



### Operational implications

How are the forces to conduct these tasks?

Do subordinate formations perform their tasks as expected by higher echelons?

How will the fighting elements coordinate with logistics and medics?

Are the measures laid down in doctrine practical and realistic?



### Consequences

**All exercises – in the field, on maps or computer assisted – must include the processing of prisoners of war so that personnel at the different levels acquire the practical experience necessary to perform this task correctly under pressure.**

**Accordingly:**

- **combat troops at the lowest level must be able to capture prisoners of war;**
- **collection points must be exercised and manned;**
- **logistics must be able to effectively process prisoners;**
- **the whole process must be part of the evaluation and lessons-learned process, leading to corrective measures or improvements, including at the doctrine and education levels.**

## Law enforcement

### Legal provision



*In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.*

(Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Art. 13)

### Operational implications



How can law enforcement officers disperse non-violent unlawful assemblies without resorting to force?

Should force be used, what is the “minimum” and “necessary” level under different sets of circumstances?

Do the means and mechanisms provided for in policies, procedures and education effectively allow a lawful response?

### Consequences

**Training must allow law enforcement officers to acquire the practical experience necessary to perform this task correctly under pressure.**

#### Accordingly:

- **officers must be able to use the different peaceful means available for responding to these situations (e.g. negotiation, persuasion, planning escape routes for the crowd);**
- **officers at the lowest levels must be able to use the various types of force at their disposal appropriately and in proportion to the threat;**
- **the whole process must be part of the evaluation and lessons-learned process, leading to corrective measures or improvements, including at policy, procedure and education levels.**

## 2.7 Equipment

Equipment must allow a lawful response to each situation.

Equipment provides personnel with the assets needed to conduct missions in accordance with the law. The highest level of command must provide personnel with means and methods that are legal. This level of command therefore has the obligation to determine whether the employment of a specific weapon (i.e. the weapon itself and the way it is used) would, in some or all circumstances, be restricted or prohibited by IHL and/or IHRL.

To check whether equipment allows compliance with the law, it should be tested during training in situations as close to reality as possible.

Beyond weaponry, an exercise where personnel search for, treat and evacuate casualties during and after operations will show whether the means of the medical unit are sufficient and adequate. For instance, wheeled ambulances may prove unfit for terrain that has been tilled by heavy tracked vehicles, such as main battle tanks, or when streets are littered with wreckage and debris following a riot.

## Combat

### Legal provision



*It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.*

(Additional Protocol I, Art. 35. 2)

### Operational implications



What is the intended military purpose or expected military advantage?

What types of injury will be inflicted?

On the basis of the answers to the two previous questions, should the injury be considered superfluous or the suffering unnecessary?

Which specific expertise is required to determine this?

Who decides on the legality of means and methods before they are introduced?

Who makes sure that lawful means and methods are not modified?

### Consequences

**A review mechanism must be established, of which the main characteristics are as follows:**

- **the final responsibility may lie with an individual or a committee as established by legislation, regulation, administrative order, instruction or guidelines;**
- **this individual or committee defines the review and decision-making process;**
- **accountability to the ministry of defence or an inter-departmental entity;**
- **review is conducted by representatives from different sectors and departments;**
- **records are systematically kept.**

**Beyond the review of means of warfare, the chain of command is responsible for making sure that troops do not modify means or use them in any way that would make them illegal.**

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## Law enforcement

### Legal provision

*Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.*

(Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Art. 4)



### Operational implications

What are the non-violent means that will enable officers to delay the use of force and firearms?

What measures are proportionate to which offence?

How much equipment can an officer reasonably carry and master?



### Consequences

**Law enforcement officers should have access to the following equipment:**

- appropriate protective gear and other equipment to delay the use of force and firearms;
- a range of non-violent means of controlling the situation, and of communicating with officers and with offenders;
- a range of different means that enable officers to respond in a graduated and proportionate manner.

**Officers must know the effects caused by the different means at their disposal.**

**Officers operating alone will not have the whole range of means available. They need therefore to be able to communicate and master other techniques, such as negotiation and conflict resolution.**

**Officers operating in teams must master the different means available, individually or as a team.**

## 2.8 Effective sanctions

Sanctions must be visible, predictable and effective.

Sanctions play a key preventive role. Experience shows that the more visible they are and the more predictable their application, the more dissuasive they will be. They also make it possible to effectively punish those who have failed to obey the law. They therefore offer the hierarchy a means of enforcing orders and discipline and of showing that the whole chain of command is firm in defending its fundamental values.

Sanctions can be enforced through penal or disciplinary measures. While the former is doubtless necessary, it must be backed by effective disciplinary sanctions at all levels of the chain of command. These administrative measures, actually under the responsibility of the direct superior, offer two key advantages: they can be enforced rapidly and they are highly visible to the offender's peers. Their dissuasive effect is therefore immediate, preventing unacceptable behaviour becoming tolerated or even accepted.



# PART 3

## ICRC SUPPORT

### 3.1 The ICRC and international law

The ICRC promotes compliance with IHL and other fundamental rules protecting people in situations of violence.

The ICRC's exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and internal violence and to provide them with assistance. In this endeavour, the ICRC strives to prevent suffering by promoting and strengthening IHL and the relevant provisions of IHRL.

The ICRC derives its core humanitarian mandate related to situations of armed conflict and the promotion of IHL from the international community, through the Geneva Conventions and their Additional Protocols. The Statutes of the International Red Cross and Red Crescent Movement confer on the ICRC a broader right of humanitarian initiative allowing it to offer its services in situations of violence not amounting to armed conflict.

To address the humanitarian consequences of the use of force in these situations, the ICRC will not refer to the whole and varied spectrum of IHRL treaties, but to a core of fundamental rules protecting people in situations of violence. These constitute a small but central and essential part of IHRL.

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## ICRC right of initiative

The ICRC's right of initiative is set out in the Statutes of the International Red Cross and Red Crescent Movement. These are adopted by International Conferences, which are four-yearly events bringing together delegations both from States party to the Geneva Conventions and the Red Cross and Red Crescent organizations (the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, and the National Red Cross and Red Crescent Societies).

Article 5 of the Statutes, which outlines the ICRC's role and responsibilities within the Movement, assigns to the ICRC the duty "to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof" (Art, 5. 2 (g)). It also makes it clear that the ICRC "may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution" (Art. 5. 3).

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## Fundamental rules protecting human beings

It is beyond the scope of this booklet to list all the fundamental IHRL rules to which the ICRC refers in order to carry out its humanitarian mandate. These norms, however, generally refer to:

1. The protection of life, physical and psychological well-being and human dignity (the rules included in the “hard core,” the recruitment of children).
2. The use of force by law enforcement officials (lawfulness, appropriateness, proportionality, no use of prohibited weapons).
3. The right to a due process of law (judicial or procedural guarantees, no arbitrary arrest or detention).
4. The obligation to ensure access to the minimum conditions necessary for survival (food, water, hygiene, clothing, shelter, medical care)
5. Respect for the family unit (no inappropriate restrictions thereon).
6. Missing persons and their families (no secret or undisclosed detention, the right to receive family news).
7. The movement of persons (no arbitrary displacement or exile, the right to seek safety and asylum).
8. Property (no deprivation thereof through illegal or arbitrary destruction or appropriation).
9. Education and religious worship (no inappropriate restrictions thereon in situations of occupation or of deprivation of freedom).

## 3.2 The role of the ICRC

When basic requirements are met, the ICRC supports efforts towards integrating the law.

Clearly, the law belongs to the States party to the treaties, not to the ICRC. The same goes for the responsibility to integrate the law.

Thanks to its long-term field presence and to the dialogue it maintains with authorities and all kinds of arms carriers around the world, the ICRC has developed considerable experience in supporting efforts aimed at preventing violations. Recognizing that the mere teaching of legal norms will not lead, in itself, to a change in attitude or behaviour, the ICRC approach has gradually shifted in the past two decades from dissemination to integration.

When authorities are genuinely committed and possess the necessary capacity to sustain the process in the long term, the ICRC is ready to assume the supportive role enshrined in the Protocols additional to the Geneva Conventions (see below) or to act upon its statutory right of initiative.

To provide appropriate support to arms carriers during the integration process, the ICRC has a specialized

unit at its headquarters in Geneva and a number of specialist delegates (with previous military or police experience) in the field. The ICRC does not provide arms carriers with practical technical training; it focuses on the legal framework within which they have to function, helping them to identify its operational implications and the actions they must take in order to comply with the law.

Through its network of delegations, the ICRC is currently supporting integration of the relevant law by arms carriers around the world.

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## Resolution 21

The Diplomatic Conference which gave birth to the 1977 Protocols additional to the Geneva Conventions also adopted Resolution 21 in which it explicitly encourages “the authorities concerned to plan and give effect, if necessary with the assistance and advice of the International Committee of the Red Cross, to arrangements to teach international humanitarian law, particularly to the armed forces and to appropriate administrative authorities, in a manner suited to national circumstances” (2. a).

It also “invites the International Committee of the Red Cross to participate actively in the effort to disseminate knowledge of international humanitarian law by, *inter alia*:

- (a) publishing material that will assist in teaching international humanitarian law, and circulating appropriate information for the dissemination of the Geneva Conventions and the Protocols;
- (b) organizing, on its own initiative or when requested by Governments or National Societies, seminars and courses on international humanitarian law, and co-operating for that purpose with States and appropriate institutions” (4).

## **ICRC support to arms carriers**

The initial step taken by the ICRC is to discuss with the relevant authorities and arms carriers' leadership their responsibilities regarding integration of the law and the issues to be tackled during the process.

Should the leadership request ICRC support, the organization may offer its advice on the drafting of standing orders and the programme. During the whole process, and according to the context, the ICRC may initiate courses aimed at teaching the relevant law to teachers, trainers or legal advisers or even carry out specific seminars or workshops for the production or revision of existing doctrine, curricula, teaching files and manuals. If necessary, it can offer support and advice regarding the production of more high-tech products such as videos or interactive CD-ROMs or DVDs.

In recent years, ICRC specialist delegates have increasingly been involved in armed forces' field and computerized

command-post exercises. In addition to portraying the role of the organization during armed conflict, ICRC delegates work closely with the exercise controllers to ensure that the relevant law is integrated.

Contacts have also been made with private companies regularly contracted by some States to produce international exercises.

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## **The scope of ICRC support**

The ICRC will support arms carriers in interpreting the law, understanding its operational implications and identifying the consequences. The final step, for instance that of writing a new tactics manual, adopting new curricula, reviewing and modifying doctrine or buying new equipment, clearly remains the responsibility of the authorities and arms carriers.



## **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.



ICRC