

Report of the Second Universal Meeting of National Committees on International Humanitarian Law

Geneva, 19–21 March 2007



Advisory Service on International Humanitarian Law

**Legal Measures and Mechanisms
to Prevent Disappearances,
to Establish the Fate of Missing Persons, and
to Assist Their Families**



ICRC



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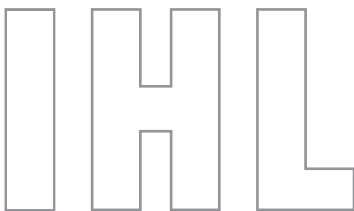
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PRESENTATION OF THE REPORT

The principles of international humanitarian law (IHL) are of importance to us all. IHL remains the most effective legal framework governing the conduct of hostilities and requires an implementation at the domestic level of all States in order to be fully enforceable. At a time when armed conflicts continue to take their toll on human lives and on material means of survival, it is important to reaffirm the contribution of the Geneva Conventions of 1949 and of their Additional Protocols of 1977 and 2005 to the protection of human dignity and the preservation of humanity in the midst of war. This body of international law has been developed specifically to allow for the legitimate security needs of States, while at the same time ensuring the protection of basic rights and human dignity. The International Committee of the Red Cross (ICRC) is pleased to highlight that the four Geneva Conventions of 1949 recently achieved universal acceptance. The universality of these important instruments represents a powerful argument to counter those who insist that international humanitarian law is no longer adequate to deal with contemporary situations of armed conflict. The fact that all countries in the world have today acceded to the Geneva Conventions indicates that the international community as a whole has now undertaken to respect and to ensure respect for these treaties in all circumstances.

Respect for IHL is primarily the responsibility of the States that have accepted to uphold it – this in turn determines the effectiveness of its principles. Often, however, States lack the political will to take concrete action for the protection of war victims and to take the measures necessary to prevent, as well as to investigate and punish, violations of the law. Adhering to the letter of the law is only a first step. Governments must set up the legal framework and adopt the required measures for the national implementation and wide dissemination of international humanitarian law. That is where the establishment of National Committees on IHL is of primary importance.

The ICRC, through its Advisory Service, is committed to supporting States' initiatives in creating their own National Committees, as well as in strengthening the role of existing committees in national IHL implementation. This momentum began in 1996 with the Meeting of Experts on Committees, and was followed up in 2002 with the Meeting of Representatives of National Committees on International Humanitarian Law. Since these meetings were held, the situation has considerably advanced and, in particular, the past two years have been marked by important developments in the field of international humanitarian law.

Significant progress has also been achieved by States in the process of implementation of international humanitarian law in their domestic law and practice. In this respect, we very much underline the work and important achievements of interministerial committees on international humanitarian law, which have been set up today in 82 countries worldwide. The ICRC continues to develop close cooperation with Governments and with existing National IHL Committees on a wide range of topics related to the national implementation of humanitarian law into the domestic legal framework. These include the repression of grave violations of IHL, the protection of the emblems of the red cross, red crescent and red crystal, the implementation of arms-related treaties, and the legal status and protection of the rights of missing persons and their families. The issue of missing persons, in particular, has become a growing concern over the last years and the ICRC remains implicated in efforts to resolve their fate as well as safeguarding the rights and needs of their families. The ICRC Advisory Service on IHL highlighted the theme of missing persons and the pledges made towards resolving this issue during the Second Universal Meeting of National IHL Committees.

Held over the period of 19-21 March 2007, this meeting brought together the representatives of existing National Committees and included the participation of a number of States that are working towards establishing such bodies. The resulting discussion will hopefully move their current situation from a needs-assessment perspective towards a plan of action. The meeting programme allowed for special working group discussions in addition to plenary sessions. As a result, an internal dialogue was fostered and facilitated regional networking, and at the same time allowed for a larger and more global understanding of the phenomenon of missing persons and the issues that confront and encourage IHL dissemination and implementation by National Committees in their respective domestic arenas.

The primary objectives of the Second Universal Meeting of National IHL Committees were:

- to update participants on recent or current developments in IHL relating to its implementation in domestic legislation and practice;
- to review accomplishments, achievements and best practices of National Committees or other bodies concerned with IHL and to provide a forum for discussion and exchange between them;
- to provide an overview of the international legal framework and international commitments relevant to the protection of persons

unaccounted for as a result of armed conflict and other situations of violence as well as to the rights of the families of such persons;

- to increase the capacity of National Committees to prevent people from going missing and to resolve the problem of persons unaccounted for as a result of armed conflict and other situations of violence, and to strengthen the National Committees' actions and commitments in this area;
- to provide a forum for discussion on means of assisting and supporting National Committees in their efforts to include the resolution of problems relating to missing persons among their activities and concerns and to benefit from the necessary domestic legal and institutional frameworks and best practices.

This report represents the proceedings of the Second Universal Meeting of National IHL Committees. It is divided into two sections, the first part presenting a synopsis of the topics addressed by the invited speakers, and the second part offering tools for the use of the National Committees.

PART I — Meeting of representatives of National Committees on International Humanitarian Law

Chapter 1 offers a general overview of the legal and operational challenges facing international humanitarian law today and of the developments of National Committees in its domestic implementation. The Advisory Service of the ICRC presented some of the successes of National Committees since the First Universal Meeting held in 2002. The ICRC Operations Directorate also highlighted some of the challenges and recent developments in the field of IHL.

Chapter 2 focuses on the regional development of National Committees and their operating mechanisms, with a number of Committees presenting their respective experiences for the consideration of other States in the process of assessing their own challenges and opportunities. The round table brought the perspectives of regional organizations into the discussion regarding domestic IHL implementation.

Chapter 3 is dedicated primarily to the phenomenon of missing persons. The introductory address presents an overview of the issue, discusses the legal and practical *lacunae* that have been thus far identified in dealing with the

needs of the victims, and offers an institutional perspective on how to attend to these concerns. Several regional representatives offer their experiences on the establishment of a National Information Bureau, the protection of data and the treatment of missing persons and mortal remains. Significant legal and practical measures are offered and assessed within the domestic and regional contexts. Lastly, the adoption and implementation of legislation governing the specific rights and obligations related to victims and the States in relation to missing persons is highlighted. The possibilities offered by mechanisms of alternative justice are discussed and supplemented by the experiences of two regional commissions that were set up to address the issue. A panel discussion concluded the presentations on this topic by emphasizing the “right to know” as a key element of the rights of victims’ families. The panelists also commented on the essential nature of adopting appropriate penal sanctions to respond to violations of the law, forming an integral part of the fight against impunity.

In **Chapters 4 and 5**, the course shifts towards the future and the goals that may be successfully achieved by way of a collective effort. The year 2007 will be marked by the 30th International Conference of the Red Cross and Red Crescent, which will present a renewed opportunity to review with all States and all actors within the Red Cross and Red Crescent Movement the most important humanitarian issues and challenges of our contemporary international order. This Conference will assess the accomplishments of States in their collective commitments and individual pledges undertaken during the 28th International Conference held in 2003 – many of which deal with the specific protection of missing persons, their families and the victims of enforced disappearance. Several recommendations are offered in the closing remarks of the meeting that encourage the efforts of National Committees in their contribution towards a successful understanding and application of IHL worldwide.

PART II —Tools

The second part of this report offers two new tools that are designed to facilitate the work of National IHL Committees. The Advisory Service of the ICRC has drafted a model law that can serve as a guide for States and their national authoritative bodies that are in the process of developing and adopting legislative measures with respect to missing persons. The document entitled *Principles for legislating the situation of persons missing as a result of armed conflict or internal violence: measures to prevent persons from going missing and to protect the rights and interests of the missing and their families* covers the fundamental concepts of the law and includes an article by article commentary that outlines the rights of the victims and obligations of the States

within the context of international humanitarian law principles. With the now universal acceptance of the Geneva Conventions of 1949, the applicability of Common Article 1 is all the more relevant and reaffirms the obligation of all parties to undertake to respect and to ensure respect for the fundamentals of humanitarian law in all circumstances. Respect means that the State is under an obligation to do everything it can to ensure that the rules in question are respected by its organs as well as by all others under its jurisdiction. Ensuring respect means that States, whether engaged in a conflict or not, must take all possible steps to ensure that the rules are respected by all, and in particular by parties to the conflict in question. This underlying principle is essential to the cause of missing persons and it is imperative that States adopt measures to prevent persons from becoming missing and to protect the rights and interests of the missing and their families.

The Advisory Service has also created a *Country Fact Sheet* template that links national implementation directly to State obligations for a wide range of IHL treaties. In essence, this tool will permit, at a glance, a good overview of which IHL treaty obligations have been implemented and which have not for each country. Collecting the necessary information will assist in identifying where more effort needs to be made towards implementation, and to better orient ICRC resources in order to assist in the establishment of work programmes and priorities in areas of the world or on issues where there exists the greatest need.

ANNEXES

To complete this report of the Second Universal Meeting of National IHL Committees on International Humanitarian Law, the meeting programme and list of participants is appended. Also included is a table on the status of National IHL Committees on International Humanitarian Law that exist worldwide as per information available at the time of the meeting.

INTERNATIONAL HUMANITARIAN LAW

IHL

PART I

MEETING
OF REPRESENTATIVES
OF NATIONAL COMMITTEES
ON INTERNATIONAL
HUMANITARIAN LAW

INTERNATIONAL HUMANITARIAN LAW

IHL

CHAPTER 1

**OVERVIEW
OF DEVELOPMENTS
OF NATIONAL COMMITTEES
IN DOMESTIC
IMPLEMENTATION
OF INTERNATIONAL
HUMANITARIAN LAW**

INTERNATIONAL HUMANITARIAN LAW



A. Welcome to the Second Universal Meeting of National IHL Committees

Opening statement

Mr. Jacques Forster

Vice-President, International Committee of the Red Cross (ICRC)

Excellencies, distinguished participants, ladies and gentlemen,

In the name of the International Committee of the Red Cross, I would like to welcome you to Geneva and to the Second Universal Meeting of National Committees on International Humanitarian Law. We are delighted to have you here, to discuss the role and responsibility of National IHL Committees in the adoption of national mechanisms and legal measures to clarify the fate and to resolve the issues related to missing persons and their families.

The aim of this meeting is two-fold. The primary objective is to address the issue of missing persons and to attempt to find lasting solutions from a domestic law point of view. But this meeting is also a unique opportunity for members of National Committees to meet and share ideas, experiences and information on their broader achievements and best practices. The daily work of National Committees may sometimes seem difficult and lonely. But you are not alone. As you well know, the ICRC's Advisory Service on IHL remains by your side to support your work. Furthermore, during your stay in Geneva, you will have the possibility to exchange between yourselves and to realize that regardless of potential differences, the daily reality you face might be more similar than you thought.

The uncertainty around the fate of family members and loved ones is a cruel reality experienced all around the world and especially in States that are going through, or have gone through, armed conflict or situations of internal violence. Throughout the world, countless families relentlessly seek to ascertain the fate of their missing loved ones. Often against all odds, they do not give up the hope of seeing them again or, at least, to learn what has happened to them. The consequences of disappearance on families of missing persons are countless: inability to move on, anxiety, and resentment, not to speak of the numerous

legal and practical problems that arise. This is why we believe that clarifying the fate of the missing is crucial in the achievement of a genuine reconciliation, in the aftermath of a conflict.

Today, the ICRC is active in more than 80 countries across the globe. Our operations are based on the principles of independence, neutrality and impartiality. Strict observance of these principles is what allows us to access victims of conflicts, provide aid, and promote respect for international humanitarian law. As you may be aware, our most important operations are taking place in countries such as Afghanistan, Sudan and Iraq. Within our extremely diversified activities, the issue of missing persons is one we face every day in the field, and to which the ICRC attempts to find lasting solutions.

There can be many reasons and factors for which persons may be unaccounted for. Armed conflicts or gross violations of human rights are often the cause of disappearance. These disappearances can affect everyone, regardless of their status as combatants or civilians and regardless of age, family situation and gender, although our experience shows that there are many more men than women among the missing persons.

Fortunately, growing concern has emerged within the international community, on the issue of missing persons and their families. The adoption, in December 2006, of the Convention against enforced disappearance by the United Nations General Assembly is just one example of the determination of States to fully address the issue; we hope it will be swiftly and widely ratified. Other initiatives have been taken, among which national implementation of international law plays an important role. Why is that? Because the incorporation of international legal norms in the domestic legal order is a key requisite to ensure respect of fundamental rules of international law.

Indeed, international obligations may sometimes seem foreign to a national system. National legislation, for its part, is a known fact, a reality that has to be acknowledged by all actors of the domestic legal order. Implementation of international obligations requires their incorporation in the national legal system in order to ensure its respect and sanction its violations. It is a way for States to realize and claim that international law is also *their* law.

With regard to missing persons, implementing legislation should be aimed both at preventing disappearances and addressing their consequences. Preventive measures should be put into place in times of peace, to reduce the risks of disappearance during armed conflict or situations of violence. Other legal or practical measures should be adopted to deal with disappearances, when

prevention has failed. Both types of action are essential and must be taken into account by legislators in the national implementation process.

Many challenges and obstacles need to be faced, when trying to properly implement international humanitarian law obligations. For example, there can be a certain reluctance of States to engage in an implementation process; a lack of resources, be they human or financial, may also be a problem. Adopting a law is one thing. Adopting a complete law that faithfully portrays a State's international obligations is another. And that is our aim: not only do we want implementation, but we also want it to be done in the most effective manner.

In this sense, the role of National Committees on International Humanitarian Law is crucial. You, as members of these Committees, are the best persons to evaluate the shortcomings of your national legal system and to determine what should be done in order to improve the respect of international norms. This has been done in the past, in other fields of international humanitarian law. Think only of the important number of laws relating to the penal repression of graves breaches of the Geneva Conventions, or to the prohibition of certain weapons. Progress has been made in many domains, due to your hard work and commitment. Hence, the same can and should be achieved with regard to missing persons and their families.

Has your domestic legislation already addressed issues relating to missing persons? What were the solutions found? What other measures could be adopted to strengthen the protection against disappearances? Here are some questions that we will address during this meeting, and to which we shall try to find concrete answers. Missing persons and their families deserve that we, working together, take action in their favour.

Since the First Universal Meeting that took place in 2002, 21 new National Committees have been created. In the last year only, your dedicated work has led to the adoption of 35 national legislations related to the implementation of IHL. The trend is positive. This is a real accomplishment, and the merit is all yours. But the work is by no means over, and efforts must continue. This Second Universal Meeting should be seen as a starting point for further measures. It will then be your responsibility to report to your respective countries the result of our discussions, and initiate the implementation process.

We have now 81 National IHL Committees worldwide, most of which are represented at this meeting. That is to say, we have here a fabulous pool of national experts, from all legal contexts and traditions. Let us take advantage of our diversity to share ideas, views and experiences. Let us try to find innovative

ways to prevent disappearances and assist the families of missing persons. I trust that our discussions will be fruitful, and I assure you that the ICRC will continue to support all efforts directed at alleviating the sufferings of victims of disappearance. But we cannot work alone and, in the end, it is your dedication that will make the difference. Thank you.

Objectives and organization of the meeting

Mr. Stéphane J. Hankins

Legal Adviser, Advisory Service on International Humanitarian Law, ICRC

Thank you Mr. Chair.

Following the introductory and welcoming words of Mr. Jacques Forster, we would like to briefly introduce the agenda of this meeting in the next two and a half days. You have all received a detailed programme, which highlights that we have before us a very full agenda. And I would like to reiterate the appreciation of the ICRC's Legal Division and its Advisory Service on IHL for your presence and for your participation in this Second Universal Meeting of National IHL Committees and other national bodies on IHL.

It is a great pleasure for us to see in this assembly such a wide participation and also many familiar faces, as many of you had already attended the First Universal Meeting of National IHL Committees organized in Geneva in 2002. Five years on, the total number of National Interministerial Committees on IHL has risen considerably – it now reaches over 80 National Committees (the exact figure stands at 83) enjoying a similar mandate to advise their governments on all matters related to the implementation of IHL in domestic law and practice. This increase, we believe, highlights the growing awareness and the recognition among governments of the relevance and added-value of a national coordinating body in this field.

I should add that it is also a great pleasure for us to welcome to this meeting representatives of a number of States which have not yet established such a structure, but which were keen to attend our discussions, as well as representatives of different regional organizations and individual experts. Such a broad participation, we are confident, carries the promise of a very rich exchange.

As Mr. Jacques Forster has already described, this meeting will aim to address a dual objective: its first purpose is to provide a forum for dialogue and exchange between National IHL Committees on a global level, regarding your respective achievements, modalities of operation and priorities of action – and thus with particular attention to the period elapsed since the First Universal Meeting five years ago. Our second purpose will be to review with you the humanitarian problem of missing persons as a consequence of armed conflict and other situations of violence and the comprehensive legal and practical measures required or recommended in domestic law and practice to address the phenomenon of persons unaccounted for.

We shall begin our work this morning with a series of presentations aiming to lay the background for our discussions, firstly to examine the most recent and current developments in the field of international humanitarian law, second, to review present challenges to the application and respect of humanitarian law in current theatres of conflict. And we are very grateful to our colleagues from the ICRC's Operations and International Law and Cooperation with the Movement for their presence with us this morning.

We shall then open the floor to you. We have invited several IHL Committees in different regions to speak on their work and priorities, but also possibly to draw attention to the challenges they may face in the realization of their mandate. I would like to add that we were not able unfortunately, but for obvious reasons, to invite you all to the podium. There will be, however, other windows for you to present your work be it during the working group session this afternoon or in the course of the informal discussions for which we will have many opportunities.

We shall also seek to consider the modalities of a regional or supra-regional dialogue and of the synergies between National IHL Committees. As we shall see, such a dialogue is already very well developed in certain regions, such as the Middle East and the Americas. We have also planned a panel discussion with representatives of different regional organizations, during which the regional and supra-regional perspective will be highlighted.

This, ladies and gentlemen, will make up our agenda of today. You will of course realize that we attach a very great value to the success of your work as National Committees, and that we are very grateful for the trustful cooperation developed with you and with your governments.

Then, ladies and gentlemen, tomorrow our discussions will shift as we shall move to the substantive part of this meeting, for which we have chosen this

year to address the question of missing persons as a consequence of armed conflict and other situations of armed violence. We will here aim to highlight the preventive and reactive legal framework required, at the level of domestic law, to address this problem. It is our conviction that National IHL Committees could usefully play a greater role in this field.

Lastly, we shall also hold a full session on Wednesday morning devoted to the preparations for the 30th International Conference of the Red Cross and Red Crescent, which will be held at the end of 2007. And here again, we shall seek to consider the possible role which might usefully be devolved upon your committees in this regard.

Our meeting will then conclude with a discussion of steps ahead and plans for the future, with particular attention to the question of the missing. We shall in this respect be proposing and distributing a draft series of guidelines and recommendations for the development of domestic legal measures in this field.

In closing, Mr. Chair, I wish to give some very brief indications of a practical character.

The programme you have received outlines the sequence of events during this meeting, which will be made up of sessions in plenary and in working groups. I want also to draw your attention to two items on our agenda. The first is the side event planned at the end of the afternoon today and devoted to the Swiss initiative on private military and security companies, which will be organized by the Swiss Federal Department of Foreign Affairs. This presentation will be followed by a small reception offered by the Swiss Confederation. The second item I wish to highlight is the outing foreseen tomorrow evening which will include a visit to the International Museum of the Red Cross and Red Crescent, and there will be there of course a strong link with the issue of the missing through the involvement over the years of Red Cross and Red Crescent Movement in this field. This will be followed by a dinner in a traditional Swiss restaurant. You are all of course cordially invited.

Finally, I would like to mention that, should you have any queries or questions regarding your stay, you may contact the ICRC Secretariat for this meeting, which will be at the end of the corridor on this same floor.

With this, I conclude and would like to wish you once again, on behalf of the ICRC, very fruitful and stimulating discussions in the next two days and a half. Thank you.

B. Recent advancements in IHL implementation by National Committees

Operational challenges for the ICRC as a neutral and independent humanitarian organization

Mr. Balthasar Staehelin

Deputy Director of Operations, ICRC

Excellencies, ladies and gentlemen,

It is a particular pleasure and honour for me to address you, an assembly of personalities that are all committed to work for the national implementation of international humanitarian law all over the world. Your noble efforts contribute to the building of an environment in which the ones who are not or are no longer taking part in hostilities are protected and in which some measure of humanity prevails in the worst of all situations, in the situation of war. We are all very grateful for your efforts, that make a significant difference for the populations suffering from situations of armed conflict, and that provide organizations such as ours, the ICRC, with a solid fundament in both international and national law, to carry out our humanitarian mission. My colleagues at the Directorate for International Humanitarian Law asked me to talk about operational challenges, in particular as a neutral and independent humanitarian organization. I will make a presentation that should last about thirty minutes, and hopefully there will be some time to take possible questions afterwards.

I am sure you are all quite familiar with the ICRC, its history and the mandate, and I will not dwell here on a general presentation of the ICRC. Rather, I would like to break down my presentation into four parts, and I ask for your indulgence that I will have to remain fairly general for want of time.

In the first part, I will make some comments on key trends in the evolution of conflict environments. In the second part, I will make some remarks on the future of the humanitarian sector, and the place of the ICRC. The third part will be on challenges, risks and opportunities, and the conduct of ICRC operations, and, in the fourth part, I shall give you an outline of the strategic orientations and operational priorities, and that will also include some indication of our budget and human resources.

Now if we look at just a few of the global trends, I think what is really at the heart of our concern is of course the enormous human cost of conflict, and I think you who are interested in IHL are certainly all very aware how much populations suffer and how difficult it is sometimes to convey a real sense of what war – and what it entails – really means for the population affected. I think that in 2006 what struck us were very much the multiple fronts in the Middle East. If there is one region that has experienced a clear deterioration, it is the Middle East, with the deterioration in the Palestinian occupied territories, the war in summer in Lebanon and northern Israel, of course the situation in Iraq, to name but these examples.

Also interesting in the global trends which affect our work and which affect conflict dynamics is the ongoing transformation of the world's geopolitical architecture and the diverse nature of its poles of influence. And I think here what we clearly see in conflict zones is an increasing number of major players. We see of course a sharp rise also in the influence of Asian States, and I think there is really a move towards a more multi-polar world in which a number of global actors can deploy economically, politically and militarily and shape conflict zones.

If we look at other global trends, perhaps the “long war”, as the so-called Global War on Terror is now often referred to, must be mentioned. It has a clear impact on the situation in Afghanistan. It has an impact also on the situation in Iraq. And it has an impact in many other countries around the world.

The proliferation of weapons is of course a major concern for us and the very easy access to weapons all over the world fuels violence and leads to very grave and serious humanitarian consequences.

Ongoing socio-economic fractures – I will afterwards make some comments on them in situations of armed conflict – are also issues which we analyze very carefully. Just look at the ongoing socio-economic fractures that have an impact on the conflict environment – I will not be able to go into many details, but the environmental degradation, climate change, scarcity of resources and pollution are all factors which in many countries lead to conflict. Land and water have traditionally been strong issues and they seem to be on the rise as a cause for conflict. Migration is becoming a major factor shaping conflict environments. With the privatization of public services in States unable to provide these services, often, “private” public services, once a conflict erupts, simply withdraw, leave a country, whereas the State, normally, when a conflict takes place, still tries to offer these services to the population. So with “private” public services, what we often see is actually that public services in times of

conflict simply disappear, which afterwards poses a challenge to humanitarian actors whereby they try to substitute for non-existent public services. I also put on this list religion as a factor that can of course contribute to violence and strife and humiliation, which I think is an often underestimated dimension of conflict. Perceived or real humiliation has an enormous impact on conflict.

Consider now the diversity of situations of armed conflict. I think it is very important that today what we are seeing in over 80 countries where the ICRC works is of course an enormous diversity of conflicts and situations of violence. We still have a limited number of international armed conflicts. We have a limited number of classic internal armed conflicts such as Sri Lanka and Colombia, and then we have a series of internal conflicts that have a variety, a diversity of actors, multiple grievances, and often are internationalized in nature. I think Sudan (Darfur) with Chad could be mentioned in this category.

I mentioned before this confrontation of global dimensions in which acts of terror are committed against third States, and that States use a number of instruments to fight the transnational actor. This has repercussions in a number of countries around the world. And then we basically have of course transnational conflicts between communities, tribes and clans, plus a number of situations which are between stabilization, containment and transition, and in which the international community tries to help turn the page to come to a situation of stability and peace. There are also situations where political and criminal violence is so mixed that one really cannot apply international humanitarian law, but where in terms simply of the use of weaponry, we come close to a situation which would normally have been associated with armed conflict. Of course, what is important for you, you will say, is that the different situations are also characterized by varying degrees of the applicability of international humanitarian law, but I wanted to give you this list simply to draw your attention to the fact that the ICRC as an institution is of course, if you look at the operations all around the world, exposed to extremely different challenges and different types of violence and also different extents of applicability of international humanitarian law.

I think what is striking as a trend is the rise in the influence of non-State actors. Non-State actors are of course not new to situations of conflict, but we have been used to them as sorts of guerrilla fighters or national liberation movements in classic insurrection-type hostilities. And I think here we see a clear evolution where non-State actors start to fragment into different factions, regroup under new commands, are sometimes very loosely structured outfits, sometimes supported by international networks, so it is becoming quite a challenge to simply analyze who are all the different actors in a conflict zone

and what is their agenda. Again, I think Darfur is certainly a situation where this constant fracturing of non-State actors into shifting groups poses enormous operational challenges.

I will be very brief, but I think also what is striking is that we see conflicts in which a State fights against a non-State actor, inflicts military defeat against non-State actors, but the very fact that non-State actors continue to fight even if they have perhaps no military hope to inflict defeat on the State actor means that situations are very protracted and are not solved. This type of situation is increasingly starting to characterize modern warfare, which means that we have perhaps less of a situation where you have peace, then you have a conflict, then you have a clear defeat or a clear victory, and then you come to stability. You have protracted situations of violence to which there is simply often no clear end.

I want to make a few comments on the future of the humanitarian sector. What is interesting is that we have a very strong move towards a reform of the UN humanitarian sector, where the UN is starting to organize themselves into clusters. I don't know whether you are familiar with the various coordination mechanisms such as the Inter-Agency Standing Committee, but the UN, I'd say, looks towards a greater integration of its agencies in an overall agenda, and what we also see is that we have more and more operations in a given context which are either led by the UN or led by a group of States, which basically integrate all the different tools which are at their disposal into one political agenda. And in such an architecture, humanitarian action would simply be one of the various instruments it uses. You may have a military arm, you may have political reform, you may have elections, you may have development cooperation, and then you have humanitarian action which is simply a facet of an integrated whole, and the ambition of such operations is that all the different elements fit into one convincing puzzle with a given political aim. I'll come back to why the ICRC finds it difficult to be integrated in such operations. Of course the ICRC collaborates closely with all other actors in the field to avoid duplication, but we keep a distance in such integrated operations for reasons I will come back to.

Among the new actors in the humanitarian sector, we see more and more the emergence of Muslim charities, we see Asian agencies becoming stronger, and private enterprise also. The Gates Foundation, of course, has a massive amount of money which for the time being is not much used in conflict zones but rather to find treatment for certain illnesses that plague the world. But I think these actors are also changing a humanitarian sector which has very much so far been dominated by UN organizations on the one hand and a lot of, let's say, Western non-governmental organizations on the other.

Finally, there is a question whether there is a crisis of humanitarianism in the post-9/11 world, and I'll come back to that. There are some observers who basically argue that humanitarian action is today totally integrated into a political agenda and has perhaps "lost its innocence", so to speak, and perhaps its soul. Now, if we look at the challenges, risks and opportunities, I think for us what is absolutely vital in our operational and philosophical approach is to have access to the populations who are affected by situations of armed conflict and other forms of violence. And that access means that we really want to be close to these populations, that we want to fan out in a given country and not to hide in fortified positions in the capital. That means that we need of course, in order to be able to do so in acceptable security conditions, we need the acceptance of all the parties to a conflict, and if I say of all the parties, I am talking of the State actors, the armed forces, the different ministries concerned, and I am also talking about the non-State actors, because in very many situations in the world, if the ICRC is not accepted by everybody, we simply could not, I think, carry out our work, and there are very many situations which immediately spring to mind. If you look for instance at the ICRC operations during the hostilities in the south of Lebanon, it is obvious that we needed both the acceptance of Israel, which was engaged militarily in this sector, and the acceptance of the Hezbollah movement and the acceptance of the Lebanese authorities to accept the mission of the International Committee of the Red Cross and indeed of its strategic partner, the Lebanese Red Cross. So that is absolutely vital. And that means also that, in order to have the acceptance of all actors, we want to dialogue with all actors. The fact that the ICRC talks to any given actor of violence does not confer any status upon that actor. It is not an issue of political recognition of the actor. It is a purely humanitarian dialogue in which on the one hand we try to negotiate our access to conflict regions, to prisoners, and on the other we try to impress upon all these actors the need for them to respect the applicable international humanitarian law. And that brings us to what our Vice-President Mr. Forster mentioned, namely our firm belief in neutral, independent humanitarian action which is rooted in international humanitarian law which, with your help, is also now translated into national legislation around the world.

This neutral, independent humanitarian action, which is of course rooted in the traditional principles of the Red Cross and Red Crescent Movement, may seem a bit like an empty slogan, but in fact it is really operationally highly relevant. What are the challenges for humanitarian action today?

On the one hand, we have the danger that humanitarian action becomes an instrument. On the other hand, and I think they are linked, these two challenges, we have the danger that it becomes rejected. So the instrumentalization would

be the integration of humanitarian action into political strategy aimed at defeating the enemy. So if you put yourself in the position of the enemy, of course, if you see humanitarian action as part of an overall agenda to defeat you, by definition you will not like it. Worse, you will perhaps actually take up arms and start to attack and kill humanitarian workers because you see them as an instrument which would lead to your defeat. And I think humanitarian action in conflict zones has probably always had to count on the fact that it would not decide the outcome of an international armed conflict, or of any conflict. The moment humanitarian action becomes a factor in who wins and who loses, I think the actors trying to carry it out are in great difficulty. And I think we could probably say the same thing about international humanitarian law. Respect for international humanitarian law is not meant to decide who wins and who loses. That should not be influenced by the respect for international humanitarian law.

We have at the other end of the spectrum a rejection of humanitarian action, and I wanted to add here a quote which was attributed to the Taliban leader Mullah Omar in 2003, and it was really a statement which very much alarmed us, and has led us to reaffirm this strictly independent, neutral way we conduct our operations. Mullah Omar was reported to have said, “Oh Muslims, know the enemies of your religion! The Jews and Christians, America, Britain, the United Nations and all Western aid groups are the greatest enemies of Islam and humanity!” And I think that simply shows that some actors now see humanitarian action, not as a humanitarian action which tries to help all people in a conflict regardless of their political affiliation, regardless of their political belief, religion, ethnic background, but as part of an overall design to defeat them. And that makes it very problematic. So what we try to do in our approach, which is rooted in the principles that were adopted by the Red Cross and Red Crescent Movement on the occasion of a conference decades ago, is really to strictly adhere to our principles, which means also that we are predictable, that people know what we stand for, that people know how we operate, that we don’t integrate our action into any military or political agenda – we want to be apart from any agenda –, that we lead our operation on all sides according to the needs, in an impartial way, which means you wouldn’t privilege one or the other, and that we insist on our capacity and our need to have a dialogue with all parties to a conflict. And it is not always easy for States to accept that we talk to other States or to non-State actors they regard as terrorists. And some non-State actors find it very difficult to accept that we talk to States which they deem terrorist States. So it is sometimes not easy in a conflict zone to have the trust of everybody, and I think we can only have acceptance by all parties if we really stay out of any political consideration and conduct our mission in a purely humanitarian way. And that means also that

we do not use armed guards, escorts, we don't militarize. An example of that would be Iraq where unfortunately the ICRC was attacked several times. Our delegation was even destroyed by a suicide bomber who used an ambulance in this attack. And the typical dilemma was what shall we do in Iraq? Should we leave? Should we stay, should we retrench, with armed guards, into the international zone? And we have decided to continue our operations and not to use armed escorts, which means that for instance in Iraq we still visit prisoners held by the multinational forces, and we still conduct, together with the Iraqi Red Crescent Society, which is again a key partner, a number of relief programmes, namely for displaced persons. And we still have expatriate staff travelling inside Iraq, being permanently stationed in the north of Iraq, but without military escorts. I think it is important to mention that.

To be brief, I think what also characterizes our approach, and some of you may have seen us working in your respective countries, is really that we try to have a broad scope of action in which we find tailor-made responses to humanitarian needs. It is apparent in operations regarding persons unaccounted for, and will be seen later in the Conference perhaps. We should be seen to try not to come always with the same standard response, that we always do food, whatever happens, or we only visit prisoners, but that we try really to find an integrated and comprehensive response.

In terms of coordination and partnership, I think the National Red Cross and Red Crescent Societies are clearly our key partners with whom we work in many contexts very extensively, and there is of course also an issue of finding the right human resources to be able to carry out our mission. So we are action-oriented, we seek impact; we want to be close to the people. We want to be a reference for international humanitarian law and a neutral, independent approach, and it is our ambition to really act in a range of phases, a diversity of situations, because, as I pointed out at the very beginning of my presentation, there is this diversity of situations where people suffer from violence, and we really need also to adapt to different situations. It is not so much any longer a single situation where we only have international armed conflict. We have this bandwidth of different situations of violence where we need to engage.

Furthermore, I think if you look at the main strategies, the environment building is really very important, and I think what your National Committees do is absolutely key in this environment building. I'm really thrilled by seeing representatives of so many National Committees knowing that international humanitarian law is not some kind of dusty treaty forgotten somewhere in a cupboard but is alive and there is an interest around the world in trying to uphold this bedrock of humanity in situations of armed conflict and to

really make it work in countries also through national legislation. That is an enormous encouragement for all of us who are working on the ground in ICRC operations.

I would now like to give you an idea of our operations in terms of budget. So we have in 2007 an initial budget of CHF 843,000,000, and I can indicate how this is broken down in terms of the regions, with Africa still by far the largest percentage, and I think the majority of our operations are still conducted in Africa. And then you have Asia with 22%, the Middle East with 20% and Europe and the Americas with 16%. We now have 1,400 expatriate staff all over the world, and almost 10,000 national staff, who play an absolutely key role because they know the context and I think this conjunction between expatriates who are not stakeholders in any given conflict and in this sense certainly find it easier to be accepted as neutral and not involved in the conflict, coupled with national staff who have the experience of the context, has really had a strong impact.

Finally, I would like to show you a map. I don't know how easy it is to see it from the back of this auditorium, but it basically indicates our major operations, and you see that the operations which cost over CHF 60,000,000 are in red. In deep red we have Sudan, being the largest operation worldwide, and unfortunately, as you may have heard, a number of other humanitarian actors are finding it increasingly difficult to operate in Darfur. There is this enormous camp of internally displaced persons in Gereida which now, after the departure of other actors, the ICRC has started to take over and where it is to provide food. In Darfur, the ICRC again endeavours to gain acceptance and to be able to operate all over, through a dialogue with this increasing number of non-State actors, trying to impress upon them the need to respect our mission and respect the emblems of the red cross and the red crescent. We then have the second-largest operation In Israel and the occupied and autonomous Palestinian territories. Then comes Iraq. This is an operation we don't talk very much about but it is extremely difficult in a way to explain what we do without attracting undue attention which perhaps afterwards would translate into attacks against ourselves, but it is the third-biggest operation worldwide. And then we come to the operations in Afghanistan, the Democratic Republic of the Congo, Colombia, the Russian Federation, Somalia, Ethiopia, Sri Lanka, Pakistan, Uganda, Côte d'Ivoire, Liberia, Chad, Indonesia and Lebanon. And, as the colours become lighter, that is an indication of the budget being smaller.

And I would perhaps like to conclude here, simply to leave some room for questions, if there are any, and I would also like to draw your attention to our website which I think is an increasingly relevant and professional reference

tool in which you will find a wealth of information, not only on international humanitarian law and national implementation, but also on our operations worldwide.

Thank you very much.

Recent developments in the field of international humanitarian law and current challenges to its implementation

Dr. Philip Spoerri

Director for International Law and Cooperation within the Movement, ICRC

Excellencies, distinguished participants, ladies and gentlemen,

I am very pleased to have the opportunity to address the Second Universal Meeting of National Committees on International Humanitarian Law and share with you some recent developments in the field of IHL and its implementation – seen from the perspective of the International Committee of the Red Cross.

I will begin the presentation with an insight from the viewpoint of ICRC operations in the field. I will call it, as a former colleague of mine once used to the “watchdog function”, namely how the ICRC tries to intervene for the respect of IHL in its field activities that are at the heart of our institution’s ambitions and identity.

Then I will address the ever existing challenge: how to better enforce rules once a war has commenced? I will also address a number of IHL challenges/issues raised relating to the “fight against terrorism” – vitally important even more than five years after the terrible attack of 9/11. I will finally provide you with information and explanations about a number of important issues which the ICRC has identified as important for clarification or legal development.

1. IHL and ICRC field operations

I would now like to move on to the current picture of armed conflicts in the world, and here it is no overstatement to conclude that 2006 was a bleak year. The conflict in Iraq has further spiralled downward into an ever-escalating cycle of violence and brutality with terrifying consequences for the civilian population (the United Nations has recently referred to a death toll of 34,000 civilians for 2006). I just learnt recently that the Medical Legal Institute (MLI) in Baghdad had to handle 16,867 unidentified human remains in 2006. The ICRC has been assisting the MLI with expertise and material. Sudan's Darfur conflict has equally continued to take an enormous toll on the civilian population with an increasingly difficult access for humanitarian organizations. A dramatic worsening of the situation was also witnessed in Israel/Palestine, particularly in the Gaza Strip, but also in the West Bank. Afghanistan is another context where the scale of armed conflict and its humanitarian consequences has increased. In addition to these ongoing (worsening) scenarios, 2006 witnessed the outbreak of a war in Lebanon, the re-ignition of the armed conflict in Sri Lanka and a spill-over of the Darfur conflict into Chad. Somalia must also be mentioned. In 2006 the country was scourged by drought, flood and finally an outbreak of armed conflict.

A specific part of the ICRC's field operations (and this indeed from the early days of the institution's creation in 1863) is that it did not limit its action to the primary objective of assisting those in need, but also realized the importance of developing the laws of armed conflict (IHL) – and subsequently playing a role in seeking the faithful and effective implementation of these rules. The ICRC therefore takes cognizance of any complaints based on alleged breaches of the law; it further dedicates substantial energy and resources to promoting understanding, advising and disseminating knowledge of IHL. Finally, when necessary, the ICRC takes initiatives to prepare the development of the law.

In light of the important current operational challenges, one of the key IHL challenges for the ICRC is to ensure the quality and impact of its protection activities in the field. In order to give you an idea of the scope of our protection activities, ICRC delegates during 2005 visited 528,611 detainees out of which 46,000 received some form of personal follow-up; the ICRC exchanged 960,000 Red Cross messages (RCMs) between family members. The reporting to the respective authorities on violations of the law forms a central objective in all ICRC delegations. ICRC representations to authorities are carried out in a confidential manner. Exceptions to this rule are reserved to a number of criteria, most notably the failing of ICRC demarches to have any impact in cases of serious IHL violations.

2. The challenge of implementing IHL

Another ever important challenge for IHL is the issue of implementation. The ICRC is keenly aware of the importance of control and sanction in the implementation of the law, firstly by the means of well-trained armed forces held in rein by effective command and control structures. On the level of national legislation, the due incorporation of IHL treaties into the national penal legislation is a cornerstone in ensuring the respect for the law.

The ICRC, since 1996 through its Advisory Service on IHL, has been actively encouraging States to become Parties to the numerous IHL treaties (promoting 17 IHL treaties) and, through eight regionally based Advisory Services, has been offering support to States in the process of ratification, accession and the implementation of IHL treaties in a wide range of areas. In order to ensure that there is adequate coordination between the variety of government ministries and national institutions, the ICRC has encouraged the establishment of National IHL Committees. The establishment of 82 National Committees on IHL, most of which are meeting here today, is a remarkable progress and is important in securing a better implementation of IHL.

3. IHL and the “fight against terrorism”

a. On the applicability of IHL

When listing contemporary challenges to IHL, it is not possible to omit the challenge posed to IHL by the global “fight against terrorism”. The first question is the place of IHL in the so-called Global War on Terror (GWOT). Some say it is a global armed conflict, others deny it is an armed conflict at all. In the report prepared by the ICRC for the 28th International Conference of the Red Cross and Red Crescent, the ICRC reached a conclusion to which it still adheres, namely that acts of transnational terrorism and responses thereto must be qualified on a case-by-case basis. In some instances the violence will amount to a situation covered by IHL, while in others it will not. In any case, IHL does not/and should not be used to exclude the operation of other relevant bodies of law, such as international human rights law, international criminal law and domestic law. The report rightly saw that the fight against terrorism following the horrific events of 11 September 2001 has led to a re-examination of the balance between state security and individual protections. The ICRC, already in this report issued at the end of 2003, viewed as “the overriding legal and moral challenge facing the international community its capacity to find ways of dealing with new forms of violence while preserving existing standards of protection provided for by international law.” This continues to be one of the major challenges of our time.

For the ICRC, what is referred to as the “war/fight against terrorism” is therefore a composite phenomenon that could best be described as a fight involving, apart from the use of force in certain instances, the use of other measures such as diplomatic, financial, economic, legal, etc.

When violence that takes place within the “fight against terrorism” can be characterized as an international armed conflict (inter-State conflict), the totality of IHL applies: examples are (at least initially) the wars in Afghanistan (2001) and Iraq (2003). (Even though the conflict in Iraq was not described as being part of the GWOT, over time it has come to be seen as such.)

We later re-qualified these conflicts when they no longer involved opposing States. In both cases today, international forces are assisting the respective governments in fighting non-State armed groups.

IHL is also applicable to certain non-international armed conflicts taking place within the GWOT: Pakistan, Somalia, and Iraq.

Outside situations of armed conflict, in our view, IHL does not apply. The acts of terrorism that have taken place in Europe (London, Madrid) and elsewhere in the world (Bali) are governed by domestic law and other bodies of international law, in particular human rights law. The governments concerned have never adopted a law of war approach in dealing with those events.

Our legal analysis is based, as already mentioned, on facts on the ground. Simply put, it would be dangerous to apply IHL to situations that do not constitute war because it would allow the looser IHL rules on targeting of persons and on detention to be implemented. In the middle of London, for example, there is no need to inflict “collateral” civilian damage when attempting to capture a terrorist suspect, as there are other means (law enforcement methods) to achieve the same result.

Similarly, the concept of detention until the end of active hostilities with no or very little procedural rights for detainees is antithetical to a law enforcement approach that can be implemented outside of armed conflict.

In sum, IHL has its place in the “fight against terrorism”, but one must be careful to apply it correctly, only to situations of armed conflict, as too broad an interpretation can lead to unintended practical, legal and political consequences.

b. Status of persons captured in the “fight against terrorism”

The ICRC’s approach to the status of persons detained in the “fight against terrorism” corresponds to the legal qualification just outlined above. Some persons will be captured in armed conflict. If the conflict is international, they will be entitled to the protections of IHL: the Geneva Conventions, Additional Protocol I, if ratified, and customary law. Where the violence amounts to a non-international armed conflict, common Article 3, Additional Protocol II, if ratified, and customary law, as well as human rights law, will apply. Outside armed conflict, domestic law and human rights law will govern rights in detention.

Concept of enemy combatant/unlawful combatant

IHL treaties do not use the term enemy combatant or unlawful combatant. It is a colloquial designation for persons who are not part of regular armed or associated force entitled to PoW status. The persons in mind are therefore “irregulars”, mainly civilians, who take a direct part in hostilities in international armed conflict. What are the consequences of their behaviour under existing IHL?

- They may be targeted (killed) while directly taking part in the fighting. The ICRC has been heading an informal expert process for the past four years aimed at identifying criteria for establishing when a person is considered to be taking a direct part in hostilities (cooking food for troops or only when actually using arms, etc.). I will address this further in a moment.
- They may be detained for imperative reasons of security for the duration of the international conflict. Internment must be subject to periodic review every six months.
- Certain rights may be derogated from while in internment.
- They may be criminally prosecuted not only for war crimes, but for the very fact that they took part in the hostilities under the domestic law of the detaining State.

It is not clear to the ICRC what other measures should or can be applied to so-called enemy combatants in international armed conflict that would not run the risk of seriously violating basic standards of humanity. In other words, what is lacking? We obviously do not subscribe to the view that standards prohibiting torture or ill-treatment should be revisited. Similarly, we do not believe that judicial guarantees must be relaxed, as the guarantee of a fair trial is a fundamental safeguard, particularly in situations where a person may face the death penalty.

The concept of combatant does not exist outside of international armed conflict. In non-international armed conflict, members of non-State armed groups may also be targeted during direct participation in hostilities. Safeguards in internment and detention are based on IHL, but even more so on domestic law and human rights (HR) law.

Note, however, that procedural safeguards for persons in detention for security reasons (without criminal charge) exist. While basic guidance exists in both IHL and HR law, it is not sufficient in terms of protection. The ICRC has published its own reading of what the basic safeguards should be, but a broader debate needs to take place because this type of detention has been widely practised as part of the GWOT.

There is no room for the concept of combatant outside armed conflict (domestic law and HR law apply).

In sum, we do not share – and are in fact concerned about – an overly broad definition of enemy combatant. Why? Because on the one hand, it stretches IHL coverage to persons not involved in an armed conflict, i.e. persons who should be dealt with by means of domestic law (e.g. terrorist suspects in London or Madrid). On the other hand, it also deprives certain persons of stronger protections that they would be entitled to under the Geneva Conventions.

The ICRC Legal Division is at present working on a good number of legal issues it counts among important current IHL challenges. I will mention just a few.

4. ICRC customary law study

The ICRC, after nearly 10 years of careful research, published in 2005 a *Customary International Humanitarian Law* study that particularly spells out those rules of IHL that apply in non-international law. This will prove a very valuable tool for IHL lawyers and practitioners; it has actually already proven to be an important tool for both national and international courts.

I would like to share with you three conclusions of the study:

- **First**, the study shows that agreement on the principles and rules of international humanitarian law is more widespread than the ratification of treaties shows.

The Geneva Conventions have been ratified universally but other treaties, like the Additional Protocols, have not. The latter nevertheless contain a

large number of rules and principles that have received widespread support in the international community. The result is that there exists an extensive body of law common to all States, a set of rules that all States have accepted and that forms customary international humanitarian law.

- **Second**, the normative framework in non-international armed conflicts is strengthened.

While treaty law governing international armed conflicts is well developed, treaty law governing internal armed conflicts is not. State practice, however, has filled a large part of this gap and has created customary rules beyond those existing in treaty law. The result is that there exists a more extensive normative framework for internal armed conflicts than that contained in treaty law.

- **Third**, the study shows that many of these rules applicable to internal armed conflicts are the same as those applicable to international armed conflicts.

This is the case for many rules on the conduct of hostilities, use of weapons and treatment to be accorded to civilians and persons hors de combat.

The result is that problems related to the qualification of an armed conflict as international or non-international are often not that important for the application of customary international humanitarian law. The same rules have to be respected in any armed conflict.

This conclusion is also important in the framework of coalition warfare and multinational operations where customary law provides a common framework for all partners.

Volume II of the study (practical cases) will be updated and this work will take place in collaboration with the British Red Cross and three researchers working at the Lauterpacht Centre for International Law in Cambridge.

5. Direct participation in hostilities (DPH)

Art 51 para 3 API: Civilians shall enjoy protection... unless and for such time as they take direct part in hostilities.

In 2003, the ICRC, in cooperation with the Hague-based TMC Asser Institute, initiated a research and clarification process entitled “Direct Participation in

Hostilities under IHL” organized with the aim of resolving the complex legal problems related to the interpretation of the notion of DPH.

Increasing civilian involvement in hostilities: The increasing involvement of civilians in both international and non-international armed conflict as well as the further shift of military operations away from distinct battlefields into civilian population centres has emphasized the importance of distinguishing not only between traditional combatants and the “peaceful” civilian population, but also between that “peaceful” civilian population and civilians “directly participating in the hostilities”.

DPH leads to loss of civilian protection: Under IHL, the notion of DPH denotes conduct during which civilians lose their individual protection against direct attacks.

Lack of definition of DPH: However, neither treaty law nor state practice provides for a precise definition of what conduct qualifies as DPH.

Importance of clarification: If we want to continue to ensure the protection of the victims of armed conflict, an adequate interpretation of the notion of DPH is of utmost importance from both a military and a humanitarian point of view.

In the framework of this process, four informal Expert Meetings have been organized, bringing together a group of around 40 legal experts from military, governmental and academic circles, as well as international and non-governmental organizations, the last one being the 4th Expert Meeting, Geneva, 27-28 November 2006). At present, the ICRC is reviewing a first comprehensive proposal on how the notion of DPH could be interpreted. The resulting document will be entitled “Interpretive Guidance on Direct Participation in Hostilities”.

It remains to be seen whether the ICRC will be able to consolidate this work and have it published in the course of 2007.

The aim is interpretation (rather than development) of IHL. In drafting the “Interpretive Guidance”, the aim was *not* to develop new rules of IHL, but to interpret existing IHL in the light of the current circumstances, which the civilian population, military personnel and humanitarian actors are confronted with in contemporary situations of armed conflict.

6. Private military/security companies (PMCs/PSCs)

Over the last decade and a half, functions traditionally performed by States' security or military apparatuses have increasingly been contracted out to PMCs/PSCs. In view of the increased presence of these relatively new actors, carrying out a range of tasks that is getting increasingly closer to the heart of military operations in situations of armed conflict, including military occupation, and which often puts them in direct contact with persons protected by international humanitarian law, it is natural for the ICRC to have commenced a dialogue with these companies and with the States with responsibilities for their operations. The aim of the dialogue is twofold: first, to promote compliance with international humanitarian law by ensuring that PMCs/PSCs and the relevant States are aware of their obligations; and, secondly, to ensure the companies are aware of and understand the ICRC's mandate and its activities for persons affected by armed conflict.

What are these obligations? PMCs/PSCs have featured widely in the media in recent months and it is often asserted, both in the popular press and in expert publications, that there is a vacuum in the law when it comes to their operations. In view of this, the ICRC considers it important to emphasize that in situations of armed conflict there is a body of law that regulates both the activities of PMC/PSC staff and the responsibilities of the States that hire them. States that hire PMCs/PSCs and the staff of PMCs/PSCs have concurrent responsibilities under international humanitarian law. Moreover, States in whose territories such companies are incorporated or operate have a role to play in ensuring respect for international humanitarian law by PMCs/PSCs.

In case of serious violations of international humanitarian law, the responsibilities of PMC/PSC staff and of the States that hire them are well-established as a matter of law. This being said, practical difficulties often arise in bringing proceedings in respect of violations. For example:

- PMCs/PSCs and their staff may have been given immunity in the country where they operate (this was the case in Iraq, for example, by means of CPA Order 17).
- The courts in the countries where the PMCs/PSCs are operating and where the alleged violations took place may not be functioning because of the conflict.

- The State hiring the PMC/PSC – or, indeed, any third State, including that of nationality of the company or of its employees – may be unable or unwilling to exercise extraterritorial jurisdiction over the PMCs/PSCs in civil matters or criminally over their staff.
- Even where the courts of the State hiring the PMC/PSC – or any State on the basis of universal jurisdiction – can and will exercise jurisdiction, much of the evidence and witnesses are in the country where the violations took place, making prosecutions and proceedings complicated.

Nonetheless I would not consider this a gap in the law but rather a challenge in its enforcement in practice – and one that is not unique to PMCs/PSCs.

It is true that there is very limited law in the field of national or international control of the services that PMCs/PSCs may provide and the administrative processes, if any, with which they must comply in order to be allowed to operate. Only a handful of States have adopted specific legislation laying down procedures that PMCs/PSCs based in their territory must comply with in order to be allowed to operate abroad (e.g. South Africa) and equally few regulate the companies operating in their own territory (e.g. Iraq and Sierra Leone).

Against this backdrop in 2005, the Swiss government, in close cooperation with the ICRC, launched an intergovernmental initiative that aims to bring States together to discuss the issues raised by PMCs/PSCs operating in situations of armed conflict and to identify steps that States can take to promote respect for international humanitarian law and human rights by such companies. To date we have held two meetings with a small group of particularly interested or affected States and industry representatives, one in January 2006 and the other in November 2006.

Although we are still at an early stage of the process, the results to date have been encouraging. There is support for the initiative and for the proposed approach. This does not aim, as mistakenly reported in the press, to develop a new binding instrument. Instead, we intend to take a far softer approach. We are moving towards the elaboration of a non-binding document that first reaffirms existing obligations of States and of the staff of PMCs/PSCs under international humanitarian law and human rights law and, secondly, provides guidance to States in their relationships with PMCs/PSCs by means of a set of best practices – the first for States that hire PMCs/PSCs, the second for States in whose territories operate, and the third for the States of nationality of PMCs/PSCs providing services abroad.

7. IHL and weapons

The regulation of weapons is the field of international humanitarian law that has evolved most rapidly in the last decade. In less than 10 years, the use of blinding laser weapons and anti-personnel landmines has been banned. The Convention on Certain Conventional Weapons has been extended to cover non-international armed conflicts and a new Protocol on Explosive Remnants of War has been added. While these developments are remarkable, they also reflect the necessity of ensuring that international humanitarian law keeps up with both the rapid development of technology and humanitarian problems on the ground. However, preserving fundamental norms governing weapons requires not only adopting new norms, when necessary, but also defending old norms from new challenges.

One of the most ambitious and successful efforts in this field has been the adoption and implementation of the Convention on the Prohibition of Anti-personnel Mines and on their Destruction – a process in which the ICRC was deeply involved from the outset. The global use of anti-personnel mines has decreased dramatically. States Parties have destroyed over 37 million anti-personnel mines and mine clearance is taking place in most of mine-affected States Parties. Where the Convention's norms are being fully applied, the number of new mine victims has decreased significantly, in some cases by two-thirds or more.

However, the scourge of landmines is far from over. The most crucial phase in the life of the Convention will be the next five years leading up to mine-clearance deadlines that begin to fall in 2009.

In contrast to the progress on anti-personnel mines, the broader humanitarian problems caused by a range of explosive remnants of war are set to get worse if urgent action is not taken. Each new conflict is adding to the already huge burden of clearance in affected communities – a burden which existing resources are already inadequate to address. The Protocol on Explosive Remnants of War to the Convention on Certain Conventional Weapons has recently entered into force. It provides a framework for both preventing and addressing the problem of explosive remnants of war.

New norms are also slowly evolving in the field of arms transfer controls with important implications for international humanitarian law. The easy access to arms, particularly access to small arms and light weapons, by those who violate international humanitarian law has severely undermined its respect and caused a major part of the civilian suffering in conflicts throughout the world in recent decades.

States Parties to the Geneva Conventions in the 28th International Conference of the Red Cross and Red Crescent (2003) recognized that to “respect and ensure respect” for international humanitarian law, controls on arms availability and transfers must be strengthened. They supported the inclusion of criteria on respect for this law by recipients of their arms in national laws and policies on arms transfers.

One of the most ancient norms in war has been the prohibition on poisoning and the deliberate spread of disease. The prohibition of the use of chemical and biological weapons is enshrined in the 1925 Geneva Protocol and reinforced by the 1972 Biological and 1993 Chemical Weapons Conventions. However, in the face of stunning advancements in the life sciences and increasing interest in certain types of so-called non-lethal weapons, vigilance is needed to ensure that current norms are respected and reinforced.

In 2002 the ICRC launched a rare public appeal on “Biotechnology, Weapons and Humanity” calling on governments, the scientific community and industry to reaffirm the norms and take a wide range of preventive actions. We have followed this up with an extensive programme of outreach to these constituencies. All of these actors together bear responsibility to ensure that, unlike most other major advances in science, the “biotechnology revolution” is not harnessed for hostile purposes. In response to the growing interest in chemical incapacitants for both law enforcement and military purposes, the ICRC has also urged State Parties to the Chemical Weapons Convention to begin a process of clarifying precisely what is permitted under the Convention’s law enforcement provisions.

Finally, among the various weapons-related files the ICRC works on, I would like to highlight for 2007 an initiative the ICRC will be taking concerning cluster munitions. On 6 November 2006 the ICRC called for an immediate end to the use of inaccurate and unreliable cluster munitions and renewed its call for a prohibition on the use of cluster munitions in populated areas. The announcement was made at the eve of the Third Review Conference of the Convention on Certain Conventional Weapons in Geneva (7–17 November 2006). The ICRC also offered to host an international meeting of experts in 2007 that will build upon previous intergovernmental discussions. It will address *inter alia* topics such as the role of this weapon for the military, possible future alternatives or potential technical developments to improve reliability and accuracy, potential restrictions on the use of the weapon and the adequacy or inadequacy of existing IHL. This expert meeting will actually be taking place in Montreux, Switzerland, from 18 to 20 April 2007.

Concluding remarks

I could continue with many more challenges: air and missile warfare, protection of journalists, cyber warfare, computer network attacks, space war, etc. Unfortunately, time requires me to stop here. I hope I was able to give you an idea where the ICRC currently sees the challenges for IHL whether for its implementation, clarification or development.

I wish you three very enriching days here in Geneva, not only in terms of substance, but also in sharing your experiences and strengthening professional ties which will permit us all to further our common goal: to work for the better implementation of IHL.

Thank you.

Overview of successes and achievements of National Committees in domestic implementation of international humanitarian law since the First Universal Meeting in 2002

Ms. María Teresa Dutli

Head of the Advisory Service on International Humanitarian Law, ICRC

At the very beginning we should recall that implementation continues to be the main challenge facing international humanitarian law today. The problem of translating the legal obligations of States into actions is especially crucial to halting repeated violations of the law in conflicts around the world. Although much remains to be done, important progress took place and I will focus my intervention on the main results.

Let me also recall that the promotion of the adoption of national implementing measures has been a long-standing concern of the International Committee of the Red Cross. The ICRC, through its Advisory Service on International Humanitarian Law, has been and continues to be active in giving support to governments in their endeavour to ensure domestic implementation of this law.

The primary objectives of the ICRC's work on national implementation are focused on three main areas, namely:

1. Universalization of international humanitarian law and related treaties.
2. Supporting the establishment and facilitating the work of National IHL Committees.

3. Domestic incorporation of international humanitarian law obligations (implementation).

In referring to the progress made since the First Universal Meeting of National IHL Committees in 2002, I will follow these three themes.

1. Universalization of international humanitarian law and related treaties

In the area of treaty accession it seems worth recalling that there are more than 100 international humanitarian law and related treaties. The development of humanitarian law into treaty law has increased steadily during the last decades. Furthermore, as the recent ICRC study on customary international humanitarian law proves, the common core of international humanitarian law binds on all parties to all armed conflicts on the basis of their customary character.

In treaty promotion activities the Advisory Service works, however, in a more limited number of treaty obligations. There are 27 main treaties on which activities are focused.

As we all know, the core of international humanitarian law are the 1949 Geneva Conventions for the protection of victims of war. A very important event that took place recently is the universalization of the Geneva Conventions. With the accession of Montenegro and Nauru in 2006, the 1949 Geneva Conventions became the first universal multilateral treaty of contemporary international law. For the first time in modern history an international treaty achieves universal acceptance.

The Geneva Conventions have been completed or are supplemented by a series of other important international treaties. The Advisory Service's activities focus on promoting universal acceptance of these treaties, whose status of ratification or adherence is as follows:

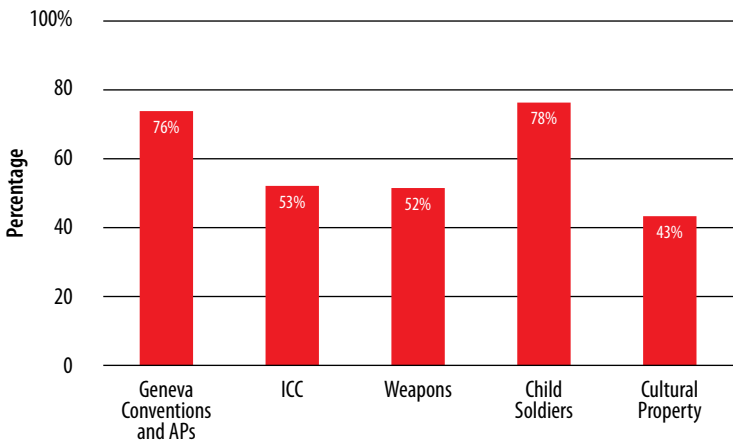
- 1949 Geneva Conventions for the Protection of War Victims – *194 States Parties* – and their three Additional Protocols – *Protocol I 167 States Parties, Protocol II 153 States Parties and Protocol III 8 States Parties*.
- 1954 Cultural Property Convention – *116 States Parties* – and its two Protocols, of 1954 – *83 States Parties* – and 1999 – *44 States Parties* – respectively.
- 1972 Biological Weapons Convention – *155 States Parties* – and the 1925 Geneva Protocol – *134 States Parties*.

- 1976 Environmental Modification Techniques Convention – 72 *States Parties*.
- 1980 Conventional Weapons Convention – 102 *States Parties* – and its five Protocols – *Protocol I 100 States Parties, Protocol II 89 States Parties, Protocol III 85 States Parties, Protocol IV 84 States Parties and Protocol V 30 States Parties*, including its Amendment.
- 1989 Convention on the Rights of the Child – 193 *States Parties* – and the Child Soldier Protocol – 114 *States Parties*.
- 1993 Chemical Weapons Convention – 102 *States Parties*.
- 1997 Anti-personnel Landmines Convention – 152 *States Parties*.
- 1998 International Criminal Court Statute – 105 *States Parties*.

The progress made in treaty participation in the last decade is considerable. If we consider that there are 195 States or entities with the capacity to accede to international treaties, we count that 60% of these States or entities have acceded to international humanitarian law and related treaties. Since the creation of the ICRC's Advisory Service in 1996, we have been able to record 1178 accessions. It should, however, be noted that these numbers are affected by both the adoption of new treaties and the creation of new countries.

The accompanying table illustrates the accessions by groups of treaty.

Treaty Accession Percentage by Treaty Set



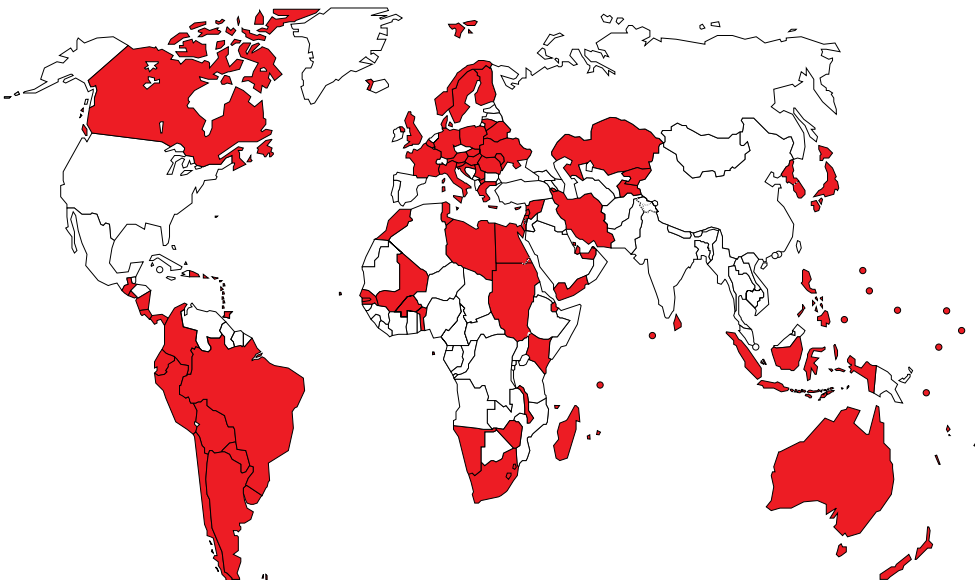
2. Establishment and role of National Committees on International Humanitarian Law

When the ICRC organized the first meeting of National Committees or other bodies for the implementation of international humanitarian law in 1996, pursuant to the Recommendations of the Intergovernmental Group of Experts adopted by the International Conference of the Red Cross and Red Crescent, 35 such bodies existed worldwide.

The number increased to 61 in 2002, at the occasion of the First Universal Meeting of National IHL Committees and there are now, in 2007, 82 National IHL Committees. This number shows that about 42% of the world's States have created such organs in order to assist governmental authorities in the process of national implementation and dissemination of humanitarian law.

The geographical distribution of States with a National IHL Committee is as follows.

- Europe – 23
- Sub-Saharan Africa – 20
- Americas – 17
- Middle East and Northern Africa – 11
- Asia/Pacific – 8
- Central Asia – 3



National IHL Committees play an extremely important role, both in the process of universalization of humanitarian law treaties and in the domestic implementation of the treaty obligations.

While this increase in the number of Committees is not on its own conclusive evidence of progress in the area of national implementation, the establishment of such a body in a State is nevertheless a strong indication of the authorities' commitment to in-depth work on the matter of national implementation.

3. Domestic incorporation of international humanitarian law obligations

Respect of international humanitarian law requires treaty ratification and national implementation. Treaty ratification is only the first step. In order to give effect to their obligations under international humanitarian law treaties, States are required to take a variety of implementing measures at the national level.

These measures include the translation of international humanitarian law instruments into national languages, the adoption of legislation providing for the punishment of violations of treaty obligations to enforce and secure their application and the widespread dissemination of treaty provisions and domestic measures.

The Advisory Service was established as a specialist unit within the ICRC to provide advice and information on national implementing measures.

It does so through bilateral dialogue with the governmental authorities and the National IHL Committees and also uses different tools such as the organization of seminars bringing together representatives of the national authorities at a regional or universal level, in order to exchange experiences and information. Experts' meetings are also organized to prepare tools that can be used by national authorities in the process of implementation. Such tools include model legislations on different subjects. Guiding principles on specific topics have also been produced. A series of publications include country and regional reports and thematic publications.

A Database on National Implementation is online on the ICRC's website. It provides documentation and brief commentaries concerning the implementation of international humanitarian law at the national level. It includes texts of legal measures adopted by States and relevant decisions of national courts. Information about the status of national implementation in 174 States can be found in this database and search can be done by country or by theme.

In order to complete our information and to be able to draw up a more complete overview of the status of national implementation, we have now prepared a new tool, the Country Fact Sheet.

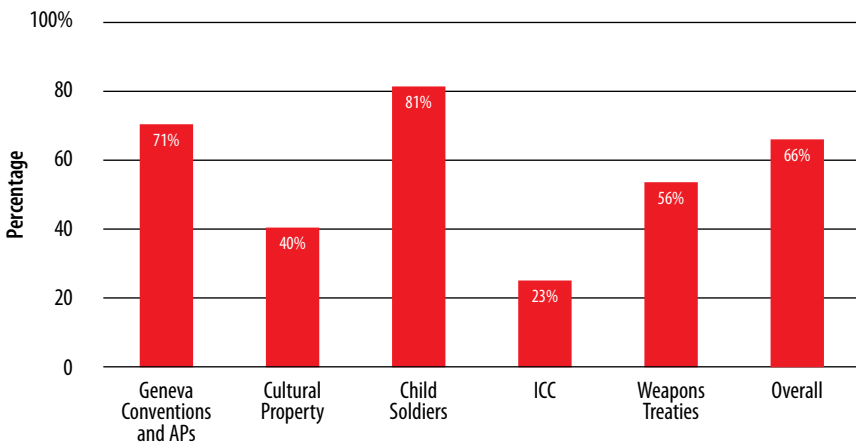
This Country Fact Sheet – which has been distributed to participants – contains 250 questions and aims to analyse the status of implementation domestically. Questions are selective and are grouped by treaty. The aim is to have one Country Fact Sheet by country and to update them regularly. The work will be carried out in coordination with National IHL Committees and through our Advisory Service’s regional legal advisers.

We are in the process of doing the first tests with this new tool. We completed, through confidential dialogue with national authorities, Country Fact Sheets for 26 States and have some initial results.

Even though the analysis is not at all comprehensive for the time being, some initial indicative results can be considered.

These initial results are summarized in the following table.

Initial Approximate Implementation Percentage by Treaty Set



Some initial findings relating to national implementation are as follows:

- Grave breaches provisions should be better implemented, many States are still lacking comprehensive incorporation of the war crimes list into domestic penal legislation, furthermore, the principle of universal jurisdiction is not accepted worldwide.

- The implementation of judicial guarantees is rather good, although not necessarily all the provisions provided for protected persons are included at the domestic level.
- The protection of the red cross and red crescent emblems through domestic legislation is rather good, but the protection of signs and emblems like those used for cultural property or for civil protection is not contemplated domestically, nor is it yet the practice for the new protected emblem, the red crystal.
- Much work still needs to be done on official language translations; the ICRC has contributed to the translation of many of the humanitarian law treaties into national languages, but official translations have rarely been transmitted to the depositary.
- IHL-related treaties, like the Cultural Property Convention and the Statute of the International Criminal Court, still have a low rate of implementation, while inventories and signalization of protected property are still lacking in almost every State, and most States have not yet adopted legislation for cooperation with the ICC.
- The protection of children in armed conflicts and the regulation of the age for participation in hostilities have been regulated in most States.
- Progress is seen in the process of implementation of arms-related treaties, mainly referring to the prohibition of the use of anti-personnel landmines and of chemical weapons.

4. Summary and conclusions

We can summarize our considerations as follows:

- Ratification of treaties is increasing steadily.
- The creation and the work of National IHL Committees continues.
- Much more work still needs to be done on national implementation.

It is important to recall that although treaty accession is optional, once the treaty is ratified its implementation is legally obligatory.

The following chart shows the progress in national implementation in the last 10 years, since the creation of the ICRC's Advisory Service on International Humanitarian Law.

We need to continue working together to improve national implementation. The ICRC through its Advisory Services at headquarters and in the field will continue to support the work of national authorities and National IHL Committees.

Progress has been significant in the past decade, but much and important work remains to be done.

Progress in IHL Implementation from January 1996 to March 2007

	Accessions to 27 Main IHL Treaties	Number of Countries with National IHL Committees	Preliminary Estimated IHL Treaty Obligation % Implementation
1 January 1996	1998	35	unknown
1 January 2002	2643	61	unknown
1 March 2007	3176	81	66%

INTERNATIONAL HUMANITARIAN LAW

IHL

CHAPTER 2

DEVELOPMENTS OF NATIONAL IHL COMMITTEES

INTERNATIONAL HUMANITARIAN LAW



A. Modalities of operation and working methods of National Committees

Salvador

Mr. José Zamora

Adviser to the Ministry of Foreign Affairs, Member of the National Committee on IHL

Comité Interinstitucional de Derecho Internacional Humanitario de El Salvador (CIDIH-ES)

El Salvador's inter-institutional committee on international humanitarian law is a mechanism created in response to the need to fulfil the commitments assumed by the State of El Salvador under the international IHL instruments that it signs and ratifies. It was established by law in Executive Decree no. 118 of 4 November 1997, published in Official Gazette no. 215, volume 337, of 18 November 1997.

At the first meeting of each year, training is provided for all the committee members, with the support of the ICRC legal adviser. Since it was created, the committee has met on a monthly basis and holds extraordinary meetings as required. As at 2 March 2007, the committee had held 85 ordinary meetings, without counting extraordinary meetings.

Purpose

The main purpose of the CIDIH-ES is to advise the Government of the Republic on measures that need to be taken for the effective adoption, implementation and dissemination of IHL conventions and protocols and other related national and international legislation.

Which institutions are involved?

1. Ministry of Defence.
2. Ministry of Education.
3. Ministry of Public Health and Social Welfare.
4. Ministry of Public Security and Justice.

5. Public Prosecutor's Office.
6. Public Defender's Office.
7. Human Rights Ombudsman's Office.
8. Technical Secretariat of the Presidency.
9. Salvadorean Red Cross Society.
10. CONCULTURA (National Culture and Art Council).
11. Ministry of Foreign Affairs.

The chairmanship and permanent secretariat is assumed by the Ministry of Foreign Affairs.

Functions

1. Follow up on national and international measures for the application, interpretation and dissemination of IHL to ensure that they are enforced.
2. Make recommendations to the Government of El Salvador concerning ratification of or accession to international IHL instruments.
3. Disseminate and promote IHL provisions and procedures in different sectors of society in El Salvador.
4. Train different sectors to promote IHL.
5. Propose national legislative reforms to give domestic effect to international treaties.
6. Ensure enforcement of IHL in the country.

Structure and work methodology

The CIDIH-ES carries out its work according to an annual work plan in three subcommittees:

1. **Legislation subcommittee:** studies and conducts legal analyses of conventions for ratification, prepares draft legislation and makes recommendations on IHL.
2. **Dissemination and training subcommittee:** promotes knowledge of IHL in different sectors of society.
3. **Protection of cultural property:** implements the commitments arising from ratification of the 1954 Hague Convention.

Significant achievements by the CIDIH-ES with regard to legislation

- Ratification of the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and its five protocols, signed by the Government of El Salvador and ratified by the Legislative Assembly in August 1999.
- Ratification of the 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict and its two protocols in 2001.
- Reform of the act to protect the Red Cross and Red Crescent emblems and names, passed on 26 October 2000 and published in the Official Gazette on 18 December 2000, no. 237, volume 329.
- Reform of the Penal Code, with the addition of article 346-C, prohibiting the use, development, production, acquisition, storage, stockpiling or transfer of anti-personnel mines, adopted in 2001.
- Signature and ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in November 2001.

The following projects are in the pipeline:

- Incorporation in the Penal Code of draft amendments to section XIX on “Crimes against humanity”, which includes serious breaches of the Geneva Conventions of 1949 and their Protocols of 1977 and 2005. They establish violations of IHL as punishable offences in accordance with applicable provisions.
- Inclusion of a ban on illegally transferring mines in the implementing regulations of the Weapons Control Act.
- Coordination of the production of a brochure to promote new IHL terminology among students taking university degrees in law, journalism, international relations and public relations in general.

Significant achievements by the CIDIH-ES with regard to dissemination and training

- Production and distribution of materials:
 - leaflet providing basic information on the CIDIH-ES;
 - educational poster on IHL;
 - posters on the protection of cultural property in the event of armed conflict.
- Donation of books on IHL by the ICRC to the network of public libraries and the national library in February 2007.
- Training for members of El Salvador's armed forces, the National Academy of Public Security and the national civilian police force.
- Training for the media.
- Training for the directors of *Casas de la Cultura* (municipal cultural centres) and teachers in the basic State education system in general
- Conference for members of various governments and private institutions on subjects relating to IHL.
- Creation of the CIDIH-ES website.

The following projects are currently in progress:

- preparation of a module on IHL to be taught at the Escuela Judicial de Capacitación (legal training school);
- project carried out with universities to include an IHL module in degree curricula in law, journalism, communications and international relations, implemented in coordination with the ICRC;
- event held with the Diplomatic School Mauricio Borgonovo Pohl to celebrate the 30th anniversary of the 1977 Protocols additional to the Geneva Conventions, scheduled for 8 June 2007;
- celebration of the 10th anniversary of the CIDIH-ES, scheduled for 20 November 2007;

- creation of a network of IHL lecturers for university degrees in law, international relations, communications and journalism to provide training and participate in relevant events.

Significant achievements by the CIDIH-ES with regard to cultural property

- Production of an educational version of the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and its two protocols.
- Preparation of guidelines for the process of marking cultural properties in El Salvador with the distinctive blue shield emblem to protect them in the event of armed conflict (*map below shows location of blue shield sites*).



- Design of two posters on the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and the production of an information leaflet.
- Launching of the cultural property marking process with the marking of the Joya de Cerén archaeological site, a national monument and a World Heritage Site.
- Pilot marking plan project in the city of Santa Ana in 2003–2004.
- Launching of the marking project in seven cities in El Salvador, funded by UNESCO-CONCULTURA.

Exchange of regional experiences

The CIDIH-ES has had the opportunity to host regional meetings on two occasions, namely the 2nd regional meeting of national IHL committees in 1999 and the 50th anniversary of the 1954 Hague Convention on the Protection of Cultural Property in 2004.

It has also exchanged experiences in the area of the protection of cultural property in the event of armed conflict with the national committees of Costa Rica, Argentina, Colombia and Mexico.

It has shared advances in legislative reform with the national committees of Guatemala and Nicaragua.

Contact

The CIDIH-ES can be contacted through the Directorate for Migration Policy, Assistant Directorate for Integrated Social Development, El Salvador Ministry of Foreign Affairs, as follows:

Address: Calle el Pedregal, Blvd. Cancillería, 500 metres west of Campus II of the University Dr. José Matías Delgado, Ciudad Merliot, Antiguo Cuscatlán, La Libertad, El Salvador, Central America.

Telephone

+ 503 2289 5340
+ 503 2231 1311/1086

E-mail

ecubias@rree.gob.sv
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+ 503 2231 1348

Website

<http://www.rree.gob.sv/sitio/sitio.nsf/pages/cidiheselsalvador>

Final reflection

It is vital to spread knowledge of IHL in peacetime in order to prevent errors and atrocities from being committed in wartime.

United Kingdom

Mr. Christopher Whomersley

*Deputy Legal Adviser, Foreign & Commonwealth Office,
Chair of the Interdepartmental Committee for IHL*

I am very honoured to be asked to speak today.

Why did the UK set up a National IHL Committee?

The promotion and full implementation of IHL is a high priority for the UK and for the international community. The creation of National Committees was one of the recommendations of the Intergovernmental Group of Experts on the Protection of War Victims, and was subsequently endorsed by the 26th International Conference of the Red Cross and Red Crescent in 1995. The UK participated in both the Group of Experts and in the 26th Conference and supported the adoption of these recommendations.

A Committee involving those Government Departments or Ministries with responsibility for IHL matters enables officials to consider and coordinate government policy on IHL. The Committee demonstrates the UK's commitment to full implementation of IHL both domestically and internationally. It provides a vehicle for publicizing what we are doing, and have already done in this field. We think we have a good story to tell.

Implementation and promotion of IHL is complementary to the British Government's emphasis on human rights. Both international human rights law and IHL seek to protect the individual, although they generally do so in different circumstances and in different ways.

The establishment of the Committee should not be seen as a substitute for coordination between Government Departments and with the Red Cross Movement. The British Government has always had a close relationship with British Red Cross and with the ICRC. (Indeed, that was one reason for initial reluctance to establish a Committee; there was a feeling that coordination was so good that there was no need for a Committee.) It is important for Governments to have a close and continuing relationship with the Red Cross Movement – for which the establishment of a Committee is no substitute.

Why is interdepartmental coordination required?

IHL issues overlap the work of a number of Government Departments. The Government relies upon ad hoc consultation and cooperation. However, the UK's responsibilities in IHL are diverse and expanding, and therefore a more formal system of coordination, as provided by the Committee, is also useful. Overall we have found that the focus provided by a Committee is useful and constructive.

Membership of the Committee

The implementation and development of IHL raises both policy and legal issues, and needs to be considered from both perspectives. The Committee's composition and work reflect their dual approach. The Committee is chaired by the Foreign Office in close consultation with the Ministry of Defence, and comprises all Departments with responsibilities relating to IHL. These include the Home Office and the Department of International Development. The devolved administrations in Scotland and Wales also participate in the Committee. Central government retains responsibility for international relations, although the devolved administrations are responsible for ensuring that the UK's international obligations are implemented, an example being those relating to dissemination of knowledge of IHL through education and training.

Since the British Red Cross has a special status as a humanitarian auxiliary to government and to the medical services of the armed forces, and also has considerable experience in IHL matters, it also represented on the Committee. As provided for under the Movement's Statutes and under its own Royal Charter, the British Red Cross cooperates with the government to ensure respect for IHL, including protection of the emblems. A number of Departments also consult the British National Society on a regular basis.

Modalities and working methods

In recent years the Committee has met once annually. This annual meeting has been useful in building contacts around relevant departments and with the British Red Cross, and establishing awareness and understanding of IHL among officials and armed forces personnel responsible for interpreting or applying the law. The Committee's meeting has provided an important forum for the exchange of information with government and with the British Red Cross on the most important IHL issues of the day, from different perspectives relevant to the Committee's mandate. Examples of recurring questions are:

activities of British forces overseas, for example, in Iraq and Afghanistan; what is happening in the Conventional Weapons process and on Biological and Chemical Weapons; update on progress in meeting pledges made at Red Cross Conference. Particular issues which arose in the past year and were discussed at our meeting in the Autumn included: cluster munitions; white phosphorus; actions of UN to repress sexual exploitation by peacekeepers.

There has been particular concern in Committee about the fulfilment of the UK's dissemination obligations under the Geneva Conventions. It is accepted that there is a need to ensure armed forces have necessary training. However, it is more difficult to ensure more general dissemination; for example, the school syllabus is already very overcrowded. Through the Committee we have at least tried to ensure relevant Government departments are aware of issue. In the last couple of years, we have finished the Committee meeting with a more academic presentation; last year, Professor Chris Greenwood QC gave a very stimulating presentation.

Conclusion

Thus, the Committee has served a useful purpose in promoting a coordinated and coherent approach to IHL issues in the UK. At the same time, it should be noted that a great deal of consultation and cooperation among interested Government Departments and the British Red Cross takes place outside the Committee, including through ad hoc meetings.

The challenge has been to attract participation at Committee meetings by representatives of some government departments for whom IHL issues are of less relevance to their regular work. We have sought to address this difficulty in several areas. One way which has met with some success is by including presentations at the meeting on relevant practical issues. One such presentation was on the operation of the UK Prisoners of War Information Bureau in Iraq. This helped foster common understanding and interest, and may be relevant to our subsequent discussions on the subject of the missing.

It is also important to keep the Committee relevant. We have felt that the Committee might benefit from focusing on operational work, or work having an operational relevance, and members have been encouraged to consider this and to offer ideas. Finally, one must recognize that important people are busy people; to get them to engage with the Committee it is necessary to ensure that it is relevant and interesting to them.

Madagascar

Ms. Liliane Rasendra Arivony

Head of International Relations, Ministry of Justice,

Chair of the National Committee on IHL

Ladies and gentlemen,

Before getting to the heart of the matter, I would like to express my warmest thanks to the organizers for granting me this opportunity to speak briefly about the recently formed National Committee on IHL in Madagascar – the latest child in the family of National Committees but probably not the last.

Madagascar is a large island situated east of the African continent. It covers an area of 597,000 km² and has a population of 10 million.

Implementation procedure of the National Committee on IHL

As I said, the National Committee was formed relatively recently. It was created by Interministerial Decree No. 2006-435 on 27 June 2006 issued by the Ministries of Justice, Foreign Affairs and National Defence. Before the decree was issued, an information seminar on IHL (organized by the Ministry of Foreign Affairs and the ICRC after being approached by the departments concerned by IHL) was held at the Hilton Madagascar Hotel on 8 August 2005.

The decree sets out the duties and functions of the Committee, the membership of which, in accordance with Article 3, is composed of:

- two representatives of Parliament;
- two representatives of the Ministry of Foreign Affairs;
- two representatives of the Ministry of Justice;
- two representatives of the Ministry of the Interior and Administrative Reform;
- two representatives of the Ministry of National Defence;
- two representatives of the Ministry of Health and Family Planning;
- two representatives of the Secretary of State for Public Safety;
- two representatives of civil society working in the area of human rights;
- two representatives of the National Red Cross Society.

Representatives of other departments and entities concerned with IHL who are not members of the Committee serve as resource persons.

Plan of action

At the prompting of its members, the National Committee organized a training workshop on IHL in cooperation with the ICRC regional delegation in Pretoria (covering Madagascar), which was held in Antananarivo on 23 and 24 October 2006.

At the close of the workshop, a plan of action for 2007 was adopted:

Ratification

- ✓ Biological Weapons Convention;
- ✓ Protocol for the Protection of Cultural Property;
- ✓ Protocol III additional to the Geneva Conventions;
- ✓ Ratification of two of these treaties is under way.

Implementation

- ✓ implementation of the Conventions and their Protocols;
- ✓ law protecting the emblem;
- ✓ review of national legislation and studies of compatibility.

The following sub-committees were formed with a view to carrying out this plan of action:

- ✓ budget sub-committee: budgets Committee activities;
- ✓ national legislation sub-committee: takes inventory of texts relating to IHL;
- ✓ international treaty inventory sub-committee;
- ✓ plan of action sub-committee: organizes all Committee activities.

In addition, an awareness-raising team was set up to serve as the link between the Committee and the authorities concerned.

The Committee meets once a month to exchange information, turn in sub-committee work, and take decisions on future activities. The drafting of internal regulations is also part of its plan of action, as is dissemination.

Constraints

Madagascar has no geographical neighbours. There is no internal conflict, but the country is not immune from such conflicts. Because of this situation, those potentially concerned by IHL seem not to view it as a priority. There is a need, therefore, to mobilize the will and to raise the awareness of those in charge; meeting this need is among the tasks assigned to the awareness-raising team mentioned above.

The Committee also has budgetary constraints. It should be pointed out that the government does not yet have its own budget for activities in this area apart from the technical and financial support provided by the ICRC and possibly other international bodies.

In closing I would like to inform you that a ministerial committee on IHL was formed a few years ago. Its chairman, General José Rasamoelina, is attending this meeting as a member of the Malagasy delegation. The main task of the ministerial committee is to spread knowledge of IHL within the Malagasy armed forces.

The Malagasy National Committee on IHL has many tasks before it. This Second Universal Meeting of National IHL Committees is certain to benefit all the participants – in particular the Malagasy delegation, which will build on the experiences of other countries to carry out its activities.

Thank you for your kind attention.

B. Regional dynamics and synergies among National Committees

Egypt

Mr. Mohamed Maher Abdel Wahed

Judge, Ministry of Justice, Member of the National Committee on IHL

It gives me great pleasure to begin my presentation by reminding you that the Egyptian Committee on International Humanitarian Law was created in January 2000. It ranked third in the chronological order of creation of Arab National Committees, which today number 12 Committees.

I will not go into the details of the creation of the Committee and its method of action, I will rather focus on the regional role that it is playing at the regional/ Arab level.

Since its inception, the Egyptian Committee, through the instrument of its creation and the method of action of its sub-committees, inspired many Arab Committees that followed in a row. The exchange of information on the establishment of Committees had its impact through bilateral cooperation (for instance, when the Egyptian Committee exchanged consultations with the Sudanese government during a meeting held in Khartoum). Later on, Arab countries consulted the Egyptian Committee through regional reports published by the league of Arab States or through exchanged expertise and documentation with other countries by means of the ICRC Advisory Service on IHL in Cairo.

The major achievement of the Egyptian Committee at the regional/Arab level since the Egyptian Ministry of Justice hosted the 50th Anniversary of the Geneva Conventions and the issuance of the Cairo Declaration on the Implementation of IHL in 1999, is that since it has seen the light, it was keen to host the meeting of Arab government experts held regularly on annual basis since 2001 and attended by the majority of Arab countries. The purpose of such meetings is to exchange expertise on the best means to implement IHL at the regional level and avoid obstacles that might impede such endeavours.

This annual regional event is a panel for preparing a regional plan of action including a special item on exchanging expertise among different national Committees. The Egyptian Committee received many members of recently-established national Committees in the Arab world to put forth quick training programmes (three-day programmes at most) on methods of action and major achievements of the Egyptian Committee.

At the level of legislative expertise, the Egyptian Committee conveys such expertise through the exchange of Egyptian draft laws with other Arab countries. Not only this, but the Egyptian Committee also benefits from the experience of other Committees. The draft law on the protection of the emblem, prepared by the Egyptian Committee, was luckily circulated among Arab countries and Egypt benefited also from the draft law on the punishment of war crimes prepared by the United Arab Emirates.

Hence, the Egyptian National Committee was privileged, as it made use of the expertise of other Committees to develop its internal structure in terms of division of labour among its thematic sub-Committees.

I will present to your esteemed selves briefly the major achievements of the Egyptian Committee through regional cooperation:

1. Organizing the annual meeting on the implementation of IHL at the regional/Arab level, with the participation of the ICRC Advisory Service and the League of Arab States, that sets guidelines on different issues pertaining to the implementation of IHL at the national level.
2. Exchanging expertise through dispatching delegations to other Committees or receiving Committees from Egypt in programmes for exchanging information and expertise.
3. Preparing the draft law on the protection of the Red Crescent and Red Cross emblems, which was a pilot draft law for many Arab countries.
4. Benefiting from the expertise of other Committees:
 - The experience of national Committees in Yemen and Jordan that preceded their Egyptian counterpart in particular had a great impact on enhancing the establishment of the Egyptian Committee.
 - The participation of the Egyptian Committee in regional meetings organized by the Moroccan Committee on legislative aspects of the implementation of IHL positively influenced the legislative action of the Committee.
 - The draft law on war crimes, crimes against humanity and genocide prepared by the Committee in the UAE was quite useful.
 - The action of the Syrian Committee with the Syrian Parliament and the Arab Parliamentary Union was useful to convey the experience through coordination of the Committee's action with the Egyptian Parliament.

Hence, ladies and gentlemen, as you can see, coordination at the regional level, of which the Egyptian National Committee was a pioneer in its promotion, bore fruit through the proliferation of national Committees, which went up from three Committees in 2000 to 12 in 2007. Four Arab countries are on their way to conclude the procedures of establishing their national Committees, thus pushing the number to 16 Committees before the end of 2007.

I invite you to review the Arab regional report posted on the ICRC/LAS network so that you can monitor the importance of coordination of such action at the regional level. It is noteworthy that the report is on the ICRC website in Arabic and English.

Finland

Ms. Irma Ertman

***General Director of the Legal Department, Ministry of Foreign Affairs,
Chair of the National Committee on IHL***

Thank you, Mr. Chairman, for giving me the floor and the opportunity to speak about the work of the National IHL Committee of Finland.

My intervention will address three separate topics. First of all, I would like to say a few words about the Finnish National Committee on IHL. My second topic is the role of IHL in the programme of the Finnish Presidency of the Council of the European Union, during the second half of 2006, in particular as regards the promotion and definition of an implementation strategy for the EU Guidelines on IHL. Finally, I would like to turn to developments in Finnish legislation; in particular the ongoing revision of the Penal Code in order to align the definitions of the so-called ICC crimes with the Rome Statute.

National IHL Committee

The Finnish National Committee was originally established by the Ministry of Foreign Affairs of Finland in 1979 as an informal working group of governmental experts to coordinate the dissemination of the 1949 Geneva Conventions and the Additional Protocol in Finland. In 1993, the group became an official and permanent body chaired by the General Director for Legal Affairs of the Ministry of Foreign Affairs (MFA). The Committee is composed of representatives of the MFA, the Ministries of Education, Interior, Justice, Social Affairs and Health, Labour and Defence as well as the armed forces' General Staff, the National Defence College, the Finnish Red Cross, Amnesty International (Finnish branch) and the Finnish Society of Humanitarian Law. The professor of international law at the University of Turku currently represents the academic society in the Committee.

In addition to its official status, the Committee also acts as an open discussion forum for the represented bodies to deal with current issues of interest. It normally meets four times a year.

The Committee coordinates the implementation and dissemination of IHL in Finland, prepares for the International Conferences of the Red Cross and Red Crescent and other conferences related to IHL, monitors new developments in IHL and considers their implications for Finland. Generally the Committee as such does not engage in concrete dissemination activities, but it has been

involved in the organization of several seminars touching on topical IHL issues. The Ministry of Foreign Affairs supports dissemination activities of the Finnish Red Cross financially.

During 2006 and 2007 issues dealt with have been, *inter alia*, the follow-up of the 28th International Conference of the Red Cross and Red Crescent and the implementation of the eight specific pledges Finland made at the conference; the follow-up of the reform of Finnish criminal legislation; and Finland's cooperation with the ICC. Finland's priorities and activities in the field of IHL during the Finnish EU Presidency were also discussed in the Committee during 2006.

The eight specific pledges Finland made at the 28th International Conference were:

- 1) A review of the national criminal code concerning the crimes under the jurisdiction of the ICC and the amendment of relevant provisions as appropriate in order to ensure the possibility of national trials under the complementarity principle – a topic on which I will briefly touch at the end of my presentation.
- 2) Enhancing cooperation to ensure effective tracing activities.
- 3) Promotion of IHL as one of the criteria on which arms transfer decisions are made (a joint pledge with the other four Nordic countries).
- 4) Support for an international process of discussions aiming to develop a shared understanding of how IHL should be applied to computer network attacks during armed conflicts (a joint pledge with Sweden and Switzerland).

The EU's pledges at the conference concerned:

- 5) Promoting respect for IHL in peacekeeping operations.
- 6) Support to the effective functioning of the ICC.
- 7) Raising public awareness in relation to IHL.
- 8) Ratification and implementation of the Protocol on Explosive Remnants of War, and a swift adherence to the extension of the CCW's scope of application to non-international conflicts.

As for the implementation of the pledges, let me just give a few examples. Training of military forces in IHL is part of the military service in Finland. The Finnish Red Cross trains every person assigned to work in peacekeeping forces. Legal officers of the armed forces provide further training in IHL during peacekeeping operations. IHL training will also be included in the training programme of the EU's rapid deployment forces. The Finnish armed forces also organize military observer courses for foreign officials and legal officers of the armed forces participate as trainers in IHL courses abroad.

As regards public dissemination of IHL, I would like to mention the publication in Finnish of an introduction to the ICRC's *Customary Humanitarian Law*, together with the 161 rules. A seminar was organized in November 2005 at the University of Helsinki on the occasion of the publication.

The Finnish Red Cross gives training in IHL in schools and organizes seminars and courses. The trainers who participate in the training on a voluntary basis have a legal background or are otherwise interested in international law and humanitarian aid.

The implementation of the pledge relating to tracing is also under way. The establishment of the National Information Bureau calls for certain legislative acts relating to aspects of personal data and constitutional law and also aspects relating to the establishment of the Bureau itself.

Finnish EU presidency

During the EU presidency, Finland consistently underlined the need for a more coherent and consistent EU line with regard to promoting compliance with international humanitarian law. The EU Guidelines on promoting compliance with IHL were adopted by the Council in December 2005. They underline the European Union's commitment to promote compliance with IHL in a visible and consistent manner. Effective implementation of these newly adopted Guidelines and the streamlining of IHL into EU's common foreign and security policy were priorities of the Finnish Presidency. In this context, briefings were organized to relevant geographical and thematic Council Working Groups in cooperation with the ICRC to draw the attention of the working groups to the Guidelines and the action that is expected of them.

Likewise, a seminar was organized jointly with the ICRC in July under the theme of IHL and the fight against terrorism, for delegates from four Council Working Groups (namely, public international law, human rights, terrorism and transatlantic relations). The organization of the seminar served the

same purpose as the Guidelines: giving visibility to IHL and increasing the sensitivity of the EU experts and policy-makers to its violations. The Guidelines recognize the special position of the ICRC as a guardian of IHL and encourage the different EU bodies to draw on the expertise of the ICRC. We also started studying the modalities of enhanced cooperation between the EU and the ICRC – a cooperation that is natural in view of the common interest the EU and the ICRC share in promoting compliance with IHL.

Developments in Finnish legislation

Finland has been one of the active supporters of the ICC right from the beginning, having ratified the Rome Statute in 2000. Finland's instrument of approval of the Agreement on Privileges and Immunities of the ICC was deposited with the Secretary-General of the UN in December 2004. Finland has also concluded with the ICC an agreement on relocation of witnesses and their close relations and has informed the Court about her willingness to enforce the judgments of the Court. The elements of ICC crimes were published in Finnish in 2004 and a seminar was organized in that context on the national implementation of the ICC Statute. Finnish Parliament has been regularly briefed on issues related to the ICC.

The Finnish Penal Code was amended in connection with the ratification of the Rome Statute. However, no major amendments were deemed necessary as the relevant Finnish provisions both on material criminal law and on scope of application of criminal law provided a sufficient basis for the incorporation of the Rome Statute into Finnish law as well.

Genocide, war crimes and violations of human rights were criminalized in Finland in 1947. Today, the relevant provisions are included in Chapter 11 of the Penal Code. In substance, the elements of genocide as provided for in the Finnish Penal Code meet with the definition of genocide in Article 3 of the Statute. Also the contents of the existing provisions on war crimes and violations of human rights in a state of emergency correspond largely to the definition of war crimes in Article 8 of the Statute, whereas the provisions of the Penal Code do not fully cover all those acts that are defined as crimes against humanity in Article 7 of the Statute. In accordance with one of Finland's pledges made at the 28th International Conference of the Red Cross and Red Crescent, the Ministry

of Justice has set up a working group which has prepared a government bill on a law modifying the Penal Code to reach full compatibility with the provisions of the Rome Statute. The proposed amendments concern mainly crimes against humanity, but new criminalizations will replace the existing provisions on war crimes and violations of human rights in a state of emergency as well. Other proposed amendments regard provisions on command responsibility.

Thank you, Mr. Chairman.

C. Working Groups: Session I

Discussing regional dynamics and synergies among National Committees on IHL

Aim of the Workshop ▶ Bilateral or multilateral cooperation between National Committees and other bodies on IHL allowing for the exchange of information and/or of expertise may prove a useful tool to enhance their work. The purpose of the discussion is to allow an exchange of information of experiences in the different regions and to propose actions that may allow the strengthening of links between Committees.

Questions for the consideration of the Working Groups

1. Has your National Committee **designated a member or a group** in charge of ensuring relations with other National Committees established in other countries? Could this be considered positively and how could such a member/group interact and cooperate with other Committees in your region and beyond (e.g. on relevant substantive issues under discussion within your Committee's Plan of Action)?
2. Does your Committee **have a dialogue and exchange information** with other National Committees on its work and accomplishments? In the affirmative, how is this done and what role do global or regional organizations play in this regard? In the negative, what could you propose to promote an exchange

of information on new developments (bills under consideration, adopted laws and regulations...) and on events planned on a regional level? On which substantive issues, can such a cooperation and dialogue prove most beneficial (e.g. legislation on the repression of war crimes and cooperation with the International Criminal Court; on the protection of the red cross and red crescent emblem; on weapons related treaties; on the protection of cultural property in the event of armed conflict, etc.?)

3. Is your National Committee **involved in the follow-up of the resolutions or action plans** adopted under the auspices of international organizations at the universal or at the regional level? How do these resolutions influence positively the cooperation and exchange of information and what is the role of your National Committee in reporting on the implementation of such resolutions and commitments? Should such a role be strengthened? Propose actions to reinforce such a role.
4. What are the **difficulties encountered in maintaining relations** with other National IHL Committees? Which actions could assist in enhancing and developing a dialogue between National IHL Committees on a global or regional level

Report back from Working Groups to Plenary

Working Group 1 – English/Russian

There was a lively discussion regarding regional cooperation amongst the participants of working group 1. There was a general consensus that the current regional dialogue is good, citing the 2006 meeting in Athens for European countries as an example of such cooperative dialogue.

Participants agreed that the designation of a representative of each respective National IHL Committee that would work to follow up cooperation would be useful but not indispensable. Such a role is not always relevant, as currently not all groups have a respective chairperson and an address which could and should be responsible for communication with other National Committees. Some National Committee members are also active in other groups such as the EU Council Working Group on Public International Law (COJUR), as well as National Society regional groups. Other examples of existing cooperation include the area of education and the school curriculum in Nordic countries, and the legal advisers of armed forces' annual meetings. The area of education continues to merit dialogue, as does the role of assisting neighbouring countries in setting up National Committees on IHL given that there are some missing in south-east Europe.

Military manuals could be useful as well as military regulations; however, confidentiality issues could raise concerns. Developing a model code of crimes that reflects international humanitarian law is also something to consider.

However, the group raised the question as to where National Committees fit in the process. Perhaps they could play a role especially regarding collective and individual pledges.

Working Group 2 – French

The working group offered the following recommendations with regard to National IHL Committees. There should be a member responsible for cooperation between National Committees, and this should be included in the terms of reference of each Committee. There is also a need to understand the mandate and working methods of each group or Committee. There was consensus that the ICRC should play a bridging role. In order to facilitate communication, there should be a website created and maintained for each group or Committee. This communication would be assisted by holding periodic regional meetings between Committees. As a final point, each Committee should review its international engagements, either annually or otherwise and put updates on their respective websites.

Working Group 3 – Spanish

The participants in this working group agreed that the session was a very interesting meeting allowing for convergences and difficulties to be discussed. The need for better cooperation between National Committees was identified with the notion that specific problems might be overcome by working together. National Committees exist in some countries, while other countries look at specific problems without a Committee. The idea of helping those countries just starting out with National Committees was discussed with the suggestion of having advice from international consultants or ICRC advisers for support. Such an initiative would likely lead to reduced costs in terms of helping establish Committees. The participants also tried to find alternative solutions to liaise with Committee members to get these initiatives under way, and to exchange information. As there are several different groups working simultaneously (e.g. differences between Central America and South America), Committees should be aware of what is going on elsewhere in order to help inspire and foster various programmes.

The working group also addressed the question of what to do on the regional level. There is a need to establish a regional mechanism or forum, but this requires funding which is not always easy to obtain. However, an exchange of information may still be possible regarding projects under way and those yet

to start. With regard to such information sharing, it was deemed useful to have networks with access to information and, for example, a website, which some have already undertaken and others should strive to establish as it may be the only way at this stage to bring National Committees together in a quick and practical way. Participants also highlighted the difficulty in keeping in touch due to a lack of financial resources and funding.

Lastly, the group considered different situations, for example, post-conflict or political difficulties, concluding that these issues should be borne in mind and could inspire the creation of internal programmes dealing, for example, with the missing or domestic reform of national laws. There is a need to find ways to streamline internal procedures to foster IHL and programmes to care for cultural property in post-conflict situations.

Working Group 4 – Arabic

Taking into account the cooperation between National Committees that has been carried out through the respective presidents, the working group invites the National Committees to create a sub-commission in charge of international or regional or sub-regional cooperation. This would respond to the need to strengthen the regional dynamic and reinforce these relations. There is a need to strengthen the current system as well as have a member designed to deal with other regions. It would be beneficial to call upon other National IHL Committees from outside the Arab world to exchange information as it would boost the role of regional organizations. Ideally, a handbook could be prepared that would have expertise, answer questions posed and would assist in gaining knowledge from other regions. This would also likely speed up the harmonization of our legislation.

The working group also came to the consensus and suggested that an annual expert meeting should be held each year with the invitation of a National Committee to be chosen by the ICRC from outside the Arab region.

The participants suggested asking the Arab League to be responsible for IHL implementation, ideally through the creation of a standing committee. The National IHL Committees would thereby be required to provide information to the Arab League on an annual basis, including an assessment of commitments undertaken. The Committees should also remain in touch with Ministry of Foreign Affairs give an opinion on all issues pertaining to IHL, submit a report to the Secretary General of the Arab League regarding the First Protocol, and ask all Committees that have not provided information to do so. Lastly, a

website for each National Committee should be created with the information regularly updated.

Working Group 5 – English

The working group noted that with regard to Questions 1 and 2, most countries that have set up a Committee have not designated a person responsible for cooperation with other countries. However, many countries have good relations with other countries; for example, Iran has exchanged plans of action with other countries in the Middle East, has translated books on IHL, and has sent these to other countries. With respect to changes on a national basis, a consensus was reached to encourage regional cooperation with, for example, the South African Development Community (SADC) and the Arab League, which would facilitate exchanges. It was suggested that the ICRC could help with relations between these organizations. To ensure cooperation, the working group proposed that participants should provide e-mail addresses to all members in order for National Committees to establish contact between themselves and maintain a perhaps the only practical means for communicating.

Regarding Question 3 about follow-up of the resolutions or action plans, the working group agreed that it should be an agenda item for all National Committees to follow up pledges at Red Cross Conferences. With reference to Question 4 and the difficulties encountered in maintaining relations with other National IHL Committees, the participants concluded that with the exchange of e-mail addresses, this would permit exchange of information between Committees, with the support of periodic universal meetings hosted by the ICRC (for example, every four years) to learn what other National Committees are doing.

D. Cooperation with regional organizations

Organization of American States

Mr. John Wilson

Legal Adviser, International Law Department

OAS Structure

Political organs

- **General Assembly:** Supreme political organ. Meets every June. Approves all political mandates, including IHL, evaluates work and sets agenda.
- **Permanent Council:** Permanent political organ. Meets approximately once week at OAS headquarters in Washington D.C.
- **Committee on Juridical and Political Affairs:** Meets bi-weekly during work year, in charge of implementing and following up on political and legal on the mandates from the General Assembly. In charge of negotiating resolutions, including IHL, ICC, displaced persons, refugees, etc.
- **Committee on Hemispheric Security:** Meets periodically as required. In charge of security mandates from the General Assembly, negotiates resolutions on terrorism, mine clearance, etc.

Technical bodies

- **Secretary General:** Top officer of the Organization of American States in charge of political and administrative decisions concerning the manner in which General Assembly mandates are implemented.
- **General Secretariat:** Composed of organs, organisms and entities, of which the following play a role in IHL: Office of International Law; Inter-American Commission on Human Rights; Office of Humanitarian Mine Action; Office of Legal Cooperation; Committee on Hemispheric Inter-American Committee against Terrorism; Inter-American Drug Abuse Commission.

OAS Role in IHL

OAS plays an important role in IHL in the Americas

- Terrorism.
- Mine clearance (de-mining).
- Arms availability/small weapons.
- Detainees/prison policies.
- Human rights and IHL.
- IHL and gender.
- Military training and functions.
- Displaced persons.
- Cooperation with ICRC.

OAS General Assembly

Promotion of and respect for International Humanitarian Law

- Promote IHL by urging Members States to consider taking the necessary steps of signing and ratifying instruments of International Humanitarian Law/promulgating domestic laws designed to bring these instruments into force.
- Promote coordinate between Permanent Council, General Secretariat and the International Committee of the Red Cross.
- Organize annual meeting of the Committee on Juridical and Political Affairs on the promotion of and respect for international humanitarian law.
- Educate OAS Member States, political organs and general secretariat on topics of importance on International Humanitarian Law.
- Provide valuable input for the drafting and negotiation of General Assembly resolutions on the promotion and protection of IHL in the Americas.

AG Resolution 2226

- Urges member States to honour their obligations under IHL and relevant States to consider becoming parties to the Additional Protocols.
- Urges States parties to Protocol I to recognize the competence of the International Humanitarian Fact-Finding Commission and to take part in the election.

- Urges Member States to adapt their criminal law in order to meet their legal obligations under the Conventions and Additional Protocols.
- Calls on Member States to enact laws to prevent the misuse of the red cross and red crescent emblems and denominations, as well as the emblem Additional Protocol III.
- Urges Member States to adopt effective measures to prevent the disappearance of persons in cases of armed conflict or other situations of armed violence, to determine the fate of those who have disappeared, and to attend to the needs of their family members.
- Urges States Parties to the 1997 Convention on Anti-Personnel Mines to prevent and suppress any activity prohibited therein, and assist victims of anti-personnel mines.

AG Resolution 2226

- Urges member States to guarantee zero tolerance in recruitment of children into armed forces/groups and their participation in hostilities.
- Urges member States to adopt measures and laws on the unregulated availability of arms, and to control illicit manufacturing and trafficking.
- Encourages member States to establish procedures to determine the effect new weapons or methods of warfare are contrary to IHL.
- Invites member States to support the work of National Committees or Commissions responsible for the dissemination and implementation of IHL and to urge States where such bodies do not exist to establishing them at the earliest possible convenience.
- Requests General Secretariat to coordinate its activities with the ICRC, to organize governmental conferences, courses and seminars for OAS member States and Secretariat staff.
- Instructs the Permanent Council to continue in cooperation with the ICRC, to organize special meetings on topics of current interest in IHL.

Other GA Resolutions on IHL

- Protection of missing persons.
- Protection of internally displaced persons.
- Protection of refugees.

- Protection of individual rights in the fight against terrorism.
- Mine clearance in the Americas.
- Biological and chemical weapons.
- Reduction in manufacturing and elimination of trafficking of small arms.
- Access to information and right to truth.
- Promotion of the international criminal court.

Committee on Juridical and Political Affairs

Annual Special Session

- Political dialogue between Member States.
- Political dialogue between ICRC and Member States.
- Input for drafting of IHL-related resolutions.
- Report from member States on implementation of IHL obligations.
- Discussion of local challenges and models to follow in IHL implementation.

The ICRC plays an important role in all phases of planning for the special session: identifying topics – providing information for the State approval – identifying and approval of participants – facilitating organization – participating in special session.

Special Session – 1 February 2007

- Resolutions for implementation of IHL.
- Protection of persons deprived of their freedom.
- Protection of missing persons and assistance to their families.
- Protection of internally displaced persons.
- Grave infractions of IHL.
- IHL challenges and the action of the ICRC.

Introductory Course on IHL

- Promote better understanding of IHL instruments and rules.
- Assist State delegates in drafting, negotiating and implementing IHL mandates for the Organization.
- Promote better understanding of IHL rules and mandates within OAS General Secretariat.
- Coordinate between political bodies that produce the mandates and the technical bodies in charge of implementing them.

- Coordinate academic discussion with political discussion, which was a great success, with participation from 26 Member States. Over 100 total participants from the organs, organisms and entities of the OAS – possibility for further curriculum development and an advanced course on IHL in the future.

Terrorism

IHL and Terrorism

- **IHL applies:** International and non-international armed conflicts – hostilities between government armed forces and organized armed groups (within a State).
- **Domestic/HR/criminal law applies:** Armed violence outside an armed conflict or terrorist suspect not detained in connection with an armed conflict.
- **Combatant/enemy combatant:** Lawful combatants cannot be prosecuted if they respect international humanitarian law, and they are entitled to prisoner of war status.
- **Detainees:** Lawful and unlawful combatants that are detained, may be interrogated and prosecuted for war crimes, but are entitled to humane treatment by enemy.
- **Terrorists vs. soldiers:** Protocol I protects civilians by limiting methods and means of warfare, including unequivocal prohibition of terrorism: 1) attacks against civilians or civilian objects and 2) threats of violence to spread terror among civilians.

Inter-American Committee against Terrorism

- **CICTE:** OAS organism for protecting Member States from terrorism via information exchange between national policy-makers.
- **Mar del Plata commitments:** Exchange information/draft counter-terrorism legislation/promote adherence to international counter-terrorism conventions/enhance border cooperation and security/develop training and crisis management.
- **CICTE programmes:** Cyber security/port security/airport security/legislation against terrorism/customs and border protection/terrorism financing/terrorism policy.

Mine clearance (demining)

Office of Humanitarian Mine Action/CHS

- **Humanitarian demining:** Mine field surveying, mapping, marking, and clearance.
- **Mine education:** OAS supports mine awareness programmes to reduce the risk of death and injury by promoting safe behaviour among affected communities.
- **Victim assistance:** Support survivors in OAS Member States and provide transportation, lodging, meals, prostheses, therapy, and medication.
- **Stockpile destruction:** One million landmines stockpiled by OAS Member States have been destroyed since 1999 with assistance from the programme.
- **Ottawa Convention:** The Convention provides for a total ban on landmines and provides demining requirements for numerous States Parties. The OAS has called on its Member States to ratify and comply with the Convention.

Arms availability/small weapons

- **Problem:** Arms and ammunition are major factors in facilitating violations against civilians during and after armed conflict.
- **Proliferation of Arms:** Availability during armed conflict and post-conflict situations around the world.
- **Inadequate controls:** Availability and frequent use of weapons in violation of humanitarian law/civilians at increased risk of abuse during and after conflicts/undermines legal norms designed to protect civilians.
- **Post-conflict:** Ensuring IHL norms becomes difficult when weapons are widely dispersed and easily accessible/humanitarian agencies are subject to attack and forced to suspend operations/end of armed conflict seldom means end to violence if arms and ammunition remain at large.
- **Weapons:** Assault rifles, machine guns, grenades, mortar bombs (small arms)/most commonly used in armed conflicts/availability subject to few international rules.

- **Committee on Hemispheric Security:** Provides framework for judicial cooperation in requesting service of process, summonses or subpoenas abroad.
- **General Assembly:** Study ID trafficking-brokering trends/support UN Programme to Prevent, Combat and Eradicate Illicit Trade in Small Arms/follow-up State reports on implementation of national/regional/global activities for UN Programme.
- **CIFTA Convention:** Convention Against Illicit Manufacturing and Trafficking In Firearms, Ammo, Explosives and Related Materials 26, States Parties/national authorities/mutual assistance/model legislation.
- **CICAD Inter-American Drug Abuse Control Commission:** Model Regulations to control international movement of firearms/model Regulations to control brokers/training programmes.

Detainees/prison policies

Types of detainees

- **Prisoners of war:** Geneva Convention relative to the Treatment of Prisoners of War (1949): POW is a captured combatant (i.e. member of armed forces) in an international armed conflict (individual enjoying equivalent legal status). In any doubt, person taking part in hostilities is presumed POW (Add. Protocol I 1977).
- **War on terror:** Armed conflict vs. war on terror/clear and appropriate legal framework/procedural safeguards/persons cannot be detained and interrogated outside of an appropriate legal framework. Detainees outside armed conflict have rights afforded by international human rights law and domestic law.
- **Divergent positions:** Two positions concerning detainees in war on terror: 1) criminal suspects handled by local law and international standards; 2) prisoners of war handled by IHL law and standards.

Ministers of Justice: REMJA

- **REMJA-IV:** Recommended proposals for the protection of the fundamental rights and freedoms of detained persons in the Americas.
- **REMJA-V:** Recommended modernization of prison infrastructure, functions, standards and the review of penitentiary policies.

- **Official meetings:** Held meetings of officials responsible for penitentiary and prison policies of OAS Member States.
- **Follow-up:** “Study of the Rights and the Care of Persons under Any Form of Detention or Imprisonment”.

Human rights and IHL

International Humanitarian Law

- Protects life/health/dignity of individuals.
- Duty falls on States.
- Protection applies to situations of armed conflict.
- Permit no derogations, armed conflict is a pub emergency.
- Humanitarian law tailored for war.
- Protect people who do not or no longer take part in hostilities.

Human Rights Law

- Protects life/health/dignity of individuals.
- Duty falls on States.
- Protection applies at all times (war and peace).
- Tailored for peacetime to protect everyone.
- Treaties can permit derogation of rights in public emergencies.
- Protect persons primarily from their own governments.

IACHR/IA-Court

- **Inter-American Commission and Court:** Apply basic principles (Articles 1 (1) and 2 of American Convention) to prohibiting State Parties from violating protected rights and freedoms; require States to take measures necessary to ensure individuals effectively enjoy those rights and freedoms/ held that right to fair trial and judicial protection (Articles 8 and 25) entail right of victims to the justice system of the state concerned.
- **International Humanitarian Law:** Court and Commission held that States must investigate, prosecute and punish persons who commit or order the commission of gross violations of both human rights or humanitarian law (Velásquez Rodríguez Case, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4 July 29, 1988).
- **Precautionary measures:** Precautionary measures adopted by the Commission (Art. 25 Rules of Procedure) form part of the domestic legal order/country is required to comply with the measures as a function of

its international obligations to respect and protect fundamental human rights. Also provided precautionary measures for Guantanamo even though US not party to convention.

IHL and gender

Inter-American Commission on Women

International Humanitarian Law and gender crimes

- Sex and gender crimes are exceedingly commonplace during periods of international and internal armed conflict.
- Crimes committed both opportunistically and purposefully, randomly and calculatedly, and by persons in control or those out of control.
- Sexual violence is committed by military personnel and civilians alike on all sides of armed conflict.
- Once considered a by-product of war, it is now recognized that women and girls are regularly and intentionally targeted for abuse.
- Rarely are perpetrators of sexual violence held accountable for their crimes.

Inter-American Programme for Promotion of Women's Human Rights and Gender Equality

- Follow-up to the 2001 Summit of the Americas.
- Implementation of the CIM Strategic Plan of Action – areas for priority action.
- Human rights and the elimination of violence against women.

Military training and functions

Inter-American Defence Board and College

- **Structure:** The Inter-American Defence Board is an OAS organ of nationally appointed defence officials.
- **Function:** Develop collaborative approaches on common defence and security issues.
- **Training:** IADB maintains the Inter-American Defence College to offer

training to senior military and government officials covers various military and security issues.

- **Demining:** IADB coordinates the technical assistance through international teams of supervisors and monitors who work closely with the OAS and the demining units of affected countries.

Other OAS areas

- Legal cooperation.
- Mutual assistance and extradition.
- Democracy and governability.
- Secretary General's Office.
- Assistant Secretary General's Office.
- Access to information.
- Corruption.
- Inter-American Children's Institute.
- Treaties and agreements.

Cooperation with the ICRC

Promote in respect for and education in IHL

- **Education:** The GA promotes cooperation between the ICRC and General Secretariat (Office of International Law/Department of International Legal Affairs) to organize governmental conferences/courses/seminars.
- **Dialogue:** General Assembly instructs the Permanent Council to continue, with support from the Office of International Law and in cooperation with the ICRC, to organize special meetings on topics of current interest in IHL.
- **Dissemination:** GA mandates the dissemination of IHL/related inter-American conventions/and OAS – ICRC joint programmes and webpage: http://www.oas.org/dil/international_humanitarian_law.htm
- **Secretary General:** Meeting on 13 October 2006 between OAS Secretary General Insulza and ICRC President Kellenberger to discuss OAS political priorities in the respect of IHL in the Americas and IHL challenges in the region, including the situations in Haiti and Colombia.
- **Permanent Council:** Secretary Insulza and President Kellenberger agreed that they would set a date in 2007 for a meeting with the OAS Permanent Council to discuss IHL topics of importance to the Americas.

League of Arab States

Mr. Abdel Rahim Al Awadi

***Secretary General of the National Committee on IHL, United Arab Emirates,
President of the Commission of Arab Experts, League of Arab States***

Since the signing of the Memorandum of Understanding (MoU) between the League of Arab States (LAS) and the International Committee of the Red Cross (ICRC) at the end of 1999, effective cooperation has been taking place between the ICRC Advisory Service on IHL and the Legal Department of the League of Arab States. The major outcome of this cooperation was the establishment of a special Commission, composed of both departments, with membership including the Head of the Legal Department of the League and the Regional Coordinator of ICRC Advisory Service in Cairo. This Commission was called the “Follow-up Commission on IHL at the Level of the Arab Region”.

The Commission began its work by creating a database on the implementation of IHL at the level of Arab States, by means of a questionnaire that was transmitted to all Arab countries and updated every year through special questionnaires.

This Commission exerted appreciated effort in printing an Arab regional report on the status of IHL implementation. Three such reports have been issued so far, and the fourth Arab report is currently being printed, which covers the period 2005 till the end of 2006.

One of the byproducts of this cooperation between the ICRC and the LAS was the annual regional meeting held to discuss the most recent developments on the implementation of IHL and consider the difficulties and achievements related thereto. The last of these meetings was the sixth regional meeting held in Cairo on 27 and 28 February 2007, which culminated with the adoption of the Regional Plan of Action for the year 2007.

Furthermore, LAS allowed the ICRC Advisory Service to participate in League meetings relevant to IHL, such as:

1. Meeting of the Commission of Arab Experts on International Conventions.
2. Annual meeting of Arab legislators.
3. Annual meeting of directors of judiciary institutes.

Naturally, the Follow-up Commission on IHL, jointly composed of LAS and ICRC representatives was at the disposal of LAS Member States to offer consultation, exchange expertise or even ask for Commission visits to countries, upon the latter's request, to support efforts geared toward the creation of a National Committee on IHL, the adoption of a particular legislation or the ratification of an international convention.

For the past six years, the Follow-up Commission has been encouraging Arab countries to establish National Committees on IHL. Thus, the number of such Committees went up from two in early 2000 to 12 today.

The theme of legislation

This theme is twofold. The first aspect thereof is related to the ratification of conventions and the second concerns the adoption of national legislation. Regarding the first aspect, during the past four years, LAS jointly consulted with the ICRC on the Rome Statute and the Hague Convention of 1954 on the Protection of Cultural Property and its First Protocol of 1954 and the Second Protocol of 1999. An important seminar will be organized before the end of 2007 to review the standpoint of Arab countries vis-à-vis the ratification of the ICC Statute.

At the level of legislation, the Commission of Arab Experts, which I had the honour to preside for two years and a half, strove to put forth a draft model Arab law, seeking guidance in the ICC Statute and relevant international conventions. Those efforts culminated with the adoption of the Draft Model Arab Law on Crimes under the Jurisdiction of the International Criminal Court, following the resolution of the Council of Arab Ministers of Justice at the end of 2005.

Finally, I must mention the efforts of the League of Arab States, in accordance with the decision of the Council of Arab Ministers of Justice, to assign the Arab Centre for Judiciary and Legal Studies, affiliated with the League, to organize two annual training courses on IHL, in coordination with the ICRC.

I would like also to allude to the Memoranda of Understanding co-signed by the ICRC and some Arab governments regarding training on IHL provisions, including the MoU signed with the Kuwaiti Ministry of Justice to commission the Kuwait Centre for Judiciary and Legal Studies with the task of training Arab magistrates, and the MoU signed with the United Arab Emirates, designating the Emirates Institute for Diplomatic Studies to train Arab diplomats in IHL.

To conclude, this brief presentation aimed at highlighting the harmony and cooperation between the three major actors, namely the League of Arab States, the ICRC and Arab governments, for a better implementation of IHL at the national level.

European Union

Ms. Christiane Hoehn

Administrator, Transatlantic Relations, DGE IV, EU Council

1. Relevance of IHL to EU foreign policy

The EU is based on the rule of law and bound to respect human rights and fundamental freedoms (Art. 6 TEU). International law is at the core of EU foreign policy. This is stated also in the European Security Strategy: “The development of a stronger international society, well-functioning international institutions and a rule-based international order is our objective. We are committed to upholding and developing international law.”

a) Development of EU foreign policy

Since the Maastricht and Amsterdam treaties and the appointment of Javier Solana as the EU’s High Representative for foreign and security policy in 1999, the EU has gradually developed its foreign policy. With the European Security Strategy, adopted in 2003 as a reaction to the crisis over Iraq, the EU for the first time has a common strategic basis. It is developing policies and strategic partnerships with a number of countries and organizations around the world. The EU has political dialogue with many third countries. National foreign policy has a more and more European dimension, the approaches are complementary. Because of this emerging EU foreign policy, implementing and promoting IHL at a national level would not be enough. There would be a gap if IHL was not taken up at the EU level.

The EU is a forum for Member States to discuss and coordinate approaches to questions relevant to IHL. For instance, EU Legal Advisers are discussing the principles of international law relevant to the fight against terrorism. The EU has a dialogue on these questions with the US. Another example is the ICC, where discussions led to the development of a Common Position. EU backing really made a difference for the ICC. If the EU as a whole backs and promotes a proposal, the political leverage and legitimacy can be much greater than if

there were only individual backings by Member States. It is important for the EU to develop coherent messages to have greater impact. Effectiveness can be limited if 27 Member States send 27 different messages concerning IHL to parties to a conflict.

EU strongly supports the important work done by the ICRC. ICRC representatives, including ICRC President Kellenberger, regularly meet with the Ambassadors of the Political and Security Committee and other working groups such as COJUR. This is a very useful exchange of views.

b) Crisis management operations

In 2003, the EU had its first crisis management operation. Now there are more than a dozen, both civilian and military. This is a growing business, as the EU is currently planning large-scale civilian crisis management operations in Afghanistan and Kosovo. There are soldiers acting under the EU flag, for instance, in Bosnia (operation ALTHEA) with 7,000 troops.

IHL applies to many EU operations. Therefore, this is the area where the EU itself has to ensure respect of IHL. ESDP missions cover the whole spectrum of operations. EU crisis management operations must always respect international law with regard to (1) legal basis for the operation and (2) conduct of the operation. This explicit grounding of the operations in international law is a distinguishing feature of EU crisis management.

There are many new types of missions, combining military, civilian and humanitarian action. It is a challenge to apply the Geneva Conventions in the best possible way. Hence, in every situation an analysis has to be made which body of law applies. This will then be reflected in the rules of engagement that are being worked out for every crisis management operation. The rules can include “dormant” provisions that apply should the situation on the ground deteriorate. The Council approves rules of engagement for each and every operation.

By its presence in conflict theatres, the EU becomes more exposed to different actors in crisis situations to which IHL applies. Therefore, IHL might be subject of discussion with such parties to the conflict.

2. IHL guidelines (adopted in December 2005)

Parties to the Geneva Conventions have two obligations: to **respect** and to **ensure respect** for the Conventions in all circumstances. (Common Art. 1 to the Geneva Conventions). While the guidelines recognize the obligation of

Member States to comply with IHL, they operationalize the “ensure respect” part of this obligation.

The guidelines address the question of what the EU can do to promote IHL all around the world. They are an important expression of EU support to IHL. They are a tool, a basis for action. The EU is working to operationalize the guidelines. For this, input from Member States is important, where the National Committees on IHL could play a role.

In the introduction, the guidelines name evolution and sources of IHL, the scope of application of IHL, compliance with IHL is called a “matter for international concern”, complementarity of IHL and human rights law is recognized, individual responsibility for war crimes is stressed – prosecution by States or international tribunals such as the ICC to be sought. The guidelines list principal legal IHL instruments.

The operational part covers two aspects: **knowledge** about IHL and its **applicability** have to be mainstreamed in the EU’s foreign policy work. As a second step, based on this information, a wide range of **actions** that could be taken have been identified.

Reporting, assessment, recommendations for action

- Council working groups to monitor situations in which IHL might apply.
- Council working groups to identify and recommend action to promote compliance in those situations.
- Exchange of information with ICRC, UN, regional organizations and the International Humanitarian Fact-Finding Commission.
- Inclusion of assessment of IHL situation in reports, for instance by Heads of Missions, EU Special Representatives, crisis management operation commanders/heads, and possible measures to take.
- Background papers for EU meetings to include analysis of applicability of IHL.

Action in relations with third countries

- Political dialogue meetings can be raised (as human rights are regularly raised).

- Raise IHL in political and diplomatic contacts with the parties to a conflict, urging compliance and condemning violations.
- Promote full implementation of IHL instruments, which includes implementing legislation and training.
- Public statements regarding both general and specific situations.
- Demarches.
- Sanctions.
- Cooperation with international bodies such as ICRC, UN – special role of ICRC recognized.
- Crisis management operations: reporting, monitoring and dialogue with the parties to a conflict on IHL.
- Ensure that there is no impunity to war crimes.
- Training: consider funding IHL training/education in IHL in third countries.
- Arms exports: European Code of Conduct on Arms Export provides that the importing country's compliance with IHL has to be considered before a licence can be granted.

3. The EU's pledges at the 2003 International Conference of the Red Cross and Red Crescent and their implementation by the EU and Member States

a) Public dissemination of IHL

A number of seminars have been organized in cooperation with the ICRC for EU and Member States' officials in order to raise the awareness of issues related to international humanitarian law.

The IHL guidelines indicate that the EU should, whenever appropriate, emphasize the need to ensure compliance with IHL through public statements.

Concerning the pledge to improving understanding of and advancing appreciation for IHL principles, in particular among youth, most EU Member

States have integrated the study of IHL principles in their schools' and/or universities' curricula or in other training courses.

b) Dissemination/training on IHL among military forces, especially with regard to peacekeeping operations

The EU's IHL guidelines underline the importance of training in IHL both in the EU and externally. The "Generic standards of behaviour for ESDP operations" state with regard to training that "particular attention should be given to international law including international humanitarian law and human rights issues..."

IHL training is required to prepare diplomatic, civilian and military personnel for participation in EU-led operations. Training actors at European level such as the European Security and Defence College, the European Police College, the European Diplomatic Programme and the EC Project on Training for Civilian Aspects of Crisis Management complement national training capacities.

Most Member States comprehensively train – in close cooperation with the ICRC – their troops at all command levels in IHL. Special training is provided to troops participating in international peacekeeping and peacebuilding operations.

c) Ratification/implementation of the Explosive Remnants of War Protocol

16 Member States have already ratified the protocol. All others indicate they have started the ratification procedure and intended to conclude it shortly.

d) Support to the ICC

The EU's pledge on support to the International Criminal Court has been implemented both at EU and Member States levels.

On 16 June 2003, the Council adopted Council Common Position 2003/444/CFSP on the International Criminal Court (Official Journal L 150 of 18.06.2003). The objective of this Common Position is to support the effective functioning of the Court and to advance universal support for it by promoting the widest possible participation in the Rome Statute. The Common position was furthermore supplemented with an action plan that was adopted in January 2004, setting out the concrete modalities for the EU support to the Court. The EU, through the Council Working Group devoted to the ICC, closely follows a wide range of issues related to work of the Court. In this framework, the EU Presidencies had carried out each year approximately 60 demarches to third countries on the importance of ratifying and implementing the Rome Statute.

To this end, the EU has drafted more than 70 fact sheets on third countries with information relevant for the ratification and implementation of the Rome Statute.

The EU has also underlined the importance of ensuring the integrity of the Rome Statute. The EU pursues systematically the inclusion an ICC clause in agreements with third countries and raises the ICC at political dialogue meetings and Summits. In 2006, the EU and the ICC signed an agreement on cooperation and assistance which is expected to lead to a further deepening of the EU's cooperation with the Court.

The EU support to the ICC is also expressed within the framework of the United Nations. For instance, the EU played an active role in the adoption of UNSCR 1593 (2005) authorising the Security Council – for the first time – to refer a case (Darfur) to the ICC.

By 6 February 2007, 26 EU Member States had signed the Agreement on the Privileges and Immunities of the ICC and 19 had ratified it. Some Member States have also signed Agreements on the Enforcement of Sentences with the ICC and concluded Agreements with the ICC on relocation of witnesses and their close relations.

Note : The views expressed in this article are those of the author, who is a member of the staff of the General Secretariat of the Council of the European Union, and such views should not in any way be considered as representing an official position of the GSC or any of its officers.

INTERNATIONAL HUMANITARIAN LAW

IHL

CHAPTER 3

ADDRESSING THE PHENOMENON OF MISSING PERSONS

INTERNATIONAL HUMANITARIAN LAW



3.1 Overview of the phenomenon and legal concerns of the missing

Addressing the phenomenon of missing persons: a major challenge in international law and practice

Ms. Renée Zellweger-Monin

Deputy Head of the Central Tracing Agency and Protection Division, ICRC

Mr. Chair, ladies and gentlemen,

Introduction

Uncertainty about the fate of a relative is a harsh reality for countless families in situations of armed conflict or violence around the world. Parents, siblings, spouses and children are desperately seeking lost relatives. Families and communities, not knowing whether their loved ones are alive or dead, are unable to put behind them the violent events that disrupted their lives. They cannot move on to rehabilitation and reconciliation, either as individuals or as a community. Such wounds can harm the fabric of society and undermine relations between groups and nations, sometimes decades after the original events.

What do we mean by a “missing person”?

A “missing person” is anyone unaccounted for as a result of an armed conflict or a situation of internal violence.

People can become missing persons in many situations:

- They may be killed when they are captured, arrested or abducted.
- They may die in custody, disappear or be held incommunicado or in a secret location. In many cases, their families either do not know where they are or are not allowed to visit them – or even to correspond with them. Data on people deprived of their freedom – such as date and place of arrest, transfer, death or burial – is frequently not recorded. When it is, the records are often withheld or destroyed.

- Mass killings lead to many becoming unaccounted for. The bodies of the victims are often abandoned, buried in haste or even destroyed.
- Often, families do not know the whereabouts of relatives in armed forces or armed groups because they are given no means of staying in touch.
- Members of armed forces or armed groups may go missing in action because they have not been issued with any means of identifying themselves, such as identity discs.
- Displaced persons and refugees, isolated populations and people living under occupation may not be able to send news to their next-of-kin. This can lead to the long-term separation of families.
- Children may be found on their own, having been separated from their families either while fleeing fighting, or because they were forcibly recruited, incarcerated or even hastily adopted.
- Evidence confirming death is not always preserved and handled appropriately during exhumations and post mortem procedures.

Whose responsibility is it?

The principal responsibility for preventing disappearances and ascertaining the fate of missing persons lies with government authorities. Armed groups also have a responsibility in this regard.

Compliance with international humanitarian and human rights law is fundamental to prevent people from becoming unaccounted for. It is therefore important that States implement these laws in full and that their provisions be made widely known.

Government authorities and leaders, backed by national and international humanitarian and human rights organizations, must prevent people from going missing and must deal with the consequences when they do. They can choose from a broad spectrum of measures to reach these aims. Whenever possible, there should be constructive dialogue between all parties, including the families of missing persons and their communities.

This is the only way to reduce the number of missing persons and to identify ways of helping them and their relatives. The families of missing persons generally say that knowing what has happened to their relatives is their most

pressing need. Furthermore, experience shows that the missing person was often the breadwinner and was responsible for administering the family's public affairs. Hence, while every effort must be made to establish the fate of missing persons, their relatives must also be enabled to live in dignity. Furthermore, it is essential for families and communities that perpetrators be held accountable for their acts.

When all else fails, and it proves impossible to account for people who have disappeared, then for the sake of the families and communities the loss of human life must be acknowledged, and the next-of-kin must be allowed to honour the memory of their missing persons in a dignified manner.

Not knowing what happened exactly to a father, a son, a sister, is an open wound and often the start of a very long journey of moral despair, to which administrative difficulties come in addition.

Mr Chair, ladies and gentlemen,

In collaboration with representatives of governments, other components of the RC/RC Movement, international, regional and national governmental and NGOs, with representatives of associations of families of missing persons and experts, in 2002, the ICRC launched a process aiming at responding to the problematic of missing persons and their families, with the objective to:

- a) examine all methods aiming at preventing disappearance in situations of conflict and internal violence and responding to the needs of families;
- b) agree with all parties concerned on recommendations and best practices aiming at preventing disappearance and reacting in an appropriate manner when people go missing as a result of an armed conflict or situation of violence;
- c) raise awareness about this issue among state authorities, IOs and NGOs.

This process resulted in the organization, in February 2003, of the International Conference of governmental and non-governmental experts on the issue of missing persons and their families.

Later in 2003, the 28th International Conference of the RC/RC endorsed the Agenda for Humanitarian Action to be implemented by States and the components of the Movement, declaring that action in favour of missing persons and their families was a priority for the Movement.

The Agenda for Humanitarian Action puts a strong emphasis on key aspects of this problematic, with five orientations for action:

- a) prevent persons from becoming missing;
- b) ascertain the fate of missing persons;
- c) manage information and process files on missing persons;
- d) manage human remains and information on the dead;
- e) support families of missing persons.

This underlines the idea that, in order for any action to be effective in relation with the problematic of missing persons, there is a need to act in a comprehensive manner.

At the International Conference, the ICRC pledged to :

- a) strengthen its operational practices;
- b) work with relevant authorities and organizations;
- c) contribute to the strengthening of relevant international and domestic law, which serves to protect persons from becoming unaccounted for, ascertain the fate of missing persons and sustain the right of families to know the fate of their relatives.

Concretely, this resulted, on the one hand, in a reinforcement of current operational activities seen, if I may say so, through the lens of the recommendations and best practices that emerged from the Expert Conference and, on the other hand, in the establishment of a plan of action.

Operationally, the ICRC pledge translated and still translates into different types of activities that you will see in the video later on.

On activities developed within the plan of action, it meant:

- promotion of existing international law;
- support for the adoption of a new international treaty designed to provide effective protection against enforced disappearance support for enhanced domestic law;

- cooperation with armed forces and regional military organizations and efforts to facilitate contacts between them in order to ensure, for instance, that military personnel wear some form of personal identification and can regularly exchange news with their families, and that human remains and the deceased are properly handled on the battlefield;
- enhancement of the capacity of the RC/RC family links network to process information on persons at risk of losing contact with their relatives and to restore family links when necessary;
- development and promotion of guidelines and standards of best practice for the management of human remains and forensic human identification, including the use of DNA, intended both for forensic practitioners and non-specialists;
- development of guidelines on the specific needs of the families of missing persons and how these needs can be met.

The implementation of the plan of action continues, with some activities that have been completed in 2005 and 2006, others that will be completed in 2007 and still others of a more permanent nature that will continue over time.

Details on the project are to be found in the ICRC report on the missing and their families that you will find outside the conference room.

Thanks to its structure, particularly at field level, and thanks to a wide range of activities already taking place in the field, the ICRC has developed a comprehensive approach in relation with the missing persons and their families. If pieces are increasingly coming together, there remains some way to go to respond in a completely adequate way to the needs of the missing and their families.

Thank you for your attention.

Missing persons: legal requirements under international humanitarian law and related treaties

Ms. Louise Doswald-Beck

*Professor of International Law, Graduate Institute of International Studies,
Director, University Centre for IHL, Geneva*

Preventive measures

International conflicts

After military engagement

1. Search for and collect wounded, sick and dead.
2. Identify them *inter alia* through identity disks.
3. Record details and send them to the Information Bureau which must then send details to the Central Tracing Agency.

Please refer to articles 15-16 First Geneva Convention; Articles 18-19 Second Geneva Convention.

Detained persons

Record details of prisoners of war and of civilian detained persons by Information Bureaux which must then send information to the Central Tracing Agency. Please refer to articles 122-123 of the Third Geneva Convention and Articles 136-137 of the Fourth Geneva Convention.

Representatives of the International Committee of the Red Cross and the Protecting Power (if established) have the right to visit prisoners of war and detained civilians (Article 126 of the Third Geneva Convention and Article 143 of the Fourth Geneva Convention).

Non-international conflicts

After each military engagement

Article 3 common to the Geneva Conventions provides that the wounded and sick shall be collected and cared for.

Detained persons

The ICRC's *Customary International Humanitarian Law* study found that the international community expects detained persons to be registered, i.e. their personal details are to be recorded (Rule 123 of the study).

Prohibition of enforced disappearance: enforced disappearance was condemned by the 24th, 25th and 27th International Conference of the Red Cross and Red Crescent (Rule 98 of the Customary law study).

Prevention of enforced disappearance

1. *Basic rules of international human rights law:*

- a. all detained persons are entitled to take proceedings before a court to challenge the lawfulness of their detention (*habeas corpus*);
- b. persons detained on a criminal charge are to be brought before a judge or judicial officer within a few days.

These rules are in all the major human rights treaties to which the vast majority of States are party.

2. *Interpretation by human rights bodies for the real implementation of the above rules, also to be found in UN General Assembly and regional official documents:*

- a. all persons are entitled to contact a lawyer at the latest within the first 48 hours and to be able to communicate with him/her confidentially;
- b. all persons must be able to communicate with their family;
- c. a state of emergency cannot eliminate these rights – any restrictions must be only to the extent and for the duration strictly required by the exigencies of the situation;
- d. the right to challenge the lawfulness of detention cannot be derogated from (UN Human Rights Committee, Inter-American Court of Human Rights); independent supervision must be regularly undertaken (European Court of Human Rights).

International Convention for the protection of all persons from enforced disappearance (2006)

Main provisions:

1. enforced disappearance must be made a specific crime under national law and suspects are to be tried or extradited for trial;
2. persons may only be held in recognized centres and have contact with both their lawyer and their family;
3. personal details are to be recorded in official registers;
4. release from detention is to be verified;
5. proper training for law enforcement personnel;
6. implementation by the committee on enforced disappearances.

Finding missing persons

International conflicts

- Article 32 Additional Protocol I: Families have the right to know the fate of their families.
- Article 33 Additional Protocol I: States are required to take measures to find missing persons and to cooperate for this purpose, in particular through the Central Tracing Agency.

Non-international conflicts

- Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate (Rule 117 of the customary law study).

Human Rights Law: enforced disappearance is “inhuman treatment”

- The United Nations Human Rights Committee and all the treaty bodies of the regional treaties have found enforced disappearance to amount to inhuman treatment for not only the disappeared person but also for the family members.
- NB. The prohibition of inhuman treatment is a non-derogable rule and the major human rights treaties have implementation provisions providing for individual petition.
- A suspected arbitrary deprivation of life must be investigated:
 - by an independent body;
 - results must be public;
 - persons responsible must be prosecuted.

International criminal law

1. Widespread or systematic enforced disappearance is a crime against humanity, listed as such in the Statute of the International Criminal Court.
2. The UN and Inter-American Convention require States to make any enforced disappearance a national crime which they must prosecute or extradite for trial in another State.

Institutional and legal implications: what can a National Committee do at the domestic level to prevent people from going missing?

Mr. Stéphane J. Hankins

Legal Adviser, Advisory Service on International Humanitarian Law, ICRC

Thank you Mr. Chair.

Following this detailed and stimulating presentation of the international legal framework – flowing from both IHL and human rights law – by Mrs. Doswald-Beck, and the projection of the ICRC video “End the silence”, which I think is a very striking and moving introduction to our work today, let us introduce our forthcoming sessions devoted to the legal and practical measures to be undertaken at the domestic level to prevent persons from becoming missing persons and to protect missing persons and their families.

The ICRC film we have watched illustrates how the uncertainty about the fate of their relatives and loved ones remains a harsh reality for countless families in armed conflict and internal strife. Families and communities, not knowing whether their members are alive or dead, are unable to obtain closure on the violent events that have disrupted their lives. They are unable to move on to personal or community rehabilitation and reconciliation.

Future generations carry with them the resentment caused by the humiliation and injustice suffered by their relatives and neighbours. Such festering wounds can undermine the fabric of society and undermine relations between persons, groups and nations for decades after the actual events.

Hence, the ICRC is today confronted with the issue of missing persons on a daily basis and is witness to the harsh reality and suffering endured by families given to live with the uncertainty about the fate of their loved ones. Across the world, parents, spouses and children affected by war are desperately trying to find lost relatives. Their anxiety can remain with them for years after end of the fighting.

There are a variety of reasons and factors for which persons may be unaccounted for. Violations of international humanitarian law and/or human rights account for most case of missing persons. But in particular, the dangers inherent in wars lead to separation and disappearances of soldiers and civilians alike.

Existing international rules have of course been designed to prevent persons from becoming unaccounted for and to ensure that missing persons do not remain missing. Notification of capture, arrest and detention, the right of the detained or separated persons to correspond with their families and the obligation of the authorities to answer enquiries, all obligations resting on warring parties under the Geneva Conventions of 1949 and their Additional Protocols of 1977, should ensure, for example, that detained persons are not missing for long.

States have also undertaken to adopt a wide array of preventive measures of a legislative, administrative or practical nature in their domestic legal structures in order to reduce the likelihood that people will go missing, to help resolve cases of missing persons and to support their families in times of armed conflict or in the aftermath of a war.

I should mention here that, confronted with the issue of missing persons in its daily work, the International Committee of the Red Cross resolved several years ago, as some of you will be aware, to start a process of deliberation and reflection on the issue of the missing. The first phase was devoted to gathering and analysing, in consultation with field and academic experts, information on related issues, including protection work and restoration of family links, support for the families of missing persons, collection and management of personal data, and on the national or international mechanisms set up to handle cases of missing persons. This resulted in February 2003 in the holding of an International Conference on the Missing, to heighten awareness of the tragedy of people unaccounted for as a result of armed conflict or internal violence, and the anguish and suffering of their families.

The conclusions and recommendations on best practices of the Conference also led to the inclusion of a specific item and commitment adopted by all the participants in the 28th International Conference of the Red Cross and Red Crescent held in December 2003 – States and National Red Cross and Red Crescent Societies alike. The ICRC itself, during the 28th International Conference, presented a pledge to further address the issue of the missing and the plight of their families.

Our discussions today and tomorrow afternoon will focus attention on the commitments and related legal obligations, undertaken by States under international law, and humanitarian law in particular, to address and resolve the issue of missing persons and their implications in domestic law.

We look forward to our discussions. Allow us to turn to you for inspiring suggestions on how to ensure a better response to the occurrence of conflict-related disappearances and thus in particular in regard to the domestic legal and practical regime to be developed in domestic law. We firmly believe that action at the level of domestic law is an essential step and that your respective National Committees can play an important role in this field. Our forthcoming discussions will hence be devoted to the actions and strategies your National Committees and your respective governments should usefully take.

3.2 Legal and practical measures

A. Legal and practical measures to be taken in peacetime to comply with obligations under international humanitarian law

The UK experience in the establishment and operation of its National Information Bureau

Lieutenant-Colonel Nick Larkin

*Assistant Director Ops Plans,
Strategy Directorate of the Deputy Chief of Defence Staff (Personnel),
United Kingdom Ministry of Defence,
Director, United Kingdom Prisoner of War Information Bureau*

Chairman, your Excellencies, ladies and gentlemen

It is an absolute honour to be invited here to share with you the United Kingdom's experience in operating its National Information Bureau in accordance with the Geneva Convention.

My name is Nick Larkin and as you can see I have a very long and important-looking title and in England that really means that I am not very important at all, but I do have one very important duty which is that I am the *de facto* Director of the UK National Information Bureau.

Some of you may have noticed that I am a serving member of the British armed forces. Some of you might find this alarming. I would wish to reassure you all, particularly the Swiss nationals, that my presence here, in uniform, does not necessarily mean that Switzerland has been invaded (and I have this carnet from my government to prove it). Our activities elsewhere in uniform, however, do require us to operate a National Information Bureau.

During this presentation you may find me using the abbreviation 'bureau' or 'NIB' or even the abbreviation 'pwib' for 'prisoner of war information bureau'. The national information bureau comprises two components: the pwib and the civilian information bureau which is run by the Home Office. The latter is responsible for recording and reporting those nationals of a party to an armed conflict who are held within the UK. Currently none are held, so this element is dormant and for the purposes of our discussion today the pwib and NIB are one and the same.

Today I want to cover the organization and operation of the bureau and illustrate one of the challenges we face with a short case study. I hope to show that if the armed forces of a country do the job they are paid to do, then the implementation of a National Information Bureau is relatively straightforward.

Responsibilities

The direction we received during the Falklands campaign in 1982 taken together with our responsibilities to civilian, under article 136 is a concise summary of our duties today. The environment is of course much more complex today and I doubt if we could administer prisoners efficiently today without the computer-based system I will describe.

Today the NIB in the UK comprises a civil servant and myself, and is one of our many duties. In higher-intensity conflict we have made provision for the NIB to be reinforced by five high-readiness reservists to increase capacity and provide 24-hour manning.

At the heart of the NIB is a customised Microsoft Office-based database. The NIB itself is a repository of information and data on prisoners and provides a national focal point for inquiries.

It is the role of the armed forces to collect accurate and complete information about prisoners. In my experience, they do well in very difficult circumstances.

Soldiers at point of capture

By way of background, I want to remind you of the chaotic conditions in which prisoners are captured. Their status is often difficult to determine. They need to be guarded, treated, protected and evacuated. Early in a conflict, this is a challenging drain on fighting manpower. Inevitably, documentation becomes a second priority.

Unit holding area

Information about the prisoners needs to be recorded close to the point of capture, but in reality this may not be until the prisoner reaches the unit holding facility. Here the unit will provide facilities to hold prisoners for up to 24 hours. Paper-based records will predominate.

Tag

At the minimum this will comprise the issue of a tag with a capture serial number for each prisoner and his or her equipment, as well as the local station.

Appendix 2B3 – F/PW – Example of a POW Capture Tag

PRISONER OF WAR CAPTURE TAG PART A (Attach this part of tag to PW)									
1. DATE AND TIME OF CAPTURE		2. SERIAL NUMBER		3. NAME		4. SERVICE NUMBER		5. CAPTURED AT	
6. NAME		7. PW NUMBER		8. SERVICE NUMBER		9. CAPTURED AT		10. DATE AND TIME OF CAPTURE	
11. NAME		12. PW NUMBER		13. SERVICE NUMBER		14. CAPTURED AT		15. DATE AND TIME OF CAPTURE	
16. NAME		17. PW NUMBER		18. SERVICE NUMBER		19. CAPTURED AT		20. DATE AND TIME OF CAPTURE	
21. NAME		22. PW NUMBER		23. SERVICE NUMBER		24. CAPTURED AT		25. DATE AND TIME OF CAPTURE	
26. NAME		27. PW NUMBER		28. SERVICE NUMBER		29. CAPTURED AT		30. DATE AND TIME OF CAPTURE	
31. NAME		32. PW NUMBER		33. SERVICE NUMBER		34. CAPTURED AT		35. DATE AND TIME OF CAPTURE	
36. NAME		37. PW NUMBER		38. SERVICE NUMBER		39. CAPTURED AT		40. DATE AND TIME OF CAPTURE	
41. NAME		42. PW NUMBER		43. SERVICE NUMBER		44. CAPTURED AT		45. DATE AND TIME OF CAPTURE	
46. NAME		47. PW NUMBER		48. SERVICE NUMBER		49. CAPTURED AT		50. DATE AND TIME OF CAPTURE	
51. NAME		52. PW NUMBER		53. SERVICE NUMBER		54. CAPTURED AT		55. DATE AND TIME OF CAPTURE	
56. NAME		57. PW NUMBER		58. SERVICE NUMBER		59. CAPTURED AT		60. DATE AND TIME OF CAPTURE	
61. NAME		62. PW NUMBER		63. SERVICE NUMBER		64. CAPTURED AT		65. DATE AND TIME OF CAPTURE	
66. NAME		67. PW NUMBER		68. SERVICE NUMBER		69. CAPTURED AT		70. DATE AND TIME OF CAPTURE	
71. NAME		72. PW NUMBER		73. SERVICE NUMBER		74. CAPTURED AT		75. DATE AND TIME OF CAPTURE	
76. NAME		77. PW NUMBER		78. SERVICE NUMBER		79. CAPTURED AT		80. DATE AND TIME OF CAPTURE	
81. NAME		82. PW NUMBER		83. SERVICE NUMBER		84. CAPTURED AT		85. DATE AND TIME OF CAPTURE	
86. NAME		87. PW NUMBER		88. SERVICE NUMBER		89. CAPTURED AT		90. DATE AND TIME OF CAPTURE	
91. NAME		92. PW NUMBER		93. SERVICE NUMBER		94. CAPTURED AT		95. DATE AND TIME OF CAPTURE	
96. NAME		97. PW NUMBER		98. SERVICE NUMBER		99. CAPTURED AT		100. DATE AND TIME OF CAPTURE	
101. NAME		102. PW NUMBER		103. SERVICE NUMBER		104. CAPTURED AT		105. DATE AND TIME OF CAPTURE	
106. NAME		107. PW NUMBER		108. SERVICE NUMBER		109. CAPTURED AT		110. DATE AND TIME OF CAPTURE	
111. NAME		112. PW NUMBER		113. SERVICE NUMBER		114. CAPTURED AT		115. DATE AND TIME OF CAPTURE	
116. NAME		117. PW NUMBER		118. SERVICE NUMBER		119. CAPTURED AT		120. DATE AND TIME OF CAPTURE	
121. NAME		122. PW NUMBER		123. SERVICE NUMBER		124. CAPTURED AT		125. DATE AND TIME OF CAPTURE	
126. NAME		127. PW NUMBER		128. SERVICE NUMBER		129. CAPTURED AT		130. DATE AND TIME OF CAPTURE	
131. NAME		132. PW NUMBER		133. SERVICE NUMBER		134. CAPTURED AT		135. DATE AND TIME OF CAPTURE	
136. NAME		137. PW NUMBER		138. SERVICE NUMBER		139. CAPTURED AT		140. DATE AND TIME OF CAPTURE	
141. NAME		142. PW NUMBER		143. SERVICE NUMBER		144. CAPTURED AT		145. DATE AND TIME OF CAPTURE	
146. NAME		147. PW NUMBER		148. SERVICE NUMBER		149. CAPTURED AT		150. DATE AND TIME OF CAPTURE	
151. NAME		152. PW NUMBER		153. SERVICE NUMBER		154. CAPTURED AT		155. DATE AND TIME OF CAPTURE	
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161. NAME		162. PW NUMBER		163. SERVICE NUMBER		164. CAPTURED AT		165. DATE AND TIME OF CAPTURE	
166. NAME		167. PW NUMBER		168. SERVICE NUMBER		169. CAPTURED AT		170. DATE AND TIME OF CAPTURE	
171. NAME		172. PW NUMBER		173. SERVICE NUMBER		174. CAPTURED AT		175. DATE AND TIME OF CAPTURE	
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196. NAME		197. PW NUMBER		198. SERVICE NUMBER		199. CAPTURED AT		200. DATE AND TIME OF CAPTURE	
201. NAME		202. PW NUMBER		203. SERVICE NUMBER		204. CAPTURED AT		205. DATE AND TIME OF CAPTURE	
206. NAME		207. PW NUMBER		208. SERVICE NUMBER		209. CAPTURED AT		210. DATE AND TIME OF CAPTURE	
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236. NAME		237. PW NUMBER		238. SERVICE NUMBER		239. CAPTURED AT		240. DATE AND TIME OF CAPTURE	
241. NAME		242. PW NUMBER		243. SERVICE NUMBER		244. CAPTURED AT		245. DATE AND TIME OF CAPTURE	
246. NAME		247. PW NUMBER		248. SERVICE NUMBER		249. CAPTURED AT		250. DATE AND TIME OF CAPTURE	
251. NAME		252. PW NUMBER		253. SERVICE NUMBER		254. CAPTURED AT		255. DATE AND TIME OF CAPTURE	
256. NAME		257. PW NUMBER		258. SERVICE NUMBER		259. CAPTURED AT		260. DATE AND TIME OF CAPTURE	
261. NAME		262. PW NUMBER		263. SERVICE NUMBER		264. CAPTURED AT		265. DATE AND TIME OF CAPTURE	
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621. NAME		622. PW NUMBER		623. SERVICE NUMBER		624. CAPTURED AT		625. DATE AND TIME OF CAPTURE	
626. NAME		627. PW NUMBER		628. SERVICE NUMBER		629. CAPTURED AT		630. DATE AND TIME OF CAPTURE	
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656. NAME		657. PW NUMBER		658. SERVICE NUMBER		659. CAPTURED AT		660. DATE AND TIME OF CAPTURE	
661. NAME		662. PW NUMBER		663. SERVICE NUMBER		664. CAPTURED AT		665. DATE AND TIME OF CAPTURE	
666. NAME		667. PW NUMBER		668. SERVICE NUMBER		669. CAPTURED AT		670. DATE AND TIME OF CAPTURE	
671. NAME		672. PW NUMBER		673. SERVICE NUMBER		674. CAPTURED AT		675. DATE AND TIME OF CAPTURE	
676. NAME		677. PW NUMBER		678. SERVICE NUMBER		679. CAPTURED AT		680. DATE AND TIME OF CAPTURE	
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686. NAME		687. PW NUMBER		688. SERVICE NUMBER		689. CAPTURED AT		690. DATE AND TIME OF CAPTURE	
691. NAME		692. PW NUMBER		693. SERVICE NUMBER		694. CAPTURED AT		695. DATE AND TIME OF CAPTURE	
696. NAME		697. PW NUMBER		698. SERVICE NUMBER		699. CAPTURED AT		700. DATE AND TIME OF CAPTURE	
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716. NAME		717. PW NUMBER		718. SERVICE NUMBER		719. CAPTURED AT		720. DATE AND TIME OF CAPTURE	
721. NAME		722. PW NUMBER		723. SERVICE NUMBER		724. CAPTURED AT		725. DATE AND TIME OF CAPTURE	
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731. NAME		732. PW NUMBER		733. SERVICE NUMBER		734. CAPTURED AT		735. DATE AND TIME OF CAPTURE	
736. NAME		737. PW NUMBER		738. SERVICE NUMBER		739. CAPTURED AT		740. DATE AND TIME OF CAPTURE	
741. NAME		742. PW NUMBER		743. SERVICE NUMBER		744. CAPTURED AT		745. DATE AND TIME OF CAPTURE	
746. NAME		747. PW NUMBER		748. SERVICE NUMBER		749. CAPTURED AT		750. DATE AND TIME OF CAPTURE	
751. NAME		752. PW NUMBER		753. SERVICE NUMBER		754. CAPTURED AT		755. DATE AND TIME OF CAPTURE	

The linkage provides an important tracking mechanism to both the NIB and the ICRC in any subsequent enquiry.

Collection point and DTFD

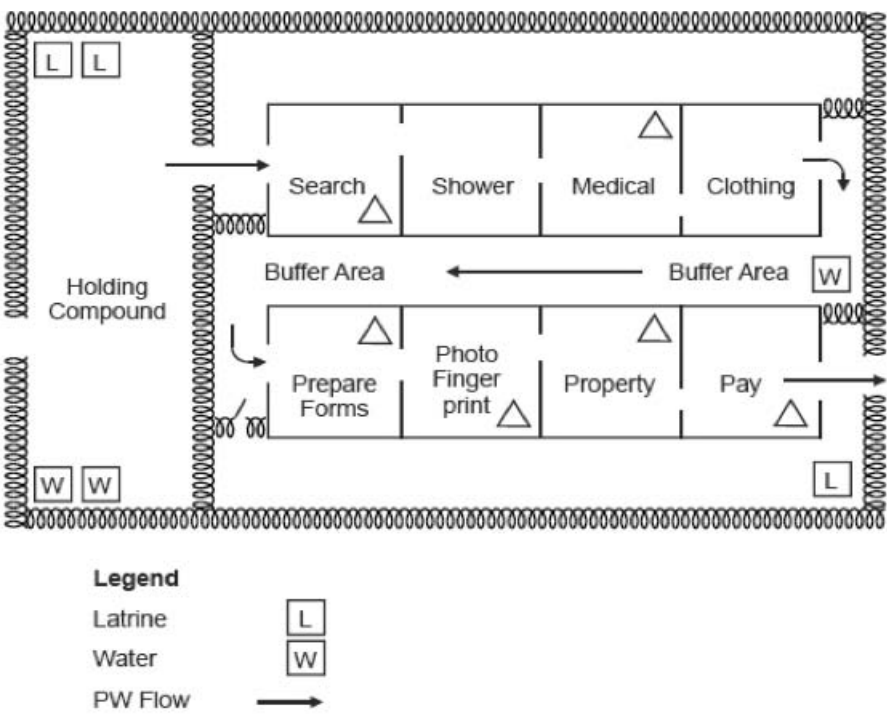
Prisoners will be evacuated as soon as possible through a prisoner collection point, if necessary to the divisional temporary holding facility such as the 2000 prisoner camp.

It is here that the prisoner undergoes formal registration and medical screening and his or her details are first recorded at the NIB. A computer-based system can more easily cope with the large numbers and provide accurate prisoner records that are more easily protected from subsequent loss or damage.

By the end of March 2003, we had captured 4,000 POWs By the end of June, there were only a few hundred still in captivity. Last Wednesday, there were 114 detainees in Iraq. Overall we have generated and maintain some 6,000-plus records (6,551).

Schematic

Here is a schematic of the registration area.



The internment serial number is generated here in the computer system together with important details of the prisoners' health and so on. The six triangles represent locally networked computers that together provide a robust and efficient system to process prisoners as quickly as possible. A number of linked registration facilities can be provided. These are operated by specialist field records and provost staff.

Initial issue of number (search), medical, form preparation photo and fingerprints, property and pay, next kin can all be entered against the prisoner's name.

New DTDF Shaibah

Facilities have improved at the current divisional temporary detention facility at Shaibah in Iraq. In coalition operations, the prisoner might then be transferred to a theatre internment facility operated by another nation. But the prisoner remains the responsibility of the capturing nation which must continue to meet its obligations in full.

Without apology I have laboured the crucial role that the armed forces on the ground play in gathering information for the NIB. Responsibility resides with commanders at all levels but particular responsibility resides with unit and divisional commanders.

Information is sent via the national chain of command to the NIB and then to the ICRC, utilizing timely and available means, including encrypted internet.

Linkages

We have data links to the permanent joint headquarters and to headquarters in every operational theatre through the national support element. You will see that the ICRC field teams provide a vital link on the ground to corroborate the evidence passed from the bureau to the ICRC.

Software function

There is transparency at all levels and information passed to the bureau includes:

- persons known to be killed, buried or captured by UK forces, including the location of the event;
- enemy personnel in the custody of UK authorities;

- information regarding the state of health of all sick or wounded POWs in custody of the UK authorities;
- details concerning transfers, releases, repatriations, escapes, and admission to hospital and deaths of POWs in custody;
- facilitated exchange of correspondence between protected persons and the ICRC;
- replies to all requests for information;
- liaison with the ICRC's Central Tracing Agency;
- all other duties required of the National Bureau by the Geneva Conventions.

Other duties include, for example, liaison with the UK police concerning arrangement for guarding prisoners transferred to the UK, were that to occur, and liaison with immigration officers, when parties are flown to the UK for medical treatment.

The Foreign and Commonwealth Office has of course the primary role in all diplomatic arrangements with the ICRC, particularly when there is a formal intervention.

Challenges

Challenges to be overcome mainly involved incomplete and/or multiple recording errors. That is why we all need to understand the environment in which the soldier is operating.

- Duplication:
 - Arab names and spelling;
 - Multiple registration (several capture cards).
- Incomplete recording:
 - case study.
- Accurate recording of agreement for NOK to be notified.
- Discrepancies in numbers.
- Confusion over terminology: POWs, detainees and criminal detainees, internees

Errors will be normal but we can minimize them by taking these steps:

- practical doctrine/SOPs;
- early planning/ICRC liaison;
- training/exercises;
- robust tested data systems;
- ICRC compatibility.

Liaison with the ICRC is vital particularly to ensure that data collected is compatible with the ICRC's own systems: a simple but vital point to consider when you set up your own system. The ICRC has supplied a gazetteer of commonly agreed phonetic spelling of Arabic names to help us overcome the problem of mis-spelled names.

Case study

- 27 September 2004 – ICRC intervention Baghdad – an examination of record keeping.
- Up to June 2005 – discussion with ICRC and resolution of most issues.
- August 2005 – MOD issued report to ICRC.
- No records for 30 IZ POWs treated in field hospitals.
- Special Investigation Branch RMP tasked to investigate.
- September 2005 – SIB locate 30 in hospital admission and discharge books. Other records identified. ICRC informed.
- March 2007 – ongoing work to reconcile hospital admissions and enter data on POW database.

By September 2004, the ICRC had made a comprehensive audit of our record-keeping and invited us to account for the discrepancies through a formal intervention. A close dialogue was maintained over the following year and most differences were accounted for. However, we were unable to track those prisoners reported by the ICRC as admissions to our field hospitals. The bureau acted with the full authority of the MOD and my predecessor, John Powell, launched a military police investigation. It got us the results we needed and the individuals, all but one, were accounted for by a reconciliation of hospital admission and discharge records. This in turn led to an investigation of other records which we are currently working upon.

In conclusion, exchanging information on prisoners and those killed and wounded is a vital legal and moral responsibility for all parties in a conflict.

An effective bureau has a key role to play. We have developed a computerized database, approved by and compatible with ICRC databases, and a process to collect to manage and exchange this information from the armed forces to the MOD.

Equally important, we have developed a robust and open relationship with the ICRC's Central Tracing Agency to ensure compassionate and humanitarian arrangements exist to protect and support those we detain and their families.

Can you afford to have a NIB? Can you afford not to have one?

The process of establishment of the Belgian National Information Bureau

Mr Yves Durieux

***Adviser on the Law of Armed Conflict, General Staff of Defence of Belgium,
Member of the National IHL Committee***

The National IHL Committee was established by a decision of the Council of Ministers on 20 May 1987. It is composed of representatives of ministries, communities and regions and of the Belgian Red Cross.

The Committee works according to the constitution of 44 different thematic files, concerning the measures to be adopted at the national level on the basis of IHL treaties. These 44 files are followed up by six working groups in order to make proposals to the relevant authorities.

Thematic file number 21 concerns the establishment of the National Information Bureau. The structure of file 21 reflects the provisions to be implemented that refer to the international legal basis, an analysis of the measures to be adopted and the establishment of the National Information Bureau (NIB). It also addresses the concerns of the competent authority with regards to budgetary implications, the status of the issue and offers a proposal of practical measures to be adopted. The annexes of file 21 include a reference on the organization of a NIB and information regarding the Day of Study on 9 November 2004.

Among the actions to be undertaken in establishing a NIB, the most relevant are the creation of an administrative service for prisoners of war and civil internees. This can be accomplished through the establishment of an organigramme, the description of the tasks and the means to be accorded for the creation and maintenance of each aspect.

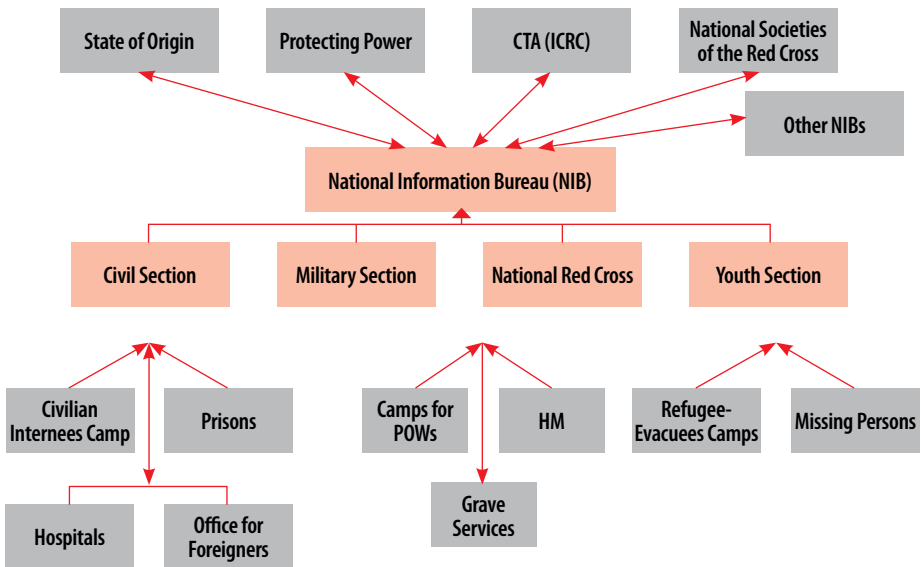
For example, the administrative services of a NIB should have the capacity to deal with administrative files, as well as the personal objects, correspondence and packages, and inquiries relating to the missing person.

The functioning directives of the NIB should also be adopted. While the NIB would likely not be operational in times of peace, however, the premises, the hardware and software and their personnel should be known, trained and available.

Among the tasks of the NIB with regard to prisoners of war and protected persons, is not only to respond to requests regarding information and recuperate and transmit personal objects but also to inform the adverse power through the Central Tracing Agency (CTA) of the ICRC of their detention. The NIB is furthermore in charge of informing the adverse power through the CTA about the sick, wounded and dead, as well as the means and location of burial.

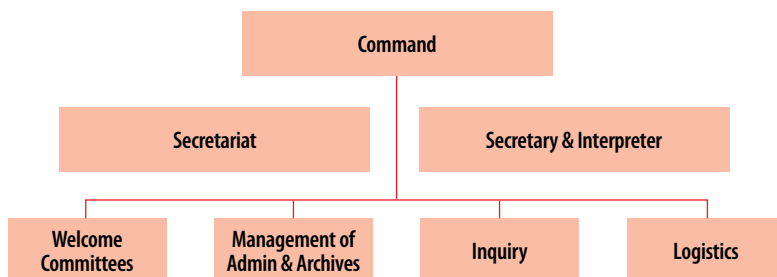
The thematic file had already been prepared in the 1990s, and was successively reviewed in 1996 and 2004. The proposal at this stage is to organize a global NIB, as will be subsequently explained. The idea of having two distinct NIBs, one for the prisoners of war and one for the civilian internees has been discarded, as well as that of having a NIB within the structure of the National Red Cross Society. However, very close cooperation with the tracing services of the National Society is considered as essential. The proposed location of this NIB is at the Ministry of Interior.

The proposed organization of the NIB is outlined as follows.



The work has been started with the development of the military section of the NIB. A sub-working group has been constituted by the Minister of Defence. The proposed human resources structure for this military section is to have two officers and six sub-officers supported by reserve personnel within the army.

The structure is proposed as follows.



Also on the basis of the thematic file on the NIB, as well as on the basis of the pledge made by the Belgian Government at the last international RC/RC conference, the National IHL Committee organized a Day of Study on 9 November 2004 on the theme of missing persons as a result of armed conflict situations. This Day of Study proposed and discussed the idea of a regional conference on the issue of missing and measures to be adopted at the national level in order to prevent people from becoming missing. This conference was organized on a European regional basis and took place in September 2006 in Brussels. Among the issues discussed was an exchange of ideas and experiences on the theme of the establishment of a NIB.

B. Working groups: Session II

Establishing a national plan of action

Theme I: Legal and practical measures to be taken in peacetime to comply with obligations under international humanitarian law

Aim of the Workshop ► To examine steps to develop and implement preventive legal and practical measures to address the occurrence of missing persons as a consequence of armed conflict and other situations of armed violence, such as identification measures, the establishment and operation of a National Information Bureau and the maintenance of a Graves Registration Service.

Questions for the consideration of the Working Groups

1. Has your National Committee been involved in studying whether preventive domestic legal and practical measures intended to prevent disappearances, to allow for the collection and sharing of information in the event of disappearances and to protect the rights of missing persons and of their families **exist in your domestic legal order**?
2. **Specific measures** to consider:
 - i) **Measures of identification:** Do all persons (citizens, residents) receive a personal identity document (card, disc, etc.)? Is this information recorded and readily accessible by authorized persons in the event of disappearance? Are additional measures in place to cover and identify military and associated personnel in the event of armed conflict? Is an effort made to ensure that children are protected in the event they are lost or separated from their families?
 - ii) **National Information Bureau (NIB):** Has a State-administered service been created in order to become operational in the event of an armed conflict? How can the mandate of a NIB be expanded so that it can also assist in situations of a non-international armed conflict and related cases of disappearances? How can such a service be facilitated (exemption from postal dues or reduced communication fees, etc.)?
 - iii) **Graves registration service:** How can the information about death and burial of protected persons in the event or as a consequence of armed conflict, regardless of their nationality (persons who migrated to safety in your country, personnel killed in battle or crossfire, etc.), be recorded and shared if necessary?
3. If such measures do not exist in your legal order and practice, **draft a plan of action** that could allow the involvement of your National Committee in the process of adoption and implementation of such measures. The plan of action should consider:
 - a) Which national authorities are responsible for the adoption, implementation and application of such measures and should be approached?
 - b) What laws and regulations should be adopted? In the affirmative, which government ministry is best suited to accomplish such a task?

- c) Which actions should a National Committee undertake?
 - d) How should the follow-up be ensured?
4. What are or could be the **difficulties encountered in the implementation** of such a Plan of Action and how could these be **overcome**?
 5. Has your Committee or have your national authorities taken any steps in the **implementation of commitments** on missing persons adopted on the occasion of the 28th International Conference of the Red Cross and Red Crescent in 2003 (Agenda for Humanitarian Action and Pledges)? How could these commitments assist in raising the attention of your national authorities regarding the preventive and reactive measures to be considered in order to address the phenomenon of missing persons?

Report back from Working Groups to Plenary

Working Group 1 – English/Russian

The working group undertook an overview of existing NIBs with examples from Finland, Germany, Austria, Sweden and Ukraine. As a first remark, the participants noted the serious difficulty in obtaining financial resources and in convincing their governments to invest in NIBs, especially during peacetime. There was agreement that the role of NIBs could extend to situations that are more pressing and relevant, for example, disaster situations and that while the National Society may have the duty at times, the primary responsibility lies with the State concerned. Looking at the 2004 tsunami experience, questions were raised in this context regarding whether a NIB can be used to keep track of and inform family members of each others' whereabouts, and answer questions relative to protection of personal data. However, it was agreed that data protection issues should not be an excuse to do nothing.

Austria raised the issue of setting up a NIB and the Ministry of Defence saw no need for the mechanism because it is a neutral State. However, it was highlighted that Article 122 of the Third Geneva Convention has such duties for neutral countries.

In general, the group agreed that the tracing service of the ICRC could be useful. The Belgian police found measures of identification (IDs) very useful and in fact vital to clarify the situation of a missing person or the deceased and to combine that with, for example, ante-mortem data. Some questions were raised regarding human rights and ID cards, noting though that such measures are not guarantees of identification success. As a result, information including dental records and DNA would be useful.

As for what a National Committee could do, the Finnish Red Cross suggested that it could be a facilitator between the government and the NIB.

Working Group 2 – French

The working group felt it had limited experiences as National Committees or NIBs with this issue. This influenced the discussion and led the group to draft a list of recommendations that address the nature of National Committees. The role of a National Committee was suggested to be one that is not decisional, but rather one of guidance/advice that can also serve to bring government authorities together. It would be useful for the National Committee to conduct a study to see what the needs of the country are, in order to realistically establish a plan of action.

The participants highlighted the need and usefulness of creating a NIB and considered that the National Committee would be ideally placed to suggest this to government. However, it was noted that it would be difficult to create priorities for this in times of peace.

Some participants raised concerns over the name of the body, suggesting that it could be confusing between ANR (Agence Nationale de Renseignement) and NIB. There was agreement that the nature and structure of the body would depend on the realities in the country concerned, for example, Belgium's Interior Ministry, the Côte d'Ivoire's Gendarmerie and Ministry of Defence and the Canadian Interior Ministry.

There is also a need to have a system set up to receive and process complaints, for example, via a human rights body or the National Society. Lastly, it is recommended to hold regular conferences as it is a good idea to have national round tables to get the government and NGOs to work together on issues (for example, on the missing).

Working Group 3 – Spanish

The achievements are varied with respect to the work of National Committees regarding these issues. When addressing the creation of a NIB, Colombia and Peru reported that the pain of war in their countries has led them to have a high level of awareness of these issues.

As for the issue of missing persons, the working group highlighted the importance of treaties that have been ratified and the importance of ensuring the implementation of measures outlined in these instruments. A common denominator does exist and it is important to keep in mind the political decisions of the States concerned. There is a definite need to ensure that

governments understand the principles of international humanitarian law, the basis of human rights and what it all means for the families of the missing.

The problems encountered in this working group go to the heart of IHL, the work of the Red Cross/Red Crescent globally and that of national human rights bodies. The transversal nature of these issues is important. Widespread violations of human rights cause the breakdown of societies especially given the cruelty and pain involved in such abuses. National Committees must address these concerns and the resulting needs, and allow people to claim their IHL rights. It is a particularly important issue among our group to prevent extra judicial killings or other preventable deaths as people need to feel that these are their human rights and are being enforced.

To convey our conclusions regarding the problems that the National Committees are going through, it will have to be understood that States need to take ownership of international treaties to which they are a party, including the Enforced Disappearances Convention. To the extent that the Red Cross and Red Crescent get involved in this process, our burden will be lightened.

Working Group 4 – Arabic

The working group concluded that it is difficult to coordinate the agenda of National Committees during peacetime to focus on the missing. As a result, there is a need to submit the files of missing persons to other bodies. The armed forces must make information available regarding the missing and should also train people to deal with this issue in particular. Governments should be invited first to create an NIB that will then be in charge of finding missing persons as a result of armed conflicts. It seems logical that the Defence and Interior Ministries would be responsible for those bureaux. National law should therefore be enacted to enable NIBs to fulfil their mandate. It is also necessary to have competent authorities responsible for death registration and a special registry that is created to keep records of those who die in war. Furthermore, it is essential to ensure coordination of and between these specialized bodies once they are established.

Working Group 5 – English

The majority of National Committees had not studied measures or mechanisms existing inside countries to address the issue of missing persons. The Ethiopian National Committee had studied the issue, but mostly, there were no studies presented from other countries.

As for measures of identification, the general input was that most countries had processes by which citizens were registered and that the military had its own

process. However, there were two challenges highlighted: illegal migrants and the technical capacity to conduct these registrations.

As for NIBs and graves registration services, most countries have this kind of process in the military. Without going into much more detail as to how they function, suffice it to say that this role does not currently fall within the mandate of the National IHL Committees.

In terms of a plan of action, most countries committed themselves to finalize a concrete plan of action to be implemented during peacetime, in collaboration with the ICRC and the UN, along with other ministries and experts in IHL. There will, however, be challenges, including the lack of political will to address these issues and the lack of capacity in some countries. In fact, capacity building is important and it was mentioned that the ICRC can play an important role in this matter. A step taken towards implementation is on the agenda of some countries participating in this working group but nothing was conclusively discussed or finalized. There was a final consensus regarding the importance of raising awareness of these issues which would lead to a change of mindset.

3.3 Other regulatory measures

A. Other legal and practical measures relating to the missing and their families

Enforced disappearance: the case of Colombia

Mr. Tomás Concha

Policy Coordinator,

*Presidential Programme for Human Rights and International Humanitarian Law,
Vice-Presidency of Colombia*

Article 12 of the section of the Constitution of Colombia on fundamental rights provides that nobody may be subjected to enforced disappearance, torture or

cruel, inhuman or degrading treatment or punishment. Act 589 of 6 July 2000 was enacted on the basis of this provision, defining acts of genocide, enforced disappearance, forced displacement and torture as criminal offences.

Act 589 of 2000 also contains important criminal policy measures to deal with the crime of “enforced disappearance”, including: i) creation of a commission to trace missing persons (Comisión de Búsqueda de Personas Desaparecidas – CBPD); ii) implementation of a single national missing persons register; iii) implementation of an urgent search mechanism; iv) enactment of legislation for the administration of the property of victims; v) obligation of the State to take all necessary action to determine the whereabouts or fate of victims; and vi) prohibition on granting pardons or amnesties to people convicted of such crimes. In accordance with national and international criteria, the act establishes that public officials, those who act on the instructions of or with the acquiescence of public officials and any other individuals can be charged with the crime of enforced disappearance.

CBPD

The CBPD is a national, permanent interinstitutional body, with the participation of non-governmental human rights organizations. The main purpose of the commission is to coordinate the work of the constituent bodies to investigate crimes involving enforced disappearance, design, evaluate and support the implementation of plans to trace missing people, create working groups to deal with specific cases and formulate public policy on enforced displacement¹.

I. Functions

The functions of the CBPD are to:

- support investigations into crimes of enforced disappearance, which entails an obligation to know about cases and ensure that investigations produce concrete results;
- promote the investigation of crimes of enforced disappearance, that is, carry out the work required to achieve positive results in accordance with the objectives of the investigation, with a view to discovering the whereabouts or fate of people who are unaccounted for;
- formulate plans to locate missing persons, including legal aspects, such as procedures to be followed by relevant bodies in the search for

¹ According to article 8 of Act 589 of 2000, the functions of the CBPD are to “support and promote the investigation of crimes of enforced disappearance, with full respect for institutional powers and the rights of those brought to trial”.

missing persons and action that can be taken by individuals and non-governmental organizations (NGOs);

- evaluate plans to locate missing persons, which entails examining the plans formulated by the various bodies responsible for investigating crimes or disciplinary offences to determine whether they are adequate for the established purpose;
- support the implementation of plans to locate missing persons, which entails an institutional commitment to provide any support that the authorities responsible for the investigations may need;
- set up working groups for specific cases, with a view to monitoring their progress.

Although other functions relating to measures to deal with enforced disappearance have been assigned to other bodies and institutions, they require the involvement of the CBPD, for example, the national missing persons register, management of the property of missing persons, mechanisms responsible for determining the whereabouts or fate of victims, identifying the reason for their disappearance and informing the families, the register of people who have been arrested or detained and the urgent search mechanism.

II. Achievements

In regular and continuous meetings, the CBPD has succeeded in drawing up and proposing important documents that organize and clarify the scope and content of the functions assigned to it. These documents include:

- a. draft regulations for the urgent search mechanism (Act 971 of 2005);
- b. a draft decree establishing implementing regulations for the CBPD (pending signature by ministers and presidential approval);
- c. a draft decree establishing implementing regulations for the national missing persons register (Decree 4218 of November 2005).

The CBPD has also held various seminars and workshops to spread knowledge of Act 589 of 2000 on enforced disappearance, Act 971 of 2005 establishing the implementing regulations for the urgent search mechanism and legal mechanisms to deal with enforced disappearance. These meetings were for justice officials, officials from the Attorney General's Office and the National Institute of Legal Medicine and Forensic Science, law enforcement personnel and the families of missing persons.

The CBPD negotiated the provision of a budget allocation by the Ministry of Finance and Public Credit to operate the commission and start up the technical secretariat. A sum of COP 400 million (almost USD 200,000) was allocated for 2006. A further COP 1,300 million (just over USD 600,000) was also allocated to put the national missing persons register into operation.

III. Progress achieved in 2006

- The CBPD established a national plan to locate missing persons, with the participation of civil society and the International Committee of the Red Cross. The plan was presented on 15 February 2007 in an official ceremony attended by the heads of the constituent bodies of the CBPD and other personalities and representatives from the main associations of families of missing persons. Central government, all the constituent bodies of the CBPD, bodies concerned with enforced disappearances, but not belonging to the commission, NGOs, victims of enforced disappearances and society in general are required to be familiar with, accept and implement this plan.
- The projects of State institutions responsible for tracing and identifying missing people were included in the 2007 national budget. The National Institute of Legal Medicine and Forensic Science was allocated the sum of COP 954,000,000 (nine hundred and fifty-four million) for operations, including activities to locate and identify missing persons, as established in the national plan to locate missing persons. The Ombudsman's Office was also allocated COP 500,000,000 (five hundred million) for the CBPD fund (from sources other than the tax pool administered by the Ministry of Finance and Public Credit).
- The budget allocated to entities such as the Public Prosecutor's Office for operations and personnel has been increased to COP 1,400,000 (one million four hundred thousand) and a commitment made to step up efforts in the area of enforced disappearance.
- With a view to ensuring that justice officials and society in general know about the urgent search mechanism, a booklet on the subject was designed by the CBPD, based on Act 971 of 2005, which establishes the implementing regulations for article 9 of Act 589 of 2000 concerning the urgent search mechanism.

- Training took place of some 315 municipal procurators throughout the country in implementing the urgent search mechanism to locate missing persons.

IV. Prospects for 2007

- A series of events has been planned for 2007 in several of Colombia's departments, where the problem of enforced disappearances has reached critical proportions, with a view to initiating prevention activities. For this work, the policy unit of the Presidential Programme for Human Rights will coordinate activities with Advisers from the assistance and prevention unit of the same Programme and the prevention unit of the Directorate for Human Rights of the Ministry of the Interior and Justice.
- Effective implementation of the national missing persons register will provide a valuable and specific tool for monitoring cases of enforced disappearance in Colombia and the implementation and effectiveness of the urgent search mechanism and the national plan to locate missing persons.

National plan to locate missing persons

The CBPD, in fulfilment of its mandate and with the participation of its constituent bodies, has formulated and adopted a national plan to locate missing persons, which serves as a reference framework and guide for all State and civil society action undertaken to this end.

The CBPD designed the national plan to locate missing persons on the basis of manuals and documented international experiences representing best practice in locating missing persons when they are still alive or identifying their remains and returning them to their family. The plan seeks to answer the follow questions in this order: a. Who has disappeared? b. Where are they? c. What happened to them? The methodology involves four main stages, which address the problem of enforced disappearance in an integrated manner: i) information gathering; ii) examination and analysis of information; iii) recovery, analysis and identification of remains; iv) final destination of remains. The plan also includes a special section on action in the event of an emergency. The purpose of the plan is to achieve greater institutional coordination in order to fulfil its objectives more successfully.

Personal data protection in Argentine law

Ms. María Gabriela Quinteros

Diplomatic Adviser, Member of the National Committee on IHL of Argentina

Good afternoon, colleagues. I am María Gabriela Quinteros from the Directorate for Human Rights of the Argentine Ministry of Foreign Affairs and a member of my country's National Committee on IHL created in 1994.

I am going to speak about personal data protection in Argentine law in the context of ICRC recommendations aimed at preventing the disappearance of people during armed conflict and internal violence. This is an issue of vital importance to my country, which is sadly known for the thousands of people who disappeared in the seventies and early eighties.

The purpose of Act 25,326, enacted on 30 October 2004, is to ensure full protection of personal data recorded in public and private archives, registers and databases, with a view to guaranteeing the individual's right to honour and privacy and to know what information is held about his or her person.

Data protection or *habeas data* is the safeguard that citizens have against their personal data being improperly used by unauthorized third parties.

The Act classifies personal data relating to racial or ethnic origin, political opinions, religious, philosophical and moral beliefs, trade union membership, health and sexual life as *sensitive* data.

Nobody is required to provide sensitive data, and such information can only be collected on the grounds of public interest as authorized by law.

It is prohibited to create records containing sensitive information, and to do so constitutes a serious breach of the provisions of the act, although trade unions and churches are evidently permitted to keep records of their members.

The guidelines laid down by the ICRC establish that personal data protection should be incorporated in domestic legislation based on the following principles:

1. Personal data shall be collected and processed *fairly and lawfully*, with the *consent* of the individual concerned.

In this regard, Act 25,326 provides that the use of personal data is illegal if the individual concerned has not given his or her free and informed *consent*, with the exception of data obtained from unrestricted publicly accessible sources, such as name, national identity number, tax identification number, social security number, occupation, date of birth and address.

2. The collection and processing of personal data shall be limited to that which is necessary for the *purpose* identified at the time of collection.

In this regard, Act 25,326 provides that data collection and storage should not be *excessive in relation to the purpose* for which the data are obtained. The *purpose must also be disclosed* to the person relative to whom the information is collected, as it cannot be used for any other purpose. Finally, personal data should be deleted as soon as the purpose for which they were collected has been fulfilled.

3. Act 25,326 also provides that the individual concerned must be granted access to data held about his or her person and may request that they be amended or deleted, if required, pursuant to art. 43 of the Constitution of Argentina, which reads “Any person may bring a prompt and summary action for protection in relation to any act or omission committed by the public authorities or private individuals that impairs, limits, alters or threatens his or her rights or is likely to do so.”
4. Lastly, it establishes the principle of *confidentiality*, which much be respected by those charged with processing and handling personal data.

The Act provides, for example, that physicians and hospitals have an obligation to observe professional secrecy and may not disclose information on the health of patients. They are, however, permitted to disclose such data in the interests of public health or in an emergency.

The personal data protection act stipulates the incorporation of art. 117 bis in the Penal Code, making it a punishable offence to *knowingly insert* false data in a personal data file.

This also applies to *knowingly passing on false information* contained in a personal data file to a third party.

The Act also provided for the incorporation of art. 157 bis, making it a punishable offence to *access* a database by *violating security systems* and to *disclose* data when required by law to maintain confidentiality.

The Act created an independent oversight body, the National Directorate for Personal Data Protection, which acts as a decentralized agency of the Ministry of Justice and keeps a register of all those who violate the provisions of the Act.

Another significant data protection measure aimed at preventing enforced disappearance was the creation of the National Information Office for armed conflict situations on 19 October 2004.

Lastly, the Comisión Nacional de Desaparición de Personas (National Commission on the Disappearance of Persons – CONADEP), created when democracy was established in Argentina in 1983, carried out an extensive investigation and reported on missing people, culminating with the report entitled *Nunca Más* (Never Again), which provides data on around 10,000 people who disappeared in the seventies and early eighties.

Thank you.

Assistance to families, including reparations

Mr. Zoran Perkovic

*Assistant Minister for International Legal and Consular Affairs,
Ministry of Foreign Affairs of Bosnia and Herzegovina*

Mr. Chairman, ladies and gentlemen, dear colleagues,

It is my great pleasure and privilege to use this meeting to introduce you to the activities undertaken by the State bodies of Bosnia and Herzegovina (BiH) as well as by other competent institutions in Bosnia and Herzegovina, in terms of providing help to families of disappeared persons and stressing the need to provide help in conducting a search for disappeared persons, identification of their mortal remains, and carrying out other actions and measures, where the goal is to offer material or other kinds of help to the families of disappeared persons.

As you might know, during the war in Bosnia and Herzegovina, in the period from 1992 to 1995, 27,800 citizens of BiH disappeared. Out of the total number of disappeared persons, 17,000 were found. Out of this number, 1,100 persons were identified and the identification procedure is under way for 6,000 persons.

The Commission on Missing Persons is searching for mortal remains of 12,000 persons. The Commission and the Missing Persons Institute established recently, have to continue the search for the missing, with a final objective to provide the families of disappeared persons with the truth about what happened to their fathers, sons, daughters or relatives, as well as to enable appropriate and honourable burial of mortal remains of their loved ones.

Setting the search for disappeared persons as an internal political priority, the Council of Ministers of Bosnia and Herzegovina prepared the Law on Missing Persons, and it was approved by the Parliament of BiH in 2004. This Law sets forth the rights of the disappeared person's family members.

The Law prescribes that the competent authorities of BiH will, under the same conditions, guarantee equal status and exercise of rights set by this Law as well as other legal regulations in BiH to family members of disappeared persons, regardless of whether the missing person was a soldier or a civilian.

A family member of a disappeared person, according to the Law, is to be considered a child born in or out of a marriage, adopted child, spouse or unmarried partner, parents, sister or brother of a disappeared person if previously supported by a disappeared person. For all these family members, the Law prescribes monthly funding support. The funding support is a non-transferable personal right. The Law created criteria for using funding support, set its amount and regulated the termination of such a right.

In order to guarantee the funds necessary to exercise the rights of the family members of disappeared persons, the Law on Missing Persons foresees establishing a Fund to support families of disappeared persons. A separate agreement is to be signed by the Council of Ministers of Bosnia and Herzegovina and the Entities' Governments of BiH. This agreement should regulate the funding by the Fund and the way in which it would be managed as well as the way in which funds would be collected.

The Fund is to be an independent administrative organization, responsible for guaranteeing funds for the realization of the rights of the disappeared persons' family members, such as the right to funding support, health protection, provision of help to associations of the disappeared persons' families, marking the burial/exhumation sites and other rights in line with the Law on Missing Persons.

Due to differences in opinion of the Entities' Governments and the State Government, regarding the amount of funds required for the Fund's operations, families of disappeared persons are still not able to use funds guaranteed to them by the Law.

Currently, certain activities are being undertaken in order to find an acceptable solution and a compromise, which would be acceptable for all founders of the Fund. This issue of the Fund not functioning significantly aggravates the rights of disappeared persons' families and puts them in jeopardy.

Besides the Law on Missing Persons, the right to damages compensation is stipulated by other appropriate regulations. Here, we are talking about the Law on Contracts and Torts, issued by the Entities in BiH.

The Law on Contracts and Torts regulates the issue of material and immaterial damages. Since the issue of compensation based on these two types of damages cannot be resolved without having a valid court decision, this form of help to family members of disappeared persons is not considered sufficiently favourable, because it exposes those families to additional court costs.

Equally problematic is the issue of who is to be prosecuted or the party responsible for damages compensation. A separate problem is the fact that damages compensation regulations were issued by the Entities of BiH; in other words, there is no State law that regulates this matter.

Based on all said here, it seems most appropriate to keep on insisting on the start of the Fund's functioning.

The constituting of the Council of Ministers of BiH in the new session, as well as constituting new Entity Governments after implementation of the general parliamentary elections in BiH, gives hope that a compromise will be reached in the end regarding funding for this Fund and that, at least through support of families of disappeared persons damage they suffered by losing their family members will be compensated for to a certain extent. Strong support of international institutions, as well as the active contribution of the International Committee of the Red Cross and national organizations, will remain an important factor in total success in this matter.

Let me thank once again to the International Commission on Missing Persons in BIH and the International Committee of the Red Cross for the support and help that they give to Bosnia and Herzegovina and its institutions in resolving this very complex and sensitive problem.

Treatment of mortal remains

Mr. Mohamed Buzubar

*Assistant to the Under-Secretary of State for Defence,
Member of the National IHL Committee of Kuwait*

At the conclusion of the 1991 Gulf War, the United Nations Security Resolution 686, originally associated with “the Riyadh Committee”, approved the establishment of the Tri-Partite Commission to discuss the status of missing persons from the conflict.

At the end of 1994, the first cases of Kuwaiti remains were delivered to Kuwait. The remains were taken to international centres for identification in Germany, the USA and the UK. A centre for identification was later established in Kuwait with a DNA database. From 2003, this Commission is continuing its functions and is carrying out the mandate of investigations in Iraq with full approval and support of the Coalition Provisional Authority (CPA).

During the military effort, coalition forces followed up on hundreds of leads, 48 of which showed strong promise due to preliminary searches but all failed to return any evidence of living POWs or other locations. No living missing/POWs have been found to date despite rumours and false claims made by media, foreign countries, soldiers and/or politicians in the US.

National Committee for the Missing and POW Affairs (NCMPA)

The NCMPA has been charged since the end of the Gulf War to negotiate the release and investigate the return of all missing persons. It is composed of investigators from MOI, MOD and other ministries. Its personsrole is to gather information, investigate leads, interview sources and coordinate the exploitation of mass grave sites in order to account for the MIA/POWs.

Task Force

The Ministry of the Interior of Kuwait established Task Force Hope with the assistance of the Ministry of Defence and has two key departments working on the issue, the Department of Forensics at gravesites identify remains and the Investigative Branch to follow up on potential leads.

Status

As of 19 May 2005, 322 remains have been recovered and 227 remains have been positively identified through DNA tests as follows.

	Kuwait	Non-Ku	Bahrain	Egypt	India	Iran	Lebnon	Oman	Saudi	Syria	Total
Male	201	12	0	1	0	3	1	1	6	0	225
Female	1	0	0	0	0	0	1	0	0	0	2
Found/ Out of total	202/543	12/28	0/1	1/5	0/1	3/5	2/3	1/1	6/14	0/4	227/605

Site exploitations as of 19 May 2005

	Assamawah	Karbala	Alamarah	Armadi	Annaseriyah	Kuwait	Total
Declared	86	80	34	25	0	2	227
Suspected ▶	151	100–125	40	40	100–180	?	
Sites ▶	3 sites	4 sites	4 sites	2 sites	4 sites	unknown	
Remains	141	99	37	37	0	8	322

Recovered/Returned martyrs: 227 out of 605 as of 19 May 2005 (the last announcement date)

File	Last name	First name	Mother name	M/F	Nationality	Disappearance date D/M/Y	Recovery site	Declaration date D/M/Y
209	AL-ANZI	SAAD	HARBIEH	M	Kuwaiti	01/11/1990	As Samawah, IZ	10/06/2003
17	ALGALAAF	AHMAD	FATIMA	M	Kuwaiti	04/11/1990	As Samawah, IZ	14/06/2003
248	AL-HAYANI	SALEH	NAIEMA	M	Kuwaiti	22/10/1990	As Samawah, IZ	01/07/2003
559	AL-ANZI	NASSER	NASHMIA	M	Kuwaiti	25/10/1990	As Samawah, IZ	08/07/2003
37	ALEIDAN	ANAAM	NASHMIA	F	Kuwaiti	01/11/1990	As Samawah, IZ	08/07/2003
308	ALWAHIB	ABDELLATIF	BADRIA	M	Kuwaiti	09/10/1990	As Samawah, IZ	08/07/2003
499	SAYED HASSAN	MAHMOUD	RABAB	M	Non Kuwaiti	12/10/1990	As Samawah, IZ	08/07/2003
423	ALMTEIRI	FEIHAN	NOWEIR	M	Kuwaiti	25/10/1990	As Samawah, IZ	26/07/2003
565	AL-KHALDI	NASSER	NAZILA	M	Non Kuwaiti	04/09/1990	As Samawah, IZ	26/07/2003
70	AL-SAMMAK	JASSEM	HAYAT	M	Kuwaiti	02/11/1990	As Samawah, IZ	29/07/2003
172	AL-HARIRI	DAAD	LATIFEH	F	Lebanon	02/11/1990	As Samawah, IZ	29/07/2003
224	AL-MOTIRI	SAFFAH	KHALDEH	M	Kuwaiti	25/10/1990	As Samawah, IZ	03/08/2003
437	AL-MTEIRI	LAFY	JAWZAH	M	Kuwaiti	15/09/1990	As Samawah, IZ	03/08/2003
348	AL-MTEIRE	OBEID	FALHA	M	Kuwaiti	24/10/1990	As Samawah, IZ	24/08/2003
480	AL-MTEIRI	MOHAMMAD	SAREH	M	Kuwaiti	24/10/1990	As Samawah, IZ	24/08/2003
289	ALOTEIBI	ABDELRAHMAN	OMHETHA	M	Kuwaiti	03/11/1990	As Samawah, IZ	24/08/2003

Date(s)	Grid	Location	Sector	Approved	Remarks
5 May 2003 to 7 May 2003		IZ – As Samawah	1 MEF	CFLCC/CENTCOM 3 UH-60s launched with 5 MOI Forensic members, MG Stratman, Pol/Mil Rep and OMCK Rep. Arrived 7 May.	Iraqi Farmer first identified site to US Marines in AO. Source stated that in Feb. 1991 while herding goats on family land he observed bulldozers digging 3 trenches in area (3m deep; 50 feet long). Digging occurred for 3 days, on 4th day four buses arrived with at least 40 people on each bus. Source believed they were KU by their attire and voices as they were pleading for help. Holes were filled and flattened over. Executions were conducted by IZ Intel Agents dressed in civilian clothes and persons were executed with Makarov pistols 1-2 shots to head. Small excavation of test holes of all three trenches produced 6 remains taken for samples, one KU match was made initially by clothing labels and confirmed by DNA, return visit to site was scheduled.
21 May 2003 to 24 May 2003		IZ – As Samawah	1 MEF	CFLCC/CENTCOM FRAGO# 66	Exploitation took place and Forensics team recovered 61 remains. Remains were layered which made recovery difficult.
11 June 2003 to 16 June 2003		IZ – As Samawah	1MEF Task Force Justice	ICRC/CPA/TPC FRAGO# 281	Full exploitation took place and Forensics team recovered 74 remains. Site closed as fully excavated, all evidence of remains removed. Victims were blindfolded, hands tied behind back and wearing KU clothing, two bullets to skull and flesh wounds. IZ information States executions were done on order of Chemical Ali and Sabawi. Total remains pulled from Samawah = 141. TPC/TSC Meeting on 2JUN2003 produced Execution Order provided by the IZ Delegation which contained 151 names for execution at Samawah (149 Kuwaiti and 2 Saudi).

B. Working Groups: Session III

Establishing a national plan of action

Theme II: Other legal and practical measures related to the missing and their families

Aim of the Workshop ▶ To examine how to implement and ensure the application of legal and practical measures relevant for the missing and their families, such as ensuring the status of the missing person, ensuring data protection and correct treatment of human remains and providing assistance to families if required, including reparations.

Questions for the consideration of the Working Groups

1. Has your National Committee been involved in studying whether legal and/or practical measures **exist in your domestic legal order** in order to prevent persons from becoming unaccounted for, as well as to protect missing persons and their families, such as definition of the status of the missing person, providing assistance to his/her family and, where required, reparations, as well as ensuring the protection of personal data and the proper treatment of human remains?
2. **Specific measures** to consider:
 - i) **Legal status:** It may be appropriate to have some form of documentary evidence that the person has been reported missing. A declaration of absence could be issued at the request of relatives or of the competent authorities. Further, the legal interests of the missing persons should be adequately protected through the designation of a representative.
 - ii) **Data protection:** Access to the information should be granted to the individual to whom it relates or to his/her relatives or legal representatives. Relevant legislation on data protection should be respected.
 - iii) **Treatment of human remains:** Human remains should be treated with respect and dignity, and the dead must be identified and buried in individually marked graves that are identified and registered.

- iv) **Assistance to families:** Specific financial and social needs of missing persons and their families should be assessed and recognized.
3. If such measures do not exist and if your National Committee has not been involved in promoting the adoption of such measures, **draft a plan of action** that may allow for the involvement of your National Committee in the process of implementation of such measures. The plan of action should consider:
 - a) Which national authorities are responsible for the adoption, implementation and application of such measures and should be approached?
 - b) What laws and regulations should be adopted? In the affirmative, which government ministry is best suited to accomplish such a task?
 - c) Which actions should a National Committee undertake?
 - d) How should the follow-up be ensured?
 4. Has your Committee or have your national authorities taken any steps in the **implementation of commitments** on missing persons adopted on the occasion of the 28th International Conference of the Red Cross and Red Crescent in 2003 (Agenda for Humanitarian Action and Pledges)? How could these commitments assist in raising the attention of your national authorities regarding the preventive and reactive measures to be considered in order to address the phenomenon of missing persons?

Report back from Working Groups to Plenary

Working Group 1 – English/Russian

In terms of the content of this working group, very few National Committees had discussed the issues (human remains, status and data protection) except for the Committee in BiH, which has a Missing Persons Institute. This body, however, along with national legislation, faces the problem of implementation of its law. As for other National Committees, some had particular problems, for example, with the tsunami. The Canadian Red Cross had been consulted by the Royal Canadian Mounted Police (RCMP) regarding the procedure for handling human remains. The outcome was that when police agencies or court-related agencies addressed the issue, the focus was on evidence in relation to eventual prosecutions. As such, the balance between the needs of victims (families) and gathering evidence for prosecution may be difficult to reach. Victims' needs and rights must be brought to the forefront and be taken into account by such organizations.

There are questions regarding how to bring these issues to the National Committees. All these measures are to some extent regulated by national law, except possibly natural disasters. It is suggested that the role of National Committees is to first assess needs of their respective countries. The working group then discussed social needs, family needs of the disappeared, their legal status and how to apply these rules to those reported missing in armed conflict or natural disaster. As an example, the level of evidence needed in order to complete a death report might be different if it derived from a natural disaster versus armed conflict.

Therefore, in general, National Committees need to find their way among the issues and decide on what they can work on with respect to the issue of the missing, and where the national legal regime needs to be adjusted.

Working Group 2 – French

For most countries in this working group, the legal status of the missing is addressed by the issuance of a declaration of absence. This serves to protect family members in the event a relative has disappeared. There have also been specific cases where the missing person has been declared dead when evidence has shown that the person is deceased even without finding the remains. In terms of the treatment of human remains, there is a need to create a framework to protect them.

There are demands from the families made through the tracing service that result in a quandary. This has occurred when the person is found and does not wish to communicate his address and this introduces contradictions because the ICRC normally assists the families with the goal of disclosing the whereabouts of the missing person who has been found.

As for the recourse to DNA testing and forensics, this expertise can come from other countries. Sometimes this can present a legal issue, however, in instances in which the examining magistrates can intervene.

When the need for family assistance arises, there is almost never automatic compensation by the government. In reality, it is the NGOs that have more readily provided psychological and material assistance.

Finally, in terms of setting up a plan of action, the working group concluded that each State should ratify the Convention on Enforced Disappearances, and must also create an organ dealing with the missing, even in times of peace.

Working Group 3 – Spanish

As a point of departure regarding the legal status of missing persons, the working group agreed on the need to establish laws and a civil registry system. In Latin America, there is a big problem regarding birth registries and so the registry could be the start of a database which would allow eventual determination of the existence of the person were he or she to disappear.

Concerning the issue of data protection, there was a consensus that laws and implementing procedures are needed. This would allow the State to give information to family members when a person is reported missing. This working group found that often legislation does exist (*habeas data*) regarding human remains.

In general, countries should seek funding for institutes to find the missing. However, it noted that without sound forensic expertise, this task would be impossible. Furthermore, assistance to families can be achieved when laws are enacted that allow for the compensation of the family members of the victims. Relatives of missing persons suffer as a result of the disappearance and this might lead to hardship and much expenditure for the family. When addressing the subject of compensation, a link should be made to reparations of damages incurred by the family members (e.g. Argentina) following the particular situation of enforced disappearances.

Working Group 4 – Arabic

The Arab National Committees have not yet dealt with this subject. Most Arab countries are working on the basis of legal texts which are not specific enough and do not address the issue. Therefore, these States will call for the drafting and adoption of legal texts that deal with the concerns surrounding the missing persons issue. There is a need to provide guidelines to the authorities to help them accomplish this goal.

Confidentiality is very important. While there is a need for NIBs covering enforced disappearances, the bureaux should ensure the collection of information is carried out by the competent authorities (c.f. Kuwait presentation). This suggests the creation of a special committee on missing persons. Morocco presented an example regarding former prisoners who had difficulty in returning to society due to breached confidentiality of their information.

Lastly, the working group agreed that the National Committees should be able to ask authorities to take necessary measures so that the conclusions drawn at this Universal Meetings are respected.

Working Group 4 – English

A number of examples were given regarding the legal status of the missing. Some States that have a French legal tradition were better placed to deal with the missing and can serve as an example to others States which should examine this mechanism.

The issue of data protection should be further discussed. There are specific issues that arise, for example, that of access to information by family members (e.g. Bali bombing). The respect for human remains was also addressed in the context of a need to be culturally sensitive and consistent with the requirements of different backgrounds.

Providing strong support and assistance to families is best achieved through social security systems, but it was noted that this might meet with fiscal constraints. Even with the best will in the world, providing such assistance might prove difficult to fulfil and therefore outside support would most likely be needed in some cases.

South Africa and Bangladesh provided examples regarding truth and reconciliation committees and offices that deal with missing persons.

3.4 Domestic mechanisms and organs

A. Domestic mechanisms and bodies to resolve cases of missing persons

Transitional justice bodies to resolve cases of missing persons: how to identify the best alternative?

Ms. Dorothée Marotine

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1. Overview of transitional justice and relevance to the issue of missing persons

1.1 Definition

Methods that States adopt to address legacies of massive human rights violations when transiting from war to peace or an authoritarian regime to democracy.

1.2 Content

Although no transitional context is similar to another one, States do have to confront the legacy of mass abuse. States in transition are generally weak economically, with poor or sometimes non-existent judicial systems. The demands for justice are at the highest whereas the capacities of a State to render justice are at its lowest. Hence, domestic criminal prosecutions are unable to fulfil the needs and expectations of the victims and require resorting to other mechanisms.

Transitional justice is considered to rely on four mechanisms:

- a. Prosecutions: civil or criminal, domestic or foreign (through universal jurisdiction like trials conducted by Belgium over Rwandan citizens accused of participation in the 1994 genocide or the trial of Ely Ould Dah, a Mauritanian captain, by France), national or international (national courts, hybrid courts like in Sierra Leone or BiH, international courts like ICTY, ICTR, ICC).

- b. Truth-seeking mechanisms: truth commission or investigative bodies like a parliamentary commission.
- c. Reparations: individual or collective, symbolic (museums) or compensatory (financial), restitutionary (reinstating certain rights) or rehabilitative.
- d. Institutional reforms: structural in nature or removal of abusers from public positions through vetting procedures.

1.3 TJ and State obligations

The landmark decision in this regard is *Velasquez Rodriguez v. Honduras* (1988) of the Inter-American Court of Human Rights (case of a student detained without a warrant, tortured by the police and ultimately disappeared):

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

These principles were reinforced by the Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of Louis Joinet (1997), updated in 2005 by Orentlicher. These principles enumerate a number of individual rights: right to know, right to justice, and right to reparation. These rights mirror corresponding State obligations such as the obligation to investigate and identify victims and perpetrators of serious human rights violations.

2. Overview of truth commissions (TCs)

2.1 Definition

Truth commissions are bodies that have the following elements:

- a. They are *ad hoc* investigative bodies, without an adjudication function.
- b. They are authorized or empowered by the State (by a monarch in Morocco, by the parliament in South Africa, by the government in Chile).
- c. They have a degree of independence from the State.
- d. They examine past events only, as they are established at a moment when it is presumed that the worst violence has ended.
- e. They investigate patterns of abuse committed over a period of time.
- f. They focus on serious acts of violence.
- g. They investigate the violations committed in the given State.

- h. They are located in the given State, even if conducting some of the work other States.
- i. They attempt to explain the causes and consequences of the violations that took place.
- j. They are temporary bodies that complete their work with a report containing conclusions and recommendations (TC in Argentina operated for 9 months, TC in Peru operated for 2 years and 3 months).
- k. They are victim-centred.

They should aim to establish an impartial historical clarification in order to prevent the recurrence of abuses, restore public confidence in the State, and foster national reconciliation.

2.2 Key legal attributes

TCs can have the power to subpoena witnesses, order search and seizure (yes in South Africa, no in Argentina).

TCs can have witness protection powers.

TCs can hold public hearings (precedent set by the South African Truth and Reconciliation Commission).

TCs can determine individual responsibility for human rights violations.

The power to grant amnesty and compensation is rather an exception than the rule. The South Africa TRC is the only commission to date to have used a “truth for amnesty” procedure. It worked in that context because of the threat of criminal prosecution, but created a misplaced expectation that TCs open the way to confessions. The Moroccan TC is the only commission to have had the power to grant financial compensation to victims. It actually could only recommend other forms of reparation.

TCs are associated with reconciliation whereas more than half of all commissions do not have reconciliation as an objective.

2.3 Commissioners

Some considerations:

- a. Different ways of appointment, but need for credibility. Executive branch (Panama), legislative branch (Germany), monarch (Morocco), in coordination with the UN (El Salvador). A broad process of consultation is desirable.
- b. Number of commissioners varies (4 in Nepal, 27 in Germany).

- c. Commissioners can be nationals (Uganda), internationals (El Salvador), a mix (Sierra Leone).
- d. Gender balance (7 of 17 commissioners in South Africa were women, 1 of 17 in Morocco). No TC has had a woman president so far.
- e. Diversity of religious, racial background (all the original commissioners of the TC of Serbia were Serbs).

3. Examples of TCs that dealt with missing persons

Argentina, first TC

The *Comisión Nacional para la Desaparición de Personas* was appointed by presidential decree in 1983 to investigate the military regime from 1976 to 1983. It had 13 commissioners (10 appointed by the President, 1 by each chamber of the Congress, and the president of the TC), 60 staff members, and worked for 9 months. Human rights NGOs turned over their files on the disappeared to the TC. The TC worked with the families of the disappeared to try to locate those who might be alive. The report, published in the book *Nunca Más* which was widely available to the public, documented about 8,960 persons who disappeared. The book actually became a national bestseller.

Chile

The *Comisión Nacional para la Verdad y Reconciliación* was appointed by presidential decree in 1990 to investigate abuses of the 17 years of military regime that resulted in death or disappearance. It had 8 commissioners and 60 staff members, and worked for 9 months. Most cases of disappearance were taken to court during the repressive regime, and the records were handed over to the TC. Of 3,428 cases brought to its attention, it thoroughly investigated the 2,920 cases that fitted in its mandate. The President presented the report to the public and offered apologies to the victims and their families. Although the release of the report was darkened by some assassinations, the government followed up on some recommendations and notably created a body in charge of following up the work of the TC and overseeing the reparations to victims.

Morocco

The *Instance Équité et Réconciliation* was appointed by a royal decree in 2004 to investigate the forced disappearances and arbitrary detentions committed under the regime of the former two kings between 1956 and 1999 (Hassan II inherited the throne in 1961). It had 17 commissioners and worked for 23 months. It was headed by a former political prisoner and torture survivor. The report shed light on 742 cases of forced disappearances and recommended that the State pursue the investigation of 66 cases that it could not elucidate. Forced disappearance was one criterion for the IER to determine compensation.

4. Conclusion

Despite the numerous factors to which the success of TCs are subject, some within their control and some outside their control, it is important to keep in mind the great potential that they represent in the fight against impunity. More than any other TJ mechanism, TCs should be established after a broad consultation with civil society, to ensure their support to the process.

Commissions to resolve the phenomenon of missing persons: case studies

Kosovo case study

Mr. Bertrand Kern

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Background information

- Bilateral representations during hostilities.
- After conflict, exhumations by ICTY teams.
- ICTY mandate: ascertain cause of death not identities of persons found (13 teams).
- Rapid turnover of staff, many actors.
- No coordinating (central) mechanism until 2002.

During and following hostilities, the ICRC approached the authorities to trace persons reported missing on a bilateral basis. Some persons were found in detention places but virtually no answer has been received regarding others still reported missing. The ICTY had no resources and asked countries to second teams to carry out exhumations. As a result, there were different protocols, different languages, and no mandate to identify human remains and in fact some were identified on a scientific basis or by relatives on the spot (at gravesites). Many of the remains were re-buried without the families' knowledge. The teams were there for a short period of time. NATO/KFOR contingents served for rather short periods of time and many different units were in charge of some aspect of the problem during the first (and crucial) years, however, discontinuity led to a loss of information over time.

Mandate of the Working Group

The mandate of the Working Group is to trace persons who are unaccounted for in connection with events in Kosovo and to inform their families accordingly, as well as address the legal and administrative needs of families. It has a strictly humanitarian basis. Strictly humanitarian means that other needs of the families and communities are not covered (need for accountability and acknowledgement, justice), means that information cannot be used for a political or judicial purpose. Such limitations are explained by the ICRC's own mandate and the strict conditions it laid out when accepting to chair the group. Both the Pristina and Belgrade authorities were asked to formally pledge to address in earnest the problem of the missing and to actively seek a solution to it. They were asked to confirm their acceptance of the ICRC chair and of the group's strictly humanitarian mandate. In reality, the problem of the missing is not only humanitarian and there is a need for strong political backing from both local and international authorities. Support has to be concrete, not verbal. Other aspects should also be addressed and would likely be in other fora.

Structure of the Working Group

- Supervisor = SRSG.
- Chair = ICRC.
- Members = Pristina (UNMIK and PISG) and Belgrade delegations.
- Guarantors and facilitators = Contact Group, OSCE, UE, NATO.
- Observers: CG – I.O. – F.A. – RC/RC.

The UN SRSG was the promoter of a direct dialogue between Pristina and Belgrade. Both sides agreed to this dialogue and the framework within which it was to take place. The ICRC was contacted and accepted to chair this Working Group provided it could organize its work as it saw fit and in keeping with the conditions aforementioned. France, Germany, Italy, the Russian Federation, the UK and the USA are the members of the contact group. They are the guarantors and facilitators of the direct dialogue and should intervene with parties to make it both successful and fruitful. They are also observers in the Working Group, together with representatives of family associations from both sides, local RC organizations, ICMP and possibly other governmental or non-governmental organizations.

Some parameters

- UN promoted dialogue (Vienna talks).
- Technical issue (out of 4).

- First meeting March 2004.
- Five formal sessions held March 2005–May 2006.
- Nine working meetings.
- Sub-Working Group on forensic Issues.

The issue was chosen by IC and imposed on both parties. For the UN, it is important to show that both parties speak to one another. For the ICRC, what matters is what the dialogue yields in terms of results, i.e. answers given to the families. As such, dialogue is a means, not an end.

- Other issues are: transport and communication, energy, returns.
- Suspension of process between March 2004 and March 2005 following inter-ethnic clashes in March 2004 in Mitrovica first, then whole of Kosovo.
- SWG: cooperation between UN, Belgrade and ICMP not functioning; need to separate specific issue from other, more political tasks.

Statement of the problem

Missing persons in relation with Kosovo events: January 1998–December 2000:

- Working Group provisional list of missing (Jan 2007 = 2,137 – June 2002 = 5,236¹).
- Difficulty to find “new” information.
- Little political will.
- Humanitarian issue only?
- Important to set clear time frame.
- Important to have one (and only) reference and thus avoid polemics around figures.
- Perception by parties is that the other side needs to come up with answers; victims do not have to be held accountable. Give information means help the other side, betray comrades in arms, war heroes, get exposed to retaliatory action by persons involved in disappearances and still holding power (no effective witness protection programme). Willingness of parties to address issue in earnest means their readiness to investigate into their own “history”, not only to solve the problem of “their” missing.
- Priority in words but not deeds. Same generation of politicians. “Too early for politicians, too late for families”. WG delegation can only provide as much as the whole structure behind them is willing to.
- Fear of judicial proceedings which are given a strong prominence in the region, possibly more than the families’ “right to know”. Two are opposed when complementarity could be sought.

¹Source: UN Office for Missing Persons and Forensic

- Since a technical WG deals with the issue, since ICRC chairs it and its mandate purely humanitarian, issue “reduced” to a humanitarian problem and when raised in other fora, “thrown back” there. What is clear, however, is that the absence of a solution to this humanitarian need has consequences on reconciliation, on returns of displaced /refugees, on allowing people to look at their future.

Ways to obtain data

- Information on the fate of missing persons.
- Information on gravesite location.
- Exhumation/identification by Sub-Working Group on Forensic Issues.

Additional tasks

- Support to families (legal & administrative).
- Check-list given to and approved by WG delegations and standard for meetings agenda.
- Most answers coming from forensic work given political sensitivity.
- SWG set up to improve coordination among concerned actors, located in 3 different places and bound by bilateral agreement. Poor communication and cooperation, slowness of the whole process, not justified by its complexity.
- Support to families, first auxiliary task but has two advantages: allows WG delegations to show that they work for their own victims, important for the families to have their suffering and the problems they face on a daily basis acknowledged.
- Results slow in coming, too slow for families.

ICRC challenges

- Obtain support of both local (national) and international authorities (prerequisite).
- Obtain cooperation of other actors involved.
- Contribute to creating favourable environment (access to information).
- De-confinement versus non-politicization.
- Ensure that political will expressed not only in words but concrete measures, that dialogue seen as means and not end. Political authorities have to create the space within which humanitarian work can develop.
- Many actors, not the least FA, have to agree on focusing on one or two major issues, priorities. Complementarity is the name of the game given ICRC limitations (humanitarian only).
- Main obstacle is access to information, some kind of measures have to be taken to protect sources of information.

- Stress that if consequences are mainly humanitarian in nature, many aspects of the problem touch on the political, legal, economical and social life of affected communities. Link with reconciliation is strong (c.f. South African Truth and Reconciliation Commission “establishing and making known the fate and whereabouts of victims”¹ is one of the means to achieving national unity and reconciliation.
- Strike delicate balance between involvement of politicians and avoiding the issue to become a bargaining tool in political games, but no monopoly and no other mechanism.

Guatemala case study

Ms. Leslie Corzo

Member of the Presidential Committee for Humanitarian Law of Guatemala

National mechanisms for solving cases of people who have disappeared in Guatemala

National context

- Thirty-six years of armed conflict (1960–1996).
- Consequences:
 - 61,648 human rights violations;
 - 6,159 of which involve enforced disappearances, according to the Comisión para el Esclarecimiento Histórico (Historical Clarification Commission – CEH).

Legal framework

- Penal Code: crime of enforced disappearance.
- Inter-American Convention on Forced Disappearance of Persons (27 July 1999).
- Declaration on the Protection of All Persons from Enforced Disappearance (adopted by UN General Assembly resolution 47/133 of 18 December 1992).
- UN International Convention on the Protection of All Persons from Enforced Disappearance (6 February 2007) signed and currently under ratification.

¹South African Promotion of National Unity and Reconciliation Act, N°34 of 1995, s. 3(1)(c.).

References to enforced disappearance

- Peace accords (12 agreements):
 - Recommendations made by the CEH:
 - searches must be undertaken to determine the whereabouts or fate of people unaccounted for;
 - the legal and administrative problems faced by the families of missing persons in civil matters must be dealt with;
 - the State should ask the ICRC for guidance and technical assistance to help it in its efforts to locate missing persons.

State action

- Executive Branch.
- State authorities, civil society and support from UNHCHR and the ICRC.
- Ombudsman's office.
- Comisión Guatemalteca de Derecho Internacional Humanitario (Guatemalan Committee on IHL – COGUADIH).

Executive Branch

- A temporary Executive Branch commission was created in May 2006, as a consultative and Advisory body, to locate people who disappeared during the internal armed conflict.

Main objectives

- Propose a national plan to locate missing persons.
- Propose the creation of a national office to locate missing persons and make the necessary arrangements to put it into operation.

Main achievements

- Draft national plan to locate people who disappeared during the internal armed conflict covering the period 2006-2015.
 - Guiding principles of the plan:
 - solidarity and cooperation;
 - right to access to information;
 - right to the truth;
 - right to justice;
 - right to legal and judicial assistance and legal representation;
 - free services;
 - judicial economy;
 - right to restoration of the dignity of victims and non-recurrence;

- right to full reparation for damage caused;
- right to publicity;
- prevention.

National Reparation Programme (2003)

Purpose

- To make reparation to, compensate, restitute, assist, rehabilitate and restore the dignity of victims of the internal armed conflict.

Achievements

- 7,321 cases of enforced disappearance recorded.
- Monetary compensation paid in 477 cases, with measures for collective reparation, restoration of dignity, cultural restitution and psychosocial rehabilitation in progress.
- Bill on absence owing to enforced disappearance.

State authorities, civil society and support from the ICRC and UNHCHR

- 2006: legislative initiative involving the creation of a national commission to trace victims of enforced disappearance and other missing persons (Comisión Nacional de Búsqueda de Personas Víctimas de Desaparición – CNBPD).
- 2007: the initiative was sent by congress to the Legislative Points and Finance Commissions, which will issue an opinion in due course.

CNBPD

Characteristics

- The commission established for a term of 15 years as an independent legal entity with financial autonomy.

Objectives

- Design, evaluate and implement plans to locate missing persons.

Functions

- Receive information about people who have disappeared.
- Implement search procedures to determine the whereabouts or fate of victims.
- Design and operate a national register of victims of enforced disappearance and other missing persons.
- Further investigations by forwarding relevant information to the Public Prosecutor's Office.
- Implement measures to protect people involved in the search process.

Ombudsman's office

- A Commission was created in 2001 to trace children who disappeared during the armed conflict (Comisión Nacional de la Búsqueda de Niñez Desaparecida por el Conflicto Armado) and was institutionalized in 2003.

Objectives

- Clarify and publicize the truth about missing children.
- Document cases, searches and reunions.
- Promote action to ensure justice and reparation.

Main achievements

- 1,280 cases documented.
- 324 cases dealt with.
- 131 families reunited.
- 1,000 cases in which psychosocial support was provided.
- 16 committees of families set up to search for missing children.

COGUADIH

The Guatemalan National IHL Committee was created in 1999.

Main achievements

- It promoted the adoption of international humanitarian law instruments by the State.
- A bill was prepared in 2005 to reform the Penal Code to include serious violations of international humanitarian law (crimes of war).
- Three working groups were set up in November 2006.

Working Groups

1. Working group to assist victims of anti-personnel mines and other explosive devices.
2. Working group to follow up on ICRC recommendations concerning missing persons.
3. Working group to prepare legislation.

Working group to follow up on ICRC recommendations

- The recommendations were analysed and a logframe was produced to channel action to implement them.

Recommendation	Area	Action	Indicator	Body concerned	Observations
Integrate provisions on the prevention of disappearances in military manuals, regulations and instructions and in training curricula for law enforcement officials.	Training in prevention and instruction.	Procedure under implementation and to remain ongoing.	There are records and databases on all military personnel from the time they join.	National Defence General Staff. Personnel Directorate. Peace Operations Directorate. Human Rights Department. Brigades, commands and military facilities.	Control mechanisms are established in peacetime military service regulations and in guidelines and plans formulated by the National Defence General Staff for the prevention of the disappearance of military personnel in times of peace or war both nationally and internationally.

Lines of action

- Legislation.
- Prevention.
- Assistance for victims.

Actions to be promoted

- Proposal to set up an information office, where citizens can report missing people who have disappeared during armed conflict or internal violence.
- Prepare a bill on “Absence owing to enforced disappearance”.
- Present a proposal for the creation of a national register to keep a record of all people arrested and detained.

B. The right to know and the fight against impunity

The missing and transitional justice: the right to know and the struggle against impunity

Dr. Anne-Marie La Rosa

Legal Adviser, Advisory Service on International Humanitarian Law, ICRC

Ladies and gentlemen,

It is a great pleasure and an honour for me to address this gathering of representatives of National Committees for the implementation of international humanitarian law on the issue of missing persons. As several aspects of this issue have already been discussed, I would like to focus my comments on the efforts of families of missing persons to obtain information, especially in countries where national mechanisms of transitional justice exist.

It is a well-known fact that uncertainty over the fate of a loved one prevents family members from coming to terms with their grief. Often, the anguish caused by a person's absence is further exacerbated by the psychological, economic, social and legal problems faced by their relatives. To make matters worse, these problems are frequently disregarded or denied. Yet, in most cases, the missing person, usually a man, is the family's sole breadwinner and the only person who has access to a bank account or any other assets the family may have. As a result, the family finds itself without any source of income. This is important to stress as it explains why, in so many instances, the situation fails to resolve itself and has inevitable repercussions for the community as a whole, sometimes undermining its ability to come to terms with the past or to put an end to protracted war or violence. In these circumstances, lasting peace is out of reach. Thus, establishing and making known the fate and whereabouts of missing persons is one of the means of achieving national unity and reconciliation.

This is where transitional justice has an important role to play. As a multi-dimensional process designed to help people move beyond violence and embrace peace, democracy and respect for human rights, transitional justice should provide an appropriate response, by working with the affected community, to the issue of missing persons. When societies in transition realize how important it is to deal with this issue, the question immediately arises as to what means

should be employed. In any event, pertinent information-gathering procedures must be set up to establish whether missing persons are dead or alive. Various types of mechanism have been relied on for this purpose.

In some cases, national authorities have preferred to establish mechanisms whose main purpose is to elucidate the fate of missing persons. Several speakers have already given specific examples of this, such as the multilateral working groups set up in Kosovo and Bosnia. In other cases, the issue of missing persons has been considered from a broader perspective, such as that of national truth and reconciliation commissions or human rights commissions, which also examine other violations of human rights law and humanitarian law. Whatever the case, any body or institution dealing with the issue of missing persons is bound to interact with transitional justice mechanisms, if only to examine the possibility of sharing relevant information each has collected. This interaction becomes all the more vital in cases where international tribunals intervene at national level. Indeed, the families of missing persons should take advantage of the presence of such tribunals to press for answers to their questions.

For example, families can take steps at various stages of criminal proceedings. The investigation stage provides them with an appropriate opportunity to obtain pertinent information. The authorities in charge of investigations and inquiries usually enjoy broad powers, including the power of enforcement, for the purpose of gathering evidence or obtaining other information needed for the trial stage. The relatives of missing persons should seize this opportunity to ensure that their concerns are duly taken into account during investigations. When international tribunals investigate large-scale killings, initiate mass exhumations or order forensic examinations, they should make every effort to ensure that such work is conducted in a manner that serves the best interests of the families while also bringing those responsible for the crimes to justice. Exhumations can help establish the circumstances in which persons disappeared and provide families with information on their fate. Unfortunately, international tribunals rarely have the resources necessary to identify the dead. In many cases, exhumed bodies have been re-interred without having been identified once the cause of death was established for criminal investigation purposes. This is because the identification process is lengthy and requires different technical skills. As a result, the families were prevented from learning the fate of their relatives or receiving their remains. At times, the methods used to exhume bodies have made it impossible for forensic experts to do their work.

At the trial stage, whenever permitted by the judicial system, the families of missing persons should seek either to initiate proceedings or to claim damages (as *parties civiles* in a civil-law system). This would provide them with greater

access to information collected through judicial mechanisms and allow them to obtain some form of reparation. Even under legal systems that do not allow them to intervene directly (*locus standi*), family members should be encouraged, at the very least, to stand as witnesses. In cases where fear for their personal safety or the safety of their relatives prevents them from testifying, measures should be taken for their protection. Ad hoc tribunals such as the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) have adopted the latter approach. They provide victims and their families with very limited scope for autonomous action, except for those who can serve as witnesses for the prosecution. A new paradigm has nevertheless been introduced with the International Criminal Court (ICC), which allows victims to present their views and concerns directly at all stages of the proceedings and to seek reparation.

When international tribunals have been active for many years in a region or a country and are reaching the end of their mandates, as is the case with the ICTR and the ICTY, the families of missing persons should make every effort to take full advantage of the wealth of information they have collected. The ICRC has obtained access to information gathered by the ICTY that is not being used for trial purposes or that concerns closed cases. It analyses this information and selects whatever might be useful in elucidating the fate of missing persons, such as indications of the location of human remains, lists of persons presumed dead and documents concerning mass graves. It shares this data – subject to its rules of confidentiality – with the Working Group on Persons who are Unaccounted for in Connection with Events in Kosovo and sometimes with other mechanisms dealing with persons who have gone missing in the Balkans. The millions of documents collected are of invaluable assistance in elucidating the fate of persons unaccounted for in connection with armed conflicts in the region. Unfortunately, any methodical search through the ICTY's files is extremely time-consuming as these files have been compiled for the purposes of criminal prosecution rather than for identification purposes.

There are nevertheless serious limits to how far criminal proceedings can go towards comprehensively addressing the problem of persons missing in connection with armed conflicts and other situations of violence. This is because such proceedings are aimed at establishing the guilt or innocence of the accused, and the related investigations focus on the needs of the prosecution. Even within a judicial system such as that devised for the ICC, any intervention by a family member must be linked to a specific situation within the Court's purview (although recent jurisprudence points to a very broad interpretation of the notion of intervention by victims in cases brought before the ICC – a fact that is to be welcomed).

It thus appears clear that information gathered for the purposes of a criminal investigation, whatever its accessibility to the victims, is not enough to satisfy the right of families to know the truth and that further steps are therefore required to meet their expectations. The families' right to information, however, is often stymied by various measures adopted to put an end to impunity. Let me explain.

Reconciling action to elucidate the fate of missing persons with the struggle against impunity

Progress made in ensuring that the perpetrators of war crimes do not go unpunished – such as the establishment of international tribunals or the broadening of the role of domestic courts – should lead to greater respect for international humanitarian law and, consequently, reduce the number of cases of disappearance since many such cases are the result of violations of that law. In practice, however, many of those who possess relevant information are afraid of being prosecuted and thus any increase in the “Hague threat” or, more generally, the existence of a real legal risk reduces the chances of obtaining information from such sources.

A delicate balance must therefore be struck between the general recognition of the importance of prosecuting war crimes and the need to set up effective mechanisms for collecting and assembling information on missing persons. If they are to work, such mechanisms must provide greater incentives for those who possess information to come forward. As we shall see, this is not always an easy task.

In practice, national authorities adopt a variety of strategies. In some cases, they have not hesitated to launch public information campaigns on missing persons, thus demonstrating their political will to resolve the issue (Peru, Chile and Morocco). On a number of occasions, the ICRC has published names of missing persons on its website, in catalogues and in books containing photographs of personal belongings found together with mortal remains. The authorities of some countries have used this information in their efforts to elucidate the fate of those unaccounted for (Serbia, Bosnia and Angola) and to help in the search for children who have been separated from their parents or relatives in connection with armed conflicts (Liberia, Sierra Leone and Côte d'Ivoire). In one case, with the consent of the families concerned, the ICRC provided a truth and reconciliation commission with crucial information on more than 400 cases that did not appear in any database (Peru). A number of other methods of collecting information on missing persons have been set up, such as telephone lines, websites and walk-in centres. In some cases,

information has been accepted on an anonymous basis so as to avoid linking the source to any legal proceedings undertaken. In order to foster a climate conducive to information sharing, the ICRC has sometimes agreed, with the consent of the parties concerned, to receive information confidentially and to pass it on to the relevant authorities after deleting anything that might enable them to identify the source. The authorities may also create legal incentives, either by considering as a mitigating factor the willingness of a party to provide information on missing persons or by punishing a party's failure to cooperate in this regard. A similar link may be established between national "vetting" procedures, in which the provision of relevant information is considered as a positive factor in the evaluation process. Lastly, certain authorities have granted or considered granting limited amnesty or immunity from prosecution, accompanied by alternative forms of justice, to those who come forward, even though this approach raises numerous questions as to its compatibility with international humanitarian law.

Any mechanisms that allow perpetrators of war crimes to avoid prosecution are clearly unsatisfactory from the standpoint of humanitarian law and contravene the obligation of States to investigate war crimes and to prosecute and punish those suspected of having committed them. Moreover, a national amnesty does not protect suspects from the threat of international prosecution. In such cases, associations of families of missing persons, if they exist, should be consulted as they are the beneficiaries of any measures taken to elucidate the fate of those missing and have a role to play in ensuring that the body concerned fulfils its mandate and commitments.

Conclusion

Elucidation of the fate of persons missing in connection with armed conflicts or other situations of violence is an important issue that should be examined as part of any multi-pronged or multi-party efforts to deal with societies in transition. When a peace treaty or other settlement is reached, this issue should receive as much attention as that of refugees, displaced persons, land and property, human rights and conflict resolution.

The opening of mass graves, the identification of bodies, the establishment of the circumstances in which missing persons died and the elucidation of all facts concerning those persons are necessary steps in a process that enables families to come to terms with their loss, victims to obtain reparation and, in the long term, individuals and their communities to put the past behind them and embrace a peaceful future.

In order to deal effectively with the issue of missing persons, the various bodies and institutions involved in transitional justice should strive to cooperate with one another. Ad hoc international tribunals and truth and reconciliation commissions, both of which have a limited lifespan, should endeavour, from the very outset, to ensure that the means and methods they employ to gather and classify information can be used both to prosecute suspects and to trace missing persons. They should also set up effective and practical means of passing on information after they have finished their work, in particular by providing families and their representatives with access to their archives.

Likewise, the forensic examinations ordered by international tribunals should focus not only on collecting evidence for the purposes of criminal prosecution but also, insofar as possible, in answering the questions of the families of those unaccounted for.

Lastly, every effort should be made to encourage and support national authorities, through capacity-building initiatives, in their efforts to genuinely address the problem of missing persons and thus to comply with their obligations under international humanitarian law.

ICRC lists of missing persons as part of the OTP¹ information system on victims of IHL violations committed in the 1990s conflict in the former Yugoslavia²

Ms. Ewa Tabeau

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1. Introduction

This presentation comes from the Investigations Division of the Office of the Prosecutor (OTP), the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. The Investigations Division, OTP, has been dealing with missing persons issues on a daily basis. The Demographic Unit of the OTP keeps record of all subsequent updates of the ICRC lists of missing persons and coordinates the use of these lists within the Office.

¹ OTP stands for the Office of the Prosecutor of the ICTY.

² The views expressed in this paper are of the author and do not necessarily express the views of the International Criminal Tribunal for the former Yugoslavia or the United Nations.

The purpose of this presentation is to summarize the experience of the Investigations Division, OTP, regarding our use of ICRC records of missing persons and to identify areas of mutual benefits in the current and future sharing of information on missing persons between the OTP and the ICRC. We believe that both our organizations fulfil an important role in this area of human rights protection and as such need to work together towards our common goals.

In this presentation I will briefly review the mandate of the ICTY, and the operation of its organs, in particular the Investigations Division of the OTP.

Further, I will summarize the important role of the ICRC lists of missing persons in the context of other sources of information on victims available to the OTP, and indicate the ways of our using these lists, together with other sources, as part of evidential material submitted in trial.

When reviewing our sources I plan to be general but hopefully clear. Examples that I give come from Bosnia and Herzegovina which is by far the best covered area of the Yugoslav conflicts and the availability of sources might be different for other conflict-affected countries in the Balkans and other regions of the world. The Bosnia example is, however, very educative, as source-wise it is the best situation one can expect while working in an international criminal tribunal such as the ICTY.

2. The mandate and organization of the ICTY³

The International Criminal Tribunal for the former Yugoslavia was established on 25 May 1993, by the United Nations Security Council through Resolution 827. The Security Council created the Tribunal in an attempt to address the violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina. These violations include mass killings, large-scale rape of women, and the practice of “ethnic cleansing”. The ICTY was founded under Chapter VII of the United Nations Charter, which allows the Security Council to take action to maintain or restore international peace and security.

The ICTY Statute establishes that the Tribunal has jurisdiction over individuals, (not organizations or groups), who allegedly committed any of the following crimes on the territory of the former Yugoslavia after 1 January 1991:

³ The source for this section is the Statute of ICTY available from the ICTY home page on <http://www.un.org/icty/legaldoc-e/index.htm>

- grave Breaches of the Geneva Conventions of 1949;
- violations of the Laws or Customs of War;
- crimes Against Humanity;
- genocide.

The mandate of the ICTY has four objectives:

- to bring persons charged with violating international humanitarian law in the former Yugoslavia to trial;
- to bring justice to the victims of the war;
- to deter future crimes;
- to contribute to the restoration of peace by promoting reconciliation in the region.

The Tribunal consists of three organs:

- the Chambers of Judges, comprising several Trial Chambers and an Appeals Chamber;
- the Office of the Prosecutor, with the Investigations and Prosecutions Divisions;
- a Registry, facilitating the Chambers and the Prosecutor as well as the Defence.

The Prosecutor initiates investigations *ex officio* or on the basis of information obtained from any source, particularly from governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor has the obligation to assess the information received or obtained and decide whether there is sufficient basis to proceed.

Thus, the ICTY cases are initiated by the Prosecutor based on an independent investigation conducted by, in particular, the Investigations Division of the OTP, or using the material referred to the Tribunal by external parties, including international and national bodies. Evidence acquired during the investigation (or referral) forms an integral part of the work of OTP and is subject to a thorough and critical examination by the Investigations Division of the OTP.

Missing persons lists are an important component of the source material acquired and used by the OTP in all stages of our work, i.e. in investigation, trial preparation, trial and even post-trial (i.e. appeal) stage, and are compared with other OTP sources related to victims of the IHL violations in question. Cross-referencing individual cases from missing persons lists with cases reported in other sources on the same incidents is meant to answer whether or not the individuals reported missing by their families can be confirmed as victims, or possibly as survivors, in other sources. The end result of these searches is meant

to increase the quantity and quality of the OTP information about individual cases. This is needed for trial purposes in the first place, but at the same time the end result of these searches can be beneficial to the families of the missing who can learn from these results about the fate of the missing.

The additional information about the missing persons available at the OTP is just one example of the importance of cooperation between the organizations collecting records of the missing, like the ICRC, and criminal tribunals, like the ICTY. Most importantly, however, the existence of such tribunals offers much more than just the additional information. Through the prosecution of persons responsible for violations of IHL and through bringing justice to victims of conflict, the tribunals contribute to ending the impunity and, thus, to prevention of new disappearances, and to restoration of peace in general.

As mentioned before, the purpose of this presentation is to give some general ideas about the victim-related information system used in the work of the OTP and about the place of the ICRC lists of missing persons in this system. By reviewing this system, and its usefulness to both the OTP and also to the ICRC, we want to voice our support for further cooperation between our organizations and make it easier for all interested to see the ways of doing so in the future.

Two other remarks I want to make relate to confidentiality aspects of the missing persons lists, the first one associated with the nature of these lists as a source, and the second with security levels we impose within the OTP on the sources and original informants.

- In the case of the former Yugoslavia, the ICRC missing persons lists are public and available from publications and the Internet, thus they are an open source. Even though the lists are public, the OTP ensures that they are used appropriately within the Office, i.e. personal details of the victims are not shared with third parties other than the parties to trial.
- Generally, the OTP has always had a strict policy regarding sharing and protection of our sources and original informants, the ICRC lists being just one such source. Our contacts with the original informants, e.g. witnesses and survivors, have always been kept at a maximum security and minimum risk of persecution to the individuals involved. This general rule ensures that the names and particulars of families that reported on the missing to the ICRC remain strictly confidential and are not exposed to these risks.

3. ICRC lists of missing persons as a source for the Office of the Prosecutor

3.1 Degree of detail and reliability of the ICRC lists of missing

The issues of detail and reliability of the ICRC lists of missing persons are discussed in this section in the context of the lists available for Bosnia and Herzegovina, which is fairly representative of all other former Yugoslav republics, and most likely to be representative of many other locations where the ICRC has operated thus far.

The work of the ICRC in Bosnia and Herzegovina has resulted in the publication of six editions of its list of missing persons (the 6th edition published in October 2004), as well as an addendum containing about 1,000 entries (published in 2000). The 4th, 5th and 6th editions of the ICRC books contained records of still missing persons as well as known deaths.

In addition to the publishing of these books, ICRC maintains a website where the names of “still missing” persons from Bosnia and Herzegovina are presented. The website, available at http://www.familylinks.icrc.org/mis_bos.nsf/bottin, is regularly updated. As the Internet-based list contains records of “still missing” only, and confirmed deaths and other closed cases are unavailable, the OTP systematically requests a complete version of the list of missing from the ICRC headquarters in Geneva.

The 2005 update of the ICRC list of missing persons for Bosnia and Herzegovina provided by the Geneva HQ of the ICRC is broader than the web-based list of “still missing” only, and includes information about persons who are not missing any more. The 2005 ICRC list provided to the OTP has five components:

- still missing with information about the body not yet available (14,105 records);
- still missing with information about the body already available (1,528);
- ICRC closed cases, i.e. confirmed deaths (6,093);
- alive persons, i.e. cases no longer valid as part of the missing persons list (434);
- administrative exclusions (52).

Altogether these five lists contain 22,212 records, of which 21,726 are related to still missing or dead persons and 486 are no longer relevant.

The 2005 ICRC list, as all previous editions of the list, includes, among others, data on surname, first name, father’s name, sex, date and place of birth, and

date and place of disappearance (recorded as both the specific place and the municipality of disappearance). Many other items are usually collected as well, but not always available for all missing persons, e.g. details of military unit, service number, circumstances of disappearance, authority which might supply information on disappearance. All these data items are included in a standardized questionnaire consistently used by the ICRC in taking records of disappearance from the informants. Notably, the informants accepted by the ICRC are close relatives of the missing. Individuals unrelated to the disappeared, who possibly do not possess enough knowledge about the missing, are not accepted as informants. The systematic use of the questionnaire and selective acceptance of the informants increase the reliability and completeness of the information about the missing persons and ensure that the ICRC lists can be seen as a valuable source on victims.

The quality and reliability of information from the ICRC lists of missing persons have been very good. It is noteworthy that the ICRC has even further improved its records throughout the years since the publication of its first list for Bosnia in 1996. Despite this improvement, empty or incomplete fields are occasionally seen on the 2005 ICRC list, which in most cases are a result of incomplete and/or deficient reporting by the families. Occasional deficiencies are sometimes seen in the spelling of names of persons and places or dates of birth or disappearance. Such errors are common all over the world in data collected through questionnaires in surveys, censuses and elsewhere, even if professional statistical authorities are involved. It is, therefore, not surprising that there are errors in variables concerning tragic events collected in a chaotic and traumatic situation. All in all, the ICRC lists of missing – as a source on potential victims – must be truly strongly complimented.

3.2 ICRC lists as part of the information system on “missing-exhumed-identified” individuals

The OTP has now reached the stage which allows for considering the integration of the records of missing persons, exhumed remains and identified victims into a broader information system covering all victims. The motivation for creating such a system is related to the fact that exhumations records, and the related records of the missing and identified, represent the most serious violations of IHL and therefore should remain central to the OTP at the completion of our work. In addition to this, the existence of this system enables cross-referencing the victims list of the Prosecution (i.e. the known killed persons) with the lists of the missing-exhumed-identified individuals.

The three components, (i.e. records of missing, exhumed and identified persons), can serve to answer a number of specific research questions, examples of which are given below.

- a. Missing persons
 - How many individuals have been reported missing?
 - What are their basic demographic characteristics (i.e. age and sex)?
 - What are the geographic and time patterns of these disappearances?
 - What major incidents can be defined based on the missing persons lists?
- b. Exhumation sites and victims:
 - How many and which grave sites have come to the attention of the ICTY?
 - How many and which of these sites have actually been exhumed?
 - How many and which of these sites are still waiting for exhumation?
 - How many human remains have been exhumed, when and from which sites?
- c. Identification of victims:
 - How many human remains (and from which sites) have been identified so far?
 - What identification methods were used?
- d. Cross-referencing the components:
 - How many exhumed and identified persons have also been reported as missing?
 - In what incidents have they gone missing?
 - How many of these incidents are included in the ICTY indictments?

A majority of the above questions can be answered based on just one source, i.e. by using either the exhumations records (sites and/or victims) or identified or missing persons lists. One essential group of questions, i.e. the last mentioned above, requires that more than one source component is used at the same time. The overlap issues can only be discussed if sources are matched with each other. Matching of sources has been a major area of activity for the Demographic Unit of the OTP and is applied using a broad range of techniques developed there.

3.3 ICRC lists of missing persons among other OTP sources on victims

The list of sources from which victim names are derived at the OTP, or which are used to confirm the alleged circumstances of death, is long and complex but it certainly includes the following major types of sources:

- witness statements and survivors' recollections;
- known public and/or classified documents (camp records, police files, court files, prisoner exchange records, military records, seized or acquired in other ways);
- lists of the killed compiled by international and/or State commissions or institutes for war crimes, and intergovernmental or non-governmental organizations (IGOs or NGOs);

- missing persons lists/reports;
- exhumation, forensic, medical, autopsy reports, death certificates;
- records of identification of the exhumed persons;
- results of additional name searches for missing or killed persons (random searches in the OTP archive for possible existing information).

The above list, although not exhaustive, properly reflects the key sources used at the OTP to create lists of victims. Witnesses who have been interviewed are the central point of reference to identify victims related to crime bases mentioned in the indictment, or if witness statements are not available, crime base-related documents and materials are screened for victim names. Lists of victims generated from witness statements or crime base-related materials are often cross-checked against other groups of sources which contain personal victim information (lists, reports, certificates). Another type of search involves screening entire electronic collections or metadata sets for materials related to victim names or crime base details.

ICRC lists of missing persons are just one of the many sources used at the OTP for searches on victims and are subject to the same assessment and validation steps as any other source reporting on the victims. Any missing person's name found in other sources can be seen as a confirmed victim, in particular if the other reporting source is of high reliability, such as a DNA identification report.

3.4 ICRC lists versus post-conflict sources on survivors of conflict

In the case of Bosnia and Herzegovina, in principle all lists of victims compiled in any case can be examined in an assessment procedure in which questionable entries are removed or at least highlighted as less certain. The existing approach at the Demographic Unit, OTP, to check lists of victims offers such a possibility.⁴ In this approach, victim records from the prosecution lists are cross-referenced with records available in corresponding demographic sources on deaths, missing, exhumed and identified persons. Further, these records are also compared with those from the 1991 population census, post-war lists of voters and of internally displaced persons and refugees. The latter lists exclude possible survivors from victim lists.

The ICRC lists of missing persons have on occasion also been subjected to the above-mentioned validation procedure with a reasonably high degree of success.

⁴This approach is described in more detail in Tabeau and Bijak (2005).

3.5 *The use of the ICRC lists in the work of OTP*

The lists of missing persons are used in all stages of the work of OTP

- In the investigation stage, first of all, they are studied as potential leads regarding victims and incidents. The names reported as missing persons give us initial ideas about potential victims and the dates and places of their death. Secondly, together with other sources, the lists of the missing are analysed with respect to crime patterns, i.e. whether such patterns can be identified and, if so, whether the patterns are widespread or systematic. Thirdly, the lists of the missing are cross-referenced with related sources on victims, (all covering the same incidents), with the purpose of confirming how many of the missing were also reported dead and in what circumstances. Finally, we do not exclude the possibility that some of the missing could have survived the conflict, and thus we search for them in our sources on post-conflict survivors.
- In the indictments, based on the results obtained from the investigation, names of the missing are often included as victims. For these names, much more evidential material usually exists than just that included on only the lists of the missing. Most importantly, witness statements and various documents are most commonly available to confirm the crime base information related to the missing.
- In the trial stage, the Prosecutors might proceed with records of missing persons as victims of incidents in question, if these records are seen as reliable enough to represent the actual victims. This is possible if the reliability is confirmed by other sources on the crime base and victimization of the incidents considered.
- Another use of the missing persons lists in the trial stage is as a reference source for victim names mentioned by witnesses or documents, or brought up by the defence. A similar way of using the missing persons list can be conducted in the appeal stage, in particular in the context of other related sources.

A concrete example of the use of the ICRC list of missing persons from Bosnia and Herzegovina in the ICTY trials can be given in relation to Srebrenica cases (Krstic, Blagojevic et al., Vujadin Popovic et al. and as well in Slobodan Milosevic). As an introduction to the Srebrenica cases, it is useful to know that Srebrenica was a UN safe area, populated mainly by Bosnian Muslims, and was located at the eastern border of Bosnia and Herzegovina with Serbia. The Srebrenica enclave fell to Serbian forces on 11 July 1995. At that time, a large number of men from the enclave tried to escape the dangerous territory by walking through the forest away from Srebrenica. Many of them were killed on their way or after surrendering or being captured. Others were separated from their families in Potočari and later executed. Several women, children and old men were also

killed. Many dead bodies were buried in mass graves, which were often disturbed soon after, while others were left in the forest. The total number of victims is not known. According to the latest 2005 OTP list of the missing from Srebrenica,⁵ the minimum number of missing persons is at least 7,661 individuals. Exhumations conducted by the ICTY and local Bosnian Commissions for Tracing Missing Persons have uncovered more than 7,000 sets of human remains out of the (broadly defined) Srebrenica territory. Of these, about 3,500 individuals have so far been identified by the DNA matching programme run by the International Commission on Missing Persons (ICMP) in Sarajevo.

Information sources that reliably cover the fall of Srebrenica, allowing for a detailed statistical analysis of victims, and in particular making it possible to obtain the total number of Srebrenica victims, are extremely limited. The fall of Srebrenica can be seen as a series of executions with the bodies never properly buried. Dead bodies were thrown into mass graves, or left behind, and sometimes moved to new locations in order to hide the links between the crime scene of the 1995 Srebrenica events and the victims thereof. Remains exhumed from the Srebrenica-related grave sites are therefore often commingled and not easy to identify. In any case, the proper death records of Srebrenica victims, with the required death certificates and dates, places and causes of death stated by physicians, generally do not exist. It is only the DNA identification reports issued by the ICMP which can be used by regional courts in Bosnia to declare these victims dead. All in all, the missing persons lists is the best source one can use in order to estimate the scale of the Srebrenica massacres and to compile lists of victims.

The 1997-1998 ICRC and 1999 Physicians of Human Rights (PHR) lists of missing persons belong to the best existing sources in this regard. These two lists were used by the OTP in producing the initial 2000 list of missing and dead persons from Srebrenica. Since July 1998 (when the 1998 4th edition of the ICRC list was published), the ICRC has systematically updated its list for Bosnia, the latest update acquired in August 2005. All subsequent updates of the ICRC list are available from the ICRC website on the Internet (http://www.familylinks.icrc.org/mis_bos.nsf/). Despite the fact that the vast majority of ICRC records of missing persons from Bosnia was collected before 1998, and that the post-1998 updates of the ICRC list of missing persons were limited, there are several hundreds of new records on the 2005 ICRC list when compared with the previous editions of the ICRC list. Whereas the ICRC has continued its activities in Bosnia until the present time, the PHR closed its Srebrenica project after 1999, and this source is not updated any longer.

⁵The 2005 list was produced as an update of the first 2000 list by Brunborg and Urdal (2002) and is available from Brunborg, Tabeau and Hetland (2005).

The latest 2005 OTP list of Srebrenica-related missing persons is based almost solely on the most recent version of the ICRC list of missing persons for Bosnia and Herzegovina, i.e. the ICRC list of August 2005. The previously reported PHR records have been kept exactly as reported on the 2000 OTP list. There are now (i.e. on the 2005 OTP list) very few missing persons registered only on the PHR list and not on the ICRC list, just 23, whereas there were 192 such persons on the 2000 list. Consequently, the 2005 OTP list of missing and dead persons is almost entirely based on the ICRC list and therefore focuses on the ICRC and to a much lesser extent on the PHR data.

Out of the approximately 3,500 Srebrenica-related persons identified by the ICMP so far, almost all are also included in the 2005 OTP list of missing and dead persons. This shows that the overlap of these two lists is extremely high, which sadly is strong evidence that all or almost all of the missing persons are dead. This also confirms that the quality and reliability of the ICRC list of missing persons are extremely high.

4. Concluding remarks

Based on a brief review of the OTP use of ICRC lists of missing persons, it is obvious that these lists are extremely important to the work of the OTP. It is also clear that the OTP generally uses these lists together with other related sources of information available at the Office. Thanks to OTP cross-referencing of the ICRC list of the missing persons with related sources, much can be learned about the fate of the missing, which might be of interest to the ICRC as the link between the missing and their families. Thus, cooperation between the ICRC and the OTP, and in particular the Investigations Division of the OTP, with regard to exchanging information on missing persons is mutually beneficial and should be encouraged.

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INTERNATIONAL HUMANITARIAN LAW

IHL

CHAPTER 4

**THE WAY FORWARD
TO THE 30TH INTERNATIONAL
CONFERENCE
OF THE RED CROSS
AND RED CRESCENT**

INTERNATIONAL HUMANITARIAN LAW



Concept and organization of the 30th International Conference

Mr. Bruce Biber

Head of the Division for Cooperation within the Movement, ICRC

This presentation summarizes the concept for the 30th International Conference, which will take place from 26 to 30 November 2007 here in Geneva. The International Conference is the supreme deliberative body for the Movement. At the International Conference, representatives of the components of the Movement meet with representatives of the States Parties to the Geneva Conventions, the latter in exercise of their responsibilities under those Conventions and in support of the overall work of the Movement in terms of Article 2 of the Statutes.

The States support the work of the components of the Movement. The same components support as far as possible the humanitarian activities of the States. As you know, all States are now parties to the Geneva Conventions and therefore invited to attend the 30th International Conference – 140 years after the first Conference in 1867. It is a unique forum, which provides an equally unique opportunity for States to meet with the RC/RC Movement to examine humanitarian issues that are of great concern to people worldwide.

I will focus on the objectives of the Conference which are of special relevance for the National Committees on IHL.

The slogan of the Conference will be “Together for Humanity”. It highlights the wish to explore, under each objective and issue addressed during the Conference, how concretely humanitarian partnerships can make the difference in responding to the needs of vulnerable people confronted with armed conflict, disasters or diseases. We are talking here not only of partnerships within the RC/RC Movement, but also of partnerships between the RC/RC and other stakeholders in the humanitarian field, starting with States members of the Conference.

Under the overall theme – and ambition – of partnerships and taking into consideration different consultations in the past months (e.g. CoD Seoul), the Standing Commission and the organizers are proposing a number of general objectives to the Conference. After presenting each of these objectives as well as the main results that are expected, we would be particularly grateful to hear your first comments and suggestions.

The first objective is to highlight the need for joint action and partnerships in addressing humanitarian challenges of common concern, including environmental hazards, migration, violence and emergent and recurrent diseases and other health threats. The expected results include a resolution embodying a consensus-based outcome of the plenary and pledges (individual/collective initiatives).

The next objective is to recognize the specific nature of Red Cross and Red Crescent action, with a particular focus on the framework and opportunities for, and the benefits of, cooperation between components of the Movement and States carried out on the basis of the National Societies' role as auxiliaries to the public authorities in the humanitarian field. The aim is to achieve recognition of the specificity of the Movement and to clarify the position of the Movement in today's humanitarian landscape. We can capitalize on specificity through partnerships.

National Societies, recognized by their governments as auxiliary to the public authorities in the humanitarian field (Article 3 and Article 4, para. 3, of the Statutes of the Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross and Red Crescent in Geneva in 1986) are especially well placed to respond to needs in this specific field. The National Society must be able to deliver its humanitarian mission at all times in line with the Fundamental Principles and with its other obligations under the Statutes of the International Red Cross and Red Crescent Movement as agreed by States in the International Conference of the Red Cross and the Red Crescent. As auxiliaries, they can assist governments in fulfilling their humanitarian tasks. On the other hand, the Statutes of the Movement require that National Societies maintain their autonomy so that they can act at all times in accordance with the Fundamental Principles of the Movement. These principles have been adopted also by States, at the 20th International Conference in Vienna in 1965. The autonomy of National Societies, combined with their commitment to impartial and neutral assistance, is often the best available means to gain access to those in need, and their confidence as well. States profit from this unique relationship with a reliable partner who can assist them in their humanitarian tasks.

The Conference will receive a report on the progress made in strengthening understanding of the auxiliary role of National Societies (pursuant to para. 13 of Resolution 1 of the 28th IC). It is expected to make recommendations necessary for guiding States and the components of the Movement in establishing a balanced relationship between public authorities and National Societies when acting as auxiliaries in the humanitarian field. Partnerships between States – or

other stakeholders – and the components of the Movement must be based on a clear understanding of the nature of each partner and their roles and mandates, on their common interests and on transparency, mutual respect, rights and responsibilities. It is also important to recognize the relevance and advantages of such partnerships and the interdependence of the parties involved.

As part of the pre-Conference consultative process, the International Federation held an expert meeting with participation from National Societies, representatives of Permanent Missions at Geneva and the ICRC focused on the status and role of the National Societies as auxiliaries to their respective public authorities in the humanitarian field (Geneva, 22–23 February 2007). The meeting gathered the representatives of the National Societies that have demonstrated interest/involvement in areas related to the auxiliary role (previous International Conference pledges, research studies presented at regional fora, well-established format of cooperation with the respective government as its auxiliary, etc.) and respective Permanent Missions (for info, in case there is a question from the floor regarding the participation – Afghanistan, Australia, Botswana, Colombia, Cuba, France, Jordan, Kenya, Libya, Morocco, Serbia, the UK, the US).

It was recalled during that meeting that the 28th International Conference of the RC/RC had already accepted the concept of a balanced relationship between the States and National Societies. Today the objective should be to identify the way forward in a very complex humanitarian world.

The discussion focused on the elements of the definition of auxiliary role and its pertinence to the RC mission, mandate and activities. It was pointed out that the National Societies' auxiliaryity should be the product of agreement or at least an understanding between the States and their National Societies in each individual case highlighting mutual respect, rights and responsibilities. Recommendations were then made on how the upcoming statutory meetings should be used to advance the dialogue within and outside the Red Cross and Red Crescent on the National Societies' auxiliary role. According to the participants, particularly important would be to reach consensus within the Movement on what the auxiliary role entails, to reaffirm the value of the NS auxiliary role by adopting its definition (such a definition should contain minimum elements of this role and avoid being overly prescriptive), and to demonstrate benefits for States of having National Societies as their auxiliaries.

Based on these discussions, the following updated version of the working definition was elaborated: "A privileged/unique partnership, entailing mutual responsibilities and benefits, based on international and national laws, in which

the national public authorities and the National Society agree on the areas in which the National Society supplements or substitutes public humanitarian services. The National Society must be able to deliver its humanitarian services at all times in conformity with the Fundamental Principles and with its other obligations under the Statutes of the International Red Cross and Red Crescent Movement as agreed by States in the International Conference of the Red Cross and Red Crescent.”

The consultations on the role of the National Societies as auxiliaries to their public authorities will be continued in this (expert-level) and other formats. We expect that the Conference will focus on:

- identifying the opportunities and benefits linked to cooperation between States and the National Red Cross and Red Crescent Societies acting as auxiliaries to public authorities in addressing humanitarian needs;
- providing guidance/direction for partnerships between National Societies and public authorities, and clarifying the scope and meaning of the auxiliary role of National Societies, with a view to defining that role in a way that would be helpful in enhancing these partnerships;
- reaffirming the responsibility of States to respect the duty of the Movement’s components to abide by the Fundamental Principles, in particular those of independence, impartiality and neutrality, and by the Movement’s policies, and to accept the components’ solidarity with and accountability to the Movement in implementing policies and carrying out activities;
- reaffirming the recognition, by all members of the Conference, that it is the primary responsibility of States and their respective public authorities to provide humanitarian relief to vulnerable persons on their respective territories.

A further objective is to reaffirm the importance of humanitarian norms in armed conflict and disaster and thus respect and ensure respect for IHL. Considering the membership of the Conference (including States Parties to the Geneva Conventions) and the history of the Red Cross and Red Crescent, it is very natural for the Conference to be a forum of discussion on issues related to the implementation, promotion and even development of international humanitarian law. In this regard, the main result of the Conference this year should be for members to renew commitment to respect and ensure respect for the provisions of IHL. A background document will be prepared to introduce the discussion on this commitment that should include in particular:

- the reaffirmation of the relevance of IHL in international and non-international armed conflicts;
- recalling the intransgressible nature of IHL provisions (in treaties and customary law);

- an emphasis on the importance of criminal sanctions for violations of IHL;
- the responsibility to intensify the work on IHL dissemination and education.

The discussion on the proposed resolution should take place in a commission and in the drafting committee. Of course, pledges concurring to the achievement of these goals would be most welcome.

The 26th International Conference mandated the ICRC to prepare a report on customary rules of international humanitarian law applicable in international and non-international armed conflicts. On the occasion of the 27th and 28th Conferences, the ICRC made a progress report on its study. Now the work has been achieved and the 30th Conference will be presented with the result of 12 years of efforts.

In addition the ICRC is committed to present to the Conference a report on its analysis of challenges to IHL in situations of contemporary armed conflict. This should include consideration of:

- asymmetric warfare and issues related to terrorist acts;
- the notion of “direct participation in hostilities” (ongoing process with experts);
- the privatization of war and application of IHL to private military and security companies (ongoing process together with Switzerland and experts);
- the need for procedural safeguards in administrative detention and internment;
- weapons and IHL.

The 28th International Conference in 2003 adopted the Agenda for Humanitarian Action and the specific International Disaster Response Law (IDRL) mandate. It stipulates as follows:

Final Goal

3.2 Enhance international disaster response through support for the compilation and application of the laws, rules and principles applicable to international disaster response.

3.2.6 The International Federation and National Societies will continue to lead collaborative efforts, involving States, the United Nations and other relevant bodies, in conducting research and advocacy activities relating to the compilation of the laws, rules and principles applicable to international disaster response... The International Federation will submit a progress report to the International Conference of the Red Cross and Red Crescent in 2007.

As a follow up to that, the International Federation has continued to study the normative framework governing international assistance in non-conflict disasters. It has developed an online IDRL database, conducted further operational case studies, set up an Asia-Pacific pilot project and surveyed various stakeholders. Its research will culminate in a comprehensive study summarizing the programme's findings and recommendations. In short, the main finding is: the principles, rules and norms governing disaster relief are dispersed and inadequate. They may lead to operational challenges encountered both by providing and receiving sides. As such, whereas international actors frequently face regulatory, bureaucratic or administrative barriers slowing down and reducing efficiency of international assistance, receiving authorities encounter considerable problems, often created by some international actors themselves, in the areas of coordination, relevance, quality and accountability of international assistance. The International Federation in consultation with National Societies, governments and relevant non-governmental organizations and international organizations has drafted "Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance" as a non-binding complementary guidance tool to assist the States in developing comprehensive national policy and legal frameworks in the area of disaster response.

We expect that the Conference will acknowledge the progress made and adopt the recommendations on how the existing IDRL regulatory frameworks might be strengthened, including the Guidelines.

In particular, the Agenda for Humanitarian Action and the Declaration of 2003 provided for a comprehensive framework for action especially in the fields of:

- IHL implementation and dissemination;
- the protection of missing persons and their families;
- limiting the use and effects of weapons;
- disaster risk reduction, preparedness and response;
- access to prevention, care and treatment for people living with HIV/AIDS.

Many pledges concurred in the implementation of these goals or addressing other issues (369 pledges in total were collected). The ICRC and the International Federation have been tasked to report on the implementation by members of the Agenda for Humanitarian Action and the Declaration.

The main message to States is essentially a reminder of the availability of reporting tools for all members of the Conference to feed the work of the

ICRC and the Federation. In particular, a questionnaire was circulated to your governments two years ago that should be sent back to us before 31 May 2007. It is also being made available to you here and is available on the ICRC website – it is a very useful and simple tool for reporting!

Reminders have been sent to members recently, but we also count on National IHL Committees to report on the pledges of their States relating to IHL, for instance, on the issue of the missing.

National IHL Committees can play a very positive role in reporting about the Conference of 2003! We want as many of you as possible to report back on this issue before the end of May so that we can produce a summary report to the International Conference. So far only very few have done so.

There is also pledge mapping available at the Conference to help with the reporting of what countries and National Societies have pledged.

Legal aspects on the agenda of the 30th International Conference

Mr. Jean-Philippe Lavoyer

Head of the Legal Division, ICRC

Ladies and gentlemen,

As has already been mentioned, IHL is always high on the agenda of the International Conferences of the Red Cross and Red Crescent. This will also be the case for the next International Conference.

In the past, the International Conference has adopted important documents. Examples are the Plan of Action of 1999 and, more recently, the Agenda for Humanitarian Action, as well as a solemn Declaration, adopted in 2003.

The main objective of the next International Conference will be to reaffirm the continued relevance of IHL in contemporary armed conflicts, to reaffirm the validity and importance of IHL in today's wars.

We all know the many challenges in today's armed conflicts. However, we are convinced that the existing law provides many answers to these challenges. The law is maybe not ideal and perfect, but it is good enough to protect those

affected by armed conflict. What is all too often lacking is the political will by the parties to a conflict to fully comply with the principles and rules of IHL.

We therefore would like the Conference to send out a strong message about the importance of IHL in today's world.

We also would like the members of the Conference to commit themselves to respecting and ensuring respect for IHL in all circumstances.

In order to prepare the debate at the Conference, the ICRC will write a background paper as well as a report on challenges to IHL in situations of contemporary armed conflict.

This report will focus on a number of specific subjects, including:

- asymmetric warfare;
- issues related to terrorist acts and the “global war on terror”;
- the notion of “direct participation in hostilities”, an issue the ICRC has been working on for several years;
- the privatization of war and application of IHL to private military and security companies;
- the need for procedural safeguards in administrative detention and internment;
- weapons and IHL.

In addition, the ICRC will submit to the International Conference a report on its *Customary International Humanitarian Law* study. In fact, the International Conference of 2003 specifically asked the ICRC to report about its study which has in the meantime been completed and published in several languages. It is not planned that the International Conference adopt the ICRC study as such.

Philip Spoerri and others have already spoken about several of these issues – and indeed challenges – earlier at this meeting.

It is of course planned to discuss IHL issues during the Conference, in plenary and in commissions.

Furthermore, IHL will be an important topic in the drafting committee, where a draft resolution on IHL will be debated and negotiated.

Some IHL issues will also be addressed in informal workshops.

We hope that many members of the Conference will make pledges on IHL. Pledges are a very useful tool to generate interest and make progress in the field of IHL.

I would like to call upon National IHL Committees to be creative and assist their authorities in the drafting of pledges. We also hope that your countries will be well represented at the International Conference, which is a precondition for a successful Conference.

INTERNATIONAL HUMANITARIAN LAW

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CHAPTER 5

PLANS FOR THE FUTURE

INTERNATIONAL HUMANITARIAN LAW



Conclusions and recommendations

Ms. María Teresa Dutli

Head of the Advisory Service on International Humanitarian Law, ICRC

The time has come to draw conclusions from our discussions over these two and a half days, and to make recommendations and proposals for action that will boost the capacity of National IHL Committees both in a general way and more specifically in connection with activities intended to prevent people from disappearing and to solve the problem of persons going missing as a result of armed conflict or other situations of violence.

First, however, we would like to thank the National IHL Committees for the immense work they accomplished these past years. We are very impressed. The presentations and discussions that took place on the first day of the meeting were good examples of this progress. They encourage us to continue along this path with renewed enthusiasm.

This meeting has had two objectives: first, to provide a forum for the exchange of information on progress and best practice in national implementation and National Committee working procedures; second, to present a synopsis of the legal framework and of the international commitments relating to the protection of missing persons and the rights of their relatives, so as to ensure that you have the fundamentals needed to boost your capacity for taking action and your efforts in this area.

We believe that these objectives have been entirely fulfilled. The discussions and the exchange of information have once again shown that while working conditions, experience and the activities actually carried out vary from one region to another, they are the same in essence. Cooperation and exchanges are therefore of fundamental importance.

Discussions in this forum of such important issues as the fate of missing persons and the rights of their relatives in connection with action that National Committees can take to prevent people from going missing and/or help to resolve this important problem of humanitarian concern have laid the foundation for a better future.

The plenary presentations on legal and practical measures to be taken in peacetime in order to fulfil the obligations of international humanitarian law, such as identification measures and setting up national information bureaus and graves registration services, and on other matters having a basis in other

branches of law (such as the status of missing persons, data protection, assistance for relatives and the handling of mortal remains) were remarkably instructive and provided the basis for very enriching discussions in the working groups. The same is true of the exchanges that took place on mechanisms and internal bodies for resolving the issue of missing persons.

At the end of the meeting we would like to distribute a document prepared for National IHL Committees and national authorities involved in the process of adopting national implementation measures intended to prevent people from going missing and to help the relatives involved to overcome their difficulties.

This document, proposed as a tool to provide you with better support in this area, is entitled “Principles for legislating the situation of persons missing as a result of armed conflict or internal violence: measures to prevent persons from going missing and to protect the rights and interests of the missing and their families”.

Today we have the pleasure of presenting this document to you. It is not yet in its final version, so we would be very grateful if you could help us to improve it by sharing any recommendations or proposals you may be able to make on the basis of your various experiences. The definitive version of the text will be included in the report of the proceedings which is being prepared in the various working languages of the meeting.

I would now like to give you a brief presentation of the document, which you will have the opportunity to examine more thoroughly on your own.

It offers framework legislation that is suited and sufficiently extensive to help national authorities bring national legislation into line with the requirements of international law. The framework is based on principles of international humanitarian law and other branches of international law. Treaties of international human rights law – applicable in all circumstances – are among those taken into consideration.

Just which obligations are legally binding on the basis of these areas of law is subject to debate. The purpose of this document is not to settle that issue but to make proposals and recommendations with the aim of better preventing disappearances and of protecting the rights of missing persons and their relatives. References to provisions of international humanitarian law are included in an annex to the document; they are not advanced as a basis for the proposals and recommendations.

This basis for enacting legislation takes the form of a model law (framework legislation) accompanied by an article-by-article commentary to help the lawmaker in his work. As with any framework legislation or proposal for action, it is always necessary to make adjustments in accordance with national needs. The model law can be used in whole or in part to develop or supplement existing internal legislation on various topics.

The model-law proposal is organized into eight chapters covering the following areas:

- i. general provisions, which include the objective of the legislation and definitions for such terms as missing person, relative of the missing person, etc.;
- ii. basic rights and measures relating to the rights of persons deprived of their freedom, the rights of relatives of persons deprived of their freedom and the rights of relatives to know what happened to the missing persons;
- iii. the legal status of missing persons and the rights associated with that status, issues involved in declaring a person to be absent, the rights of relatives in terms of civil status and any entitlement to financial assistance or social benefits;
- iv. issues relating to the tracing of missing persons, provisions pertaining to the issuing of identity cards or similar documents, determining the authority in charge of tracing missing persons, setting up a national information bureau that works together with the national missing persons authority and with the registry of information on missing persons, submitting tracing requests, beginning and ending tracing, access to information on missing persons and protecting data;
- v. the rights of the deceased, covering such matters as the obligation to search for and recover the dead, the registration of deaths, the handling of mortal remains, burials and exhumations, and the handling of unidentified remains;
- vi. criminal liability, setting out the acts that must be recognized as criminal offences under national legislation and proposing a mechanism for prosecutions;
- vii. and viii.
as in any framework legislation, one section is devoted to specifying the authority in charge and another to final provisions.

The model legislation has 27 articles accompanied by commentaries and three annexes: a model certificate of absence, a model certificate of death, and references to provisions of international humanitarian law.

This text is not intended to be exhaustive, but simply to present a framework tool providing the basis for identifying the areas in which measures must be taken. Depending on the context and the legislative situation, some of the measures may already have been taken, while others may need to be developed. This model could therefore be used in its entirety or in part by national authorities seeking to enhance the legal framework preventing people from going missing and to solve the relatives' problems and uphold their rights.

As a complement to this tool, which, as already mentioned, we will complete and include in the report of the proceedings, we have made available to you and to anyone else interested information on the laws and regulations that we know of relating to these problems that are in force in the various States. These national laws and regulations may be consulted using the National Implementation database, which is accessible through the ICRC website. We invite you to provide us with any relevant information that could usefully supplement the information in the database so as to make the tool as complete and useful as possible.

This leads me to another matter I would like to comment on: the country fact sheets. These documents, which you received on the first day in connection with the presentation on advances in national implementation, are also intended as an instrument for National Committee work. The information obtainable by reviewing existing legislation will provide the basis for producing a picture of progress, accomplishments and needs that is as up to date as possible. The trends we will obtain will make it possible to better focus our activities in accordance with needs and to have the best possible perspective on these needs, both for your sake at the national level and for ours at the international level. As mentioned during the meeting, information collected in this way will not be published, but will be used merely to identify trends and to adapt our tools.

These proposals are quite limited in view of the richness of the debate and the ideas put forward. The reports of the working groups and the statements and proposals made at the meeting will be carefully examined with a view to enhancing the proposals.

Finally, I would like to add that all the discussions and proposals will be included in a report that will be sent to you. The report will include these instruments for your work. We hope in this way to press ahead with dialogue and provide you with useful tools for performing your national implementation tasks.

This meeting has been a link in the chain that is the national implementation process. There will be other meetings, at regional level – it is customary in most regions of the world to hold such meetings, usually on an annual basis – and also at the world level.

We attach a great deal of importance to carrying on and stepping up this dialogue. We remain available to support you in your national implementation work, whether through dialogue and bilateral technical assistance or in cooperation with and with the support of associated regional organizations.

Thank you very much.

Closing statement

Mr. Jacques Forster
Vice-President ICRC

Excellencies, distinguished participants, ladies and gentlemen,

We have come to the end of our discussions and, on behalf of the ICRC, I would like to thank you for attending this Second Universal Meeting of National Committees on International Humanitarian Law. As I expected, the dialogue has been fruitful, and has allowed us to share interesting experiences and views on ways to solve issues related to missing persons and their families.

I must say we were very pleasantly surprised by the number of people attending the meeting, as well as by the high level of knowledge of the participants. That has certainly increased the quality of the discussions and, in the end, we are very satisfied with the outcome of this Meeting. It proved that there is a real awareness of issues of implementation of international humanitarian law and new avenues have been opened to implement measures preventing persons from becoming missing and to solve the already existing problems. This is very positive.

The Meeting has been attended by almost all of the 82 existing National Committees, representing all regions of the world. In addition, 20 States that do not yet have such a Committee participated with high-level delegations, thus demonstrating a clear interest in the setting up of a National Committee and in international humanitarian law in general. We want to thank these observer States for attending, and wish them luck in the establishment of their National

Committees. Hopefully, in our next Meeting, we will have the pleasure of seeing you again, as the representatives of new, active Committees.

Now, turning to the already existing Committees, I would like to say how impressed we are with the amount of work you are doing. Your efforts are not in vain, your actions do make a difference and the results are tangible. But, it is not yet the end of the road. You must continue your good work, there is still room for improvement and we trust that you will find the means to go even further.

As you are aware, implementation is a long process. But it is also a dynamic process, in constant evolution, as IHL continues to develop and the number of ratifications increases. As was said during the Meeting, "Ratification is optional, but implementation is compulsory." Indeed, nothing forces a State to ratify an international treaty, but once it is done, it becomes an obligation of the State to give a real meaning to ratification, and that should be done by a full implementation of the obligations contained in the treaty.

The ICRC has given you two new additional tools during the Meeting. That is, the country fact sheets and the draft model law on missing persons. These are not perfect, but they could well be a starting point, and we hope that they can be of help in your undertakings. Of course, the ICRC Advisory Service will continue to offer support to your work, be it through our legal advisers in the field, or through our headquarters in Geneva.

If this Meeting was a success, it is because of your participation. A very special vote of thanks needs to be addressed to the people who have made presentations before the plenary. Your lectures were very interesting and full of new, relevant information. Thank you for sharing your experience with us. Also, I wish to thank the Chairs and Rapporteurs of the working groups, who did a tremendous job at facilitating our debates. Finally, I want us all to thank the interpreters without whom the language barrier would have been an obstacle to our discussion. Thank you, you did an amazing job.

It was, for all of us, a real pleasure to meet you and we hope our paths will cross again soon. Have a safe trip home, and let the work continue!

INTERNATIONAL HUMANITARIAN LAW

IHL

PART II

**TOOLS:
GUIDING PRINCIPLES/
MODEL LAW ON
THE MISSING
AND COUNTRY
FACT SHEET TEMPLATE**

INTERNATIONAL HUMANITARIAN LAW

IHL

TOOL A

**GUIDING PRINCIPLES/
MODEL LAW ON
THE MISSING**

INTERNATIONAL HUMANITARIAN LAW



GUIDING PRINCIPLES/MODEL LAW ON THE MISSING

Principles for legislating the situation of Persons Missing as a Result of Armed Conflict or Internal Violence: Measures to prevent persons from going missing and to protect the rights and interests of the missing and their families.

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Introduction

The International Committee of the Red Cross (ICRC) remains dedicated to addressing the issue of missing persons which is of growing concern in the modern world. Families are left without news of their loved ones and must face a very harsh reality. Of primary concern is knowing whether the missing persons are alive or dead, dealing with subsequent effects of the loss, whether it be as a result of their absence or death, and of course the eternal question of why they disappeared at all. There are a variety of reasons for which persons may be unaccounted for as disappearances occur in different contexts, including enforced or involuntary disappearances such as abduction, and as a result of natural disasters or migratory movements. In particular, in almost every situation of armed conflict or internal violence, inherent dangers lead to separation and disappearances of soldiers and civilians alike. Within the context of international and non-international armed conflict, violations of international humanitarian law and of human rights account for most cases of missing persons.

Fundamental rules of international humanitarian law and human rights exist to help prevent persons from going missing in situations of armed conflict or internal violence. To respect the principles of international law is to respect the integrity and dignity of all human beings, including the deceased, and in the context of missing persons, it erects a barrier and encourages a resolution of cases of disappearance. If civilians and members of armed forces or armed groups who are sick, wounded, captured, deceased, or deprived of their liberty were treated in accordance with these rules, there would be fewer missing persons and fewer families left in the dark about their fate. It is important for all States to act with determination to prevent disappearances, not perpetrating abductions or other enforced disappearances, to clarify the fate of missing persons and to lend assistance to families who are without news of their relatives.

Principles for legislating the situation of persons missing as a result of armed conflict or internal violence is offered as a tool to assist States and their national authoritative bodies with the adoption of legislation that will address, prevent and resolve situations of missing persons. States have an obligation to disseminate IHL and implement its fundamental principles and its rules into their national legal system and practice. With the now universal acceptance of the Geneva Conventions of 1949, the applicability of Common Article 1, which reaffirms the obligation of all parties to undertake to respect and to

ensure respect for the fundamentals of humanitarian law in all circumstances, is all the more relevant. Respect means that the State is under an obligation to do everything it can to ensure that the rules in question are respected by its organs as well as by all others under its jurisdiction. Ensuring respect means that States, whether engaged in a conflict or not, must take all possible steps to ensure that the rules are respected by all, and in particular by parties to the conflict in question. This underlying principle is essential to the cause of missing persons and it is imperative that States adopt measures to prevent persons from becoming missing and to protect the rights and interests of the missing and their families.

To ensure the best possible protection for missing persons and their families, such situations must be dealt with on the basis of legal considerations appropriate to each case. This guide is intended to be a comprehensive legal framework that may assist States in completing their domestic legislation on missing persons. The model is based on the principles of international law, in particular international human rights law and international humanitarian law. Human rights treaties apply at all times and in all circumstances to all persons subject to the jurisdiction of a State party, and therefore continue to apply in times of violence alongside international humanitarian law which is specifically applicable in situations of armed conflict and is non-derogable. There is often debate regarding which provisions are obligatory in nature for the State and which are strong recommendations – however, this aspect of the problematic will not be addressed in this context as the goal is to ensure the best possible protection of the victims, which include both the missing person and his or her family. The provisions of international law and IHL which relate to the missing can be found in the ICRC report *The missing and their families* published in 2003 as a follow-up to the International Conference of Governmental and Non-Governmental Experts held in February 2003. This comprehensive list has been reproduced in Annex 3 of this document.

The principles of international law promote the prevention of disappearance with primordial importance. Several measures are available to assist in accomplishing this goal, including the issuance of identity cards and ensuring proper registration of an individual's basic personal information. Once a person has disappeared, families have the right to be informed of his or her fate and may have recourse to the State for providing the information as per Article 32 of Additional Protocol I (AP-I). In order to uphold this right to know, the parties to a conflict must therefore search for persons reported missing as is prescribed in Articles 32 and 33 of AP-I and Articles 136 to 141 of the Fourth Geneva Convention (GC-IV). The State must facilitate enquiries made by members of families dispersed as a result of the conflict so as to help them restore contact

and bring them together. A further responsibility incumbent upon the parties to a conflict concerns deceased persons and is extensively outlined in IHL law. Articles 15 of GC-I, 18 of GC-II, 16 of GC-IV and 34 of AP-I require that all possible measures be taken to search for, recover and identify the dead and maintain lists showing the exact location and markings of the graves, together with particulars of the dead interred therein.

International rules regarding missing persons apply in both international and non-international armed conflicts. Rule 117 of the ICRC's *Customary International Humanitarian Law* study published in 2006 indicates that State practice has established a norm applicable in both international and non-international armed conflicts whereby each party to the conflict must take all feasible measures to account for persons reported missing and must provide their family members with any information it has on their fate.

The new UN Convention against Enforced Disappearance recently adopted by the United Nations General Assembly is the first universally binding instrument that addresses enforced disappearance, defined as the abduction or deprivation of liberty of a person by State authorities and the subsequent refusal to disclose his or her whereabouts or fate. Enforced disappearance is regarded as a human rights violation and it is categorically prohibited. When committed as part of a widespread or systematic attack directed against any civilian population, it is considered as a crime against humanity under the Rome Statute of the International Criminal Court.

Guiding principles are presented here in the form of a model law with the support of an article-by-article commentary to aid in the development of the actual legislative text to be adopted by the State. It covers the fundamental concepts of the law regarding the rights of missing persons and their families, alongside the State's obligation to ensure and uphold these rights. The model law is divided into chapters that outline basic rights as well as certain measures of enforcement in situations prior to their becoming missing, once they are reported missing and in the eventuality of suspected or actual death. The notion of prevention is addressed by a provision on adopting preventive measures of identification and is directly linked to the chapter on criminal responsibility that seeks to establish violations of the law as criminal and thereby liable to prosecution and penal sanctions. As such, this model lends itself as a tool for such States that wish to complement or complete existing legislation, or those that seek to fill the legal void that may exist regarding the governance of cases of missing persons. It can be used as a whole or in part, and can focus as needed on prevention, resolution or any other aspects of the issue. Several examples of State legislation are available for reference on the ICRC web database of National

Implementation of IHL at the following link: <<http://www.icrc.org/ihl-nat>>. The Advisory Service on International Humanitarian Law of the ICRC remains readily available for consultation and to provide assistance to States during the discussion and drafting of their national legislation implementing principles of international humanitarian law.

Worldwide, the ICRC continues to work on the problem of missing persons with the parties to conflicts, humanitarian organizations and others with a stake in the issue. This includes efforts to promote existing international law, to support the strengthening of relevant domestic law, to cooperate with military forces to ensure that soldiers wear some means of identification and that human remains are properly handled on the battlefield. The short-term objective is to create a domestic legislative framework that addresses the situation of missing persons. In the long term, the goal would be to resolve all current cases of missing persons and bring closure to the suffering of their families and, ultimately, to prevent future cases of disappearance.

Chapter I : General provisions

Article 1

Object of the law

1. The present Law aims to prevent persons from becoming missing and to provide for aid in the search for and the tracing of a missing person in the context of armed conflict or internal violence, and protect the rights and interests of missing persons and their relatives.
2. In respect of State obligations to disseminate and enact principles of international humanitarian and human rights law, the present Law implements the provisions of international treaties and conventions for the protection of victims of war and for the protection of human rights relevant to the prevention of persons becoming missing and the protection of missing persons and their relatives which [*name of the State*] is a party to, including:
 - Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949;
 - Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949;
 - Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949;
 - Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949;
 - International Covenant on Civil and Political Rights (1966);
 - Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977;
 - Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977;
 - Convention on the Rights of the Child (1989);
 - Rome Statute of the International Criminal Court (1998);
 - International Convention for the Protection of All Persons from Enforced Disappearances (2006).

Commentary

Object of the law

- Several international treaties of a universal or regional character contain provisions which link to issues related to missing persons, including:
- International humanitarian law
 - Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949);
 - Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1949);
 - Convention (III) relative to the Treatment of Prisoners of War (1949);
 - Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949);
 - Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 1977;
 - Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 1977;
- International human rights law
 - International Covenant on Civil and Political Rights (1966);
 - Convention on the Rights of the Child (1989);
 - International Convention for the Protection of all Persons from Enforced Disappearance (2006);
 - Regional conventions on the protection of human rights: European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); American Convention on Human Rights (1969); African Charter on Human and Peoples' Rights (1981).
- Other relevant international texts of a universal or regional character include
 - Rome Statute of the International Criminal Court (1998);
 - UN Declaration on the Protection of All Persons from Enforced Disappearance (1992);
 - United Nations Guidelines concerning computerized personal data files (1990);
 - Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981);
 - OECD Guidelines governing the Protection of Privacy and Trans-border Flows of Personal Data (1980).
- The principles of customary international law also address the protection

and respect of the rights of the missing and their families. These underlie or complement the provisions adopted in international treaties. They are referenced in the International Committee of the Red Cross (ICRC) study on *Customary International Humanitarian Law*, published in 2005.

- Legislative, regulatory and other measures aimed at preventing persons from becoming unaccounted for and accounting for persons reported missing must be undertaken to implement the obligations arising from the above instruments and to give effect to internationally protected humanitarian and human rights, without distinction of any kind. Enacting domestic legislation contributes to the fulfilment of a State's obligations to respect and ensure respect for IHL by disseminating and implementing the fundamentals of IHL into its national legal system and practice.

Article 2

Definitions

For the purpose of the present Law:

1. *Missing person* is a person whose whereabouts are unknown to his/her relatives and/or who, on the basis of reliable information, has been reported missing in accordance with the national legislation in connection with an international or non-international armed conflict, a situation of internal violence or disturbances, natural catastrophes or any other situation that may require the intervention of a competent State authority.
2. *Relative of the missing person* – unless otherwise specified, for the purpose of the present Law, the term “relative” shall be understood in accordance with provisions of the [Civil Code/Family Law]. It shall include, at a minimum, the following persons:
 - children born in and out of wedlock, adopted children or step-children;
 - lawfully wedded partner or unwedded partner;
 - parents (including step-mother, step-father, adopter);
 - full or half or adopted sisters and brothers.
3. *State authority for tracing missing persons* shall be a designated State authority which shall have competence for the tracing of missing persons and entrusted with the performance of other functions or tasks in accordance with the present Law.
4. *National Information Bureau (NIB)* is the office in charge of collecting and transmitting information, documents and objects concerning persons protected by international humanitarian law who have fallen into the hands of an adverse party, in particular prisoners of war and civilian internees.
5. *Registry* is the centralized database for the management of tracing requests regarding missing persons.
6. *Reliable information on disappearance of a person* is considered to be the information from which it is possible to reasonably conclude that the whereabouts of a certain person are unknown to his/her relatives or, in case of not having relatives, a person does not appear at his/her place of residence or place of temporary presence.

7. *Minimum data on a missing person* is data that contains information such as a missing person's name, place and date of birth, marital status, occupation, address, date and details of last news/circumstances of disappearance, and rank for military personnel/combatants.
8. *Identification of human remains* is the activity carried out by a competent official, whose expertise to carry out such activity is recognized by competent State authorities, and aimed at establishing the identity of a person or remains thereof.

Commentary

Definitions

- National authorities should ensure that the definition of *missing person* is sufficiently wide in scope so as to protect the rights of the person missing and their families who need support in consequence of the circumstances. The definition should include the element of uncertainty about the fate of the person reported missing, even if some of the consequences that flow from the state of being missing may mean that the recognition of such status has similar effects to a declaration of death.

How national law defines the missing person will often derive from the background for the adoption of the measures. It can recognize the status of missing persons in a limited or broad manner depending on the nature and extent of missing persons and families affected. National law may wish to distinguish between those who go missing due to a particular factual, emergency or violent situation, to a specific timeframe or perhaps a specific circumstance such as disappearance following arrest/detention or in relation to an armed conflict. The definition can also be extended to cover persons missing as result of a natural disaster and those who go missing for other reasons. The more narrowly defined the category of persons concerned, the more likely it is that some missing persons will fall outside the scope of the legal provisions. Alternatively, it may be desirable to provide specific provisions for particular situations where needed, and other provisions of a general nature.

For those States that have acceded to the International Convention on the Protection of All Persons from Enforced Disappearance, the Law should incorporate the definition of enforced disappearance as set out in Article 2 of that Convention.

- The general definition of *relative of the missing person* should be wide enough to include persons affected by the unknown whereabouts of the missing person, although it might be necessary to restrict the definition in specific provisions that provide certain rights. Notwithstanding the general provisions on family relationships found in existing law, for the purpose of protection of and assistance to “relative(s)” of missing persons, the term should be understood to include:
 - *children born in and out of wedlock, adopted children or step-children;*
 - *lawfully wedded partner or unwedded partner;*
 - *parents (including step-mother, step-father, adopter);*
 - *full or half or adopted sisters and brothers.*

The definition of *relative* could also be widened to the extent that it takes into account the specific cultural environment whereby the notion of family might extend to include, for example, close friends.

- In order to ensure a consistent and uniform interpretation and enforcement of the Law, other terms and concepts may be defined, as the need may be. The proposed model defines some additional terms and further develops their contents within specific provisions throughout the current Law encompassing the various principles that regulate the situation of missing persons. For example:
 - *State authority for tracing missing persons;*
 - *National Information Bureau;*
 - *Registry;*
 - *Reliable information on disappearance of a person;*
 - *Minimum data on a missing person;*
 - *Identification of human remains.*

Chapter II : Basic rights and measures

Article 3

Fundamental rights

1. All persons without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status shall enjoy the following fundamental rights:
 - (a) the right not to be arbitrarily deprived of his/her life;
 - (b) the right to be protected against torture, and other cruel, inhuman or degrading treatment;
 - (c) the right to liberty and security, and the right not to be arbitrarily deprived of liberty, including the fundamental and judicial procedural guarantees that must be afforded to all persons deprived of liberty;
 - (d) the right to a fair trial affording all judicial guarantees;
 - (e) the right to respect for family life;
 - (f) the right to know the reason for his/her incarceration, to exchange news with relatives or other persons in a close relationship by any means of communication available;
 - (g) the right not to be subjected to enforced disappearance or involuntary disappearance and/or illegal or arbitrary abductions;
 - (h) the right to recognition as a person before the law.
2. Missing persons and their relatives may not be discriminated against on any ground such as language, race, sex, nationality, religion, colour of skin, political ideology.
3. Foreign citizens shall be entitled to the same rights under the present Law as citizens of [*name of the State*] unless they benefit from a better protection prescribed by other legislation.
4. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

Commentary

Fundamental rights

- In order to prevent persons from becoming unaccounted for and to account for persons reported missing, legislative, regulatory and other measures must be taken to implement the obligations arising from international humanitarian law and to give effect to internationally protected human rights. Those rights include:
 - the right not to be arbitrarily deprived of one's life;
 - the right not to be arbitrarily deprived of one's liberty;
 - the right to a fair trial affording all judicial guarantees;
 - the right to respect for one's family life;
 - the right to know the fate of the missing and to exchange news with relatives or other persons in a close relationship by any means of communication available;
 - the prohibition of torture and other cruel, inhuman or degrading treatment;
 - the prohibition of enforced disappearance;
 - the right to be recognized everywhere as a person before the law.
- Care should be taken in the elaboration of any law on missing persons to ensure that there is no unjustified selective element in the Law. Non-discrimination is easiest to ensure by limiting restrictions on the applicability of the law and making it relevant to all missing persons under a State's jurisdiction. This is particularly important when considering missing persons who are foreign nationals or members of particular ethnic or other groups that live or have lived within a territory that has had its borders redefined as a result of conflict. Families of persons who went missing within the former State may be left without redress if, by the change in their State/nationality, they are left without the opportunity to benefit from measures designed to assist them.
- In cases where a national of a third State is missing and his/her family is not resident on that territory, care should be taken to notify the authorities of that territory of the missing person. The judicial and other authorities of third States are more likely to recognize the validity of a missing registration or certificate of absence or death if they can see that the procedures established for issuing such documents have a legal basis and are carried out by competent authorities properly designated.

- Following an international armed conflict, bilateral and multilateral cooperation among States in conjunction with humanitarian organizations can lead to more effective assistance to families. States should endeavour to address the humanitarian nature of the problem independently of other inter-State issues so as to avoid further distress to the families of missing persons pending the resolution of political issues.
- Regional and international institutions should encourage inter-State cooperation. They may also have an important role to play on their own. The role of the independent and impartial Central Tracing Agency (CTA) established by the ICRC as per the Geneva Conventions is paramount in putting the needs of the missing at the forefront, especially when several State actors are involved. The CTA is in charge of centralizing all information on prisoners of war and protected persons and of forwarding it as rapidly as possible to the authorities concerned, except where doing so might be detrimental to the persons concerned or to their relatives.
- Respect for the Law should be ensured, notably by providing the necessary technical and financial means, and administrative or penal sanctions in case of breach by the officials mandated to uphold the Law. Penalties for failing to fulfil the responsibilities and obligations towards the missing and their families as outlined in the Law are provided for in Article 24.

Article 4

Rights of persons arrested, detained or interned

1. Arrest, detention and imprisonment shall be carried out and duly registered in accordance with the provisions of the Law and only by competent officials or persons legally authorized for that purpose; those persons shall be identifiable and, wherever possible, should identify themselves. Information to be registered shall include:
 - (a) the identity of the person deprived of liberty;
 - (b) the date, time and location where the person was deprived of liberty and the name of the authority that deprived the person of liberty;
 - (c) the name of the authority having decided the deprivation of liberty and the reasons for the deprivation of liberty;
 - (d) the name of the authority controlling the deprivation of liberty, as well as the place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
 - (e) the dates when the arrested person would be produced before the judicial authority and other relevant information relating to the judicial proceedings;
 - (f) elements regarding the physical integrity of the person deprived of liberty;
 - (g) in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the human remains;
 - (h) the date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.
2. Persons deprived of their liberty, whether interned or detained, are informed, at the time of arrest, of the reasons for their arrest and are promptly informed of any charges against them.
3. Any person deprived of liberty shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful. This paragraph does not apply to persons protected under the Third and Fourth Geneva Conventions referred to in Article 1 who are interned.
4. Anyone who is arrested, detained or imprisoned may request a medical examination and shall receive adequate health care, as the case may be.

Such examination shall be conducted in private without the presence and/or influence of the detaining authorities.

The serious illness or death of a person deprived of his/her liberty shall be notified without delay to the spouse, a near relative or any other person previously designated by the person interned or detained.

5. Persons deprived of their liberty, whether interned or detained, shall have the right to inform any person with a legitimate interest, such as their families or legal counsel, as a minimum, of their capture or arrest, the location of the place where they are detained and their state of health. They shall be authorized to communicate with and be visited by their family, counsel or any other person of their choice, subject only to the conditions established by law, or, if they are foreigners in the country where they are deprived of liberty, to communicate with their consular authorities, in accordance with applicable international law.
6. The transfer or release of persons deprived of their liberty is notified to the spouse, a close relative or any other person with a legitimate interest.
7. For the purpose of paragraph 4, the competent authority shall issue regulations providing for the issuance of capture and internment cards for use by prisoners of war and interned civilians in situations of international armed conflict.

Commentary

Rights of persons arrested, detained or interned

- Arrest, detention or imprisonment must be carried out only in strict accordance with the provisions of the Law and by competent officials or persons authorized for that purpose. Those persons should be identifiable and, wherever possible, should identify themselves. To that end, regulations, orders and instructions should be issued to govern arrest and detention procedures.
- Persons deprived of their liberty must be informed promptly of the reasons for their arrest or detention. In addition, competent authorities should ensure the effective protection, *inter alia*, of the right to request a medical examination and to receive health care.

- Official registers of all persons deprived of their liberty must be maintained and kept up-to-date in every place of internment or detention (including police stations and military bases) and made available to relatives, judges, counsels, any other person having a legitimate interest, and other authorities. The information to be registered should include:
 - the identity of the person deprived of liberty;
 - the date, time and location where the person was deprived of liberty and the name of the authority that deprived the person of liberty;
 - the name of the authority having decided the deprivation of liberty and the reasons for the deprivation of liberty;
 - the name of the authority controlling the deprivation of liberty;
 - the place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
 - elements regarding the physical integrity of the person deprived of liberty;
 - in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the human remains;
 - the date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

- The right of persons to inform their families or any other person of their choice of their capture, arrest or detention is provided both under humanitarian law and human rights law. Domestic law and regulations should thus ensure that persons deprived of their liberty, whatever the reason for their internment or detention, have the right to inform their families, at least, of their capture/arrest, address and state of health and adequate means of communication should be provided. This right should not be interpreted as restricting the right to correspond with the members of one's family.

- In situations of international armed conflict, capture/internment cards must be issued by the authorities for the purpose of establishing contacts between prisoners of war/interned civilians and their families.
 - *Capture card* – The parties to a conflict which are holding prisoners of war are required to enable the latter to write a card direct to their families and to the Central Tracing Agency informing them that they have been captured. An individual capture card will contain in particular information relating to the prisoner's surname and first names, his State of origin, rank, serial number and date of birth, his family's address, and his captivity, address and state of health. Should a prisoner wish to refrain from revealing certain information, however, this must be respected.

- *Internment card* – This is modelled on the capture card and is adapted to the situation of civilian internees. It is also intended for the families and the Central Tracing Agency, and clearly identifies the general circumstances of the civilian internee by providing information notably on his/her internment, address and state of health, provided that the internee considers it appropriate to reveal these details.
- In the event of death, there is an obligation to provide a death certificate, to handle the human remains with respect and dignity, as well as to return the body to the family and/or to ensure burial.
- Protected persons under the Third and Fourth Geneva Conventions may be interned for the duration of hostilities (prisoners of war) or for imperative reasons of security (civilian internees). The Conventions provide for specific procedures in relation to the internment of such protected persons.

Article 5

Rights of relatives of persons arrested, detained or interned

1. The closest known relative, the counsel or the designated representative of a person deprived of liberty, shall receive from the competent authority the following information:
 - (a) the name of the authority having decided the deprivation of liberty;
 - (b) the date, time and location where the person was deprived of liberty and admitted to the place of deprivation of liberty;
 - (c) the name of the authority controlling the deprivation of liberty;
 - (d) the whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;
 - (e) the date, time and place of release;
 - (f) elements regarding the physical integrity of the person deprived of liberty;
 - (g) in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the human remains.Accurate information shall be provided without delay.
2. In the event of an enforced disappearance, any person with a legitimate interest, such as a relative of the person deprived of liberty, his/her representative or counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.
3. No one shall incur penal responsibility or be subjected to threats, violence or any form of intimidation for inquiring about the fate or whereabouts of relatives who are detained or interned or for maintaining private or personal contacts with them, regardless of the nature of the act for which a person was arrested, detained or interned or is suspected of having committed.

Commentary

Rights of relatives of persons arrested, detained or interned

- The relatives of the victim have the right to know the truth regarding the circumstances of the arrest, detention or internment, the progress and results of the investigation and the fate of the disappeared person.

- In order to prevent persons from being unaccounted for, accurate information about the arrest and the place of detention or internment, including any transfers and release, should be made available without delay to relatives and legal counsels or representatives. Such an obligation for the detaining authority is recognized under several provisions of international humanitarian law, human rights law instruments, and other international texts. These are based on:
 - the right not to be held in secret places or incommunicado;
 - the right to inform, or require the competent authorities to notify a relative or any other person of their choice of their arrest, address and state of health;
 - the right to the assistance of defence counsel of their choice;
 - the right to request and receive a medical examination and health care.
- No penal responsibility should be imposed on relatives for seeking information regarding the fate of a relative who is detained or interned, nor for maintaining private or personal contact with him/her. This right must be upheld no matter the nature of the act the person is suspected of having committed, even if it be of a criminal nature or an act against State security.

Article 6

Rights of missing persons

The rights and interests of missing persons shall be protected at all times until their fate has been ascertained or their death recognized.

Commentary

Rights of missing persons

- By recognizing a special legal status for the missing, national law responds to needs regarding the legal rights and obligations of the missing person and the uncertainty and hardship faced by the family. It provides a framework and appropriate remedies to deal with everyday practical issues.
- Missing persons should be presumed to be alive until their fate has been ascertained. The foremost right of a missing person is that of search and recovery. Within his/her right to life and security, a missing person has the right to have a thorough investigation conducted into the circumstances of the disappearance until a satisfactory conclusion can be drawn as to his/her fate. This right is based on the right to life and security.
- While the fate of a person has not been ascertained, his/her legal status of absence should be acknowledged and a certificate offered to attest to the uncertain fate and to allow for the protection of his/her rights.
- A person should not be declared dead without sufficient supporting evidence. It is therefore desirable to provide for an interim period of absence before a death certificate is issued. The length of time that this period of absence endures after absence is declared should be reasonable, in order to allow for proper investigation of the circumstances of the person's disappearance and his/her fate. This interim period can be a function of the circumstances of the disappearance and the ability to investigate it. In the event the person is found alive, the certificate of absence should be annulled and the legal status of the person and his/her rights fully re-instituted.
- The rights and interests of missing persons, including their civil status, property and assets, must be protected at all times until their fate has been ascertained or their death recognized. In a legal system where missing persons are to be presumed to be alive until their fate has been ascertained

or their death legally declared, provisional arrangements may be made for the management of the missing persons' property and assets. These should take into account the preservation of the missing persons' interests and the immediate needs of the missing persons' relatives and dependents. Judicial or administrative control should thus be ensured, for instance, by the nomination of a temporary or provisional guardian over the missing persons' property and assets.

- If needed, a representative should be appointed to safeguard the interests of the missing person. The representative should be able to petition relevant executive, administrative or judicial authorities if needed in respect of specific matters such as rights and obligations related to civil status or family concerns, and financial or property management issues, or any other considerations.

Article 7

Rights of relatives to know the fate of missing persons

1. Everyone has a right to know about the fate of his/her missing relative(s), including their whereabouts or, if dead, the circumstances of their death and place of burial if known, and to receive mortal remains. The authorities must keep relatives informed about the progress and results of investigations.
2. No one shall incur penal responsibility or be subjected to threats, violence or any form of intimidation for inquiring about the fate or whereabouts of relatives, nor for maintaining private or personal contact with them if their whereabouts have been ascertained, regardless of the nature of the act they may have been arrested, detained or interned for or are suspected of having committed.

Commentary

Rights of relatives to know the fate of missing persons

- The right of the family to know the fate of a missing relative is provided for under international human rights law and international humanitarian law.
- International humanitarian law imposes an obligation on each party to an armed conflict to take the necessary measures to clarify the fate of the missing person and to inform the family thereof. This obligation can be met in part through the investigation of cases of disappearances that occurred on the territory under their control and keeping the relatives informed of the progress and results of the investigation.
- Both the right to know the fate of a missing relative as well as the correlative obligation of public authorities to carry out an effective investigation into the circumstances surrounding a disappearance are recognized under international human rights law, notably through the protection of the right to life, the prohibition of torture and other forms of cruel, inhuman or degrading treatment or the right to family life.
- As time passes, the likelihood that persons who are unaccounted for will return diminishes. The responsibility of the authorities to provide information on the fate of the missing remains, but the focus of the responsibilities of public authorities is likely to shift towards the exhumation of gravesites and the identification and return of human remains.

- This change of approach is also reflected by the families who, with time, increasingly speak of the need to receive the human remains of their relatives. This is an important step in accepting the fact of their death and starting the separation and grieving process associated with burial ceremonies.
- No penal responsibility should be imposed on relatives for seeking information regarding the fate of a relative, nor for maintaining contact once the fate of the person has been determined. This right must be upheld no matter the nature of the act the person is suspected of having committed, even if it be of a criminal nature or an act against State security.

Chapter III : Legal status of missing persons and related rights

Article 8

Recognition of absence

1. The law must recognize and establish the legal personality of the missing person.
2. In accordance with [*reference to national law*], a declaration of absence shall be issued at the request of any interested person or of the competent authority by the [*judicial authority*], if it is established that a person has been missing for a period of over [...] years.
3. The [*judicial authority*] may issue a declaration of absence upon presentation of a certificate of absence delivered according to the following paragraph.
4. A certificate of absence may be delivered by [*the competent administrative or military authority*]. It shall be considered as proof of absence for the purpose of administrative and pension claims.
5. The court shall designate a representative of the absentee. The representative shall manage the interests of the absentee in his/her best interests during the period of absence. He shall have the rights and obligations as defined in [*national law on guardianship*].
6. Where an interested person other than a relative requests a declaration of absence, a relative or the court-appointed representative may intervene and oppose such a declaration with the competent authority.

Commentary

Recognition of absence

- It is essential to recognize and attribute a legal status to a missing person. A declaration of absence should be issued at the request of relatives, other interested persons or of the competent authority if it has been established that a person has been missing for a determined period of time. The minimum period of absence before a declaration of absence is issued should not be less than one year, but provision may be made for a shorter period with regard to particular events or circumstances.

- A representative, preferably with legal powers, should be appointed to protect the interests and see to the immediate needs of the missing person and the dependents. The declaration would entitle the missing person's representative to preserve the rights of the missing person and manage property and assets in his/her interest. For the dependents, financial assistance by way of an allowance drawn from the assets of the missing person might be arranged when no public assistance is available. A declaration of absence should enable the heirs to take provisional possession of the missing person's estate as would a declaration of death if the case so merits, however, provision should be made in the event of a missing person's return with regard to compensation/reparation, restitution, assistance and social care.
- It is suggested that a competent administrative or military authority be granted the authority to issue a "certificate of absence" to enable relatives to assert their rights, in particular before administrative authorities. Such a certificate should be in a particular form to ensure its validity, bear the appropriate authentication of the competent authority and include a provision that it may be adapted or revoked to respond to a change in status of the missing person. A judicial validation of the certificate through a summary procedure (declaration of absence) would be required to assert the rights of the missing person.
- Account must be taken of the particular difficulty of gathering and furnishing the necessary evidence/documentation in times of armed conflict or internal violence, and in post-conflict situations. Hence, provision should be made for the presentation of substitute or alternate evidence/documentation that may be given probative value, including attestations of absence established by military units, reliable local institutions or the ICRC (e.g. ICRC attestations based on tracing requests).
- The legal interests of missing persons should be adequately protected through designation of an appropriate representative on his/her behalf. The designation can be made in the declaration of absence. In some cases it may be appropriate for the role of legal representative to fall to a State authority, which can then petition the court or other authorities in respect of specific matters such as custody/guardianship of minors, disposal of assets, access to bank accounts and use of income. In other cases there may be a suitable person such as a spouse or parent who can deal with these issues alone provided the ability to do so has official recognition, via registration or otherwise. It should be possible to revoke the authority of the legal representative should the missing person be located.

- The civil status of the missing person should remain as is during the period of absence. All related rights should be safeguarded and related responsibilities fulfilled through an appointed representative.
- Where an interested person other than a relative requests a declaration of absence, a relative should be able to intervene and oppose such a declaration with the competent authority. This would ensure the cautious treatment of the missing persons' assets and that these are administered responsibly at least during any period while there is no presumption of death of the missing person.
- A model certificate of absence is provided in Annex 1 of this document.

Article 9

Rights of relatives regarding legal status of missing persons

1. The civil status of the spouse of a person declared missing shall not be modified before the absence or before the death of the missing person has been legally recognized in accordance with Article 8 and Article 20 of the present Law.
2. As an exceptional measure and in derogation to paragraph 1, in case both parents are missing or not present, there shall be established provisional guardianship over under-aged children of such persons within 15 days from the date of submission of the request for tracing the missing person to the competent State authority, taking account of the best interest of the child as the primary consideration.
3. In the event the absence has been officially recognized and after the expiration of an interim period of [...] year(s) following such a declaration of absence, the marriage shall be ended at the request of the surviving spouse. In the event death has been officially recognized, the marriage shall be terminated at the request of the surviving spouse.
4. In the event absence has been officially recognized, a relative of the missing person may request authorization to manage temporarily the missing person's property and assets before a competent court. When absence has not been officially recognized, a relative of the missing person may request before a competent court and exercise temporary management of the missing person's property and assets, where this is in the best interest of the missing person.
5. Relatives of the missing person who can prove their material dependence on the missing person's income should be entitled to submit a request to the authority of the competent court claiming that an allowance be drawn from the assets of the missing person in order to meet their immediate needs.
6. Where an interested person other than a relative requests a certificate of absence, the relatives may intercede on behalf of their own rights and oppose such a declaration with the competent authority.

Commentary

Rights of relatives regarding legal status of missing persons

- The civil status of the spouse and children should not be modified before the death of the missing person has been legally recognized.
- The spouse of the missing person should be considered as remaining married unless the marriage is terminated or annulled. Consideration may be given to providing for the possibility of such termination upon petition of the spouse as long as the interests of the missing are taken into account. This may be possible through the operation of existing laws on divorce or with a suitable adjustment to them.
- The interests of the child should receive particular attention as there may be no second parent or care giver in lieu of the person who has been declared missing. A provision may ensure that children are adequately protected in these situations, in the manner which best suits their needs. It is recommended that measures be taken for the provisional custody of the child immediately after the parent(s) have been reported missing and that adoption remain consistent with the 1989 Convention on the Rights of the Child and should not occur against the express wishes of the child, concerned relatives or legal guardians.
- A number of issues surrounding the management of property of persons unaccounted for, whether situated in the country or abroad, may be raised by relatives of missing persons. Property may have been lost or destroyed. Real property is often the family's most important and valuable asset and losing rights of ownership or possession may severely affect the economic situation of the affected family. Issues related to property claims will be different depending on the nature of the situation. It may involve foreign elements in case of armed conflicts or displacement of population within or without borders. At least, in the shorter term, the family will need to be able to manage the assets of the missing person which were generating income or providing shelter.
- In a legal system where missing persons are to be presumed to be alive until their fate has been ascertained or their death legally declared, provisional arrangements may be made for the management of missing persons' property and assets. These should take into account the immediate needs of the missing person's relatives and the preservation of the missing person's interests. Judicial or administrative control should thus be ensured, for instance, by the nomination of a temporary or provisional

guardian over the missing person's property and assets. This representative would ideally be able to see to the immediate rights and obligations of the missing person and to the needs of his/her dependents. If possible, financial assistance by way of an allowance drawn from the assets of the missing person might be arranged when no public assistance is available.

Article 10

Right to financial assistance and social benefits for the missing and their relatives

1. The competent authority shall assess and recognize the specific financial and social needs of missing persons and their families.
2. The right to financial assistance and social benefits is an individual and non-transferable right.
3. In accordance with the present Law and on the condition that absence or death has been recognized, dependents of the missing person, who were materially supported by such a person or became to be in need of material support following this person's disappearance, shall have the right to monthly financial assistance. A Special Fund shall be established for that purpose.
4. The acceptance of public assistance shall not be considered as a waiver of the right to obtain reparation or compensation for damage resulting from a violation of national or international law by individuals or by State authorities or officials.

Commentary

Right to financial assistance and social benefits for the missing and their relatives

- In many instances, the missing persons are men who served as the family breadwinner, so dependent women and children are more vulnerable. On the basis of a needs assessment, authorities should address the specific needs of the families and dependents of missing persons who have been declared absent in relation to armed conflict or internal violence. They should be entitled to the same social or financial benefits provided for other victims. A certificate of absence as described in Article 8 or an attestation issued by the ICRC, for instance, should be sufficient for any claim for assistance.
- Assistance should also be provided if needed to persons who have been unaccounted for, for a period of time. During their absence, their rights and financial assets including property should be duly safeguarded. Missing persons returning after a prolonged period of absence should be entitled to assistance for their rehabilitation and reintegration into society, in addition to direct financial support. The fiscal regime applicable to the

missing persons' revenues and property should also take into account the period of absence.

- There should be no adverse discrimination between the dependents of servicepersons and civilians, nor any based on gender. In many instances, the missing persons are men who were the family breadwinner, so as such dependent women and children are more vulnerable and thereby merit special protection.
- Basic social services should be offered to the dependents of missing persons. This may include: an allowance for basic material needs; housing benefits and employment opportunities; health care; an education allowance for the children; and legal assistance. When there is a system of social security, families of the missing should have access to it.
- A mechanism for needs assessment and processing of requests for assistance must be put into place and be readily accessible to the victims and their families.
- A request for financial assistance should be submitted to the relevant State or local authority in charge of social welfare in the place of residence of the requesting person, which shall study the request and issue an opinion. The request and the opinion should then be transmitted to the institution providing the assistance which should take the final decision within a reasonable delay (for example, 10 to 15 days) as to the assistance granted. The decision should be subject to appeal before an administrative tribunal.
- To ensure due adequate implementation of the present Law, the relevant State or municipal authority should submit the list of processed requests to the [authority] which should monitor the treatment of such requests by State or municipal authorities.

Chapter IV : Tracing missing persons

Article 11

Preventive measures of identification

1. In accordance with applicable national law, competent national authorities shall ensure that all persons receive a personal identity document or any other means of identification upon request. Children shall either have their own personal identity document or be registered on their parents' identity documents.
2. In times of armed conflict or internal violence, competent national authorities shall ensure that persons at risk, including in particular unaccompanied children, elderly and disabled persons, refugees and asylum seekers, are registered individually and as soon as possible, in compliance with the rules governing the protection of personal data.
3. The competent authority shall issue regulations providing for the issuance, registration and delivering of identification cards and tags to military and associated personnel, including:
 - (a) members of the armed forces and other persons liable to become prisoners of war;
 - (b) medical and religious personnel of the armed forces;
 - (c) members of the armed forces and military units assigned to civil defence.
4. The competent authority shall issue regulations providing for the issuance, registration and delivering of identification cards to civilian personnel such as:
 - (a) civilian medical personnel and civilian religious personnel;
 - (b) permanent or temporary staff of civilian hospitals;
 - (c) civilian civil defence personnel;
 - (d) personnel engaged in the protection of cultural property;
 - (e) journalists engaged in dangerous professional missions, provided that they fulfil the conditions constituting that function.

Commentary

Preventive measures of identification

- It is of paramount importance to adopt identification measures to help prevent disappearances and facilitate tracing in the event a person does go missing. Such measures may be adopted or needed in peacetime, in time of armed conflict or other situations of violence, or in post-conflict situations, depending on the measures required. However, the legal and institutional framework should already be established in peacetime, so that the different procedures can be activated when needed with the least delay.
- Under international humanitarian law, measures for identifying persons are closely connected with the concept of protection, which constitutes the very basis of the legal instruments of international humanitarian law. It is therefore essential to properly identify persons who are entitled or likely to be entitled to protection under international humanitarian law.
 - *Identity card* – This is the basic document with which the status and identity of persons who have fallen into the hands of the adverse party can be determined. It must be issued to any person liable to become a prisoner of war and must contain at least the owner's surname, first name, date of birth, serial number or equivalent information, rank, blood group and rhesus factor. As further optional information, the identity card may also bear the description, nationality, religion, fingerprints and photo of the holder.
 - *Specific identity card* – This must be issued for military personnel carrying out special tasks or for certain categories of civilians. It should contain the basic information plus certain other particulars concerning the assignment, such as the distinctive emblem of the activity, the person's training and position, and the stamp and signature of the competent authority. The categories concerned by these measures include civilian medical and religious personnel and those attached to the armed forces, civilian civil defence personnel and journalists engaged in dangerous professional missions, provided that they fulfil the conditions constituting that function.
 - *Identity disc* – The authorities may supplement the above measures by providing identity discs. The identity disc is worn permanently round the neck on a chain or strap. It should be made, as far as possible, of durable, stainless material which is resistant to battlefield conditions. The inscriptions it bears are similar to those on the identity card and should be indelible and fade-proof.

It is also important that the issuing and use of the ID, or the information appearing on it, should not be likely to give rise to arbitrary or unlawful discrimination. It should be possible for a personal identity document or any other means of identification to be available to any person on request.

- The usefulness and importance of the means and standing operating procedures of identifying individuals should be explained, in particular, in the course of training for military personnel and other categories of persons specifically concerned. Special attention should also be devoted to this aspect when international humanitarian law is being disseminated to a wider public.
- International humanitarian law has provided specific measures for identification of children, especially when less than 12 years old, who should either have their own personal ID or be registered on their parents' ID. If children have been evacuated to a foreign country for compelling reasons of health or safety, the State arranging for the evacuation and, where appropriate, the authorities of the host country must draw up an information card and send it to the ICRC Central Tracing Agency with a view to facilitating the children's return to their families.
- Necessary measures should be taken to ensure that all persons at risk are registered individually in compliance with the rules governing the protection of personal data.

Article 12

State authoritative body for tracing missing persons

1. Within 60 days from the date the present Law enters into force, an independent and impartial State authority for tracing missing persons and identification of human remains (hereinafter the “[*authority*]”) shall be established.
2. The [*authority*] shall:
 - (a) receive tracing requests and, on the basis of submitted tracing requests, shall collect, check and provide to the applicant and state authorities available information and facts on disappearance, as well as information on the whereabouts and fate of a person, in accordance with the national legislation and with the standards on the protection and management of personal data laid out in the present Law;
 - (b) be responsible for the operation of a Registry of data (hereinafter referred to as the “Registry”) as established under Article 14 of the present Law and shall adopt necessary regulations to this end;
 - (c) take appropriate measures to ensure the right of persons deprived of freedom to inform their relatives of their condition, whereabouts and circumstances of their detention/imprisonment in accordance with Article 4 of the present Law;
 - (d) ensure that a proper search for the dead is conducted in collaboration with competent national or local authorities, as soon as practical during and after any event, including an armed conflict, likely to have caused a large number of deaths or disappearances;
 - (e) ensure the adoption of all preparatory measures required for the establishment and operation of a National Information Bureau in the event of an armed conflict or in case of occupation in accordance with Article 13 of the present Law;
 - (f) take measures to ensure the enjoyment of rights by relatives of the missing person in accordance with the present Law and other legislation;
 - (g) perform any other tasks required by its duties.
3. The [*authority*] shall operate and perform its functions through both a central office and local representations. The scope of competence and procedure for the operations of the [*authority*] shall be specified by its Statute.
4. Information that has been collected or submitted to the [*authority*] before the present Law enters into force may, at the discretion of an applicant, also be submitted to the [*authority*] after the Law’s entry into force and

shall be considered as acceptable should it meet the minimum data requirement as provided in paragraph 7 Article 2 of the present Law.

5. The attributions of the State authority established under this provision are without prejudice to the power of national or international courts or other bodies for tracing missing persons and identifying human remains.

Commentary

State authoritative body for tracing missing persons

- Consideration may be given to the designation of a competent authority, the [*authority*], to deal with missing persons and their families. This may be an existing office within a specific government ministry or a specially created office. The institutional necessities for the tracing of missing person will obviously vary according to the scope of application of the law, including the choices made regarding the personal, temporal and material scope of the law.
- The [*authority*] for tracing should have the competence to receive requests for tracing of persons unaccounted for, to carry out an investigation into the circumstances surrounding the missing person and to reply to the applicant.
- The [*authority*] should also be competent to act as an interface with other State authorities for all issues related to the search for missing persons, the identification of human remains, and the protection of the rights of missing persons and their relatives.
- It is essential that the States fulfil their obligation to institute National Information Bureaux. This will ensure that information on persons deprived of their freedom is available and forwarded. It will also serve to prevent disappearances, to reassure the families about the fate of their relatives and to secure the fundamental guarantees to which everyone is entitled.

Article 13

National Information Bureau

1. The [authority] must ensure that within 60 days from the date the present Law enters into force, a National Information Bureau (hereinafter the “[NIB]”) shall be set up under the authority of [*name of the concerned national authority*]. The NIB must be operational in the event of armed conflict of an international or non-international character.
2. The NIB shall be responsible for centralizing without adverse distinction all information on the wounded, sick, shipwrecked, dead, protected persons deprived of their liberty, children whose identity is in doubt and persons who have been reported missing.
3. The structure, membership and working procedure of the NIB, and the coordination mechanisms for the collection and transmission of information to the appropriate authorities, including the Registry established by the State authority, and to the ICRC’s Central Tracing Agency, shall be defined by [*regulations*].

Commentary

National Information Bureau

- The registration of persons detained or interned is perfectly consistent with the law’s objective to protect persons not or no longer participating in the hostilities. Because of the tasks they are required to perform and the information they have to collect and transmit to the relatives of persons deprived of their freedom, the National Information Bureaux play a pivotal role in preventing disappearances. In addition, the establishment of a NIB, as provided for in the 1949 Geneva Conventions, is one means of ascertaining the fate of those who have gone missing on the battlefield or in enemy-controlled territory, and thus of allaying their families’ anxiety.
- The NIB must be operational as soon as hostilities break out. It is therefore advisable to lay the groundwork for its establishment in time of peace. If it does not already exist, the authority must ensure it is established. Fully recognizing the role of the NIB during armed conflict, it may also be authorized and structured to play a larger role in supporting the search for missing persons in a wider context, during times of peace and internal violence.

- The NIB serves as a link between the various parties to an armed conflict. They have to provide it with certain information on prisoners of war and other protected persons as quickly as possible. The NIB must immediately forward that information to the States concerned (in the case of prisoners of war) or to the State of which the protected persons are citizens or on whose territory they reside (in the case of protected persons who are kept in custody for more than two weeks, subjected to assigned residence or interned), via the Central Tracing Agency. The State that ultimately receives the information must forward it as quickly as possible to the families concerned. The NIB must also reply to all inquiries it may receive regarding prisoners of war or protected persons. In the case of prisoners of war, the NIB may make any inquiries necessary to obtain information that is not in its possession.
- As for the nature, composition and working methods of the NIB, there are no strict regulations in international humanitarian law treaties. The NIB would normally be part of a governmental administration. Since the State is responsible for ensuring that the NIB performs its duties, it must be able to exercise control over it. The State may choose to institute one or two NIBs. If a government administration is to be in charge, it may be logical to institute one NIB for civilians and another for the military, since these two categories of persons are usually dealt with by two different sets of authorities.
- The facilities granted to the NIB must be determined in advance, by legislative or regulatory means. Such facilities include:
 - exemption from postal dues of the correspondence, relief shipments and remittances of money addressed to prisoners of war and civilian internees or despatched by them;
 - so far as possible, exemption from telegraphic charges (or, at least, greatly reduced rates);
 - the provision of special means of transportation organized by the Protecting Powers or by the ICRC to convey the correspondence, lists and reports exchanged between the CTA and the NIB;
 - the provision of the necessary accommodation, equipment and staff to ensure the NIB's efficient operation.
- Depending on the category to which the protected persons belong, for example, sick, wounded, shipwrecked or dead combatants, prisoners of war or protected civilians, the NIB may collect the information, documents and objects which may assist in their identification. This includes information on the capture, state of health, wounds, sickness or cause of death and changes of situation (transfers, releases, repatriations,

escapes, admissions to hospital, deaths). It may also be necessary to collect notifications that escaped prisoners of war have been recaptured, certified lists of all prisoners of war who died in captivity, certificates of death or duly authenticated lists of the dead, information indicating the exact location and markings of graves and articles of value (including foreign currency and documents of importance to the next of kin such as last wills or other articles of intrinsic or sentimental value).

- In respect of human rights law, an alternative mechanism of tracing may be set up allowing for a petition in front of a local court that could operate in times of peace or internal conflict.

Article 14

Registry of information on missing persons

1. With a view to ensuring effective and speedy tracing and clarification of the fate of the missing persons, the Registry of centralized data on the missing persons shall be established.
2. The Registry shall accumulate and centralize data on the missing persons to assist in the process of establishing their identities, and the location and circumstances of their disappearance.
3. The data entered into the Registry shall be subject to independent, impartial and thorough verification of their accuracy and tallying with information from official records on the missing persons kept in [*name of the State*].
4. All State authorities of [*name of the State*] must afford all necessary assistance and cooperation to the [*authority*] to facilitate the operation of the Registry.

Commentary

Registry of information on missing persons

- The information about missing persons should be located in a centralized institution, to give a coherent overview of the scope of the problem, to assist with the location of the missing person and to give a reference point to other authorities, including foreign authorities, which may be more readily able to identify than the local reporting authority. This is particularly the case where, due to conflict or internal disturbances, families may move away from the area in which the initial report was made and they should not have to return there only for administrative reasons relating to the person who is missing if this can be addressed elsewhere. Every effort should be made to ensure data recorded locally is compiled centrally as soon as possible to avoid confusion and contradiction.
- The Registry shall accumulate and centralize data on the missing persons to establish their identities, and the location and circumstances of their disappearance. This data would be both administrative, such as name, age, place of residence, and qualitative, including professional details, activities and known whereabouts.

- The introduction and maintenance of safeguards in conformity with the applicable principles for the collection and processing of information relating to missing persons and their families should not put a particular burden on national authorities or those involved in collecting or processing the information. Without them, however, a significant amount of information, often of a highly sensitive nature, is potentially vulnerable to inappropriate use and this may place the person to whom it relates, or a family member, in danger.

Article 15

Submission of a tracing request

1. Any interested person may report a missing person immediately and submit a request for tracing directly to the State authority established under Article 12 of the present Law or through designated local authorities.
2. The powers of the [authority] to receive such requests and to undertake the tracing of the missing persons shall not be prejudicial to the powers of other State authorities in charge of criminal prosecution.
3. The [authority] shall ensure that procedures to report that a person is missing are widely known and facilitated.
4. The person submitting the tracing request is required to provide minimum data on the missing person's identity, as provided by paragraph 7 Article 2 of the present Law. In case such minimum required data is not provided, the person who made the request shall provide additional information within a reasonable time delay.
5. Requests for tracing foreign citizens, in accordance with the present Law, may be submitted by a foreign citizen's relatives and by relative authorities of State of citizenship of the missing citizen in accordance with the same procedure as for [name of the State] citizens, if:
 - the missing person had temporary/permanent residence on the territory of [name of the State];
 - the missing person did not have temporary/permanent residence on the territory of [name of the State] but the applicant can provide reliable information that the disappearance took place on its territory.
6. Tracing requests that have been submitted to the authorities of the [interior or other competent ministry] before the present Law enters into force may, at the discretion of an applicant, also be submitted to the [authority] after the Law's entry into force and shall be considered as acceptable should they meet the minimum data requirement as provided by paragraph 7 Article 2 of the present Law.

Commentary

Submission of a tracing request

- Registration of a tracing request is a commitment to do everything possible to respond to a report that a person has gone missing. It may be impossible to clarify the fate of all missing persons at certain moments due to circumstances, such as instances of ongoing violence that pose a threat to general safety. However, this should not *de facto* determine that no cases of missing persons be registered or investigated at all. On the contrary, an active process must be established and facilitated by the [authority], with special emphasis on preventing persons from going missing.
- In most cases it will be necessary to institute a procedure through which a person can be reported missing, registered and consequently have legal effects. The report that a person is missing may coincide with the denunciation of a crime (e.g. kidnapping), but procedures should exist to register the person as missing whether or not that person may also be the victim of a crime. Where a possible criminal act has been notified to the authorities they should begin to investigate in the usual manner.
- A wide range of persons should be able to register the fact that a person is missing. National authorities should ensure that any person with a legitimate interest may register a missing person. This includes family members and dependents, as well as legal representatives of the missing person or the family. However, it may also include other persons who are able to demonstrate a legitimate interest, such as friends and neighbours, or any person who can bear credible witness that a person is missing. Any request for such registration will of course need to be subject to challenge if information is presented to show the whereabouts of the person, or if the missing person comes forward.
- To facilitate reporting and registration, national authorities may wish to designate local institutions (police or others) as the appropriate authority for such reports. In many cases this will be the nearest one to the residence of the missing person or place where he was last seen, but it should also be possible to make the registration elsewhere when there are grounds for doing so. National law may wish to enumerate these grounds but, if it does so, it should leave open the possibility of other reasonable grounds being adduced. These may include the place of residence of the family where it is different from that of the missing person.

- The reporting should be possible as soon as there are concerns about the missing person. There normally should not be a time lapse prescribed, however, if one does exist, it should be reasonable and may depend on the circumstances reported. A record should be kept of any attempt to report a person missing regardless of the time at which it is made. The time factor with respect to what point any legal effects may come into application should be clearly established.
- Comprehensive information relating to the missing person should be collected at the time of registration. It is important to ensure that a sufficient number of details regarding the missing person and the circumstances of the disappearance are recorded at the moment of reporting as important details may be forgotten with the passage of time. In addition to basic information such as name, age and gender, it would be essential to note the clothes worn at last sighting, the place of last sighting, including the reason why the person is thought to be missing, and details of family members and of the person making the report. It should be sufficient that the person making the report is able to identify the person deemed to be missing and to give the grounds on which the concern that the person is missing is based, so registration should not be prevented if information is missing.
- Information collected should not be detrimental to the person reported missing. While it should be shared amongst the appropriate and necessary authorities, all information should be protected once provided.

Article 16

Cessation of tracing

1. A tracing request is considered settled when the person sought has been located and the family and relevant authorities have been duly informed.
2. In case a missing person is declared dead and his/her remains are not found, the tracing procedure shall not be terminated unless requested by the person who submitted the tracing request.

Commentary

Cessation of tracing

- A tracing request may be settled in the following cases.
 - The person sought has been located. A missing person should be deemed identified when the identification procedure clearly establishes that physical or biological characteristics of the person, corpse or human remains match those of the missing person or his/her whereabouts are established. The identification procedure should be carried out pursuant to the legislation in force.
 - The inquirer has been informed that the missing person has been located, whether or not contact can be re-established.
 - In case of death, reliable information on the death of the person has been transmitted to the family and the human remains have been returned if possible or handled with dignity and respect with a proper burial. In the absence of human remains, the official transmission of all reliable information to interested parties is essential.
 - Upon settlement of a tracing request, all personal data collected with the view to settle the case should be treated in accordance with the law on the protection of personal data, including their deletion or destruction, as the case may be.

Article 17

Accessing information on missing persons

1. State authorities in charge of foreign affairs, defence, justice, the interior and local governments within their respective competence shall cooperate with, provide available information to and afford necessary assistance to the [authority] in the performance of its tasks, in particular in tracing and identifying missing persons.
2. Access to the information should be granted to the individual to whom the information relates, relatives and legal representatives of the missing persons, State authorities and other organizations authorized to perform tracing and recovery of missing persons. The data shall be made available in accordance with the relevant legislation on data protection.
3. The information shall not be subject to any restrictions except those which are provided by law and necessary to protect national security or public order. Where the requested authorities refuse to provide information on such grounds, all available cooperative means shall be undertaken so as to provide to the [authority] the information strictly required to trace the missing person or identify human remains.
4. The [authority] and other concerned State authorities shall cooperate with the International Committee of the Red Cross and the National Red Cross/Red Crescent Society, in accordance with their mandates, with a view to tracing the missing persons and protecting the rights of their families.
5. A request for providing the data on the missing person may be submitted to the [authority] by the relative of such a person or by State authorities. The [authority] shall study and decide on such a request within 30 days from the date of its submission.
6. A person unsatisfied with the decision of the [authority] on his/her request may refer this decision to the court within 30 days from the date of its adoption.

Commentary

Accessing information on missing persons

- In order for the [*authority*] to fulfil its tasks, it is essential that cooperation with other public agencies and bodies be effective. Much of the information that is relative to the tracing and identification of missing persons to be provided to the inquirer will come from various governmental agencies/ministries at the national or local level. There must be a clear commitment and active support of all relevant ministries in the fulfilment of their clearly defined roles in collecting and processing information related to missing persons.
- Access to personal data should be granted to the individual to whom the information relates. All persons have to be informed of the existence, use and disclosure of personal information relating to them, and this includes the missing persons and their relatives. The right to obtain a copy and to challenge the accuracy and completeness of the data and to have details amended as appropriate should also be provided for.
- The controller of the files should be allowed to deny access, in part or totally, where the information sought contains references to other individuals or sources of information received in confidence, including information protected by confidentiality agreements concluded for a humanitarian purpose. Access could also be regulated when it could be expected to seriously threaten an important public interest (national security, public order, etc.), be seriously detrimental to the interests of other persons or impede or jeopardize the purpose for which the information was collected, including humanitarian purposes.

Article 18

Protection of data

1. The data kept in the Registry may not be disclosed or transferred to persons for purposes other than those for which they were collected in accordance with the present Law.
2. Procedure for use, entry, exclusion and exchange of data, its verification and management shall be determined by Regulations on the Registry.

Commentary

Protection of data

- Information relating to the missing person must be handled appropriately with respect to the privacy of that person and his/her family. Appropriate data protection rules and practices at the national level can ensure that all personal information remains sufficiently protected in terms of who has access and for what purpose and that access to it is permitted when the humanitarian need requires. Rules regarding data protection need to balance these potentially conflicting needs and will require an explicit or inherent flexibility in any measures, administrative or legal, that operate at the national level.
- In many national systems, elaborate legal provisions for the protection of personal data and privacy already exist. However, often the most sophisticated systems are uncertain about how to address issues relating to missing persons and their families and little specific provision exists in this regard. While some national laws specifically protect the data of living people only, when dealing with missing people it is to be assumed that they are alive and that their data should be protected. Where national law does not protect the information on dead people, special consideration may be due in the case of death following a period of being missing as the information may continue to be deemed personal by the family.
- Measures must ensure protection of information and the privacy of missing persons and their relatives, as well as ensure that the data is not used for any purpose other than intended. The use for which data is being collected should be clearly established at the time of collection. The consent of the individual concerned, whether it is the missing person or person providing the information, is understood as also comprising consent to the specific purpose for which the collection of the data is intended. Such purposes include: establishing the identity,

location, conditions and fate of persons reported missing; establishing the identity of unidentified human remains; providing information to families concerning a missing or deceased relative; and as the case may be, contributing to the administration of justice. Information deemed to be sensitive, such as DNA information collected from family members for matching human remains, is increasingly used in relation to criminal investigations and proceedings as well as in situations of natural disasters, accidents, and the search for missing persons. National legislation should normally provide for the situations in which DNA samples may be taken, the method for doing so and the processing of the data in the framework of the intended purpose. It is important to ensure that a DNA analysis performed for the purpose of identification of a missing person be separated from any other use, for example, in criminal proceedings, otherwise it may inhibit recourse to this form of information gathering on the part of relatives and interested parties.

- At the same time, these measures of protection must not in any way serve as an obstacle to locating or identifying the missing person. It is imperative therefore that within organizations that collect, process or store personal data, clear procedures are put in place to ensure respect of privacy together with a system of accountability and control. Implementing measures must include provisions addressing a failure to comply that outline significant consequences.
- Any transfer of personal data to a third party will have to be assessed in light of the specific purpose for which the data was obtained, of the specific purpose of the data collection or information request by the third party, and of the guarantees of protection that the third party can offer. Whether the data subjects would have given such information to the third party and whether the consent to the collection and processing of the data comprised an implicit consent or otherwise for such a transfer should be also assessed.
- Personal data that has served the purpose for which it was collected should be deleted or destroyed, thus preventing any improper or inappropriate use in the future. Specific information collected or processed for the purpose of locating a missing person or identifying human remains is no longer necessary once the person has been located or the remains identified. It should therefore be destroyed unless there is an overwhelming humanitarian need to retain it for a further and definite period of time. Alternatively, the information can be depersonalized so that it is no longer possible to identify an individual on the basis of it. This may be done for statistical or historical purposes. Personal data that has lost its personal character is no longer protected as personal data.

Chapter V : The search, recovery and treatment of the dead

Article 19

Obligation for proper search and recovery of the dead

Once the fate of a missing person has been determined to be death, all available means must be undertaken to ensure recovery of the body and any personal effects.

Commentary

Obligation for proper search and recovery of the dead

- The death of a missing person may be determined through the discovery of human remains or presumed as a result of other evidence, events or certain defined situations, or may be presumed after the passage of time. It is not generally desirable to provide for an automatic presumption of death except in clearly defined circumstances which suggest that death was inevitable. In such cases, a reasonable period of time should have passed since the registration of the missing person. Death may be presumed after the passage of a certain time period (probably a few years) and at the request of the legal representative or spouse/family, or the competent authority. For reasons of certainty, testamentary and otherwise, it is probably not desirable for a legal status of missing to be indefinite and there should be some provision for the determination of the status, if not by request then perhaps when the missing person would have reached a particularly old age.
- In situations of internal violence, domestic law and regulations must provide for an effective official investigation into the circumstances of death when any person is killed or appears to have been killed as a result of the use of force by agents of the State. In international and non-international armed conflicts, the competent authorities must adopt adequate procedures for providing information on identity, location and cause of death to the appropriate authorities or to the families.
- The change in status from a missing person to a confirmed case of death obligates the State authority to undertake all necessary measures available to recover the human remains. This process can also extend to the personal effects that may be associated with the victim.

- The [*authority*] should identify the deceased and inform the relatives of the discovery. All records should be brought up to date and synchronized, including the NIB and the Registry, with reference information about persons deceased under their authority or control, whether identified or not, the location of human remains and graves, and the issuance of death certificates. At this time, the legal status and related rights as well as the need for financial assistance of the dependents of the deceased may need to be re-evaluated.
- A declaration of death should not be issued before all available measures or actions to ascertain the fate of the missing person have been taken, including public notifications that a declaration of death is to be issued. Provision should be made for the consequences of the return of missing persons who have been legally declared dead.
- All necessary measures should be undertaken to ensure proper handling of the remains and personal effects of the deceased. Maintaining dignity and respect is of utmost importance. The remains may be returned to the family if possible. If not, a proper burial should be ensured.

Article 20

Declaration of death

1. A declaration of death shall be issued at the request of any interested person or of a competent State authority by [competent national, administrative or military authority], if it is established that a person has been missing or declared absent for a period of over [...] year(s). If someone other than the relatives requests a declaration of death, the relatives may oppose such a declaration with the competent national authority.
2. A declaration of death shall not be issued until such time as all available measures or actions to ascertain the fate of missing persons have been taken, including public notifications that a declaration of death is to be issued

Commentary

Declaration of death

- A declaration of death may be issued at the request of any interested person or the competent authority. If someone other than the family requests a declaration of death, the relatives should be allowed to oppose such a declaration. Such a declaration should not be issued before all available measures or actions to ascertain the fate of the missing person have been taken, including public notifications that a declaration of death is to be issued.
- A declaration of death and issuance of a death certificate should be performed by a designated judicial or other competent authority. The courts in the missing person's place of residence or in the family's current place of residence should be competent to hear a request for a declaration of death. Account must also be taken of the particular difficulty of accessing the court and gathering and furnishing the necessary evidence/documentation in times of armed conflict or internal violence, and in post-conflict situations. Hence, additional provision should be made for circumstances where a medical practitioner or other competent person can issue a death certificate within a reasonable time. Also, provision should be made for the presentation of substitute or alternate evidence/documentation and it may be appropriate for attestations of absence/death established by military units, reliable local institutions or the ICRC to be given probative value (e.g. ICRC attestations based on tracing requests).

- Issuance of a death certificate, following a finding of actual or presumed death, should have all of the effects with regard to a missing person as it does with regard to any other person. The death certificate should also bring to an end any special legal arrangements made to address the fact that a person was missing. For example, a spouse should be free to remarry and inheritance provisions may take their normal course. A provision should be made in the event of a missing person's return with regard to compensation/reparation, restitution, assistance and social care.
- A model certificate of death is provided in Annex 2 of this document.

Article 21

Treatment of human remains

1. The competent authority should ensure that the dead are treated with respect and dignity. The dead must be identified and buried in individually marked graves in sites that are identified and registered.
2. If exhumations are required, the competent authority should ensure that the identity of human remains and cause of death are established with due diligence by an official qualified to perform exhumations and post-mortem examinations and to make a final determination.
3. In situations of international armed conflict, exhumations shall be permitted only:
 - (a) to facilitate the identification and return of the remains of the deceased and of personal effects to the home country upon its request or upon the request of the next of kin;
 - (b) where exhumation is a matter of overriding public necessity, including cases of medical and investigative necessity, notice shall be given to the home country of the intention to exhume the remains together with details of the intended place of reburial.
4. Human remains and personal effects shall be returned to the families.

Commentary

Treatment of human remains

- The treatment of death is normally subject to legal regulation within the domestic framework. However, this national legislation should contain provision that covers the situation of the dead and human remains in the case of missing persons. The law adopted to address the missing should subsequently contain a provision referring to this national legislation.
- Questions concerning the circumstances of death, or at times the number of possible dead, or the fact that the deaths may have occurred many years ago, may lead some to suggest that the normal rules may not apply. While these are factors that must be taken into account, the basic proposition should be that normal handling is appropriate except where the authorities can invoke a well founded reason to act differently. Any separate procedure must still take into account the rules of international

law and the basic need to ensure respect for the dead and the needs of their families.

- In addition, the domestic rules of criminal procedure and investigation should provide that information collected during exhumations that might help identify the victims of armed conflict or internal violence is forwarded to the authorities responsible for identifying the victims. Such rules should also ensure that all information/evidence gathered on deceased persons during judicial proceedings or investigations is forwarded directly to the family or to the ICRC, the latter acting either as an intermediary or to ensure that the information is properly stored pending transmission to the families.
- When following up the discovery of unidentified bodies and human remains, however old and wherever found, there should be an awareness that their identities may subsequently be confirmed and their treatment should as far as possible be the same as for an identified corpse.
- The discovery of burial sites can be important not only in tracing missing persons but also in the identification of the commission of crimes and their possible subsequent prosecution. As such, exhumations should be performed only with the proper authorizations, and according to the conditions specified in law. Normally, the skills of a fully qualified forensic specialist should be employed and a framework provided for the type of professional qualifications necessary to carry out or supervise any activities that involve the handling of human remains.
- Ethical rules of conduct commonly accepted by the international community on the use of means of identification, in particular for investigations carried out in an international context, must be upheld and should be promoted and/or adopted by the competent authorities. The procedures of exhumation and post-mortem examination should respect the following principles.
 - At all times, the dignity, honour, reputation and privacy of the deceased must be respected.
 - The known religious beliefs and opinions of the deceased and his/her relatives should be taken into consideration.
 - Families should be kept informed of the decisions in relation to exhumations and post-mortem examinations, and of the results of any such examination. When circumstances permit, consideration should be given to the presence of the families or of family representatives.
 - After post-mortem examination, the remains should be released to the family at the earliest time possible.

- It is essential that all information be collected for the purpose of identification whenever exhumations are performed; regulations and procedures should be in conformity with the principles governing the protection of personal data and genetic information; it is important to preserve evidence conducive to the identification and that may be required for any criminal investigation, whether under national or international law.
- Depending on the apparent circumstances of the death or deaths concerned, overall responsibility for the protection and recovery of the remains should be allocated to a specific authority, in cooperation with others as appropriate. In this way, it is more likely that a clear chain of responsibility, authority and accountability is established. There should be a clear form of authorization for the operation of recovery, including appropriate health and safety regulations.

Article 22

Burial and exhumation

1. The missing persons' relatives shall have the right to demand that places of burial and exhumation where the missing persons were either buried or exhumed be marked.
2. The marking of the place of burial or exhumation shall be within the competence of the [authority] after establishing the identity of buried persons or their remains.
3. The [authority] shall issue a permit for putting up a memorial plaque or some other commemorative mark. Issues concerning the marking of burial or exhumation sites shall be governed by regulations adopted by the [authority] within 60 days from the date of entry into force of the present Law.
4. The [authority] shall ensure the existence and functioning of an official graves registration service to record the particulars of the dead and their burial. This service should extend to the information regarding protected persons in international armed conflicts.

Commentary

Burial and exhumation

- The remains of those who have been killed in action and of other dead persons must be disposed of in compliance with the rules of international law, in particular with regard to the search, collection, identification, transportation, disposal or burial, and repatriation of the persons deceased.
- In all circumstances, applicable procedures, directives and instructions should respect *inter alia* the following principles.
 - The dead must be treated with respect and dignity.
 - The identity of human remains and the cause of death should be established with due diligence, and all available information should be recorded prior to the disposal of the remains. A public official or person competent, preferably a trained forensic specialist, is to be designated to perform post-mortem examinations and to make the final determination as to identity and cause of death. Commonly recognized international ethical standards of practice must be adhered to during this process.

- The burial should be preceded where possible by a medical examination and a report should be prepared.
 - Burial should be in individual graves, unless circumstances require the use of collective graves.
 - The dead should be buried where possible according to the rites of the religion to which the deceased belonged.
 - Cremation should be avoided, except where necessary (e.g. for reasons of public health) and a record of the reason for it kept, as well as the ashes.
 - All graves must be marked.
- For the benefit of members of the armed forces, including those involved in peacekeeping or peace enforcement operations, of armed groups, and of civilian auxiliary services or other organisms involved in the collection and management of the dead, standard operating procedures, directives or instructions should include:
- the search, collection, and identification of the dead without distinction;
 - the exhumation, collection, transportation, temporary storage or burial, and repatriation of human remains and corpses;
 - training and information on means of identification and the treatment of the dead.
- In international armed conflicts, the authorities must see to it that the dead, including burials, are recorded as well as the particulars of graves and those interred there. This task might be efficiently covered by the State's official graves registration service – if not, it would require the establishment and functioning of a complementary system to record the details of the death and interment of protected persons.

Article 23

Unidentified dead

1. In the event of unidentified human remains, they shall be treated in accordance with Articles 19 to 22 of the present Law.
2. A record shall be kept with the Registry and access to the relevant information facilitated to ensure that the unidentified dead receive due attention until their identity is ascertained and the family and interested parties are informed.

Commentary

Unidentified dead

- All available means must be employed to identify human remains.
- If the remains of a person are found, yet not identified or identifiable, the body and all personal effects must still benefit from all measures that ensure dignified handling and burial.
- A record should necessarily be kept active in order to allow for future identification and subsequent notification to relatives and interested parties, including State authorities.

Chapter VI : Criminal responsibility

Article 24

Criminal acts

1. The following acts, when committed in violation of the present Law or any other applicable penal law, shall be prosecuted and punished according to prescribed penalties:
 - (a) illegal arrest, detention or internment;
 - (b) unjustified refusal by an official to provide data on a missing person when requested by the missing person's relative, the [authority] or any other State authorities;
 - (c) undue or delayed provision of information on a missing person by an official requested to provide such data in accordance with the present Law and the Regulation of the Registry;
 - (d) intentional provision of false and unverified data on the missing person by an official that impedes the tracing of such a person;
 - (e) unlawful use and disclosure of personal data;
 - (f) the systematic and deliberate denial of the right to inform relatives of one's capture/arrest, address and state of health in contravention of Article 4 (4) of the present Law;
 - (g) the systematic and deliberate denial of the right to exchange news with relatives in contravention of Article 4 (4) of the present Law;
 - (h) intentional mutilation, despoliation and desecration of the dead;
 - (i) causing enforced disappearance.
2. The failure by an authorized official to uphold the provisions of this Law and related legislation, including the administrative laws and regulations governing the State authoritative bodies described herein, shall be subject to penalties prescribed in the [reference to domestic penal legislation] with regard to acts which constitute violations thereof.
3. The present Law is completed by [reference to domestic penal legislation] with regard to acts which constitute violations of international humanitarian law or other crimes under international law.

Commentary

Criminal acts

- The systematic and deliberate denial of the right to know the fate of one's relative should be punished as a criminal offence under domestic law. Penalties should be defined that are appropriate to the gravity of the offence.
- The systematic and deliberate denial of the right to inform relatives of one's capture/arrest, address and state of health should be punished as a criminal offence under domestic law. Penalties should be defined that are appropriate to the gravity of the offence.
- Consistent with most religious and cultural traditions, humanitarian law prohibits the despoliation and mutilation of the dead. National measures should exist in most legal systems to ensure that this prohibition is respected through the criminalization of all acts of mutilation and despoliation. The act of mutilating or despoiling the dead can lead to complications in the identification of the dead and is therefore likely to increase the chances of a person being considered missing when in fact they have been killed. It therefore directly impacts on the ability of the family to know the fate of the missing person.
- Similar offences should exist for the non-respect of burial sites, and the desecration of graves. The act of mutilating or despoiling the dead can constitute the war crime of committing outrages upon personal dignity, in particular humiliating or degrading treatment as identified in Article 8(2)(b)(xxi) of the Statute of the International Criminal Court. National law should ensure that the crimes of despoliation and desecration of the dead are punishable as criminal offences. Intentional mutilation should also constitute a criminal offence, and may additionally be an element of concealing separate criminal offences which resulted in the deaths.
- The current Law must contain a reference to the criminality of serious violations of IHL and other crimes under international law and the penal sanctions associated with these crimes as provided for in domestic legislation. If such national provisions implementing IHL do not yet exist, the [authority] shall undertake the promotion and incorporation of IHL principles on a national level and retain the power to initiate criminal proceedings with respect to violations when necessary.

- The failure by an authorized official to uphold the provisions of this Law shall be subject to penalties prescribed in the domestic penal legislation. The responsibility of the officials extends to those acts committed by their subordinates.

Article 25

Prosecuting criminal acts

1. State authorities shall adopt legislation in order to ensure that crimes enumerated in Article 24 of the present Law are criminalized under domestic law and that criminal proceedings can be initiated by the missing person or his/her legal representative, family members, interested parties or the State authority.
2. An amnesty for acts may be granted to individuals and under certain conditions. No form of amnesty may be granted for crimes under international law or serious violations of international humanitarian law.

Commentary

Prosecuting criminal acts

- The national authorities shall take the necessary measures to establish its jurisdiction over the offences listed in Article 24.
- The person or group of persons on trial for the crimes defined in Article 24 shall be entitled to all the judicial guarantees normally granted to any ordinary person being tried.
- If a crime has been committed and the designated State authority (e.g. Minister of Public Affairs) is not prosecuting the penal acts, then the State should oblige the enforcement of the law and prosecution of the crime.
- If amnesty is granted by a legislative act, it must clearly specify who and which cases at law can and cannot benefit from such a provision, and under what circumstances. For example, amnesty must not:
 - cover persons who committed crimes under international humanitarian law, including war crimes, genocide and crimes against humanity;
 - preclude the initiation of civil proceedings or have a legal effect on the victims' right to reparations;
 - must not circumvent any guarantees of due process;
 - eliminate the opportunity for identifiable victims to question and challenge the decision.

Chapter VII : Supervision

Article 26 Supervision

Monitoring of the execution of the present Law shall be the responsibility of the supervisory authority of the [*authority*].

Chapter VIII : Concluding provision

Article 27 Entry into force

The present Law shall enter into force in accordance with the domestic legislation of [*name of the State*].

Annex 1

Model certificate of absence

(Title of responsible authority)

CERTIFICATE OF ABSENCE

Reference number

Name and first names

Place and date of birth

Address

Citizenship Sex

Occupation

Type and number of document

Father's name

Mother's name

Name of spouse

Dependents

Date and place of last sighting

Name of the reporting person

Address of the reporting person

REPRESENTATIVE OF THE MISSING PERSON

Authority

or

Name and first name

Address

Citizenship

Type and number of document

Duration of the validity of the declaration of absence

(Date, seal and signature of the responsible authority)

Annex 2

Model certificate of death

(Title of responsible authority)

CERTIFICATE OF DEATH

Reference number

Name and first names

Place and date of birth

Last address

Citizenship Sex

Occupation

Type and number of document

Father's name

Mother's name

Name of spouse

Dependents.....

Authority

Annex 3

IHL provisions

Extract from the ICRC report *The missing and their families* published following the International Conference of Governmental and Non-Governmental Experts held from 19 to 21 February 2003.

Foreword

International humanitarian law and international human rights law are concurrently applicable in armed conflicts. Human rights treaties apply at all times and in all circumstances to all persons subject to the jurisdiction of a State Party. They therefore continue to apply in times of armed conflict, except to the extent that a State Party may have legitimately derogated from some of its obligations under a treaty. Stringent conditions must be met for a derogation to be legitimate. International humanitarian law is applicable in situations of armed conflict and is non-derogable.

In order to spare the reader unnecessary repetition, the provisions of international human rights law are cited as references only in respect of the rules applicable in internal violence; only those provisions that specifically mention armed conflicts or refer to a non-derogable obligation are cited as references in respect of the rules applicable in international and non-international armed conflicts.

Neither this list of international humanitarian law rules applicable in armed conflicts nor that of the international human rights rules applicable in internal violence is by any means exhaustive.

A. International law

International law applicable in international armed conflicts

The State Parties undertake to respect and ensure respect for the Geneva Conventions and Additional Protocol I in all circumstances, and, in situations of serious violations of the Geneva Conventions or Additional Protocol I, the State Parties undertake to act, jointly or individually, in cooperation with the United Nations and in conformity with the United Nations Charter. (1)

Knowing the fate of relatives

- Families have the right to know the fate of their relatives. (2)
- Each party to the conflict must take all feasible measures to account for persons reported missing as a result of an armed conflict. (3)

General protection

- All protected persons have the right to respect for their family life. (4)
- The life of every combatant *hors de combat* and civilian must be respected and protected. (5)
- Whenever circumstances permit, and particularly after an engagement, all possible measures must be taken, without delay, to search for and collect the wounded, sick and shipwrecked, without adverse distinction. (6)
- Every combatant *hors de combat* and civilian must be treated humanely. (7)
- Torture and other cruel, inhuman or degrading treatment or punishment are prohibited. (8)
- Hostage-taking is prohibited. (9)
- The arbitrary deprivation of liberty is prohibited. (10)
- Enforced disappearance is prohibited. (11)
- Discrimination based on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria is prohibited. (12)

- Everyone has the right to a fair trial by an independent, impartial and regularly constituted court respecting all internationally recognized judicial guarantees. (13)
- Without prejudice to more favourable treatment, neutral States must apply by analogy the relevant provisions of the four Geneva Conventions and Additional Protocol I to protected persons they receive or intern in their territory. (14)
- Each party to the conflict must allow the free passage of and not arbitrarily impede the delivery of relief supplies of an exclusively humanitarian nature intended for civilians in need in areas under its control; humanitarian relief personnel must have the freedom of movement essential to guarantee the exercise of their functions, unless imperative military reasons so demand. (15)

Conduct of hostilities

- The parties to the conflict must at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly must direct their operations only against military objectives. (16)
- Indiscriminate attacks are prohibited. (17)
- In the conduct of military operations, precautions in attack and against the effects of attack must be taken to spare the civilian population, civilians and civilian objects. (18)
- Combatants *hors de combat* and civilians must not be used to shield military operations. (19)

Protection of civilians

- The parties to the conflict must not order the displacement of or forcibly displace the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand and then only for the time necessary; civilians thus evacuated must be transferred back to their homes as soon as hostilities in the area in question have ceased. (20)
- Where displacement occurs, the basic needs of the civilian population must be met, its security ensured and family unity maintained. (21)

- The voluntary and safe return and reintegration of displaced persons must be facilitated. (22)
- Returned displaced persons must not be discriminated against. (23)
- The transfer by the Occupying Power of parts of its own civilian population into the territory it occupies or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory is prohibited. (24)
- Women, the elderly and the disabled affected by armed conflict are entitled to special protection. (25)
- Children affected by armed conflict are entitled to special protection. (26)

Protection of protected persons deprived of their liberty for reasons related to the conflict

- The personal data of protected persons deprived of their liberty for reasons related to the conflict must be recorded. (27)
- The information recorded on protected persons deprived of their liberty for reasons related to the conflict must be of such a character as to make it possible to identify the person exactly and to advise the next-of-kin quickly. (28)
- Internment of civilians. (29)
 - A. Protected persons on the territory of a party to the conflict may be interned or placed in assigned residence only if the security of the Detaining Power makes this absolutely necessary. This action must be reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose; if internment or placing in assigned residence is maintained, the court or administrative board must review the action periodically, and at least twice yearly, with a view to the favourable amendment of the initial decision, if circumstances permit. (30)
 - B. If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment. Decisions regarding such assigned residence or internment must be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of GCIV, including the right of appeal. The appeal must be decided with the least possible

delay and, if the decision is upheld, it must be subject to periodic review, if possible every six months. (31)

C. Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of interment or imprisonment is proportionate to the offence committed. (32)

D. Each interned protected person must be released by the Detaining Power as soon as the reasons which necessitated his/her internment no longer exist. (33)

- Interned members of the same family must be lodged together in the same place of internment. (34)
- Women deprived of their liberty must be separated from detained men, unless they are members of the same family, and must be guarded by women. (35)
- Every civilian internee must be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible. (36)
- Accused prisoners of war, accused persons in occupied territory, and accused civilian internees must be allowed to receive visits from their legal counsel. (37)
- The ICRC must be granted access to all protected persons deprived of their liberty for reasons related to the conflict. (38)
- Protected persons deprived of their liberty for reasons related to an international armed conflict must be released and repatriated in accordance with the Geneva Conventions. (39)

Communication between family members

- All persons in the territory of a party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. This correspondence shall be forwarded speedily and without undue delay. (40)

- Prisoners of war and civilian internees must be allowed to send and receive letters and cards; the censoring of correspondence addressed to prisoners of war or civilian internees or dispatched by them must be done as quickly as possible and only by the appropriate authorities. (41)
- Correspondence addressed to prisoners of war or civilian internees or dispatched by them through the post office, either direct or through the Information Bureaux, must be exempt from any postal dues. (42)
- Should military operations prevent the Powers concerned from fulfilling their obligation to ensure the conveyance of mail and relief shipments, the Protecting Power, the ICRC, or any other organization duly approved by the parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means. (43)

Treatment of the dead and graves

- Whenever circumstances permit, and particularly after an engagement, all possible measures must be taken, without delay, to search for and collect the dead, without adverse distinction. (44)
- Each party to the conflict must treat the dead with respect and dignity and prevent their being despoiled. (45)
- Each party to the conflict must take measures to identify the dead before disposing of their remains. (46)
- The dead must be disposed of in a respectful manner and their graves respected. (47)
- Burial should be in individual graves, unless unavoidable circumstances require the use of collective graves. All graves must be marked. (48)
- Each party to the conflict must take all possible measures to provide information to the appropriate authorities or to the family of the deceased regarding the deceased's identity, location and cause of death. (49)
- Each party to the conflict must endeavour to facilitate the return of the deceased's remains and personal effects to the home country at its request or at the request of the next-of-kin. (50)

Collecting and forwarding information

- Upon the outbreak of a conflict and in all cases of occupation, each party to the conflict must establish an official Information Bureau:
 - A. to centralize, without adverse distinction, all information on the wounded, sick, shipwrecked, dead, protected persons deprived of their liberty, children whose identity is in doubt and persons who have been reported missing and to provide this information to the appropriate authorities, through the intermediary of the Protecting Powers and likewise of the ICRC Central Tracing Agency (51);
 - B. to be responsible for replying to all enquiries concerning protected persons and for making any enquiries necessary to obtain information which is asked for if this is not in its possession (52);
 - C. to act as an intermediary for the free transport of matter, including correspondence, sent to and by protected persons (and whenever requested through the ICRC Central Tracing Agency) (53).
- Information recorded on protected persons deprived of their liberty or on deceased persons must be of such a character as to make it possible to identify the person exactly and to advise the next-of-kin quickly. (54)
- Each party to the conflict must furnish the persons under its jurisdiction liable to become prisoners of war with an identity card showing (55):
 - A. full name,
 - B. rank, army, regimental, personal or serial number or equivalent information,
 - C. date of birth.
- Medical and religious personnel must carry a special identity card embossed with the stamp of the military authority showing (56):
 - A. the distinctive emblem;
 - B. full name;
 - C. rank and service number;
 - D. date of birth;
 - E. the capacity in which he/she is entitled to protection;
 - F. photograph;
 - G. signature and/or fingerprints.
- Within the shortest possible period, each of the parties to the conflict must transmit to the Information Bureau the following information, when available, on each prisoner of war (and medical and religious personnel) (57):

- A. full name;
 - B. rank, army, regimental, personal or serial number;
 - C. place and date of birth;
 - D. indication of the Power on which the POW depends;
 - E. first name of father;
 - F. maiden name of mother;
 - G. name and address of the person to be informed;
 - H. address at which correspondence may be sent to the POW;
 - I. information regarding transfers, releases, repatriations, escapes, admissions to hospital and death;
 - J. if the POW is seriously ill or wounded, the state of health (to be supplied regularly, every week if possible).
- Within the shortest possible period, each of the parties to the conflict must transmit to the Information Bureau at least the following information on other protected persons deprived of their liberty for reasons related to the conflict (58):
- A. full name;
 - B. place and date of birth,;
 - C. nationality;
 - D. last known place of residence;
 - E. distinguishing characteristics;
 - F. first name of father;
 - G. maiden name of mother;
 - H. date, place, and nature of the action taken with regard to the individual;
 - I. address at which correspondence may be sent to the person deprived of liberty;
 - J. name and address of the person to be informed;
 - K. information regarding transfers, releases, repatriations, escapes, admissions to hospital and death;
 - L. if the protected person deprived of his/her liberty is seriously ill or wounded, the state of health (to be supplied regularly, every week if possible).
- Within the shortest possible period, each of the parties to the conflict must transmit to the Information Bureau the following information, when available, on each wounded, sick, shipwrecked or dead person (59):
- A. full name;
 - B. army, regimental, personal or serial number;
 - C. date of birth;
 - D. any other particulars figuring on the identity card or disc;

- E. date and place of capture or death;
 - F. particulars concerning wounds or illnesses, or cause of death.
- In case of death, the following must be collected and transmitted to the Information Bureau (60):
- A. date and place of (capture and) death;
 - B. particulars concerning wounds/illnesses or cause of death;
 - C. all other personal effects;
 - D. date and place of burial with particulars to identify the grave,
 - E. when applicable, half of the identity disc must remain with the body and the other half transmitted.
- At the commencement of hostilities, the parties to the conflict must establish an official graves registration service to see to the dead, including burials, and to record the particulars for identification of graves and those there interred. (61)
- The authorities of the party to the conflict arranging for the evacuation of children to a foreign country and, as appropriate, the authorities of the receiving country must establish for each child a card with photographs, which they must send to the ICRC Central Tracing Agency. Each card must bear, whenever possible and whenever it involves no risk of harm to the child, the following information (62):
- A. full name;
 - B. sex;
 - C. place and date of birth (or, if that date is not known, the approximate age);
 - D. father's full name;
 - E. mother's full name and maiden name;
 - F. next-of-kin;
 - G. nationality;
 - H. native language, and any other language spoken by the child;
 - I. address of the child's family;
 - J. any identification number attributed to the child;
 - K. state of health;
 - L. blood group;
 - M. any distinguishing features;
 - N. date on which and place where the child was found;
 - O. date on which and place from which the child left the country;
 - P. religion, if any;
 - Q. present address in the receiving country;
 - R. should the child die before returning, the date, place and circumstances of death and the place of interment.

- Information the transmission of which might be detrimental to the person concerned or to his/her relatives must be forwarded to the ICRC Central Tracing Agency only. (63)
- The Information Bureau and the ICRC Central Tracing Agency must enjoy free postage for all mail and, as far as possible, exemption from telegraphic charges or, at least, greatly reduced rates. (64)

Customary international law

Whereas the customary law status of rule 10.64 is uncertain at the time of writing, all other rules mentioned above are widely recognized as representing customary international law applicable in international armed conflicts (10.1 to 10.63 and 10.65, 10.66).

International law applicable in non-international armed conflicts

General protection

- All persons have the right to respect for their family life. (65)
- The life of every person not or no longer directly participating in the hostilities must be respected and protected. (66)
- Whenever circumstances permit, and particularly after an engagement, all possible measures must be taken, without delay, to search for and collect the wounded, sick and shipwrecked, without adverse distinction. (67)
- Every person not or no longer directly participating in the hostilities must be treated humanely. (68)
- Torture and other cruel, inhuman or degrading treatment or punishment are prohibited. (69)
- Hostage-taking is prohibited. (70)
- Discrimination based on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria is prohibited. (71)
- Everyone has the right to a fair trial by an independent, impartial and regularly constituted court respecting all internationally recognized judicial guarantees. (72)

- Each party to the conflict must allow the free passage of and not arbitrarily impede the delivery of relief supplies of an exclusively humanitarian nature intended for civilians in need in areas under its control; humanitarian relief personnel must have the freedom of movement essential to guarantee the exercise of their functions, unless imperative military reasons so demand. (73)

Conduct of hostilities

- The parties to the conflict must at all times distinguish between the civilian population and persons participating directly in the hostilities and between civilian objects and military objectives and accordingly must direct their operations only against military objectives. (74)
- Indiscriminate attacks are prohibited. (75)
- In the conduct of military operations, precautions in attack and against the effects of attack must be taken to spare the civilian population, civilians and civilian objects. (76)
- Persons not or no longer directly participating in the hostilities must not be used to shield military operations. (77)

Protection of civilians

- The parties to the conflict must not order the displacement of or forcibly displace the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand and then only for the time necessary. (78)
- Where displacement occurs, the basic needs of the civilian population must be met, its security ensured and family unity maintained. (79)
- Children affected by armed conflict are entitled to special protection. (80)

Protection of persons deprived of their liberty for reasons related to the conflict

- Women deprived of their liberty must be separated from detained men, unless they are members of the same family, and must be guarded by women. (81)
- The ICRC should be granted access to all persons deprived of their liberty for reasons related to the conflict. (82)

- At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who participated in the armed conflict or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained. (83)

Communication between family members

- Persons deprived of their liberty for reasons related to the armed conflict must be allowed to send and receive letters and cards, the number of which may be limited by competent authority if it deems necessary. (84)

Treatment of the dead and graves

- Whenever circumstances permit, and particularly after an engagement, all possible measures must be taken, without delay, to search for and collect the dead, without adverse distinction. (85)
- Each party to the conflict must treat the dead with respect and dignity and prevent their being despoiled. (86)
- The dead must be disposed of in a respectful manner and their graves respected. (87)

Customary international law

- It is widely recognized that, in addition to rules pointed under “Protection of persons deprived...” the points 84 and 85 to 87, rules 1, 2, 3, 10, 11, 22, 23, 25, 27, 46, 48 and 49 also represent customary international law applicable *mutatis mutandis* in non-international armed conflicts.

International law applicable in internal violence

General protection

- All persons have the right to respect for their family life. (88)
- The arbitrary deprivation of life is prohibited. (89)
- All persons must be treated with humanity and with respect for the inherent dignity of the human person. (90)
- All persons have a right to adequate food, clothing and housing and to the enjoyment of the highest attainable standard of physical and mental health. (91)
- Torture and other cruel, inhuman or degrading treatment or punishment is prohibited. (92)

- Hostage-taking is prohibited. (93)
- Everyone has the right to liberty and security of person; the arbitrary deprivation of liberty is prohibited. (94)
- *Incommunicado* detention or detention in a secret location is prohibited. (95)
- Enforced disappearance is prohibited. (96)
- Discrimination based on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria is prohibited. (97)
- Everyone has the right to a fair trial by an independent, impartial and regularly constituted court respecting all internationally recognized judicial guarantees. (98)

Protection of the population

- The deportation or forcible transfer of any civilian population committed as part of a widespread or systematic attack directed against that population, with knowledge of the attack, is prohibited. (99)
- All persons have the right to leave any country, including their own, and to return to their country. (100)
- The principle of *non-refoulement* must be respected. (101)
- Returned displaced persons must not be discriminated against. (102)
- Children are entitled to special protection. (103)

Protection of persons deprived of their liberty

- Official up-to-date registries of persons deprived of their liberty must be established and maintained and, in accordance with domestic law, must be made available to relatives, judges, attorneys, any other person having a legitimate interest and other authorities. (104)
- Persons deprived of their liberty should be allowed to receive visitors. (105)

Communication between family members

- All persons have the right to correspond with members of their families. (106)

References: International law

1. GCI-IV: common Art. 1; API: Arts. 1(1), 89.
2. API: Art. 32.
3. API: Arts. 32, 33; GCIV: Arts. 136-141.
4. GCIV: Arts. 26, 27(1), 49(3), 82(2), 116; API: Arts. 74, 75(5), 77(4); HRIV: Art. 46; ACHR: Arts. 17(1), 27(2).
5. GCI: Arts. 12, 50; GCII: Arts. 12, 51; GCIII: Arts. 13, 130; GCIV: Arts. 27, 147; API: Arts. 75(2), 85; Rome Statute: Arts. 6(a), 7(1)(a), 8(2)(a)(i), 8(2)(b)(vi); ICCPR: Arts. 4, 6; ECHR: Art. 2, 15(2); ACHR: Arts. 4, 27(2); ACHPR: Art. 4.
6. GCI: Art. 15; GCII: Art. 18; GCIV: Art. 16; API: Art. 10.
7. GCI: Art. 12; GCII: Art. 12; GCIII: Art. 13; GCIV: Arts. 5(3), 27(1); API: Arts. 10(2), 75(1); HRIV: Art. 4.
8. GCI: Arts. 12(2), 50; GCII: Arts. 12(2), 51; GCIII: Arts. 17(4), 87(3), 89, 130; GCIV: Arts. 32, 147; API: Arts. 75(2), 85; Rome Statute: Arts. 7(1)(f), 7(2)(e), 8(2)(a)(ii), 55(1)(b); 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Arts. 1, 2; ICCPR: Arts. 4(2), 7; ECHR: Arts. 3, 15(2); ACHR: Arts. 5(2), 27(2); ACHPR: Art. 5; 1985 Inter-American Conv. to Prevent and Punish Torture: Arts. 1, 5; 1989 Conv. on the Rights of the Child: Art. 37.
9. GCIV: Arts. 34, 147; API: Arts. 75(2)(c), 85; Rome Statute: Art. 8(2)(a)(viii).
10. GCIV: Arts. 43, 78; API: Art. 75(1); Rome Statute: Arts. 55(1)(d), 59(2).
11. Rome Statute: Arts. 7(1)(i), 7(2)(i); 1994 Inter-American Conv. on the Forced Disappearance of Persons: Art. X. This rule is not formulated as such in international humanitarian treaty law, but the practice of enforced disappearance would violate other rules stated above (e.g. rules 10.3, 10.7, 10.10 to 10.13, 10.15, 10.16, 10.34).
12. GCI: Arts. 12(2), 31; GCII: Arts. 12(2), 30; GCIII: Arts. 14, 16, 43, 61, 88; GCIV: Arts. 13, 27, 54, 98, 118; API: Preamble, Arts. 9(1), 69(1), 70(1), 75(1), 85(4)(c); Rome Statute: Arts. 7(1)(h), 7(1)(j).
13. GCI: Art. 49(4); GCII: Art. 50(4); GCIII: Arts. 84(2), 86, 96(3)-(4), 99, 102-108, 129(4), 130; GCIV: Arts. 5, 33, 66, 67, 71-78, 117-126, 146(4), 147; API: Arts. 75(4), (7), 85(1), (4)(e); HRIV: Art. 50; Rome Statute: Arts. 8(2)(a)(vi), 20(2), 25, 55, 60, 63(1), 64, 66, 67-69, 76; Second Protocol (1999) to the 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Art. 17(2).
14. GCI: Art. 4; GCII: Art. 5; GCIII: Arts. 4B, 109(2), 110, 111, 114-116; GCIV: Arts. 24(2), 36(1), 132(2); API: Art. 19; 1907 Hague Conv. (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land: Arts. 11, 12, 14.

15. GCIII: Arts. 72, 73; GCIV: Arts. 23, 59, 108, 109; API: Art. 70.
16. API: Arts. 48, 51, 52, 85(3)(a); Rome Statute: Arts. 8(2)(b)(i), 8(2)(b)(ii); Protocol II (amended 1996) to the 1980 CCW: Arts. 1(2), 3(7); Protocol III (1980) to the 1980 CCW: Art. 2; 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Art. 4; Second Protocol (1999) to the 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Art. 6.
17. API: Arts. 51(4)-(5), 85(3)(b); Protocol II (amended 1996) to the 1980 CCW: Arts. 1(2), 3(8)-(9); Protocol III (1980) to the 1980 CCW: Art. 2.
18. API: Arts. 57, 58; HRIV: Art. 26; Protocol II (amended 1996) to the 1980 CCW: Arts. 1(2), 3(10)-(11); Second Protocol (1999) to the 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Arts. 6(d), 7, 8.
19. GCI: Art. 19; GCIII: Art. 23; GCIV: Art. 28; API: Arts. 12(4), 51(7); Rome Statute: Art. 8(2)(b)(xxiii).
20. GCIV: Arts. 49, 147; API: Art. 85(4)(a); Rome Statute: Arts. 7(1)(d), 8(2)(a)(vii), 8(2)(b)(viii).
21. GCIV: Art. 49(3); API: Art. 78.
22. GCIV: Arts. 45, 49(2).
23. This is in application of the general rule of non-discrimination, see 10.14.
24. GCIV: Arts. 49, 147; API: Art. 85(4)(a); Rome Statute: Arts. 8(2)(a)(vii), 8(2)(b)(viii).
25. GCI: Art. 12(4); GCII: Art. 12(4); GCIII: Arts. 14(2), 16, 25, 44, 45, 49, 88(2)-(3); GCIV: Arts. 14(1), 17, 27, 76(4), 82, 85, 119; API: Arts. 8(a), 70(1), 75(5), 76; APII: Arts. 4(2)(e), 5(2)(a), 6(4).
26. GCIV: Arts. 23(1), 24(1), 38(5), 50, 76(5), 89(5); API: Arts. 8(a), 70(1), 77(1); 1989 Conv. on the Rights of the Child: Art. 38; 1990 African Charter on the Rights and Welfare of the Child: Art. 22; Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Arts. 1-4, 6; ACHR: Arts. 19, 27(2).
27. GCIII: Arts. 122, 123; GCIV: Arts. 136, 137, 140; HRIV: Art. 14(1).
28. GCIII: Art. 122(4); GCIV: Art. 138(1).
29. GCIV: Art. 79.
30. GCIV: Arts. 41-43.
31. GCIV: Art. 78.
32. GCIV: Art. 68.
33. GCIV: Art. 132(1).
34. GCIV: Art. 82(2)-(3); API: Art. 77(4).
35. GCIII: Arts. 25(4), 29(2), 97(4), 108(2); GCIV: Arts. 76(4), 82, 85(4), 124(3); API: Art. 75(5).
36. GCIV: Art. 116.

37. GCIII: Art. 105; GCIV: Arts. 72, 126.
38. GCIII: Arts. 56(3), 126; GCIV: Arts. 76(6), 96, 143; Art. 56(3) of GCIII and Art. 96 of GCIV state that delegates of the Protecting Power, the ICRC or other agencies providing relief to POWs may visit labour detachments.
39. HRIV: Art. 20; GCIII: Arts. 109-117 (direct repatriation and accommodation in neutral countries of prisoners of war with special needs), Arts. 118-119 (release and repatriation of prisoners of war at the close of hostilities); GCIV: Arts. 35, 45(4), 132-135 (release, repatriation and accommodation in neutral countries of civilian internees); API: Art. 85(4)(b).
40. GCIV: Art. 25.
41. GCIII: Arts. 35, 70, 71, 76; GCIV: Arts. 25(3), 93, 106, 107, 112.
42. GCIII: Art. 74(1); GCIV: Art. 110; HRIV: Art. 16.
43. GCIII: Art. 75; GCIV: Art. 111.
44. GCI: Art. 15; GCII: Art. 18; GCIV: Art. 16; API: Art. 33.
45. GCI: Art. 15; GCII: Art. 18; GCIV: Art. 16; API: Art. 34.
46. GCI: Arts. 16, 17; GCII: Arts. 19, 20; GCIII: Arts. 120, 121; GCIV: Arts. 129, 131.
47. GCI: Art. 17; GCII: Art. 20; GCIII: Art. 120; GCIV: Art. 130; API: Art. 34(1).
48. GCI: Art. 17; GCII: Art. 20; GCIII: Art. 120; GCIV: Art. 130; API: Art. 34.
49. GCI: Arts. 16, 17; GCII: Art. 19; GCIII: Art. 120; GCIV: Art. 130; API: Art. 33.
50. API: Art. 34(2)(c).
51. GCI: Arts. 16, 17(4); GCII: Arts. 19(2), 20; GCIII: Arts. 120, 122, 123; GCIV: Arts. 130, 136-138, 140; API: Art. 33(3); HRIV: Arts. 14, 16.
52. GCIII: Art. 122(7); GCIV: Art. 137(1); API: Art. 33(3); HRIV: Art. 14.
53. GCIII: Art. 74; GCIV: Art. 110; HRIV: Art. 14.
54. GCI: Art. 16; GCII: Art. 19; GCIII: Arts. 120, 122; GCIV: Arts. 129, 138(1), 139; API: Art. 34.
55. GCIII: Art. 17, Annex IV.A.
56. GCI: Art. 40(2)-(4), 41(2), Annex II; GCII: Art. 42(2)-(4), Annex. For the definition of medical and religious personnel, see Arts. 24, 26, 27 of GCI, Arts. 36, 37 of GCII and Art. 8(c)-(d) of API.
57. GCI: Art. 16; GCII: Art. 19; GCIII: Arts. 17, 70, 122, Annex IV.B.
58. GCIV: Arts. 136-138; HRIV: Art. 14.
59. GCI: Art. 16; GCII: Art. 19.
60. GCI: Arts. 16, 17, 40(2); GCII: Arts. 19, 20, 42(2); GCIII: Art. 120; GCIV: Arts. 129, 130, 139; HRIV: Arts. 14, 19; API: Art. 34.
61. GCI: Art. 17(3); GCII: Art. 20(2); GCIII: Art. 120(6); GCIV: Art. 130(3).

62. API: Art. 78(3).
63. GCIV: Arts. 137(2), 140(2).
64. GCIII: Arts. 74, 124; GCIV: Arts. 110, 141; HRIV: Art. 16; 1994 Universal Postal Convention: Art. 7(3).
65. APII: Arts. 4(3)(b), 5(2)(a); ACHR: Arts. 17(1), 27(2).
66. GCI-IV: common Art. 3; APII: Art. 4(2); Rome Statute: Arts. 6(a), 7(1)(a), 8(2)(c)(i); ICCPR: Arts. 4, 6; ECHR: Arts. 2, 15(2); ACHR: Arts. 4, 27(2); ACHPR: Art. 4.
67. GCI-IV: common Art. 3; APII: Arts. 7, 8.
68. GCI-IV: common Art. 3; APII: Arts. 4, 5(3), 7(2).
69. GCI-IV: common Art. 3; APII: Art. 4(2); Rome Statute: Arts. 7(1)(f), 7(2)(e), 8(2)(c)(i), 55(1)(b); 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Arts. 1, 2; ICCPR: Arts. 4(2), 7; ECHR: Arts. 3, 15(2); ACHR: Arts. 5(2), 27(2); ACHPR: Art. 5; 1985 Inter-American Conv. to Prevent and Punish Torture: Arts. 1, 5; 1989 Conv. on the Rights of the Child: Art. 37.
70. GCI-IV: common Art. 3; APII: Art. 4(2)(c); Rome Statute: Art. 8(2)(c)(iii).
71. GCI-IV: common Art. 3; APII: Arts. 2(1), 4(1), 7(2), 18(2); Rome Statute: Arts. 7(1)(h), 7(1)(j).
72. GCI-IV: common Art. 3; APII: Art. 6(2)-(3); Rome Statute: Arts. 8(2)(c)(iv), 20(2), 25, 55, 60, 63(1), 64, 66, 67- 69, 76; Second Protocol (1999) to the 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Art. 17(2).
73. APII: Arts. 5(1)(c), 18(2).
74. GCI-IV: common Art. 3; APII: Arts. 4, 13; Protocol II (amended 1996) to the 1980 CCW: Art. 1(2)-(3); Protocol III (1980) to the 1980 CCW: Art. 2; Rome Statute: Arts. 8(2)(e)(i), 8(2)(e)(xii).
75. Protocol II (amended 1996) to the 1980 CCW: Arts. 1(2)-(3), 3(8), 3(9); Protocol III (1980) to the 1980 CCW: Art. 2.
76. APII: Art. 13(1); Protocol II (amended 1996) to the 1980 CCW: Arts. 1(2)-(3), 3(10), 3(11); Second Protocol (1999) to the 1954 Hague Conv. for the Protection of Cultural Property in the Event of Armed Conflict: Arts. 6(d), 7, 8, 22.
77. APII: Arts. 4, 13(1).
78. APII: Art. 17; Rome Statute: Arts. 7(1)(d), 8(2)(e)(viii).
79. APII: Arts. 4(3)(b), 17(1).
80. APII: Art. 4(3); 1989 Conv. on the Rights of the Child: Art. 38; 1990 African Charter on the Rights and Welfare of the Child: Art. 22; Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflicts: Arts. 1-4, 6; ACHR: Arts. 19, 27(2).

81. APII: Art. 5(2)(a).
82. Although there are no specific treaty provisions requiring that the ICRC be granted access to persons deprived of their liberty in non-international armed conflicts, this rule is widely recognized as representing customary international law applicable in non-international armed conflicts.
83. APII: Arts. 5(4), 6(5).
84. APII: Art. 5(2)(b).
85. APII: Art. 8.
86. APII: Art. 8.
87. APII: Art. 8.
88. 1948 Universal Declaration of Human Rights: Art. 12; ECHR: Art. 8; ICCPR: Arts. 17, 23(1); ICESCR: Art. 10(1); ACHR: Arts. 17, 27(2); ACHPR: Art. 18; Additional Protocol (1988) to the ACHR in the Area of Economic, Social and Cultural Rights: Art. 15(1); 1989 Conv. on the Rights of the Child: Arts. 9, 10, 37; 1990 African Charter on the Rights and Welfare of the Child: Arts. 18, 19, 25(2)(b).
89. ICCPR: Arts. 4, 6(1); ECHR: Arts. 2, 15(2); ACHR: Arts. 4, 27(2); ACHPR: Art. 4; Rome Statute: Arts. 6(a), 7(1)(a).
90. ACHPR: Art. 5; ICCPR: Art. 10(1); ACHR: Art. 5.
91. ICESCR: Arts. 11, 12; 1948 Universal Declaration of Human Rights: Art. 25(1); Additional Protocol (1988) to the ACHR in the Area of Economic, Social and Cultural Rights: Arts. 10, 12; ACHPR: Art. 16; 1951 Conv. Relating to the Status of Refugees: Arts. 20, 21, 23; 1989 Conv. on the Rights of the Child: Art. 22; 1990 African Charter on the Rights and Welfare of the Child: Art. 23.
92. 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Arts. 1, 2; ICCPR: Arts. 4(2), 7; ECHR: Arts. 3, 15(2); 1987 European Conv. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment: Preamble; ACHR: Arts. 5(2), 27(2); 1985 Inter-American Conv. to Prevent and Punish Torture: Arts. 1, 5; ACHPR: Art. 5; 1989 Conv. on the Rights of the Child: Art. 37; Rome Statute: Arts. 7(1)(f), 7(2)(e), 55(1)(b).
93. ECHR: Art. 5; ICCPR: Arts. 9, 12; ACHR: Arts. 7, 22; ACHPR: Art. 6; 1973 Conv. on Crimes Against Internationally Protected Persons, including Diplomatic Agents: Art. 2; 1979 International Conv. against the Taking of Hostages: Arts. 1, 8, 12.
94. 1948 Universal Declaration of Human Rights: Art. 3; ICCPR: Art. 9(1); ECHR: Art. 5(1); ACHR: Art. 7(2)-(3); ACHPR: Art. 6; 1989 Conv. on the Rights of the Child: Art. 37; Rome Statute: Art. 55(1)(d).
95. This rule is not formulated as such in international human rights treaty law, but its violation would constitute a violation of other rules stated above (e.g. 12.2 to 12.4, 12.6 to 12.8, 12.10, 12.12, 12.21 and 12.23).

96. 1994 Inter-American Conv. on Forced Disappearance of Persons: Preamble, Arts. I, II, X, XI, XII; Rome Statute: Arts. 7(1)(i), 7(2)(i).
97. UN Charter: Art. 1(3); 1948 Universal Declaration of Human Rights: Arts. 2, 7; ICCPR: Arts. 2, 4; ECHR: Arts. 14, 15; ACHR: Arts. 1, 27; ACHPR: Art. 2; 1965 Convention on the Elimination of Racial Discrimination: Arts. 2, 5; 1989 Conv. on the Rights of the Child: Art. 2(1); 1973 International Convention on the Suppression and Punishment of Apartheid: Art. I; Rome Statute: Arts. 7(1)(h), 7(1)(j).
98. ICCPR: Arts. 9(3), 14; ECHR: Arts. 5(3), 6, 40(1); Protocol No. 7 (1984) to the ECHR: Arts. 2, 4; ACHR: Arts. 7, 8; ACHPR: Art. 7; 1989 Conv. on the Rights of the Child: Art. 40(2)(b); Rome Statute: Arts. 20(2), 55, 60, 63(1), 64, 66, 67-69, 76; 1994 Inter-American Conv. on Forced Disappearance of Persons: Art. X.
99. Rome Statute: Art. 7(1)(d) ("For the purposes of paragraph 1, "attack directed against the civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an attack." Rome Statute: Art. 7(2)(a).); ICCPR: Art. 13; Protocol No. 4 (1963) to the ECHR: Arts. 3, 4; Protocol No. 7 (1984) to the ECHR: Art. 1; ACHR: Art. 22; ACHPR: Art. 12(5); 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Art. 3; 1989 Indigenous and Tribal Peoples Conv: Art. 16.
100. 1948 Universal Declaration of Human Rights: Art. 13(2); ICCPR: Art. 12(4); Protocol No. 4 (1963) to the ECHR: Art. 3; ACHR: Art. 22(5); ACHPR: Art. 12(2); 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Art. 3; 1969 Conv. Governing the Specific Aspects of Refugee Problems in Africa: Art. 5; 1989 Indigenous and Tribal Peoples Conv.: Art. 16.
101. 1951 Conv. Relating to the Status of Refugees: Arts. 32, 33; 1969 Conv. Governing the Specific Aspects of Refugee Problems in Africa: Art. 2(3); 1984 Conv. against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Art. 3.
102. This is in application of the general rule of non-discrimination, see 12.11; 1969 Conv. Governing the Specific Aspects of Refugee Problems in Africa: Arts. 4, 5; 1951 Conv. Relating to the Status of Refugees: Art. 3.
103. 1948 Universal Declaration of Human Rights: Art. 25(2); ICCPR: Art. 24; ACHR: Art. 19, 27(2); ICESCR: Art. 10; ACHPR: Art. 18(3); 1989 Conv. on the Rights of the Child: Arts. 3, 20; 1990 African Charter on the Rights and Welfare of the Child: Art. 4.
104. 1994 Inter-American Conv. on Forced Disappearance of Persons: Art. XI.

105. 1987 European Conv. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment: Arts. 1-2; 1994 Inter-American Conv. on Forced Disappearance of Persons: Art. X.
106. 1948 Universal Declaration of Human Rights: Art. 12; ICCPR: Art. 17(1); ACHR: Art. 11(2); ECHR: Art. 8(1).

Additional references

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 Guiding Principles on Internal Displacement (1998).
 Standard Minimum Rules for the Treatment of Prisoners (1955).
 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988).
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 UN Human Rights Committee: *María del Carmen Almeida de Quintero and Elena Quintero de Almeida case* (Uruguay), decision of 21 July 1983, Communication No. 107/1981, para. 14.
 Inter-American Commission: Report No. 136/99, 22 December 1999, *Case of Ignacio Ellacuría et al*, Case No. 10.488, paras. 221 & 224.
Lucio Parada Cea et al, Report 1/99, 27 January 1999, Case No. 10.480, par. 151.
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Castillo Paéz Case, Judgment of 3 November 1997, Series C: Decisions and Judgments, No. 34, para. 90.
Blake Case, Judgment of 24 January 1998, Series C: Decisions and Judgments, No. 36, paras. 66, 97, 103.
Bámaca Velázquez Case, Judgment of 25 November 2000, Series C: Decisions and Judgments, No. 70, paras. 129, 145(f), 160-166, 182(a), (c), (g), 197-202.
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- UN GA resolution 34/169 of 1979 – Code of Conduct for Law Enforcement Officials.
- UN GA resolution 37/194 of 1982 – Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- UN GA resolution 40/34 of 1985 – Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
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- Resolution XXI of the 24th International Conference of the Red Cross (Manila, 1981) – International Red Cross aid to refugees.
- Resolution IX (para. 5) of the 25th International Conference of the Red Cross (Geneva, 1986) – Protection of children in armed conflicts.
- Resolution XIII of the 25th International Conference of the Red Cross (Geneva, 1986) – Obtaining and transmitting personal data as a means of protection and preventing disappearances.
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- Resolution XV of the 25th International Conference of the Red Cross (Geneva, 1986) – Cooperation between National Red Cross and Red Crescent Societies and governments in the reuniting of dispersed families.
- Resolution 2 of the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1996) – Protection of the civilian population in period of armed conflict.
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Annex 3

B. Special protection to which children are entitled

Special protection to which children are entitled: international law applicable in international armed conflicts

- Children are protected by GCIV relative to the protection of civilian persons in time of war and API; they are protected by the fundamental guarantees that these treaties provide, in particular the right to life, the prohibitions on corporal punishment, torture, collective punishment and reprisals (1), and by the rules of API on the conduct of hostilities, including both the principle that a distinction must be made between civilians and combatants and the prohibition on attacks against civilians. (2)
- Children affected by armed conflict are entitled to special protection. GCIV guarantees special care for children, but it is API that lays down the principle of special protection: “Children shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.” (3)
- The provisions setting out this protection are summarized in the rules that follow.
- Evacuation, special zones: evacuation must be temporary and only arranged where compelling reasons of health or medical treatment of the child so require or from areas of combat for safety reasons; special zones may be established by the parties in order to protect from the effects of war children under 15, expectant mothers and mothers of children under 7. (4)
- Assistance and care: children must be given priority access to food and health care; children under 15 years of age must be given additional food, in proportion to their physiological needs. (5)
- Education and cultural environment: the education of children must be facilitated and their cultural environment preserved. (6)

- Identification, family reunification and unaccompanied children:
 - A. The parties to the conflict must endeavour to arrange for all children under 12 to be identified by the wearing of identity discs, or by some other means. (7)
 - B. The parties to the conflict must take the necessary measures to ensure that children under 15, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances and as far as possible entrusted to persons of a similar cultural tradition. (8)
 - C. All protected persons have the right to correspond with members of their families. (9)
 - D. Each party to the conflict must facilitate enquiries made by the members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. (10)
 - E. Where displacement occurs, the basic needs of the population must be met, its security ensured and family unity maintained. (11)
 - F. Information on unaccompanied children and children who have been separated from their families must be centralized and provided to the ICRC Central Tracing Agency. (12)
- Arrested, detained or interned children:
 - A. Proper regard must be paid to the special treatment due to minors. (13)
 - B. If arrested, detained or interned for reasons related to the conflict, children must be held in quarters separate from those of adults, except where families are accommodated as family units. (14)
 - C. The cases of pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict must be considered with the utmost priority. (15)
- Exemption from the death penalty: the death penalty for an offence related to the armed conflict must not be carried out on persons who had not attained the age of 18 years at the time the offence was committed. (16)
- Recruitment and participation in hostilities:
 - A. Conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities is prohibited. (17)
 - B. If, in exceptional cases, children who have not attained the age of 15 years take a direct part in hostilities and fall into the power of an adverse party, they continue to benefit from the special protection

- accorded by international humanitarian law, whether or not they are prisoners of war. (18)
- C. In recruiting among persons who have attained the age of 15 years but not the age of 18 years, priority should be given to those who are oldest. (19)
 - D. States must 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. (20)
 - E. Children under the age of 18 must not be compulsorily recruited into the armed forces. (21)
 - F. States that permit voluntary recruitment into their national armed forces under the age of 18 years must maintain safeguards to ensure, as a minimum, that:
 - a. such recruitment is genuinely voluntary;
 - b. such recruitment is carried out with the informed consent of the person's parents or legal guardians;
 - c. such persons are fully informed of the duties involved in such military service;
 - d. such persons provide reliable proof of age prior to acceptance into national military service. (22)
 - G. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years. (23)
- All protected persons have the right to respect for their family life. (24)
 - It is widely recognized that rules 1 to 16, 17, 18 and 24 represent customary international law applicable in international armed conflicts.

Special protection to which children are entitled: international law applicable in non-international armed conflicts

- Children are covered by the fundamental guarantees for persons not or no longer directly participating in hostilities (25); they are further protected by the principle: "The civilian population as such, as well as individual civilians, shall not be the object of attack." (26)
- Children affected by armed conflict are entitled to special protection: "Children shall be provided with the care and aid they require . . ." (27) The provisions setting out this protection are summarized in the rules that follow.

- Evacuation, special zones: measures must be taken, if necessary and whenever possible with the consent of their parents or persons who are responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country. (28)
- Assistance and care: children must be provided with the care and aid they require. (29)
- Identification, family reunification and unaccompanied children: all appropriate steps must be taken to facilitate the reunion of families temporarily separated. (30)
- Where displacement occurs, the basic needs of the population must be met, its security ensured and family unity maintained. (31)
- Education, cultural environment: children must receive an education, including religious and moral education. (32)
- Exemption from the death penalty: the death penalty may not be pronounced on persons who were under the age of 18 years at the time of the offence and may not be carried out on pregnant women or mothers of young children. (33)
- Recruitment and participation in hostilities:
 - A. Conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities is prohibited. (34)
 - B. The special protection provided by international humanitarian law to children who have not attained the age of 15 years remains applicable to them if they take a direct part in hostilities. (35)
 - C. In recruiting among persons who have attained the age of 15 years but not the age of 18 years, priority should be given to those who are oldest. (36)
 - D. States must 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. (37)
 - E. Children under the age of 18 must not be compulsorily recruited into the armed forces. (38)
 - F. States that permit voluntary recruitment into their national armed forces under the age of 18 years must maintain safeguards to ensure, as a minimum, that:
 - a. such recruitment is genuinely voluntary;

- b. such recruitment is carried out with the informed consent of the person's parents or legal guardians;
 - c. such persons are fully informed of the duties involved in such military service;
 - d. such persons provide reliable proof of age prior to acceptance into national military service. (39)
- G. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years. (40)

- All persons have the right to respect for their family life. (41)
- It is widely recognized that, in addition to rules 26 to 32, 34(A), 35(B) and 41, rules 9 and 14 also represent customary international law applicable *mutatis mutandis* in non-international armed conflicts.

Special protection to which children are entitled: international law applicable in internal violence

- Children are entitled to special protection. (42)
- Everyone has the right to education. (43)
- Arrested, detained or interned children:
 - A. Every child deprived of liberty must be separated from adults unless it is considered in the child's best interest not to do so. (44)
 - B. Juvenile offenders must be accorded treatment according to their age and legal status. (45)
- Sentence of death must not be imposed for crimes committed by persons below the age of 18 years. (46)
- All persons have the right to correspond with members of their families. (47)
- All persons have the right to respect for their family life. (48)
- Recruitment:
 - A. Conscription or enlisting children under the age of 15 years into the national armed forces is prohibited. (49)
 - B. In recruiting among persons who have attained the age of 15 years but not the age of 18 years, priority should be given to those who are oldest. (50)

- C. Children under the age of 18 must not be compulsorily recruited into the armed forces. (51)
- D. States that permit voluntary recruitment into their national armed forces under the age of 18 years must maintain safeguards to ensure, as a minimum, that:
 - a. such recruitment is genuinely voluntary;
 - b. such recruitment is carried out with the informed consent of the person's parents or legal guardians;
 - c. such persons are fully informed of the duties involved in such military service;
 - d. such persons provide reliable proof of age prior to acceptance into national military service. (52)
- States that recognize and/or permit the system of adoption must ensure that the best interests of the child must be the paramount consideration and they must:
 - A. ensure that adoption is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
 - B. recognize that inter-country adoption may be considered as an alternative means of child care, if the child cannot be placed in a foster home or with an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
 - C. ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
 - D. take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
 - E. promote, where appropriate, the above objectives by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs. (53)

References: Special protection to which children are entitled

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2. API: Arts. 48, 51.
3. API: Art. 77; 1989 Conv. on the Rights of the Child: Art. 38; 1990 African Charter on the Rights and Welfare of the Child: Art. 22; ACHR: Arts. 17, 19, 27(2).
4. GCIV: Arts. 14 (safety zones), 17, 24(2), 49(3), 132(2); API: Art. 78.
5. GCIV: Arts. 16, 23(1), 24(1), 38(5), 50, 81(3), 89(5); API: Arts. 8(a), 70(1), 77(1).
6. GCIV: Arts. 24(1), 50, 94; API: Art. 78(2).
7. GCIV: Art. 24(3).
8. GCIV: Art. 24(1).
9. GCIII: Arts. 35, 70, 71; GCIV: Arts. 25, 93, 106, 107, 112.
10. GCIV: Arts. 26, 50; API: Art. 74.
11. GCIV: Art. 49(3); API: Art. 78.
12. GCIV: Arts. 25, 50, 136-140; API: Art. 78(3).
13. GCIV: Arts. 76(5), 85(2), 89(5), 94, 119(2), 132.
14. GCIV: Arts. 76(5), 82; API: Art. 77(4).
15. GCIV: Arts. 89(5), 91, 127, 132; API: Arts. 75(5), 76.
16. GCIV: Art. 68(4); API: Art. 77(5).
17. Rome Statute: Art. 8(2)(b)(xxvi); API: Art. 77(2); GCIV: Art. 50(2); 1989 Conv. on the Rights of the Child: Art. 38(2)-(3); 1990 African Charter on the Rights and Welfare of the Child: Arts. 2, 22(2) (specifying that children may neither participate nor be recruited below 18 years); 1999 Conv. on the Worst Forms of Child Labour: Arts. 1, 3.
18. API: Art. 77(3); GCIII: Arts. 16, 49.
19. API: Art. 77(2); 1989 Conv. on the Rights of the Child: Art. 38(3).
20. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 1; 1990 African Charter on the Rights and Welfare of the Child: Arts 2, 22(2) (specifying that children may neither participate nor be recruited below 18 years).
21. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 2; 1990 African Charter on the Rights and Welfare of the Child: Arts. 2, 22(2).
22. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 3.
23. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 4.
24. GCIV: Arts. 26, 27(1), 49(3), 82(2), 116; API: Arts. 74, 75(5), 77(4); HRIV: Art. 46; ACHR: Arts. 17(1), 27(2).
25. GCI-IV: common Art. 3; APII: Art. 4.

26. APII: Art. 13.
27. APII: Art. 4(3); 1989 Conv. on the Rights of the Child: Art. 38; 1990 African Charter on the Rights and Welfare of the Child: Art. 22; ACHR: Arts. 17, 19, 27(2).
28. APII: Art. 4(3)(e).
29. APII: Art. 4(3).
30. APII: Art. 4(3)(b).
31. APII: Arts. 4(3)(b), 17(1).
32. APII: Art. 4(3)(a).
33. APII: Art. 6(4).
34. Rome Statute: Art. 8(2)(e)(vii); APII: Art. 4(3)(c); 1989 Conv. on the Rights of the Child: Art. 38(2)-(3); 1990 African Charter on the Rights and Welfare of the Child: Arts. 2, 22(2) (specifying that children may neither participate nor be recruited below 18 years); 1999 Convention on the Worst Forms of Child Labour: Arts. 1-3.
35. APII: Art. 4(3)(d).
36. 1989 Conv. on the Rights of the Child: Art. 38(3).
37. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 1; 1990 African Charter on the Rights and Welfare of the Child: Arts 2, 22(2) (specifying that children may neither participate nor be recruited below 18 years).
38. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 2; 1990 African Charter on the Rights and Welfare of the Child: Arts. 2, 22(2).
39. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 3.
40. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 4.
41. APII: Arts. 4(3)(b), 5(2)(a); ACHR: Arts. 17(1), 27(2).
42. 1948 Universal Declaration of Human Rights: Art. 25(2); ICCPR: Art. 24; ICESCR: Art. 10; ACHR: Arts. 17, 19, 27(2); ACHPR: Art. 18(3); 1989 Conv. on the Rights of the Child: Arts. 3, 20; 1990 African Charter on the Rights and Welfare of the Child: Art. 4.
43. 1948 Universal Declaration of Human Rights: Art. 26, ICESCR: Art. 13; ACHPR: Art. 17; 1989 Conv. on the Rights of the Child: Art. 28; 1990 African Charter on the Rights and Welfare of the Child: Art. 11.
44. 1989 Conv. on the Rights of the Child: Art. 37(c); ICCPR: Art. 10(2)(b), (3); ACHR: Art. 5(5); 1990 African Charter on the Rights and Welfare of the Child: Art. 17(2)(b).
45. ICCPR: Art. 10(3); 1989 Conv. on the Rights of the Child: Arts. 20, 37, 40; ACHR: Art. 5(5); 1990 African Charter on the Rights and Welfare of the Child: Art. 17.

46. ICCPR: Art. 6(5); ACHR: Art. 4(5); Protocol to the ACHR to Abolish the Death Penalty (1990): Art. 1; Protocol No. 6 (1983) to the ECHR concerning the abolition of the death penalty: Arts. 1, 2; Second Optional Protocol (1989) to the ICCPR, aiming at the abolition of the death penalty: Arts. 1, 2(1).
47. 1948 Universal Declaration of Human Rights: Art. 12; ICCPR: Art. 17(1); ACHR: Art. 11(2); ECHR: Art. 8(1); 1989 Conv. on the Rights of the Child: Art. 16.
48. 1948 Universal Declaration of Human Rights: Art. 12; ECHR: Art. 8; ICCPR: Art. 23(1); ICESCR: Art. 10(1); ACHR: Art. 17; ACHPR: Art. 18; Additional Protocol (1988) to the ACHR in the Area of Economic, Social and Cultural Rights: Art. 15(1); 1989 Conv. on the Rights of the Child: Arts. 8-10, 16, 37; 1990 African Charter on the Rights and Welfare of the Child: Arts. 18, 19, 25(2)(b).
49. 1989 Conv. on the Rights of the Child: Art. 38(3); 1990 African Charter on the Rights and Welfare of the Child: Arts. 2, 22(2) (specifying that children may not be recruited below 18 years); 1999 Convention on the Worst Forms of Child Labour: Arts. 1-3.
50. 1989 Conv. on the Rights of the Child: Art. 38(3).
51. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 2; 1990 African Charter on the Rights and Welfare of the Child: Arts. 2, 22(2).
52. Optional Protocol (2000) to the 1989 Conv. on the Rights of the Child on the involvement of children in armed conflict: Art. 3.
53. 1989 Conv. on the Rights of the Child: Art. 21; 1993 Hague Conv. on the Protection of Children and Cooperation in Respect of Intercountry Adoption: Arts. 1(a), 4.

Additional references

Universal Declaration of Human Rights (1948).
 International Covenant on Civil and Political Rights (1966).
 Convention on the Rights of the Child (1989).
 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (2000).
 Rome Statute of the International Criminal Court (1998).
 Statute of the Special Court for Sierra Leone (2001).
 African Charter on the Rights and Welfare of the Child (1990).
 Resolution II of the 24th International Conference of the Red Cross (Manila, 1981) – Forced or involuntary disappearances.

Resolution XV of the 25th International Conference of the Red Cross Crescent (Geneva, 1986) – Cooperation between National Red Cross and Red Crescent Societies and governments in the reuniting of dispersed families.

Resolution 2 of the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1996) – Protection of the civilian population in period of armed conflict.

Plan of Action for the years 2000-2003, adopted by the 27th International Conference of the Red Cross and Red Crescent (Geneva, 1999).

Inter-Agency Guidelines on Unaccompanied and Separated Children – ICRC, UNHCR, UNICEF, International Rescue Committee, SCF-UK, World Vision International (draft, April 2002).

INTERNATIONAL HUMANITARIAN LAW

IHL

TOOL B

**COUNTRY FACT SHEET
TEMPLATE**

INTERNATIONAL HUMANITARIAN LAW



COUNTRY FACT SHEET TEMPLATE

[Country name]

Country Fact Sheet ICRC Advisory Service on IHL

A. Summary Page

Section 1 - Treaty Accessions

	Treaty / Declaration	Date of Signature	Date of Accession	Reservations, Declarations
A1	Geneva Conventions I-IV			
A2	Additional Protocol I			
A3	Additional Protocol I Article 90 Declaration			
A4	Additional Protocol II			
A5	Additional Protocol III			
A6	International Criminal Court Statute			
A7	Convention on the Rights of the Child (CRC)			
A8	CRC Optional Protocol			
A9	Hague Cultural Property Convention			
A10	Hague Cultural Property Convention Prot. I			
A11	Hague Cultural Property Convention Prot. II			
A12	Environmental Modifications Convention			
A13	Geneva Protocol 1925			
A14	Biological and Toxins Weapons Convention 1972			
A15	Certain Conventional Weapons (CCW) Conv. 1980			
A16	CCW Protocol I (Non-detectable fragments)			
A17	CCW Protocol II (Mines and booby traps)			
A18	CCW Protocol II amended			
A19	CCW amended (Article 1)			
A20	CCW Protocol III (Incendiary weapons)			
A21	CCW Protocol IV (Blinding laser weapons)			
A22	CCW Protocol V (Explosive remnants of war)			
A23	Chemical Weapons Convention			
A24	Ottawa Anti-personnel Mines Convention			

Section 2 - National Committee on IHL

Name, year of establishment, legislation establishing and contact:

A25

Section 3 - Recent Action and Implementation Priorities

A26	Outline recent action taken by the country in committee work / establishment, and implementation measures (maximum three):	
A27	List three priorities in IHL implementation:	

B. Country Overview

Section 1 - General Information on Political and Legal Structures

B1	Type of legal system (eg civil law)?	
B2	Status of self-executing treaty and customary law provisions?	
B3	Can war crimes and prohibitions be prosecuted directly in the absence of specific incorporating legislation? Source for this information?	
B4	Hierarchy of international norms between treaties, national law, sub-national law (eg provinces, States), regulations:	
B5	Approximate number of laws adopted by national legislature per year?	
B6	Languages in which official gazette is published:	
B7	Membership in political regional orgs.:	

Section 2 - General Elements of Criminal Law Applicable in the Country

		View ¹	Comments
B8	Do common law offences still exist? (common law States only)		
B9	Criminal statute of limitations generally?		
B10	Is failing to act (omission) penalized?		
B11	Does command responsibility liability exist?		
B12	Are there superior orders immunities?		
B13	What is the age for criminal responsibility?		
B14	Do military courts exist? Jurisdiction?		
B15	Are war crimes committed by members of the armed forces triable in civil(ian) courts or military courts, or both?		

¹ Please enter only: **y** (for yes), **m** (for may be), **n** (for no), **p** (for partially), **ni** (for no information), **u** (for unsure)

C. Geneva Conventions I-IV

Accession Date

		View	Legislation, comments
C1	Have the measures below been taken to implement the obligations under this Convention?		
C2	Does the State agree with this assessment?		

Section 1 - Grave Breaches

		View	Legislation details
C3	Is there legislation, either general or specific (mention which), incorporating all grave breaches in force?		

Indicate whether there are criminal provisions for each of the following grave breaches: Articles 50, 51, 130 and 147 respectively of the 1949 Four Geneva Conventions)

		View	Law, article, comments
C4	Wilful killing		
C5	Torture or inhuman treatment		
C6	Wilfully causing great suffering		
C7	Unlawful deportation or transfer		
C8	Unlawful confinement of protected person		
C9	Protected person compelled to serve in hostile forces		
C10	Wilfully depriving a prisoner of war or a protected person of the rights of a fair and regular trial prescribed in the Conventions		
C11	Taking of hostages		
C12	Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly		
C13	Universal jurisdiction provided for grave breaches?		
C14	Other "non-grave" GC breaches criminalized?		
C15	Comments on grave breach implementation:		

Section 2 - Judicial Guarantees

Full title of relevant laws, constitutions, etc:

Indicate whether the following judicial guarantees are incorporated into legislation:

	View	Law, article, comments
C16	Independent court	
C17	<i>Ne bis en idem</i>	
C18	Right to assistance by comrades	
C19	Protecting power notice	
C20	Right to call witnesses	
C21	Defence by qualified advocate	
C22	Right to call defence witnesses	
C23	Right to competent interpreter	
C24	Right to appeal sentence	
C25	Right to know particulars of offence	
C26	Prot. power info about trial	
C27	No death penalty on under-18s	

C28 Comments on judicial guarantees implementation:

Section 3 - Identity Cards

Indicate whether regulations for the following exists or cards have been printed:

	View	Comments
C29	Medical and Religious Personnel Cards	
C30	PoW Identity Cards	
C31	Capture Cards	
C32	Correspondence Cards	
C33	PoW Death Cards	
C34	Mixed Medical Commission Cards	
C35	Internment Cards	

Section 4 - Dissemination

Examples of dissemination activities

1. Arms Carriers

	Armed Forces (provide some detail)	Police Forces (provide some detail)
C36	Training	
C37	Military Manual	
C38	Code of Discipline	
C39	Schools and Colleges	

2. Civilian Population

C40 Universities: Youth:

Section 5 - Emblem

	View	Legislation details, comments
C42	<i>Is there legislation prohibiting the unlawful use of the emblem?</i>	
C43	Red Cross	
C44	Red Crescent	
C45	Swiss Heraldic	
C46	Red Lion and Red Sun	
C47	Is there legislation outlining who may authorize the use of the emblem?	

Section 6 - Other Issues

	View	Legislation details, comments
C48	Information Bureaux established?	
C49	Legislation enabling the work of a national society?	
C50	Legislation establishing mixed medical commissions?	
C51	GCs translated into national official languages?	
C52	Other comments on GC implementation?	

D. Additional Protocol I

Accession Date

	View	Legislation, comments
D1	Have the measures below been taken to implement the obligations under this Convention?	
D2	Does the State agree with this assessment?	

Section 1 - Grave Breaches

Indicate whether these grave breaches (arts. 85 and 11 of AP I) have been criminalized through legislation:

	View	Law, article, comments
D3	Is there legislation incorporating the following grave breaches in force (either in general or specifically?)	
	View	Law, article, comments
D4	Seriously endangering, by any wilful and unjustified act or omission, physical or mental health and integrity of persons who are in the power of the adverse Party or who are interned, detained or otherwise deprived of liberty as a result of an armed conflict, in particular physical mutilations, medical or scientific experiments, removal of tissue or organs for transplantation which is not indicated by the state of health of the person concerned (...)	
D5	Making the civilian population or individual civilians the object of attack*	
D6	Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects*	
D7	Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage civilian objects*	
D8	Making non-defended localities and demilitarised zones the object of attack*	
D9	Making a person the object of attack in the knowledge that he is <i>hors de combat</i> *	
D10	The perfidious use of the distinctive emblem of the red cross and red crescent or other protective signs*	
D11	The transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory**	
D12	Unjustifiable delay in the repatriation of prisoners of war or civilians**	
D13	Practices of apartheid and other inhuman and degrading practices involving outrages upon person dignity, based on racial discrimination**	
D14	Attacking clearly recognised historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of people and to which special protection has been given, causing as a result extensive destruction thereof when such objects are not located in the immediate proximity of military objectives or used by the adverse party in support of its military effort**	
D15	Depriving a person protected by the Conventions or by Protocol I of the rights of a fair and regular trial**	
D16	Are other (non-grave) breaches criminalized?	

Section 2 - Judicial Guarantees

Full title of relevant laws, constitutions, etc:			
		View	Law, article, comments
D17	AP I Judicial guarantees are implemented?		
D18	Does the State agree with this assessment?		

<i>Indicate whether the following judicial guarantees are reflected in legislation:</i>		View	Law, article, comments
D19	Necessary means for defence		
D20	Individual penal responsibility only		
D21	<i>Nulla poena sine crimen</i>		
D22	Presumption of innocence		
D23	Tried in one's presence		
D24	Not compelled to testify against self		
D25	Defence witnesses brought under same conditions as prosecution		
D26	Judgement pronounced publicly		
D27	Convicted person advised of right to appeal		

Section 3 - Other Issues

	View	Law, article, comments
D28	No one under 15 takes part in hostilities?	
D29	Signals for medical aircraft and vessels introduced?	
D30	Civil Defence ID cards?	
D31	Journalists cards?	
D32	Protection from misuse of AP I signs (dangerous forces, civil defence)?	
D33	Article 82 AP I legal advisers appointed?	
D34	Permit ICRC and National Societies to carry out functions?	
D35	New weapons studies - means and methods system in place?	
D36	Examine military sites to avoid placement near densely populated areas - system in place?	
D37	System to ensure violations of AP I compensated (article 89 of AP I)?	

E. Additional Protocol II

Accession Date

	View	Law, article, comments
E1	Have the measures below been taken to implement the obligations under this Convention?	
E2	Does the State agree with this assessment?	

Section 1 - Prohibitions

	View	Law, article, comments
E3	Are the prohibitions covered in national law?	
E4	<i>Legislation criminalizing the following is not necessary, but recommended:</i>	View
E5	NIAC prohibition re violence to life, health and physical / mental well-being of persons	Law, article, comments
	NIAC prohibition re collective punishments	
E6		
E7	NIAC prohibition re taking of hostages	
E8	NIAC prohibition re acts of terrorism	
E9	NIAC prohibition re outrages upon personal dignity including rape and enforced prostitution	
E10	NIAC prohibition re slavery	
E11	NIAC prohibition re pillage	
E12	NIAC prohibition re threats to above	
E13	NIAC prohibition of use of cultural property in support of military effort	
E14	NIAC prepare in peacetime for safeguard of cultural property in war	

Section 2 - Judicial Guarantees

	View	Law, article, comments
E15	<i>In NIAC, guarantee that:</i>	
E16	No conviction except by independent and impartial court	
E17	Accused has all necessary rights and means of defence	
E18	<i>Nulla poena sine crimen</i>	
E19	No higher penalty than that applicable at time of offence	
E20	Innocent until proven guilty	
E21	Right to be tried in own presence	
E22	Not compelled to testify against self	
E23	Not compelled to confess guilt	
E24	Death penalty not imposable on pregnant women or women with dependent infants	
	Death penalty not imposable if less than 18 at time of offence	

E1. Additional Protocol III

Accession Date

		View	Law, article, comments
E25	Have the "red crystal" emblem and designation (wording) been protected in legislation?		
E26	Does the State agree with this assessment?		

F. Hague Cultural Property

Accession Date

		View	Law, article, comments
F1	Have the measures below been taken to implement the obligations under this Convention?		
F2	Does the State agree with this assessment?		

		View	Law, article, comments
F3	Have preparations been made for the safeguard of cultural property in war?		
F4	Has the State prohibited (penal legislation) the theft, pillage, vandalism and misappropriation of cultural property?		

Hague Cultural Property First Protocol

Accession Date

		View	Law, article, comments
F5	Do legislative provisions exist regarding the export of cultural property from occupied territory?		

Hague Cultural Property Second Protocol

Accession Date

		View	Law, article, comments
F6	Have the measures below been taken to implement the obligations under this Convention?		
F7	Does the State agree with this assessment?		

Are the following requirements reflected in administrative measures / legislation?

		View	Law, article, comments
F8	Prepare in peacetime for safeguard of cultural property including inventories, emergency planning and designation of persons responsible		
F9	Adopt legislation prohibiting making of cultural property under enhanced protection the object of attack		
F10	Adopt legislation prohibiting making cultural property under enhanced protection or surroundings in support of military action		
F11	Adopt legislation prohibiting extensive destruction or appropriation of cultural property protected under the Convention and Protocol II		
F12	Adopt legislation prohibiting making cultural property protected under the Convention and Protocol II the object of attack		
F13	Prohibit theft, pillage or misappropriation, of acts of vandalism directed against cultural property protected under the Convention		
F14	Adopt legislation ensuring that the prohibitions apply based on territory, nationality or presence in State		

F15	Provide for the extradition re offences under Protocol II		
F16	Adopt legislation prohibiting use of cultural property in violation of Protocol II		
F17	Adopt legislation prohibiting the illicit export, removal or transfer of ownership of cultural property from occupied territory		

G. Convention on the Rights of the Child Optional Protocol

Accession Date

		View	Law, article, comments
G1	Have the measures below been taken to implement the obligations under this Convention?		
G2	Does the State agree with this assessment?		

Have the following measures been undertaken?

		View	Law, article, comments
G3	Ensure that those under 18 years of age do not take part in hostilities		
G4	Ensure that those under 18 years of age are not compulsorily recruited into their armed forces		
G5	Ensure that under-18 voluntary recruitment is voluntary, with consent of guardians and upon reliable proof of age		
G6	Is there a criminal provision prohibiting under-age recruitment?		
G7	What is the minimum age listed in the binding declaration at accession, at which voluntary recruitment is permitted in the armed forces? Secondly, provide legislation details which reflect this obligation.		

H. Statute of the International Criminal Court

Accession Date

		View	Law, article, comments
H1	Have the measures below been taken to implement the obligations under this Convention?		
H2	Does the State agree with this assessment?		

Note that some of the elements below are listed as recommended not required. Having provisions similar to the Statute helps demonstrate that a State is able and willing to try persons suspected of having committed Rome Statute crimes.

		View	Law, article, comments
H3	Has the State incorporated the crimes in the Rome Statute (not strictly required, but recommended)		
H4	Has the State provided for universal jurisdiction, and in what form? (not required, but recommended)		
H5	Have the administration of justice offences against the Court been criminalized?		
H6	Nulla crimen sine lege re ICC crimes? (recommended)		
H7	Irrelevance of official capacity incorporated? (recommended)		
H8	Command responsibility included? (recommended)		
H9	Non-applicability of statute of limitations? (recommended)		
H10	Mental element (defences) same as in Statute? (rec.)		
H11	Grounds for exclusion of responsibility match Statute? (recommended)		

H12	Has the State ensured that arrest and transfer ("surrender") procedures are in place?		
H13	Have the Statute's interim release provisions been provided?		
H14	Have the cooperation with the prosecutor provisions been put in place?		
H15	Is the possibility of the ICC sitting in the State regulated?		
H16	Has the State extended privileges and immunities to the Court?		
H17	Enforcement of Sanctions - as per Rome Statute?		

I. Biological Weapons Convention

Accession Date

		View	Law, article, comments
11	Have the measures below been taken to implement the obligations under this Convention?		
12	Does the State agree with this assessment?		

		View	Law, article, comments
13	Have necessary measures been incorporated through criminal legislation and otherwise to prohibit and prevent the development, production etc of agents and toxins in Article I of the Convention?		
14	Have transfer restrictions obligations been complied with, that is, has the State established export controls?		
15	Has the obligation to comply with weapons destruction been complied with (as per Treaty Reports)?		
16	Comments on implementation:		

12. Environmental Modifications Convention

Accession Date

		View	Legislation, comments
17	Measures taken to prohibit and prevent activity in violation of ENMOD, including in military or other hostile use of environmental modification techniques that have widespread, long-lasting or severe effects?		
18	Does the State agree with this assessment?		

J. Certain Conventional Weapons Convention

Accession Date

J1	Have the prohibitions in CCW Protocol I to V generally been criminalized?	View	Law, article, comments
		<input type="text"/>	<input type="text"/>

Certain Conventional Weapons Convention amended (Article 1)

Accession Date

CCW Protocol I

Accession Date

CCW Protocol II (amended)

Accession Date CCW II
Accession Date CCW II amended

J2	Have measures in 14(2) related to the prevention and suppression of violations of the Protocol (penal sanctions) been undertaken?	View	Legislation, comments
		<input type="text"/>	<input type="text"/>

CCW Protocol III

Accession Date

CCW Protocol IV

Accession Date

CCW Protocol V

Accession Date

K. Chemical Weapons Convention

Accession Date

		View	Law, article, comments
K1	Have the measures below been taken to implement the obligations under this Convention?		
K2	Does the State agree with this assessment?		

For greater detail, see the OPCW matrix

		View	Law, article, comments
K3	Has the State enacted criminal legislation to prohibit the production, development, retention, etc of chemical weapons as provided for in Articles I and VII?		
K4	Has the State designated a National Authority?		

L. Ottawa Anti-personnel Landmines Convention

Accession Date

		View	Law, article, comments
L1	Have the measures below been taken to implement the obligations under this Convention?		
L2	Does the State agree with this assessment?		
		View	Law, article, comments
L3	Has the State taken appropriate legal, administrative and other measures to prohibit the use, acquisition, stockpiling, retention, development, production(see Article I), as well as assisting, encouraging, inducing the previous prohibitions, of antipersonnel mines? (see also ICRC Article 9 checklist for detailed questions)		
L4	Has the State destroyed or ensured the destruction its mines? (if State is not mine-affected, enter "na" for not applicable)		
L5	Has the State provided for universal jurisdiction? (recommended)		
L6	Has the State cleared its mines (assuming it had some), in the delays prescribed by the Convention (10 years, extendible with ASP authorization)?		
L7	Has the State reported in accordance with Article VII?		
L8	Has the State provided in legislation for the possibility of a visit of a fact-finding commission?		

M. Pending Draft Legislation

	Treaty	Year Drafted	Title, Current Status
M1	Geneva Conventions I-IV (and Grave Breaches)		
M2	Additional Protocol I (and II)		
M3	Additional Protocol III		
M4	Cultural Property Convention and Protocols		
M5	Child Soldiers		
M6	International Criminal Court		
M7	Biological Weapons Convention (and 1925 Protocol)		
M8	ENMOD		
M9	CCW and Protocols		
M10	Chemical Weapons Convention		
M11	Ottawa AP Landmines Treaty		
M12	Emblem Legislation		
M13	Other Legislation		

N. Future planning

Over the coming 5 years, in order of priority, what legislative and other steps should be taken to implement IHL in the country?

1	
2	
3	
4	
5	

Compatibility Study (provide details):

Experts and advisers:

Additional notes:

Laws & Regulations in Force	Enactment	Promulgation	into force	L/T	DB	F	Reference	Original text
Constitutional & Administrative Law								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
18.								
19.								
Red Cross								
21.								
22.								
23.								
24.								
25.								
26.								
27.								
28.								
29.								
Administration of Justice								
31.								
32.								
33.								
34.								
35.								

38.	
39.	
40.	
41.	Judicial Assistance, Extradition & Immigration
42.	
43.	
44.	
45.	
46.	
47.	
48.	
49.	
50.	
51.	Police, Defence & Military Law
52.	
53.	
54.	
55.	
56.	
57.	
58.	
59.	
60.	
61.	Laws and Regulations on Weapons
62.	
63.	
64.	
65.	
66.	
67.	
68.	
69.	

INTERNATIONAL HUMANITARIAN LAW

IHL

ANNEXES

ANNEX 1: PROGRAMME

**ANNEX 2: LIST
OF PARTICIPANTS**

**ANNEX 3: TABLE
OF NATIONAL COMMITTEES
ON INTERNATIONAL
HUMANITARIAN LAW**

INTERNATIONAL HUMANITARIAN LAW



Annex 1 — Programme



ICRC

**Advisory Service on
International Humanitarian Law**

**Second Universal Meeting
of National Committees on International
Humanitarian Law**

***Legal Measures and Mechanisms
to Prevent Disappearances, to Establish the Fate
of Missing Persons and to Assist Their Families***

Geneva, 19-21 March 2007

Programme

Sunday 18 March 2007

Arrival of participants

18.00 Registration of participants

19.00 Welcome reception

Monday 19 March 2007

08.30 – 09.00 Arrival and registration (continued)

Morning session

Chair: Mr Jacques Forster, Vice-President, ICRC

09.00 – 09.15 **Opening statement**
by Mr Jacques Forster, Vice-President, ICRC

09.15 – 09.30 **Objectives and organization of the meeting**
*by Mr Stéphane J. Hankins, Legal Adviser, Advisory Service on International
Humanitarian Law, ICRC*

- 09.30 – 10.15 **Operational challenges for the ICRC as a neutral and independent humanitarian organization**
by Mr Balthasar Staehelin, Deputy Director of Operations, ICRC
- 10.15 – 11.00 **Recent developments in the field of international humanitarian law and current challenges to its implementation**
by Mr Philip Spoerri, Director for International Law and Cooperation within the Movement, ICRC
- 11.00 – 11.15 Coffee break
- 11.15 – 11.45 **Overview of successes and achievements of National Committees in domestic implementation of international humanitarian law since the First Universal Meeting in 2002**
by Ms María Teresa Dutli, Head of the Advisory Service on International Humanitarian Law, ICRC
- 11.45 – 12.30 **Modalities of operation and working methods of National Committees**
- National Committees
- Salvador: Mr José Zamora, Adviser to the Ministry of Foreign Affairs, Member of the National Committee on IHL;
 - United Kingdom: Mr Christopher Whomersley, Deputy Legal Adviser, Foreign & Commonwealth Office, Chair of the Interdepartmental Committee for IHL;
 - Madagascar: Ms Liliane Rasendra Arivony, Head of International Relations, Ministry of Justice, Chair of the National Committee on IHL.
- 12.30 – 14.00 Lunch
- Afternoon session**
- Chair: Mr Philip Spoerri, Director for International Law and Cooperation within the Movement, ICRC**
- 14.00 – 14.30 **Regional dynamics and synergies among National Committees**
- National Committees
- Egypt: Mr Mohamed Abdel Wahed, Judge, Ministry of Justice, Member of the National Committee on IHL;
 - Finland: Ms Irma Ertman, General Director of the Legal Department, Ministry of Foreign Affairs, Chair of the National Committee on IHL.
- 14.30 – 16.00 **Working Groups**
(including coffee break)
- 16.00 – 16.45 Reporting back from the working groups

16.45 – 17.45

**Cooperation with regional organizations
Round table**

Facilitator: Ms María Teresa Dutli, Head of the Advisory Service on International Humanitarian Law, ICRC

- Organization of American States: *Mr John Wilson, Legal Adviser, International Law Department;*
- League of Arab States: *Mr Abdel Rahim Al Awadi, General Secretary of the National Committee of the United Arab Emirates;*
- European Union: *Ms Christiane Hœhn, Administrator, Transatlantic Relations, DGE IV, EU Council.*

18.00 – 19.00

Side-event on private military and security companies

Presentation of the Swiss initiative on private military and security companies, in cooperation with the ICRC

Drinks offered by the Swiss Federal Department of Foreign Affairs

Tuesday 20 March 2007

Morning session

Chair: Mr Jean-Philippe Lavoyer, Head of the Legal Division, ICRC

09.00 – 09.15

Addressing the phenomenon of missing persons: a major challenge in international law and practice

by Ms Renée Zellweger-Monin, Deputy Head of the Central Tracing Agency and Protection Division, ICRC

09.15 – 09.30

Screening of the ICRC video "End the Silence"

09.30 – 10.10

Missing persons: legal requirements under international humanitarian law and related treaties

by Ms Louise Doswald-Beck, Professor of International Law, Graduate Institute of International Studies, Director, University Centre for IHL, Geneva

10.10 – 10.25

Institutional and legal implications: what can a National Committee do at the domestic level to prevent people from going missing?

by Mr Stéphane J. Hankins, Legal Adviser, Advisory Service on International Humanitarian Law, ICRC Geneva

10.25 – 10.40

Coffee break

10.40 – 11.15

Theme I:**Legal and practical measures to be taken in peacetime to comply with obligations under international humanitarian law**

- The UK experience in the establishment and operation of its National Information Bureau, *by Lieutenant-Colonel Nick Larkin, Director of the UK National Information Bureau;*
- The process of establishment of the Belgian National Information Bureau *by Mr Yves Durieux, Adviser on the Law of Armed Conflict, General Staff of Defence of Belgium, Member of the National IHL Committee.*

Discussion

11.15 – 12.30

Working Groups: Establishing a national action plan on Theme I

12.30 – 13.15

Reporting back from the working groups

13.15 – 14.30

Lunch

Afternoon session**Chair: Ms Renée Zellweger-Monin, Deputy Head of the Central Tracing Agency and Protection Division, ICRC**

14.30 – 15.15

Theme II:**Other legal and practical measures relating to the missing and their families**

- Enforced disappearance: the case of Colombia, *by Mr Thomas Concha, Policy Coordinator, Presidential Programme for Human Rights and International Humanitarian Law, Vice-Presidency of Colombia;*
- Personal data protection in Argentine Law, *by Ms María Gabriela Quinteros, Diplomatic Adviser, Member of the National Committee on IHL of Argentina;*
- Assistance to families, including reparations, *by Mr Zoran Perkovic Assistant Minister for International Legal and Consular Affairs, Ministry of Foreign Affairs of Bosnia and Herzegovina;*
- Treatment of mortal remains, *by Mr. Mohamed Buzubar, Assistant to the Under-Secretary of State for Defence, Member of the National IHL Committee of Kuwait.*

15.15 – 16.15

Working Groups: Establishing a national action plan on Theme II

(including coffee break)

16.15 – 17.00

Reporting back from the working groups

- 17.30 Departure by bus to the International Museum of the Red Cross and Red Crescent
- 18.00 – 19.00 Visit to the International Museum of the Red Cross and Red Crescent
- 19.00 – 22.00 Dinner at the Edelweiss Restaurant

Wednesday 21 March 2007

Morning session

Chair: Mr Philip Spoerri, Director for International Law and Cooperation within the Movement, ICRC

- 09.00 – 10.00 **Domestic mechanisms and bodies to resolve cases of missing persons**

Round table

Facilitator: Ms Monique Crettol, Adviser, Central Tracing Agency and Protection Division, ICRC

- Transitional justice bodies to resolve cases of missing persons: how to identify the best alternative? *by Ms Dorothee Marotine, Programme Associate, International Centre for Transitional Justice, Brussels*
- Commissions to resolve the phenomenon of missing persons
Case studies:
 - Kosovo: *Mr Bertrand Kern, Deputy Chair, Kosovo Working Group on Missing Persons, ICRC*
 - Guatemala: *Ms Leslie Corzo, Member of the Presidential Committee for Humanitarian Law of Guatemala*

- 10.00 – 11.00 **Panel discussion: The right to know and the fight against impunity**

- *Ms Anne-Marie La Rosa, Legal Adviser, Advisory Service on International Humanitarian Law, ICRC*
- *Ms Ewa Tabeau, Demographer, Office of the Prosecutor, International Criminal Tribunal for the former Yugoslavia*

- 11.00 – 11.15 Coffee break

- 11.15 – 12.15 **The way forward to the 30th International Conference of the Red Cross and Red Crescent**

- *Mr Bruce Biber, Head of the Division for Cooperation within the Movement, ICRC*
- *Mr Jean-Philippe Lavoyer, Head of the Legal Division, ICRC*

- 12.15 – 12.45 **Plans for the future**
 Conclusions and recommendations
 by Ms Maria Teresa Dutli, Head of the Advisory Service on International Humanitarian Law, ICRC
- 12.45 – 13.00 **Closing statement**
 by Mr Jacques Forster, Vice-President, ICRC
- 13.00 – 14.00 Lunch

Departure of participants

Location and dates: Geneva, 19-21 March 2007.

Duration and venue: Two and a half days.

Mövenpick Hotel,
20, route de Pré-Bois
PO BOX 556
1215 Geneva
Switzerland
Phone +(41 22) 717 11 11

Participation:

- Representatives of National Committees and other national bodies concerned with the implementation of international humanitarian law (two representatives from each of the National IHL Committees worldwide).
- Other experts and representatives of international and regional organizations having developed activities relating to the protection of missing persons and their families.

Approximately 180 persons.

Methodology: Working sessions made up of presentations and discussions in working groups.

Annex 2 — List of participants

National Committees

Argentina

Sra. María Gabriela Quinteros

Consejero Funcionaria, Diplomática en la Dirección de Derechos Humanos de la Cancillería Argentina;
Cancillería de Argentina.

Australia

Professor Stuart Kaye

Chair, Australian International Humanitarian Law Committee;
Australian Red Cross.

Austria

Dr. Georg Heindl

Minister, Human Rights Department;
Austrian Ministry of Foreign Affairs.

Mr. Markus Weidinger

Second Secretary;
Permanent Mission of Austria.

Belarus

His Excellency Mr. Viktor Golovanov

Minister of Justice, Head of the National Committee for the Implementation of International Humanitarian Law;
Ministry of Justice.

Mr. Yaroslav Budnik

Member of the Secretariat of the National Committee for the Implementation of International Humanitarian Law;
Ministry of Justice.

Belgium

M. Benjamin Goes

Attaché, Service Public Fédéral;
Chancellerie du Premier Ministre.

M. Yves Durieux

Conseiller en Droit des Conflits Armés de l'Etat Major de Défense Belge;
Etat-Major de la Défense – Département Opérations & Training – Division
Planning – Section Droit des Conflits Armés – Règles d'engagement.

M. Guido Van Rillaer

Cellule des personnes disparues;
Police Judiciaire Fédérale.

Bolivia

Dr. Iván Félix Morales Nava

Director General de Asuntos Jurídicos;
Ministerio de Justicia.

Dra. Liliana Guzman Gorena

Abogada – Asesora en Derechos humanos y Derecho Internacional
Humanitario;
Ministerio de Defensa Nacional.

Bosnia and Herzegovina

Mr. Zoran Perkovic;

Assistant Minister for International Legal and Foreign Affairs;
Ministry of Foreign Affairs.

Brazil

Mr. Marcelo Böhlke

Second Secretary, Assistant of the Head of the UN Division of the Ministry of
External Relations;
Ministério das Relações Exteriores.

Ms. Luciana Mancini

Second Secretary;
Mission permanente du Brésil .

Canada**Ms. Mi Nguyen**

Senior Policy Adviser;
Department of Foreign Affairs and International Trade, Humanitarian Affairs
and Disaster Response Group.

Ms. Johanna Hökeberg

National Coordinator, Detention Monitoring Program (also responsible for
the Ante-Mortem Data Collection Project);
Canadian Red Cross Society.

Chile**Sr. Christian Werner Finsterbusch Romero**

Secretario, Comisión Nacional de Derecho Humanitario de Chile;
Ministerio de Relaciones Exteriores, Dirección Jurídica.

Colombia**Mr. Tomás Concha**

Coordinador Área de Políticas, Programa Presidencial Derechos Humanos y
Derecho Internacional Humanitario;
Comisión Nacional de Derecho Internacional Humanitario.

Comoros**M. Nomane Mohamed Bakar**

Secrétaire Général du Ministère de la Justice;
Ministère de la Justice.

Ms. Ahamada Mze Nadhifa

Directrice de Cabinet du Ministère de la Justice;
Ministère de la Justice.

Costa Rica**Sra. Carmen Claramunt Garro**

Jefe del Departamento Diplomático del Ministerio de Relaciones Exteriores,
Presidenta Comisión Nacional para la aplicación del Derecho Internacional
Humanitario;
Ministerio de Relaciones Exteriores.

Dra. Magda Iñes Rojas Chaves

Directora, Área de Derecho Público;
Procuraduría General de la República.

Côte d'Ivoire

M. Simplicie Kouadio Koffi

Magistrat, Directeur de la législation au Ministère de la Justice, Président délégué de la Commission interministérielle pour la mise en œuvre du DIH; Ministère de la Justice.

M. Niamké Ebagnelin Benjamin Malan

Sous-Directeur des Affaires Humanitaires au Ministère des Affaires Etrangères;
Ministère des Affaires Etrangères.

Croatia

Dr. Nenad Javornik

Executive President;
Croatian Red Cross.

Mr. Nikola Jagic

Head of International Department;
Croatian Red Cross.

Mr. Toma Galli

Second Secretary;
Permanent Mission of Croatia to the United Nations.

Denmark

Mr. Asif Parbst Amin

Head of Section, Secretary of National Committee;
Danish Ministry of Foreign Affairs.

Mr. Mads Carstensen

Deputy Head of the Secretariat, Danish Red Cross;
Danish Red Cross.

Dominican Republic

S.E. Homero Luis Hernández Sánchez

Embajador, Representante Permanente;
Mission permanente de la République dominicaine.

Sra. Magaly Bello de Kemper

Consejera;
Mission permanente de la République dominicaine.

Ecuador**Sr. Augusto Saá Corriere**

Director General de Derechos Humanos;

Ministerio de Relaciones Exteriores, Comercio e Integración.

Egypt**Mr. Mohamed Abdel Wahed**Representative of the Ministry of Justice at the National Committee on IHL
(Prosecutor);

Ministry of Justice.

Mr. Alaa El AtafiRepresentative of the Ministry of Defence to the National Committee on IHL
(Brigadier Military Justice);

Ministry of Justice.

El Salvador**Sr. José Zamora**

Asesor Técnico en Política Migratoria;

Dirección General Adjunta de Desarrollo Social Integral – Ministerio de
Relaciones Exteriores.**Sr. José Roberto Mejía Trabanino**

Coordinador de Temas Globales;

Ministerio de Relaciones Exteriores .

Finland**Ms. Irma Ertman**

General Director of the Legal Department;

Ministry for Foreign Affairs.

Mr. Jani Leino

Legal Adviser;

Finnish Red Cross.

Former Yugoslav Republic of Macedonia**Ms. Elizabeta Gjorgjieva**

Director of International Humanitarian Law Directorate;

Ministry of Foreign Affairs.

Mr. Zulfi Ismaili

Junior desk officer at the Sector of International Law;

Ministry of Foreign Affairs.

France**M. Michel Forst**

Commission Consultative Française des Droits de l'Homme;
Commission Nationale Consultative des Droits de l'Homme.

Mme. Stéphanie Djian

Chargée de mission;
Commission Nationale Consultative des Droits de l'Homme.

Gambia**Mr. Kebba Sanyang**

Attorney General's Chambers Marina Parade Banjul;
Attorney General's Chambers.

Germany**Professor Dr. Michael Bothe**

Chair, German Committee on International Humanitarian Law;
German Red Cross Headquarters.

Dr. Robert Heinsch

Legal Adviser, International Law Department;
German Red Cross Headquarters.

Mr. Christian Hörl

Head, National Information Bureau;
German Red Cross Headquarters.

Greece**Professor Dr. (Ms.) Kalliopi Koufa**

President of the Greek National Committee on International Humanitarian Law; Director of the Institute of Public International Law and International Relations of Thessaloniki;
Institute of Public International Law and International Relations of Thessaloniki.

Guatemala**Sra. Leslie Corzo**

Directora de Análisis de la Comisión Presidencial de Derechos Humanos.

Sra. Martha Altolaquirre

Viceministra de Relaciones Exteriores, Presidenta de la Comisión
Guatemalteca para la Aplicación del DIH;
Ministerio de Relaciones Exteriores.

Dr. Guillermo Carranza Taracena

Abogado Estado de Guatemala.

Hungary**Dr. István Horváth**

Chairman of the National Committee; Director General, Ministry of Foreign
Affairs, Legal Department;
Ministry of Foreign Affairs.

Ms. Agnes Jantsits

Secretary, National Advisory Committee on International Humanitarian Law.

Indonesia**Ms. Risma Indriyani**

Head of Subdirectorate, International Law Affairs, Vice-chairperson of the
National Committee of International Humanitarian Law;
Ministry of Justice and Human Rights.

Mr. Mohammad Fachruddien, SH, MH

Head of Law Bureau (Director of the Law Directorate) of the Ministry of
Defence;
Ministry of Defence.

Iran**Mr. Mohammad Taher Kanaani**

Head of Secretariat of the National Humanitarian Law Committee;
Iranian Red Crescent Society.

Mr. Mehrdad Eshraghi

Deputy Director General of International Affairs Department;
Iranian Red Crescent Society.

Japan**Mr. Akira Nakata**

Director, Planning and Coordination Division, International Relations
Department;
Japanese Red Cross Society.

Mr. Seitoku Kawakami

Official, Human Rights and Humanitarian Affairs Division, Foreign Policy
Bureau;
Ministry of Foreign Affairs.

Mr. Akira Kato

Second Secretary;
Permanent Mission of Japan.

Jordan**Dr. Mohammed Al-Hadid**

Vice-Chairman of National Committee on International Humanitarian Law;
Jordan Red Crescent.

Kenya**Mr. Wanjuki Muchemi**

Solicitor General of the Republic of Kenya and Chairperson of National
Committee on International Humanitarian Law;
State Law Office.

Ms. Njeri Mwangi

Member Secretariat of the National Committee on International
Humanitarian Law, Senior Principal State Counsel;
State Law Office.

Kuwait**Dr. Rashid Al-Anezi**

Professor of International Law;
Faculty of Law, Kuwait University.

Dr. Mohamad Buzubar

Assistant to the Under-Secretary of State for Defence;
Member of the National IHL Committee.

Mr. Fayez Al-Kandari

Professor of Private Law, Dean of Student Affairs;
Minister of Information Legal Adviser.

Kyrgyzstan

Mr. Erkinbek Tobokelovich Mamyrov

State Secretary of Ministry of Justice of Kyrgyz Republic.

Ms. Chinara Mamidinova

Deputy of Head of General Department;

Centre of coordination of law-drafting activity of the Government of Kyrgyz Republic.

Lesotho

Mr. Mosheoane John Tsolo

Assistant Commissioner Lesotho Correctional Services;
Ministry of Justice, Human Rights and Rehabilitation.

Ms. Nthutsoa Ntlhakana

Senior Assistant Parliamentary Counsel, Attorney-General's Chamber.

Libya

M. Khalid Albuaechi

Coordinator of the Libyan Commission of the Office of the Human Rights,
Ministry of Justice;
General people's Committee for justice.

M. Alnefati Zrass

Member of the National Committee on IHL, Legal Adviser;
Ministry of Defence.

Lithuania

Dr. Dainius Žalimas

Chairman of the National Committee on International Humanitarian Law;
Ministry of National Defence.

Madagascar

Mme. Liliane Rasendra Arivony

Magistrat, Présidente de la Commission Nationale du DIH; chef de service
des Relations Internationales;
Ministère de la Justice.

Brigadier Général José Rasamoelina

Membre de la Commission Nationale de Droit International Humanitaire;
Président de la Commission Ministérielle du DIH; Chargé de Mission,
Ministère de la Défense Nationale;
Ministère de la Défense Nationale.

Malawi**Brigadier D.J.C.Sefu**

Senior Army Officer;
Malawi Defence Forces Headquarters.

Mr. Ernest M. Makawa

Chief Legal Officer;
Ministry for Foreign and International Cooperation.

Mali**Mr. Guida Sèyo Waigalo**

Chargé de Mission;
Ministère de l'Éducation Nationale.

Mauritius**Mrs. Kan Oye Fongweng**

Chair of the National Committee on International Humanitarian Law;
Permanent Secretary, Prime Minister's Office.

Mr. David Chan Cheong

Assistant Solicitor-General and Member of the National Committee on IHL.

Morocco**Mme. le Prof. Saadia Belmir**

Présidente de chambre à la Cour suprême;
Conseillère au Cabinet du Ministère de la Justice.

M. Mohamed Ftouhi

Administrateur adjoint au Ministère de la Justice;
Ministère de la Justice.

Namibia**Ms. Neliswa Majebe Tjahikika**

Legal Chief Officer and Secretary of National Committee on International
Humanitarian Law.

Nepal**Mr. Madhab Paudel**

Secretary;
Office of the Prime Minister and Council of Ministers.

Dr. Kul Ratna Bhurtel

Secretary;
Ministry of Law.

New Zealand**Brigadier Kevin Riordan**

Director General of Defence Legal Services.

Norway**Mr. Mads Harlem**

Legal Adviser;
Norwegian Red Cross.

Ms. Martine Scheie

Adviser, Section of international humanitarian and criminal law;
Ministry of Foreign Affairs.

Panama**Sr. Elías Solís González**

Comisionado ante la Comisión Nacional Permanente par la Aplicación del
Derecho Internacional Humanitario;
Cruz Roja Panameña.

Sr. Juan Ruiz Quiroz

Comisión Nacional Permanente para la aplicación del Derecho Internacional
Humanitario;
Procuraduría General de la Nación.

Paraguay**Coronel Sr. Graciano Federico Antúnez Barrios**

Presidente de la Comisión Nacional de Estudio y Aplicación del Derecho
Internacional Humanitario;
Ministerio de la Defensa Nacional.

Peru**Sr. Luis Alberto Salgado Tantte**

Presidente de la Comisión Nacional de Estudio y Aplicación del Derecho
International Humanitario (CONADHI);
Ministerio de Justicia.

Sra. Teresa Blasi Martí

Asesora, Comisión Nacional de Estudio y Aplicación del Derecho
International Humanitario (CONADHI);
c/o Ministerio de Justicia.

Su Excelencia Juan Pablo Vegas Torres

Ministro Consejero, Funcionario de la Dirección Nacional de Derechos
Humanos;
Ministerio de Relaciones Exteriores.

Philippines**Mr. Noel Servigeon**

Director, Human Rights & Humanitarian Affairs, Office of United Nations
and other International Organizations;
Department of Foreign Affairs.

Ms. Lourdes Casas Quezon

Vice-Chairman of National Committee on International Humanitarian Law ;
Philippine National Red Cross.

Mr. Atty Soliman Santos Jr.

Vice Chair for NGOs, National Committee on International Humanitarian
Law;
Philippine Campaign to Ban Landmines.

Poland**Ms. Malgorzata Polomska**

Secretary of National Committee
IHLLegal Expert, Legal and Treaty Department;
Ministry of Foreign Affairs.

M. Andrzej Misztal

Ministre conseiller, Représentant permanent adjoint;
Mission permanente de la République de Pologne.

Republic of Korea (the)**Mr. Yeonjean Yoon**

Director, Multilateral Treaties Division;
Ministry of Foreign Affairs and Trade.

Senegal**M. Ndiaymé Gaye**

Magistrat, Responsable du guichet des droits de l'homme;
Haut Commissariat aux droits de l'homme et à la promotion de la paix.

Seychelles

Mr. Abraham Mathew Servina

President, Centre For Rights & Development (CEFRAD), Member of National Humanitarian Affairs Committee, Chairman, National Focal Point on small arms and light weapons;
Ministry of Foreign Affairs and International Cooperation.

Mrs. Sandra Michel

Second Secretary, Ministry of Foreign Affairs; Member of Seychelles's National Committee;
Ministry of Foreign Affairs and International Cooperation.

Slovakia

Dr. Metod Spacek

Chairman of the National Committee on International Humanitarian Law;
Ministry of Foreign Affairs of the Slovak Republic.

Mr. Bohdan Telgarsky

Secretary General,
Slovak Red Cross.

Slovenia

Dr. Savin Jogan

Chairman of the National Committee on International Humanitarian Law;
National Commission for International Humanitarian Law.

South Africa

Mr. Cassim Peer

Deputy Director – Humanitarian Affairs, Department of Foreign Affairs;
Department of Foreign Affairs.

Ms. Beulah Naidoo

Geneva Mission focal point for Humanitarian Affairs, Counselor;
Permanent Mission of South Africa in Geneva .

Sudan

Mr. Mohamed Zaroug

Ambassador;
Ministry of Foreign Affairs.

Dr. Abdul Moneim Taha

Head of Humanitarian Law Department, Ministry of Justice. Rapporteur of the National Commission;
Ministry of Justice.

Swaziland

Mr. Melusi Masuku

Legal Adviser Ministry of Foreign Affairs;
Ministry of Foreign Affairs.

Ms. Ntombifuthi Precious Mkhwanazi

Secretary & Rapporteur of the National Committee, Attorney General's Office;
Ministry of Justice and Constitutional Affairs.

Sweden

Ms. Maria Hedegård

President of the Swedish Total Defence Council for Humanitarian Law;
Head of Legal Department;
Ministry of Defence.

Mr. Mikael Andersson

Deputy Director, Legal Secretariat, Ministry of Defence,
Secretary of the Swedish Total Defence Council for Human Law;
Ministry of Defence .

Syria

Dr. Bashar Al Shaar

Minister of State for Red Crescent Affairs;
President of the Syrian National Commission.

Major General Nicolas Maaloula

Representative of the Ministry of Defence.

Mr. Anas Al Zein

Representative of the Ministry of Justice.

Mr. Samir Talaj

Responsible for Tracing;
Syrian Arab Red Crescent Society.

Togo

M. Klougan Yao

Magistrat – Président de Tribunal - Représentant de Ministre de la Justice.

M. Mikemina Yaba

Magistrat conseiller à la Cour d'Appel de Lomé.

Tunisia**Mme. Monia Ammar**

Chargée de mission au cabinet du Ministre de la Justice et des Droits de l'Homme.

M. Ben Salem Abdennaceur

Directeur général des affaires juridiques et du contentieux;
Ministère de la Santé Publique.

M. Hatem Landoulsi

Conseiller auprès de la Mission de Tunisie à Genève;
Mission permanente de la Tunisie.

Ukraine**Ms. Olena Yakovenko**

Head of Division for Cooperation with International Organizations;
Ministry of Justice.

Mr. Oleksandr Voronin

Attaché of Directorate General for Treaty and Legal Affairs;
Ministry of Foreign Affairs.

United Arab Emirates**Mr. Abdel Rahim Al Awadi**

Member of the National Committee on International Humanitarian Law;
Counselor, Ministry of Justice.

Amb. Ya'qoub Youssuf Al Hawssani

Member of the National Committee on International Humanitarian Law;
Ambassador, Ministry of Foreign Affairs/Ministère des Affaires Étrangères;
Ministry of Foreign Affairs.

United Kingdom**Mr. Chris Whomersley**

Deputy Legal Adviser;
Foreign & Commonwealth Office.

Lieutenant-Colonel Nick Larkin

Assistant Director, OPS Plans DCDS(PERS) Strategy;
Ministry of Defence.

Ms. Linda Dann

Director of Operational and International Humanitarian Law Team, DGLS;
Ministry of Defence.

Mr. Michael Meyer

Head of International Law;
British Red Cross.

Uruguay**Dr. Winter Kabran Gabriel**

Primer Secretario del Servicio Exterior;
Ministerio del Servicio Exterior.

Dra. Andrea Chinazzo Dávila

Doctora en Derecho y Ciencias Sociales – Experta independiente.

Yemen**Dr. Abbas Zabarah**

Secretary General;
Yemenite Red Crescent Society.

Zimbabwe**Mr. Charles Tarumbwa**

Brigadier General;
Ministry of Defence.

Mrs. Josephine Gumbo

Legal Adviser, Ministry of Justice, National Committee Secretariat;
Ministry of Justice, Legal and Parliamentary Affairs.

Observers

Bangladesh

Mr. Mosud Mannan

Director General (International Organizations);
Ministry of Foreign Affairs.

Mr. Mohammad Tarik Haider

Deputy Legal Adviser;
Ministry of Foreign Affairs.

Central African Republic

Mme. Léonie Mbazona

Directrice des Affaires juridiques et du Contentieux au Ministère des Affaires
Étrangères, Présidente du Comité ad hoc;
Ministère des Affaires Étrangères.

China

Mr. Guan Jian

Counsellor of Treaty and Law Department – MFA ;
Ministry of Foreign Affairs..

Mr. Li Yongsheng

Deputy Division Chief – Treaty and Law Department ;
Ministry of Foreign Affairs.

Congo

M. M'Bemba Fulgence

Minister's Adviser for administrative matters;
President of the National Committee ;
Ministry for Justice and Human Rights.

Czech Republic

Mr. Petr Válek

Legal Officer, International Law Department;
Ministry of Foreign Affairs.

Ethiopia

Mr. Henok Teferra Shawl

Second Secretary-Legal Expert;
Ministry of Foreign Affairs.

Honduras

Sra. Abogada Xenia Irias Cerrato

Directora de derecho humanos y narcotráfico;

Secretaria de relaciones exteriores, dirección general de asuntos especiales.

Sr. Julio Cesar Lainez Ordoñez

Asesor Jurídico en materia de Derechos Humanos.

Malaysia

Mr. Rushan Lufti Mohamed

Senior Federal Counsel, International Affairs Division – Attorney General's Chambers Malaysia;

Attorney General's Chambers Malaysia – International Affairs Division.

Lt. Col. Mohd Razif Ramli

Staff Officer 1 Legal, Armed Forces HQ;

Ministry of Defence.

Mexico

Sra. Liliana Lopez Ortiz

Subdirectora de derecho internacional;

Secretaria de relaciones exteriores de Mexico.

M. Erasmo Martinez

Ministre;

Mission permanente du Mexique auprès de l'Office des Nations Unies et des autres organisations internationales ayant leur siège en Suisse.

M. Juan Manuel Sanchez

Deuxième secrétaire;

Mission permanente du Mexique.

Mongolia

Dr. Bulgaa Altangerel

General Director of the Law and Treaty Department;

Ministry of Foreign Affairs.

Portugal

Ms. Patricia Galvao Teles

Consultant, Ministry of Foreign Affairs;

Department of Legal Affairs.

Russian Federation**Ms. Diana Eloeva**

Second Secretary;

Legal Department of the Ministry of Foreign Affairs .

Spain**Dr. Concepción Escobar Hernandez**

Legal Adviser, Director of the International Law Department;

Ministry of Foreign Affairs.

Sra. Sylvia Escobar

Ambajadora en mission especial para derechos humanos;

Ministry of Foreign Affairs.

Switzerland**M. Daniel Klingele**

Head of Section, Human Rights and Humanitarian Law;

MFA Directorate of International Law.

Mme. Véronique Haller

Diplomatic Adviser;

MFA Directorate of International Law.

Tanzania**Colonel Laiser Aloyse**

Assistant Judge Advocate General;

MOD/TPDF.

Turkey**Captain Olcay Yesilkaya**

Assistant Legal Adviser;

Genelkurmay Bakanligi Adli.

Vietnam**Dr. Son N'Guyen Ba**

Director General;

Department of International Law and Treaties.

International Organizations

Commonwealth Secretariat

Ms. Arvinder Sambei

Head of Criminal Law Section, Legal & Constitutional Affairs Division;
Commonwealth Secretariat.

Council of the European Union

Ms. Christiane Hoehn

Administrator, Transatlantic Relations;
European Union Council.

International Centre for Transitional Justice

Ms. Dorothée Marotine

Programme Associate;
International Centre for Transitional Justice.

International Criminal Court

Dr. Hans Bevers

Legal Adviser and acting Head of the Legal Advisory Section at the Office of
the Prosecutor of the ICC;
International Criminal Court.

International Criminal Tribunal for the former Yugoslavia

Dr. Ewa Maria Tabeau

Demographer;
Office of the Prosecutor,
International Criminal Tribunal for the former Yugoslavia.

International Federation of the Red Cross and the Red Crescent Societies

Mr. Frank Mohrauer

Governance, manager;
International Federation of the Red Cross and the Red Crescent Societies
Governance Support Unit.

International Humanitarian Fact-Finding Commission

Dr. Gisela Perren-Klingler

Member of the International Humanitarian Fact Finding Commission;
Département fédéral des affaires étrangères,
Direction du droit international public.

Organization of American States**Mr. John Wilson**

Legal Adviser;

International Law Department.

University Centre for International Humanitarian Law**Ms. Louise Doswald-Beck**

Professor of International Law, Graduate Institute of International Studies;

Director;

University Centre for IHL, Geneva.

International Organizations

ICRC**Mr. Jacques Forster**

Vice-President

Mr. Philip Spoerri

Director for International Law and Cooperation within the Movement

Mr. Balthasar Staehelin

Deputy Director of Operations

Mr. Jean-Philippe Lavoyer

Head of the Legal Division

Mr. Bruce Biber

Head of the Division for Cooperation within the Movement

Ms. Renée Zellweger-Monin

Deputy Head of the Central Tracing Agency and Protection Division

Ms. María Teresa Dutli

Head, Advisory Service on International Humanitarian Law

Mr. Bertrand Kern

Deputy Chair, Kosovo Working Group on Missing Persons

Ms. Monique Crettol

Adviser, Central Tracing Agency and Protection Division

Mr. Stéphane Hankins

Legal Adviser, Advisory Service on International Humanitarian Law

Mr. Christopher Harland

Legal Adviser, Advisory Service on International Humanitarian Law

Ms. Anne-Marie La Rosa

Legal Adviser, Advisory Service on International Humanitarian Law

Ms. Marie-Hélène Proulx

Legal Adviser, Advisory Service on International Humanitarian Law

Mr. Chérif Atlam

Legal Adviser, Advisory Service on International Humanitarian Law

Mr. Anton Camen

Legal Adviser, Advisory Service on International Humanitarian Law

Mr. Richard Desgagné

Legal Adviser, Advisory Service on International Humanitarian Law

Mr. Alexandre Faite

Legal Adviser, Advisory Service on International Humanitarian Law

Ms. Nicole Hogg

Legal Adviser, Advisory Service on International Humanitarian Law

Mr. Larry Maybee

Legal Adviser, Advisory Service on International Humanitarian Law

Mr. Jamie Williamson

Legal Adviser, Advisory Service on International Humanitarian Law

Mr. Robert Young

Legal Adviser, Advisory Service on International Humanitarian Law

Mr. Patrick Zahnd

Legal Adviser, Advisory Service on International Humanitarian Law

Ms. Nicole Neuenschwander

Staff

Ms. Nathalie Herren

Staff

Mr. Etienne Kuster

Staff

Ms. Noreen Majeed

Staff

Mr. Pierre-Olivier Marcoux

Staff

Ms. Nathalie Weizmann

Staff

Annex 3 — Table of National Committees and other national bodies on International Humanitarian Law

National Committees and other national bodies on International Humanitarian Law
as of 31 January 2007 (total by continent)

Europe	Central Asia	Asia & Pacific	The Americas	Africa	Middle East and Northern Africa
Austria	Kazakhstan	Australia	Argentina	Benin	Egypt
Belarus	Kyrgyzstan	Indonesia	Bolivia	Burkina Faso	Iran
Belgium	Tajikistan	Japan	Brazil	Cape Verde	Jordan
Croatia		Korea (Rep. of)	Canada	Comores	Kuwait
Denmark		New Zealand	Chile	Côte d'Ivoire	Libya
Finland		Democratic People's Republic of Korea	Columbia	Gambia	Morocco
Former Yugoslav Republic of Macedonia		Philippines	Costa Rica	Kenya	Syria
France		Sri Lanka	Dominican Republic	Lesotho	Tunisia
Germany			El Salvador	Madagascar	United Arab Emirates
Greece			Ecuador	Malawi	Yemen
Hungary			Guatemala	Mali	
Italy			Nicaragua	Mauritius	
Lithuania			Panama	Namibia	
Moldova (Rep. of)			Paraguay	Senegal	
Norway			Peru	Seychelles	
Poland			Trinidad & Tobago	South Africa	
Romania			Uruguay	Sudan	
Serbia				Swaziland	
Slovakia				Togo	
Slovenia				Zimbabwe	
Sweden					
Ukraine					
United Kingdom					
TOTAL: 23	TOTAL: 3	TOTAL: 8	TOTAL: 17	TOTAL: 20	TOTAL: 10
TOTAL: 81					

Country	Name and address of committee	Year established / Legal basis / Operation	Composition	Mandate
Argentina	<i>Comisión de Aplicación del Derecho Internacional Humanitario (CADIH)</i> c/o Ministerio de Defensa Azopardo 250, Piso 13° 1328 Buenos Aires Tel. +5411 43468877	<u>Established</u> : 1994 <u>Legal basis</u> : Executive Decree No. 933/94 of 16 June 1994 <u>Operation</u> : internal regulations	<u>Representatives</u> : Foreign Affairs, Defence, Interior, and Justice <u>Chairmanship</u> : rotating among the participating ministries <u>Secretariat</u> : Ministry of Defence	<ul style="list-style-type: none"> ■ To ensure implementation of international humanitarian law by drawing up laws, regulations and other texts designed to ensure respect for international commitments in this area; ■ to teach and disseminate international humanitarian law among the military and civilians.
Australia	Australian Red Cross National Committee on International Humanitarian Law c/o Australian Red Cross National Office 155 Pelham St. PO Box 196 3053 Carlton, South Victoria	<u>Established</u> : 1981 <u>Legal basis</u> : administrative understanding <u>Operation</u> : internal regulations	<u>Representatives</u> : Foreign Affairs, Justice, Defence, academic circles, experts and Australian Red Cross <u>Chairmanship</u> : Professor Stuart Kaye, Faculty of Law, University of Wollongong <u>Secretariat</u> : Australian Red Cross	<ul style="list-style-type: none"> ■ To promote knowledge of international humanitarian law; ■ to advise the government on issues relating to obligations arising from the humanitarian treaties and on all matters concerning international humanitarian law.
Austria	Interministerial Working Group on the Dissemination of International Humanitarian Law c/o Ministry of Foreign Affairs Völkerrechtsbüro Abt. 1/7 Ballhausplatz 2 1014 Vienna	<u>Established</u> : 1988 <u>Legal basis</u> : ad hoc mandates	<u>Representatives</u> : Chancellery, Foreign Affairs, Defence, Justice, Interior, academic circles and Austrian Red Cross <u>Chairmanship and secretariat</u> : Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To coordinate ratification of instruments of international humanitarian law; ■ to prepare for and follow up International Conferences of the Red Cross and Red Crescent.

Belarus	<p>National Committee for the Implementation of International Humanitarian Law</p> <p>c/o Ministry of Justice Kollectornaya str., 10 220004 Minsk Fax +375-17-2201225</p>	<p><u>Established:</u> 1997</p> <p><u>Legal basis:</u> Council of Ministers Order No. 1242 of 19 September 1997</p> <p><u>Operation:</u> Committee statutes of 26 January 1998 and internal regulations</p>	<p><u>Representatives:</u> Deputy Prime Minister, Council of Ministers, Justice, Defence, Education, Interior, Foreign Affairs, CIS Affairs, Health, Culture, State Security Committee, academic circles, Red Cross Society of Belarus</p> <p><u>Chairmanship:</u> Minister of Justice</p> <p><u>Secretariat:</u> Ministry of Justice</p>	<ul style="list-style-type: none"> ■ To promote the ratification of and adherence to humanitarian law treaties, and the amendment of national legislation to comply with these treaties, and to contribute to the dissemination of humanitarian law; ■ to draw up Advisory opinions on the Republic's position on problems of humanitarian law, draft treaties, and national implementation legislation; ■ to examine proposals and coordinate activities of bodies concerned with the implementation of humanitarian law; ■ to monitor the application of rules of humanitarian law at the national level; ■ to cooperate and exchange information with the ICRC and other international organizations involved in implementation of humanitarian law.
Belgium	<p><i>Commission interministérielle de droit humanitaire (CIDH)</i></p> <p>c/o Ministère des affaires étrangères Palais d'Egmont 8, Petit Sablon 1000 Bruxelles</p>	<p><u>Established:</u> 1987</p> <p><u>Legal basis:</u> Royal Decree of 6 December 2000 restructuring the Committee</p> <p><u>Operation:</u> internal regulations of 14 September 2001</p>	<p><u>Representatives:</u> Prime Minister, Justice, Foreign Affairs, Defence, Interior, Health, Development Cooperation, representatives of the governments of the communities and regions, permanent experts, and Belgian Red Cross</p> <p><u>Chairmanship:</u> decided by the Ministry of Foreign Affairs</p> <p><u>Secretariat:</u> Ministry of Foreign Affairs.</p>	<ul style="list-style-type: none"> ■ To identify and submit to the ministries concerned measures that need to be taken at the national level to implement humanitarian law; ■ to follow up and coordinate these measures; ■ to assist the federal government through studies, reports, opinions, or proposals relating to the application and development of humanitarian law.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Benin	<i>Commission nationale pour la mise en œuvre du droit international humanitaire</i> c/o Ministère de la Justice, de la Législation et des Droits de l'Homme B.P. 976 Cotonou	<u>Established:</u> 1998 <u>Legal basis:</u> Decree No. 98-155 of 27 April 1998 <u>Operation:</u> internal regulations	<u>Representatives:</u> Justice, Foreign Affairs and Cooperation, Defence, Interior, Security, Health, Family, Social Welfare and Women's Affairs, Finance, Education and Scientific Research, Bar Association, and Red Cross of Benin <u>Chairmanship:</u> Ministry of Justice <u>Vice-Chairmanship:</u> Ministry of Foreign Affairs and Cooperation, and Red Cross of Benin <u>Secretariat:</u> Ministry of the Interior	<ul style="list-style-type: none"> ■ To ensure effective implementation of and respect for international humanitarian law; ■ to encourage the promotion and defence of its rules and provisions; ■ to disseminate, teach and popularize humanitarian law; ■ to perform other duties as instructed by the government, including giving opinions on any questions referred to it.
Bolivia	<i>Comisión Nacional Permanente para la Aplicación del Derecho Internacional Humanitario (CNPADIH)</i> c/o Ministerio de Relaciones Exteriores y Culto Plaza Murillo, Ingavi esqu. Junín La Paz	<u>Established:</u> 1992 <u>Legal basis:</u> Decree No. 23.345 of 2 December 1992; reorganized pursuant to Resolution No. 218.456 of 17 August 1998 issued by the President of the Republic and the Ministry of Justice and Human Rights, which came into force on 30 October 1998 <u>Operation:</u> internal regulations	<u>Representatives:</u> Foreign Affairs, Justice, Defence, Interior, Sustainable Development and Planning, Supreme Court, National Congress, Bolivian Red Cross, and academic circles <u>Chairmanship and secretariat:</u> Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To monitor the dissemination and implementation of international humanitarian law; ■ to examine internal regulations and any amendments required for the incorporation of provisions of humanitarian law into national legislation, and to propose their approval by the executive and legislative authorities.
Brazil	<i>Comissão Nacional para Difusão e Implementação do Direito Internacional Humanitário no Brasil</i> Ministério das Relações Exteriores Palácio do Itamaraty, Anexo I, Sala 215-A Telefone: (61) 411 6048 Fax: (61) 322 9332	<u>Established:</u> 2003 <u>Legal basis:</u> Decree of 27 November 2003 <u>Operation:</u> internal regulations	<u>Representatives:</u> Foreign Affairs, Justice, Defence, Health, Education, Culture, President's Civil House and Special Secretariat for Human Rights, Federal Senate, Chamber of Deputies, Brazilian Red Cross and ICRC <u>Chairmanship and secretariat:</u> Foreign Affairs Ministry	<ul style="list-style-type: none"> ■ To propose to the relevant authorities the measures needed to implement and make better know IHL at the national level, in particular the Geneva Conventions, their Additional Protocols and other IHL treaties to which Brazil is party.

<p>Burkina Faso</p>	<p><i>Comité interministériel des droits humains et du droit international humanitaire</i></p>	<p><u>Established:</u> 2005 <u>Legal basis:</u> Decree No. 2005-100/PRES/PM/MPDH of 23 February 2005</p>	<p><u>Representatives:</u> Secretary Generals of the Ministries of Foreign Affairs and Regional Cooperation; Defense; Security; Social Affairs and National Solidarity; for the Promotion of Women; Basic Education and the Elimination of Illiteracy; Land Administration and Decentralization; Secondary and Higher Education and Scientific Research; Labour, Employment and Youth; Health; Environment; Finance and Budget; and the Burkina Faso Red Cross</p> <p><u>Chairmanship:</u> Secretary General of the of the Ministry for the Promotion of Human Rights</p> <p><u>Secretariat:</u> Permanent technical Secretary nominated by Decree adopted by the Council of Ministers</p>	<p>■ To facilitate the coordination of actions undertaken by the respective Ministerial Departments for the promotion and the protection of human rights;</p> <p>■ to examine the policies, strategies and issues on human rights submitted by the government;</p> <p>■ to provide technical support to the preparation of reports which Burkina Faso must present in particular to the institutions and committees of the United Nations, of the International Committee of the Red Cross (ICRC), as well as to the African Commission on Human Rights and Peoples (ACHRP), in conformity with the State's conventional obligations in the field of human rights and international humanitarian law (IHL);</p> <p>■ to study any disputes on human rights and IHL involving the State and submitted by the government;</p> <p>■ to contribute to the introduction of human rights and IHL education in the formal and non-formal systems of education;</p> <p>■ to disseminate human rights and IHL in the framework of all State bodies entrusted with respecting humanitarian rules, in particular within the armed forces.</p>
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Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Canada	National Committee on Humanitarian Law c/o Canadian Red Cross Society 170 Metcalfe St., Suite 300 Ottawa, Ontario K2P 2P2	<u>Established:</u> 1998 <u>Legal basis:</u> Memorandum of Understanding of 18 March 1998 <u>Operation:</u> according to terms of reference of 18 March 1998	<u>Representatives:</u> Foreign Affairs and International Trade, National Defence, Justice, Solicitor-General (represented by Royal Canadian Mounted Police), Canadian International Development Agency and the Canadian Red Cross Society <u>Chairmanship:</u> Department of National Defence <u>Secretariat:</u> Canadian Red Cross Society	<ul style="list-style-type: none"> ■ To recommend ratification of instruments of international humanitarian law; ■ to facilitate the implementation of obligations arising from this body of law, in particular by reviewing and advising on national legislation and administrative measures (repression of violations of humanitarian law, protection of the emblems, guarantees for protected persons); ■ to advise on disseminating and training in international humanitarian law in Canada (aimed at the armed forces, police, civil servants, humanitarian organizations, legal and medical professions, schools and universities, journalists and the public at large); ■ to coordinate and stimulate activities of the government and other organizations to strengthen and disseminate humanitarian law; ■ to recommend the adoption of measures to promote national implementation in other States drawing on the resources and expertise available in Canada; ■ to maintain a pool of personnel with expertise in humanitarian law and ensure links with other national committees and the ICRC.

Cape Verde	<p><i>Comité Nacional para os Direitos Humanos (CNDH)</i></p> <p>c/o Ministry of Justice</p> <p>205 Praia</p>	<p><u>Established</u>: 2001</p> <p><u>Legal basis</u>: Decree No. 19/2001 of 24 September 2001</p>	<p><u>Representatives</u>: Justice, Foreign Affairs, Health, Education, Culture, Social Communication, Youth, National Assembly, Bar Association, Red Cross of Cape Verde, Institutes for Youth and Women's Affairs, trade unions, national association of municipalities, and NGOs</p> <p><u>Chairmanship</u>: Ministry of Justice</p>	<ul style="list-style-type: none"> ■ To promote the protection and dissemination of human rights and international humanitarian law; ■ to define the strategy and ensure the development of a national plan of action for human rights and, once approved by the Council of Ministers, ensure its implementation; ■ to draw up and present initial and periodic reports on the implementation of international human rights and humanitarian law instruments.
Chile	<p><i>Comisión Nacional de Derecho Humanitario (CNDH)</i></p> <p>c/o Ministerio de Relaciones Exteriores, Dirección Jurídica</p> <p>Catedral 1158</p> <p>3° Piso, Oficina 339</p> <p>Santiago</p> <p>Tel. +562-6794237/8</p> <p>Fax +562-699-5517</p>	<p><u>Established</u>: 1994</p> <p><u>Legal basis</u>: Decree No. 1229 of 31 August 1994</p> <p><u>Operation</u>: internal regulations of 1 June 1995</p>	<p><u>Representatives</u>: Foreign Affairs, Defence, Interior, Education, Health, Justice, and Culture</p> <p><u>Chairmanship and secretariat</u>: Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> ■ To review and propose to the authorities legislative and administrative measures ensuring the practical implementation of international humanitarian law.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Colombia	<i>Comisión Intersectorial Permanente para los Derechos Humanos y el Derecho Internacional Humanitario</i> c/o Vicepresidencia de la República Carrera 8 No. 7-27 Bogotá Tel. +571 4442120/2864126 Fax +571 2863589	<u>Established:</u> 2000 <u>Legal basis:</u> Presidential Decree No. 321 of 25 February 2000 <u>Operation:</u> internal regulations	<u>Representatives:</u> Interior, Foreign Affairs, Justice, Defence, Labour and Social Security, and High Commissioner for Peace <u>Chairmanship:</u> Vice-Presidency of the Republic	<ul style="list-style-type: none"> ■ To orientate, encourage and coordinate the national plan of action adopted in order to promote respect for human rights and the application of international humanitarian law; ■ to ensure the adoption of national measures and evaluate periodically the progress made; ■ to consolidate institutional mechanisms for the protection of human rights and international humanitarian law and encourage dissemination to the public; ■ to promote the amendment of national measures to comply with international treaties to which Colombia is a party and help carry out international commitments; ■ to analyse the recommendations formulated by international bodies and evaluate means of implementation at the national level; ■ to promote cooperation between the government and other organizations in order to strengthen respect for human rights and international humanitarian law.

<p>Comores</p> <p><i>Commission interministérielle du droit international humanitaire (CIDIH)</i></p> <p>c/o Ministère de la Justice, de l'Information, des Affaires religieuses et des Droits de l'homme B.P. 2000 Moroni Tel.: +269 74 4040 +269 73 2854 +269 74 4053</p>	<p><u>Established:</u> 2003</p> <p><u>Legal basis:</u> Decree No. 03-104/PR of 17 November 2003</p>	<p><u>Representatives:</u> Justice, Social Affairs, Defence, Foreign Affairs, Secretary General of the Comoros Red Crescent and Secretary General of the Grand Mufti</p> <p><u>Chairmanship:</u> Government representative for human rights and humanitarian affairs (Ministry of Justice)</p>	<ul style="list-style-type: none"> ■ To liaise between the government and other parties concerned with respect for IHL; ■ to promote ratification and implementation of IHL instruments; ■ to foster the development of IHL, help make it better known and promote attendance at relevant international forums.
<p>Costa Rica</p> <p><i>Comisión Costarricense de Derecho Internacional Humanitario</i></p> <p>Ministerio de Relaciones Exteriores y Culto Casa Amarilla Apartado 10027-1000 San José Tel: (506) 233-6625 Fax: (506) 233-6625</p>	<p><u>Creation:</u> 2004</p> <p><u>Legal basis:</u> Executive Decree No. 32077-RE of 21 May 2004 (entry into force on the same day)</p>	<p><u>Representatives:</u> Ministries of the Presidency, Foreign Affairs and Worship, Public Security, Justice and Pardon, Public Education, Culture, Juveniles and Sports, the General Prosecutor's Office, the Legislature, the Judiciary, the University of Costa Rica, the National University, the Office of the Ombudsman, the National Council of Rectors, the Lawyers' College and the Costa Rican Red Cross</p> <p><u>Chairmanship and Secretariat:</u> Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> ■ To make recommendations and to propose to the government the adoption of national measures for the implementation of international humanitarian law and the elaboration of laws and regulations in this field; ■ to promote, develop and support the dissemination of international humanitarian law in State institutions and in the society at large; ■ to participate in meetings, seminars and conferences organised in this field by the government; ■ to promote and support the authorities in charge of higher education in the incorporation of international humanitarian law within academic curricula; ■ to propose measures contributing to the application and respect of international humanitarian law.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Côte d'Ivoire	<i>Commission interministérielle nationale pour la mise en œuvre du droit international humanitaire</i> c/o Ministère de la Justice et des Libertés publiques P.O. Box V 107 Abidjan Tel. +225 20322432	<u>Established:</u> 1996 <u>Legal basis:</u> Decree No. 96-853 of 25 October 1996 <u>Operation:</u> internal regulations	<u>Representatives:</u> Foreign Affairs, Justice, Defence, Interior, Health, Economy, Higher Education, Bar Association, and Red Cross Society of Côte d'Ivoire <u>Chairmanship:</u> Ministry of Justice and Public Freedom <u>Vice-Chairmanship:</u> Red Cross Society of Côte d'Ivoire <u>Secretariat:</u> Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To ensure respect for and effective implementation of international humanitarian law; ■ to review and draw up laws and regulations for the application of humanitarian law in areas where national legislation needs to be supplemented or amended, and submit them to the government; ■ to ensure that humanitarian law is applied in Côte d'Ivoire; ■ to encourage the promotion, dissemination and teaching of humanitarian law.
Croatia	National Committee on International Humanitarian Law c/o Croatian Red Cross 14 Ulica Crvnog Kriza 10000 Zagreb Tel. +385 1 4655 812 Fax +385 1 4550 072 c/o Ministry of Foreign Affairs and European Integration Department for the UN and Human Rights Trg. N. S. Zrinskog 7-8 10 000 Zagreb Tel. +385 1 4569 964 Fax: +385 1 4597416	<u>Established:</u> 2000 <u>Legal basis:</u> Government Decision of 13 July 2000	<u>Representatives:</u> Foreign Affairs, Interior, Justice, Defence, Culture, Administration, Health, Education, Government Human Rights Office, academic circles and Croatian Red Cross <u>Chairmanship:</u> Croatian Red Cross <u>Secretariat:</u> Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To coordinate all activities of State bodies dealing with the protection and promotion of international humanitarian law, including the Croatian parliament, the Office of the Ombudsman as well as non-governmental organizations; ■ to evaluate the status of implementation of humanitarian law in Croatia and make recommendations in this field, in particular for the creation of ad hoc working groups for the adoption of required implementation measures.

Democratic People's Republic of Korea	No information available.				
Denmark	Governmental Red Cross Committee c/o Danish Red Cross Blegdamsvej 27 2100 Copenhagen Tel. +45 35 25 92 00 Fax +45 35 25 92 10	<u>Established:</u> 1982 <u>Legal basis:</u> Government Decision of 16 July 1982	<u>Representatives:</u> Foreign Affairs, Justice, Defence, Interior, Education, Health, Civil Defence, armed forces, Judge Advocate General, and Danish Red Cross <u>Chairmanship and Vice-Chairmanship:</u> Ministry of Foreign Affairs <u>Secretariat:</u> Danish Red Cross	<ul style="list-style-type: none">■ To ensure the application of international humanitarian law by reviewing administrative measures to be adopted in order to meet the obligations arising from international humanitarian law treaties, particularly in the areas of disseminating and teaching international humanitarian law;■ to coordinate the implementation of these measures;■ to serve the government in an Advisory capacity.	<ul style="list-style-type: none">■ To advise the governing bodies of the Danish Red Cross regarding questions of humanitarian law at national and international levels;■ to prepare concrete proposals for the promotion of humanitarian law and other related rules;■ to represent the Danish Red Cross in national and international bodies and fora;■ to promote cooperation with national authorities, institutions and universities;■ to develop and maintain contacts with similar committees in other National Societies, the ICRC, and the Federation.
	International Humanitarian Law Committee of the Danish Red Cross (same as above)	<u>Established:</u> 1995 <u>Legal basis:</u> Decision of the Governing Board of the Danish Red Cross of 17 March 1995	<u>Composition:</u> legal and medical experts with special knowledge of international law issues		

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Dominican Republic	<i>Comisión Nacional Permanente para la Aplicación del Derecho Internacional Humanitario</i> c/o Secretaría de Estado de Relaciones Exteriores Avenida Independencia 752 Santo Domingo Tel. + 1 809 535 6280 Fax + 1 809 535 6848	<u>Established:</u> 1995 <u>Legal basis:</u> Presidential Decree No. 131-99 of 30 March 1999 <u>Operation:</u> internal regulations	<u>Representatives:</u> Foreign Affairs, Armed Forces, Education, Culture, Health, Labour, Sports and Leisure, Public Prosecutor's Office, national police, legal office of the executive branch, and the Dominican Red Cross <u>Chairmanship:</u> Secretary of State for Foreign Affairs	<ul style="list-style-type: none"> ■ To recommend appropriate measures for better national implementation of international humanitarian law; ■ to promote draft legislation and regulations for the application of humanitarian law treaties; ■ to disseminate this body of law among State authorities; ■ to promote the inclusion of this body of law in official teaching programmes.
Ecuador	<i>Comisión Nacional para la aplicación del Derecho Internacional Humanitario</i> c/o Ministry of Foreign Affairs	<u>Established:</u> 2006 <u>Legal basis:</u> Executive Decree of the President No. 1741 of 16 August 2006	<u>Representatives:</u> Ministries of Foreign Affairs, National Defence, Ministry of Security and the Police, Social Affairs, Congressional Commission for Legislation and Codification, Congressional Commission on Human Rights, Supreme Court of Justice, and Ecuadorean Red Cross Society <u>Chairmanship:</u> Ministry of Foreign Affairs <u>Secretariat:</u> Ecuadorean Red Cross Society	<ul style="list-style-type: none"> ■ To promote accession to international instruments in the field of international humanitarian law, ■ to prepare draft laws, regulations and instructions for the implementation of the norms and principles of IHL; ■ to promote the dissemination and integration of the instruments of IHL at all levels of the educational system and training programmes; ■ to monitor the practice in the field of IHL and to make recommendations; ■ to develop, promote and coordinate a national plan of action to ensure the promotion and application of IHL; ■ to analyse the recommendations of international organizations and to propose measures for their implementation at the national level; ■ to promote the cooperation between the government and international organizations to strengthen respect for international humanitarian law.

Egypt	<p>National Committee on International Humanitarian Law</p> <p>c/o Ministry of Justice Lazoughli Square Cairo Tel. +202-792-2269 Fax +202-795-6059</p>	<p><u>Established:</u> 2000</p> <p><u>Legal basis:</u> Prime Ministerial Decree No. 149 of 23 January 2000</p>	<p><u>Representatives:</u> Justice, Foreign Affairs, Defence, Interior, Higher Education, National Security, and Egyptian Red Crescent Society</p> <p><u>Chairmanship:</u> Ministry of Justice</p>	<ul style="list-style-type: none"> ■ To promote implementation of international humanitarian law, coordinate activities of the agencies concerned, and make proposals to decision-makers; ■ to propose an annual plan on national measures for dissemination of humanitarian law; ■ to promote training of public officials responsible for its implementation; ■ to contribute to training and development programmes for these officials; ■ to exchange information and experiences with other bodies concerned with international humanitarian law.
El Salvador	<p><i>Comité Interinstitucional de Derecho Internacional Humanitario (CIDH-EI)</i></p> <p>c/o Ministerio de Relaciones Exteriores Edificio 3, 2da. Planta Centro de Gobierno San Salvador Tel. +503 22 24 447</p>	<p><u>Established:</u> 1997</p> <p><u>Legal basis:</u> Presidential Decree No. 118 of 4 November 1997</p> <p><u>Operation:</u> internal regulations</p>	<p><u>Representatives:</u> Foreign Affairs, Interior, Public Security, Justice, Education, Defence, Health, Treasury, Public Prosecutor's Office, Procurator for the Defence of Human Rights, and Salvadorean Red Cross Society</p> <p><u>Chairmanship and secretariat:</u> Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> ■ To advise the government on measures to be adopted in order to implement, apply, and disseminate international humanitarian law at the national level.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Finland	National Committee on International Humanitarian Law c/o Ministry of Foreign Affairs P.O. Box 176 Laivastokatu 22 000161 Helsinki	Established: 1993 Legal basis: Decision of the Ministry of Foreign Affairs of 8 December 1993	Representatives: Foreign Affairs, Interior, Education, Social Affairs and Health, Defence, armed forces, Finnish Red Cross, Finnish Society of Humanitarian Law and Finnish branch of Amnesty International Chairmanship and secretariat: Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To coordinate the implementation and dissemination of the Conventions and Protocols and other international humanitarian law instruments; ■ to prepare for the International Conferences of the Red Cross and Red Crescent and other international conferences relating to humanitarian law; ■ to monitor new developments in international humanitarian law and consider their implications for Finland.
Former Yugoslav Republic of Macedonia	National Committee on International Humanitarian Law c/o Macedonian Red Cross	Established: 2006 Legal basis: Decision of the Secretary General of the Government of 7 June 2006	Representatives: Ministries of Foreign Affairs, Defence, Justice, Education and Science, Culture, Health, General Secretariat of the Government, Macedonian Red Cross Society, as well as other Ministries and academic circles on an ad hoc basis. Chairmanship: Ministry of Foreign Affairs Secretariat: Macedonian Red Cross Society	<ul style="list-style-type: none"> ■ To evaluate existing national law in regard to the obligations under IHL treaties; ■ to make recommendations for the further implementation of IHL and to promote activities for the dissemination and spreading of knowledge in the field of IHL.

France	<p><i>Commission nationale consultative des droits de l'homme (CNDH)</i></p> <p>c/o Bureau du Premier ministre 35, rue Saint-Dominique 75700 Paris</p>	<p><u>Established:</u> 1947</p> <p><u>Legal basis:</u> Decree No. 84-72 of 30 January 1984, amended by Decree No. 93-182 of 9 February 1993 and Decree No. 96-791 of 11 September 1996</p> <p><u>Operation:</u> Functions related to humanitarian law are carried out by Subcommittee «E» on «Humanitarian action and law», which was established on 10 December 1996</p>	<p><u>Representatives:</u> executive, judiciary and legislative branches of government, private individuals, and civil society including the French Red Cross</p> <p><u>Chairmanship:</u> university faculty member</p>	<p>Subcommittee «E» has the following duties:</p> <ul style="list-style-type: none"> ■ To handle any problem concerning emergency humanitarian situations; ■ to exchange information on the mechanisms required to face such situations; ■ to prepare recommendations on the different forms of humanitarian aid in crisis situations; ■ to monitor the application of international humanitarian law and make proposals on this subject.
Gambia	<p>Interministerial Committee on International Humanitarian Law</p> <p>c/o Department of State for Justice Mumar Kaddafi Avenue Banjul Tel. +220-227-238 Fax +220-225-352</p>	<p><u>Established:</u> 1999</p> <p><u>Legal basis:</u> Letter from the President's Office to the Department of State for Justice of 12 August 1999</p>	<p><u>Representatives:</u> Interior, Foreign Affairs, Defence, Justice, Health, Social Welfare and Women's Affairs</p> <p><u>Chairmanship:</u> Department of State for Justice</p>	<ul style="list-style-type: none"> ■ To promote new national implementation measures, including ratification of international humanitarian law treaties.
Germany	<p>National Committee on International Humanitarian Law</p> <p>c/o German Red Cross Headquarters Carstenstr. 58 12205 Berlin</p>	<p><u>Established:</u> 1973</p> <p><u>Legal basis:</u> German Red Cross Statutes of 1993</p> <p><u>Operation:</u> internal regulations</p>	<p><u>Representatives:</u> Foreign Affairs, Defence, Interior, academic circles, and German Red Cross</p> <p><u>Chairmanship:</u> university faculty member</p> <p><u>Secretariat:</u> German Red Cross</p>	<ul style="list-style-type: none"> ■ To be a forum for consultation and coordination between the German Red Cross and the various departments of the federal government; ■ to focus on implementation, development and dissemination of international humanitarian law.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Greece	Committee for the Implementation and Dissemination of International Humanitarian Law c/o Legal Department Ministry of Foreign Affairs Zalokosta 2 Athens 106-71	Established: 2000 Legal basis: Ministerial Decree No. 2/53482/0022 of 24 December 2003, as modified by Ministerial Decree No. 2/14275/0022 of 23 June 2005	Representatives: Foreign Affairs; National Defence; Internal Affairs, Public Administration and Decentralization; Public Order; Education and Religious Affairs; Justice; Health and Social Solidarity; Culture; General Secretariat of the New Generation; Directorate of Political and Emergency Planning; academic circles; Hellenic Red Cross. Chairmanship: University law professor	<ul style="list-style-type: none"> ■ To help the Ministry of Foreign Affairs carry out its duties more efficiently by advising it on the implementation of international humanitarian law by the administration and public agencies; ■ to put forward initiatives and proposals designed to encourage civil society to take action in all areas of international humanitarian law; ■ to make recommendations and proposals concerning legislation to enforce the country's obligations under international humanitarian law treaties; ■ to propose the ratification of such treaties; ■ to advise the government on policy to promote international humanitarian law at national and international levels; ■ to recommend ways of disseminating this law to the media, NGOs, social partners, agencies, schools, etc.; ■ to promote widespread dissemination programmes; ■ to liaise with academic circles and agencies involved in matters pertaining to international humanitarian law, with similar authorities and agencies in other countries, and with the ICRC and other international bodies.

Guatemala	<p><i>Comisión Guatemalteca para la Aplicación del Derecho Internacional Humanitario (COGUADIH)</i></p> <p>c/o Ministerio de Relaciones Exteriores 2a Avenida Reforma 4-47, Zona 10 Ciudad Guatemala Tel. +502 348 04 00 Fax +502 348 04 40</p>	<p><u>Established:</u> 1999</p> <p><u>Legal basis:</u> Government Agreement No. 948-99 of 28 December 1999</p>	<p><u>Representatives:</u> Foreign Affairs, Interior, Education, Defence, Health, Presidential Commission for Human Rights (COPREDEH), Secretariat for Peace, Judiciary, Congress, Public Prosecutor's Office, Human Rights Procurator, Bar Association and Guatemalan Red Cross</p> <p><u>Chairmanship and secretariat:</u> Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> ■ To recommend measures for adoption by the government to ensure implementation of international humanitarian law; ■ in accordance with this aim, to submit draft legislation and regulations to the President of the Republic for consideration; ■ to spread knowledge of international humanitarian law within State institutions and among the general public; ■ to inform the Ministry of Foreign Affairs of the Committee's willingness to represent Guatemala at international fora dealing with this body of law; ■ to suggest other activities designed to promote respect for humanitarian law.
Hungary	<p>National Committee for the Dissemination and Implementation of International Humanitarian Law</p> <p>c/o Ministry of Foreign Affairs International and European Law Department Nagy Imre tér 4. 1027 Budapest, Hungary Tel. +36 1 458 1142 F: +36 1 458 1091</p>	<p><u>Established:</u> 2000</p> <p><u>Legal basis:</u> Government Resolution No. 2095/2000 (V.9.) of 9 March 2000</p> <p><u>Operation:</u> revised statutes of 29 March 2001</p>	<p><u>Representatives:</u> Foreign Affairs, Defence, Interior, Justice, Health, Education, and Cultural Heritage, Social Affairs and Family</p> <p><u>Chairmanship:</u> Ministry of Foreign Affairs</p> <p><u>Vice-Chairmanship:</u> Ministry of Defence</p> <p><u>Secretariat:</u> Hungarian Red Cross</p>	<ul style="list-style-type: none"> ■ To advise the government on international humanitarian law issues; ■ to promote the dissemination of this body of law within the country, in particular in institutions of higher or secondary education, and in the armed and security forces, and to make recommendations; ■ to help government authorities to consider negotiation and accession to humanitarian law treaties and to contribute to the elaboration of new treaties; ■ to consult and cooperate with the ICRC; ■ to exchange ideas with similar committees in European Union member States, in neighboring countries especially.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Indonesia	Interministerial Committee on International Humanitarian Law c/o Ministry of Justice and Human Rights Jl.H.R. Rasuna Said Kav 6-7 Jakarta Tel. +62 21 520-2387 Fax +62 21 522-1619	<u>Established:</u> 1980 Legal basis: Decree of the Minister of Justice No. M.01.PR.09.01 of 2 January 1980; mandate renewed by Decree No. C.33.PR.09.03 of 24 June 1996	<u>Representatives:</u> Foreign Affairs, Justice, Defence, Interior, Education, Culture, armed forces, academic circles and Indonesian Red Cross Society <u>Chairmanship:</u> Department of Justice and Human Rights	<ul style="list-style-type: none"> ■ To formulate government policy principles on matters of international humanitarian law; ■ to carry out research and studies on implementing this body of law; ■ to formulate uniform principles of dissemination of international humanitarian law through education and information programs; ■ to prepare draft laws and regulations to implement the Geneva Conventions and other IHL instruments.
Iran	National Committee on International Humanitarian Law c/o Iranian Red Crescent Society Ostad Najatollahi Ave. Tehran Tel. +98 21 884-9077 Fax +98 21 884-9079	<u>Established:</u> 1999 Legal basis and operation: Decree of the Cabinet of Ministers No. H 19651T/77125 of 17 May 1999 (Statutes of the Committee)	<u>Representatives:</u> Foreign Affairs, Justice, Interior, Health, Defence and Armed forces <u>Chairmanship and secretariat:</u> Iranian Red Crescent Society	<ul style="list-style-type: none"> ■ To develop and present for approval suitable measures for implementing international humanitarian law at the national level, including the ratification of treaties; ■ to monitor compliance with this body of law at the national level; ■ to teach and promote the concepts of humanitarian law among the armed forces, the general public and educational institutions; ■ to represent the government on issues relating to humanitarian law in national and international fora; ■ to coordinate the exchange of information with regional and international organizations; ■ to deal with matters covered by humanitarian law relating to refugees, prisoners of war and other victims of war.

<p>Italy</p>	<p><i>Commissione di Studio per l'adeguamento dell'ordinamento giuridico agli accordi e alle regole di diritto internazionale umanitario</i></p> <p>c/o Ministro degli Affari Esteri Servizio del Contenzioso Diplomatico, Trattati e Affari Legislativi Ufficio 1 1, Piazzale della Farnesina 00199 Roma Tel. +39 64 759223 Fax +39 64 759430</p>	<p><u>Established:</u> 1988</p> <p><u>Legal basis:</u> reorganized by Ministry of Foreign Affairs Decree No. 215bis of 16 February 1998</p>	<p><u>Representatives:</u> Foreign Affairs, Justice, Defence, judiciary, academic circles, and Italian Red Cross</p> <p><u>Chairmanship:</u> Ministry of Foreign Affairs</p>	<p>■ To review measures necessary for adapting domestic legislation to the provisions of international humanitarian law;</p> <p>■ to review amendments to legislation needed for the repression of war crimes and other violations of international humanitarian law.</p>
<p>Japan</p>	<p>National Committee on International Humanitarian Law</p> <p>c/o Japanese Red Cross Society 1-3 Shiba Daimon, 1-Chome Minato-Ku Tokyo 105-8521 Tel. +81 3 3438-1311 Fax +81 3 33435-8509</p>	<p><u>Established:</u> 1999</p>	<p><u>Representatives:</u> Prime Minister, Foreign Affairs, Justice, Education, Defence, Health and Labour, academic circles, and Japanese Red Cross Society</p> <p><u>Secretariat:</u> Japanese Red Cross Society</p>	<p>■ To study means of spreading knowledge of international humanitarian law, its implementation, its legal aspects, the teaching of this area of law, exchanges of information, and other aspects considered necessary by the Committee.</p>

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Jordan	National Committee for the Implementation of International Humanitarian Law c/o Jordan Red Crescent P.O. Box 10001 11151 Amman Tel. +96264773141 Fax +96264750815	<u>Established:</u> 1999 <u>Legal basis:</u> Temporary Law No. 63 of 20 August 2002 <u>Operation:</u> regulations issued by the Commission	<u>Representatives:</u> Prime Minister, Justice, Foreign Affairs, Interior, Education, Health, Directorate of Military Courts, Directorate of Public Security, Directorate of Civil Defence, Jordan University, National Assembly, experts appointed by the Chairman of the Committee, Jordan Red Crescent (represented by its President). <u>Chairmanship:</u> appointed by the King <u>Vice-Chairmanship:</u> Jordan Red Crescent <u>Secretariat:</u> Jordan Red Crescent	<ul style="list-style-type: none"> ■ To devise and implement the general policy, strategy, plans and programmes for raising awareness of the principles of international humanitarian law at the national level; ■ to promote, together with the ICRC and the parties concerned, efforts to disseminate the principles of international humanitarian law; ■ to exchange information and experiences with national, Arab, regional and international organizations and commissions concerned with international humanitarian law and strengthen ties with them; ■ to carry out research and studies for the parties concerned, present proposals to them and give them advice; ■ to issue publications on international humanitarian law and the means by which it may be implemented; ■ to adopt, together with the parties concerned, recommendations and reports related to the principles of international humanitarian law and its development; ■ to help improve legislation related to international humanitarian law.

<p>Kazakhstan</p>	<p>Interdepartmental Commission on International Law and the International Human Rights Treaties</p> <p>c/o Ministry of Foreign Affairs 10, Beybitskii St. Astana, 473000</p> <p>Republic of Kazakhstan Tel: +3172 153 003 Fax: +3172 327 567</p>	<p><u>Established:</u> 2003</p> <p><u>Legal basis:</u> Government Resolution No. 1251 of 9 December 2003</p> <p><u>Operation:</u> internal regulations approved by Government Resolution No. 1251 of 9 December 2003</p>	<p><u>Representatives:</u> Foreign Affairs, Industry and Trade, Justice, Labour and Social Insurance, Health, Economy, Interior, Environmental Protection, Information, Defence, Education, General Prosecutor's Office and National Security Committee</p> <p><u>Chairmanship and secretariat:</u> Foreign Affairs Ministry</p>	<p>■ To submit advice and proposals to the government on meeting obligations under IHL and international human rights law, on implementing the treaties of those bodies of law and on improving domestic legislation to bring it in line with the resulting obligations;</p> <p>■ to spread knowledge of IHL and promote wider international cooperation in respecting IHL and human rights law.</p>
<p>Kenya</p>	<p>National Committee for the Implementation of International Humanitarian Law</p> <p>c/o Attorney-General's Chamber State Law Office P.O. Box 40113 Nairobi Tel. +254 2 227 461</p>	<p><u>Established:</u> 2001</p> <p><u>Legal basis:</u> Memorandum of the Attorney-General of 5 October 2001</p>	<p><u>Representatives:</u> Foreign Affairs, Defence, Justice, Attorney-General, Interior, Police, Prisons, Youth, Women, Refugees, Health and Education, academic circles, judiciary, Kenya Bar Association, Kenya Medical Association, and Kenya Red Cross Society</p>	<p>■ To promote respect for international humanitarian law through its implementation and dissemination.</p>

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Korea (Republic of)	National Committee on International Humanitarian Law c/o Ministry of Foreign Affairs and Trade (Treaties Bureau) 77 Sejongro Chongrogu Seoul (110-760) Tel +822 720 92 13 Fax +822 725 07 67	<u>Established:</u> 2002 <u>Legal basis:</u> Presidential Decree No. 15602 <u>Operation:</u> Decision of the Ministry of Foreign Affairs and Trade No. 42 of 17 October 2002	<u>Representatives:</u> Foreign Affairs, Education and Human Resources, Justice, National Defence, Cultural Properties Administration, Korean Red Cross Society and academic circles <u>Chairmanship and secretariat:</u> Ministry of Foreign Affairs and Trade	<ul style="list-style-type: none"> ■ To monitor and coordinate the dissemination and implementation of international humanitarian law; ■ to advise on matters relating to ratification of humanitarian law treaties; ■ to review national legislation and propose measures to implement the rules of international humanitarian law; ■ to promote international humanitarian law in educational institutions, armed forces and to the general public; ■ to cooperate and exchange information with national committees of other countries, the ICRC and international organizations.
Kuwait	National Committee on International Humanitarian Law c/o Ministry of Justice	<u>Established:</u> 2006 <u>Legal basis:</u> Ministerial Decree of the Ministry of Justice of 9 October 2006	<u>Representatives:</u> Ministries of Justice, Foreign Affairs, Defence, Foreign Affairs, Interior, and Information, Faculty of Law of Kuwait University, Kuwait Red Crescent Society. <u>Chairmanship:</u> Assistant Undersecretary for Legal Affairs and International Relations, Ministry of Justice	<ul style="list-style-type: none"> ■ To study and assist in bringing domestic legislation in line with the obligations resulting from the Geneva Conventions and their Additional Protocols, as well as other IHL instruments; ■ to coordinate the activities of State bodies involved in the implementation of IHL and to provide recommendations, proposal and advice on the implementation of IHL at the national level; ■ to set up a plan for the organization of training and dissemination programs to develop knowledge of IHL.

<p>Kyrgyzstan</p>	<p>Interdepartmental Committee on the Implementation of International Humanitarian Law</p> <p>c/o Ministry of Justice Ozorbekova St. 37 720040 Bishkek Tel. +996 312 22 84 89 Fax +996 312 66 30 40/44</p>	<p><u>Established:</u> 2003</p> <p><u>Legal basis:</u> Government Resolution No. 361 of 18 June 2003</p> <p><u>Operation:</u> Regulations annexed to Resolution No. 361 of 18 June 2003</p>	<p><u>Representatives:</u> Justice, Foreign Affairs, Health, Interior, Environment and Emergencies, Defence, Education, Science and Culture, Social Fund, in coordination with National Security Service, Red Crescent Society of Kyrgyzstan, and ICRC</p> <p><u>Chairmanship and secretariat:</u> Ministry of Justice</p>	<ul style="list-style-type: none"> ■ To assist in bringing domestic legislation in line with IHL treaties; ■ to analyse and assess legislation as regards compliance with IHL norms; ■ to suggest ways of improving the implementation of IHL; ■ to consider and develop opinion briefs on draft international treaties and national laws in the sphere of IHL; ■ to coordinate the activities of State bodies involved in the implementation of IHL; ■ to promote the dissemination of IHL and gather information on developments in the area of IHL; ■ to monitor the implementation of its own decisions; ■ to facilitate interaction and the exchange of information with the ICRC and other international organizations active in the area of IHL.
<p>Lesotho</p>	<p>National Committee on International Humanitarian Law</p> <p>c/o Ministry of Defence Private Bag A 116 Maseru Tel. +266 326422</p>	<p><u>Established:</u> 2001</p> <p><u>Legal basis:</u> Memorandum of Understanding of March 2001 among the entities concerned</p>	<p><u>Representatives:</u> Defence, Foreign Affairs, Justice, Law and Constitutional Affairs, Interior, Police, Health and Education, armed forces, academic circles and Lesotho Red Cross Society</p> <p><u>Chairmanship:</u> Ministry of Defence</p>	<ul style="list-style-type: none"> ■ To advise the government on matters relating to ratification of or accession to humanitarian law treaties; ■ to set up education and training programmes as a means of spreading knowledge of international humanitarian law; ■ to prepare studies; ■ to identify, prepare, and adopt measures for the implementation of international humanitarian law; ■ to monitor the implementation of this body of law at ministerial level.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Lithuania	Commission on the Implementation of International Humanitarian Law c/o Ministry of National Defence Totoriu g. 25/3 2600 Vilnius Tel. +370 85 273 5623 (Milda Meckauskaite) Fax +370 52 126 967	Established: 2001 Legal basis: Amendment to the Regulations of the Ministry of National Defence of 22 May 2001, and Ordinance of the Ministry of National Defence of 30 August 2001	Representatives: National Defence, Foreign Affairs, Interior, Culture, Health, European Law, Armed Forces, and Lithuanian Red Cross Chairmanship and secretariat: Ministry of National Defence	<ul style="list-style-type: none"> ■ To act as an Advisory body of the Ministry of National Defence in favour of coordination of national implementation of humanitarian law, including participation in treaties, training programmes, and proposals for enacting or amending legislation.
Libya	National Committee on International Humanitarian Law	Established: 2005 Legal basis: Decree of the General Popular Committee No. 253 of 2005	<p>Representatives: Secretariat of the General Popular Committee, General Popular Committees for Justice, Defence, External Communication and International Cooperation, Public Security, Health Care, Higher Education, Culture, National Centre for Educational Planning, charitable foundations, bar association, IHL experts, and Libyan Red Crescent Society</p> <p>Chairmanship: Secretary of the General Popular Committee for Justice</p>	<ul style="list-style-type: none"> ■ Develop strategies, plans and programmes in the field of implementation of IHL; ■ study IHL conventions and prepare draft legislation in implementation of these conventions; ■ prepare and implement training programmes on IHL; ■ organize national regional and international seminars and events to study IHL and its national implementation; ■ coordinate among national bodies concerned with the implementation of IHL; ■ monitor violations of IHL and propose remedial measures; ■ enact measures to promote and disseminate an IHL culture.

Madagascar	<i>Interministerial Committee for the Red Cross</i> c/o Ministry of Justice	<u>Established:</u> 2006 <u>Legal basis:</u> Governmental Decree relating to the establishment of an Inter-ministerial Committee for the Red Cross of 27 June 2006	<u>Representatives:</u> Ministries of Foreign Affairs, Justice, Interior and Administrative Reform, National Defence, Health and Family Planning, State Secretariat for Public Security, representatives of civil society and of the Malagasy Red Cross Society <u>Chairmanship:</u> Ministry of Justice	<ul style="list-style-type: none"> ■ To coordinate and follow up actions for the national implementation of international humanitarian law treaties; ■ to evaluate existing domestic law and other national measures of implementation and to advise the government on the development of IHL; ■ to ensure the dissemination of IHL on the national territory.
Malawi	Malawi National Committee on International Humanitarian Law c/o Ministry of Defence Private Bag 339 Lilongwe	<u>Established:</u> 2001 <u>Legal basis:</u> Memorandum of understanding of March 2001 among the ministries concerned	<u>Representatives:</u> Ministries of Defence, Foreign Affairs, Justice, Interior, judiciary, Human Rights Commission, and Malawi Red Cross Society	<ul style="list-style-type: none"> ■ To advise the government on legislation to implement international humanitarian law, including the adoption of measures for the punishment of war criminals, respect for the emblem, and the protection of civilians during armed conflict; ■ to help spread knowledge of this body of law.
Mali	<i>Comité de pilotage du programme national pour l'éducation à la culture de la paix et aux droits humains</i> c/o Ministère de l'Éducation de base P.O. Box 71 Bamako Tel. +223 222 450	<u>Established:</u> 1998 <u>Legal basis:</u> Ministerial Decree No. 98-401/PW/-RM of 11 December 1998 <u>Operation:</u> internal regulations	<u>Representatives:</u> Prime Minister's Office, Foreign Affairs, Justice, Defence, Interior, Culture, Education, National Advisory Committee on Human Rights, National Commission for UNESCO, cultural and religious associations, trade unions, and human rights NGOs <u>Chairmanship:</u> Ministry of Basic Education <u>Vice-Chairmanship:</u> Ministry of Secondary and Higher Education and Scientific Research	<ul style="list-style-type: none"> ■ To develop and evaluate the national programme for education in the spheres of peace and human rights; ■ to propose or initiate awareness-raising activities aimed at promoting behaviour conducive to peace and respect for human rights; ■ to ensure the follow-up and evaluation of these measures and activities.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Mauritius	National Committee on International Humanitarian Law c/o Prime Minister's Office Level 4 Gouvern. Centre Port Louis	<u>Established:</u> 2001 <u>Legal basis:</u> Cabinet Decision of 12 October 2001 (Memorandum of the Prime Minister's Office of 11 December 2001)	<u>Representatives:</u> Prime Minister, Foreign Affairs, Public Prosecutor's Office, Finance, Social Security, Education, Culture, Health, and Mauritius Red Cross Society <u>Chairmanship and secretariat:</u> Prime Minister's Office	<ul style="list-style-type: none"> ■ To ensure effective implementation and application of international humanitarian law instruments; ■ to help spread knowledge of these instruments at the national level.
Moldova	National Committee on Consultation and Coordination of Implementation of International Humanitarian Law 31 August, 82 2012 Chisinau Tel. +373 2 234351 Fax +373 2 232527	<u>Established:</u> 1996 <u>Legal basis:</u> Governmental Decrees No. 382-P of 9 September 1996 and No. 121-P of 21 October 1998 <u>Operation:</u> Government Order No. 259 of 1 April 1999 (internal regulations)	<u>Representatives:</u> Foreign Affairs, Interior, Education, National Security, Health, Labor, Defence, Justice, Civil Defence, Police and Red Cross Society of Moldova <u>Chairmanship:</u> Ministry of Justice <u>Secretariat:</u> Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To review and evaluate national legislation in the light of international humanitarian law treaties; ■ to present conclusions to the government on issues relating to national implementation, make appropriate recommendations, and monitor their application; ■ to coordinate the activities of the governmental bodies concerned; ■ to spread knowledge of international humanitarian law.
Morocco	Commission interministérielle des libertés publiques et des droits de l'homme c/o Ministère des Droits de l'homme Rabat	<u>Established:</u> 2003 <u>Legal basis:</u> Prime Ministerial Decree <u>Operation:</u> matters related to IHL are dealt with by the Subcommittee for the implementation of IHL, established by the Prime Minister on 6 October 2003	<u>Representatives:</u> (Subcommittee for the implementation of IHL): Interior, Justice, Foreign Affairs, Education, Modernization of the Public Sector, Employment, Social Affairs, and government General Secretariat (members of the armed forces to be nominated) <u>Chairmanship</u> (Subcommittee for the implementation of IHL): Minister for Human Rights	<ul style="list-style-type: none"> ■ The Subcommittee for the implementation of IHL is responsible for spreading knowledge of and promoting implementation of IHL at the national level

Namibia	Interministerial Technical Committee on Human Rights and Humanitarian Law c/o Ministry of Justice Private Bag 13302 Windhoek Tel. +264 61 280 5111	<u>Established:</u> 1995 <u>Legal basis:</u> Decision of the Council of Ministers	<u>Representatives:</u> Justice, Foreign Affairs, Defence, and Ombudsman <u>Chairmanship:</u> Ministry of Justice	<ul style="list-style-type: none"> ■ To advise the government on issues relating to human rights and international humanitarian law.
New Zealand	National Committee on International Humanitarian Law c/o New Zealand Red Cross 69 Molesworth St. Thorndon P.O. Box 12-140 6038 Wellington Tel. +64 4 472 3750 Fax +64 4 473 0315	<u>Established:</u> 1980 <u>Legal basis:</u> Decision of the Executive	<u>Representatives:</u> Foreign Affairs, Justice, Defence, Education, armed forces, academic circles, judiciary, and New Zealand Red Cross <u>Chairmanship:</u> Judge of the Court of Appeal <u>Secretariat:</u> New Zealand Red Cross	<ul style="list-style-type: none"> ■ To advise the government on ways in which it can meet its treaty obligations with regard to the dissemination of international humanitarian law; ■ to support and coordinate the dissemination programmes and report to the government on their relevance.
Nicaragua	<i>Comisión Nacional para la Aplicación del Derecho Internacional Humanitario</i> c/o Ministerio de Relaciones Exteriores Apartado postal No. 127 Managua Tel. +505 266 6512 Fax +505 266 6512	<u>Established:</u> 1999 <u>Legal basis:</u> Presidential Decree No. 54-99 of 23 April 1999	<u>Representatives:</u> Foreign Affairs, Education, Health, Justice, President's Office, commissions of the National Assembly, Supreme Court, Nicaraguan Red Cross, and academic circles <u>Chairmanship:</u> Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To advise and provide support to the government on all issues relating to participation in international humanitarian law treaties, to incorporation of their provisions into national law, and to dissemination of their rules.
Norway	National Committee on International Humanitarian Law c/o Ministry of Foreign Affairs P.O. Box 8114 0032 Oslo Tel. +47 22 24 36 00 Fax +47 22 24 95 80	<u>Established:</u> 1989 <u>Legal basis:</u> Royal Decree of 15 September 1989	<u>Representatives:</u> Foreign Affairs, Defence, Justice, armed forces, Public Prosecutor's Office, and Norwegian Red Cross <u>Chairmanship:</u> Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To implement international humanitarian law and advise the authorities on its interpretation and application; ■ to serve as a forum for discussion on international humanitarian law.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Panama	<i>Comisión Nacional Permanente para la Aplicación del Derecho Internacional Humanitario (CPDIH)</i> c/o Ministerio de Relaciones Exteriores Altos del Cerro Ancón Edificio 95 Ciudad de Panamá Tel. +507 211 4296 Fax +507 211 4296	<u>Established:</u> 1997 <u>Legal basis:</u> Executive Decree No. 154 of 25 August 1997, amended by Executive Decree No. 165 of 19 August 1999 <u>Operation:</u> Resolutions No. 001-98 and No. 001-00 (internal regulations)	<u>Representatives:</u> Foreign Affairs, Justice, Interior, Education, Labor, Police, Civil Defense, President's Office, Legislative Assembly, academic circles, and Red Cross Society of Panama <u>Chairmanship and Secretariat:</u> Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To prepare a list of national legislation implementing international humanitarian law, and make recommendations and propose draft laws to the Executive to make effective the norms contained in that body of law; ■ to disseminate international humanitarian law in institutions of the State and among the general public; ■ to cooperate with the Ministry of Foreign Affairs in organizing meetings with the ICRC; ■ to promote the incorporation of humanitarian law into university and school programmes and cooperate in the development of such programmes; ■ to represent Panama in international conferences and meetings dealing with topics relating to international humanitarian law.
Paraguay	<i>Comisión Interministerial de Aplicación del Derecho Internacional Humanitario</i> c/o Ministerio de Defensa Nacional Edificio del Ministerio de Defensa Mcal. López esquina Vicepres. Sánchez Asunción	<u>Established:</u> 1995 <u>Legal basis:</u> Presidential Decree No. 8802 of 12 May 1995, reorganized by Presidential Decree No. 15926 of 28 December 2001	<u>Representatives:</u> Foreign Affairs, Defence, Interior, Justice and Employment, Paraguayan Red Cross <u>Chairmanship and secretariat:</u> Ministry of Defence	<ul style="list-style-type: none"> ■ To consult with the public and private institutions concerned and make recommendations to the authorities on means of implementing, applying, and disseminating international humanitarian law.

<p>Peru</p>	<p><i>Comisión Nacional de Estudio y Aplicación del Derecho Internacional Humanitario (CONADIH)</i> c/o Ministerio de Justicia Scipión Llona 350 Miraflores Lima Fax +511 441 05 47</p>	<p><u>Established:</u> 2001 <u>Legal basis:</u> Resolution (Resolución Suprema) No. 234-2001-JUS of 1 June 2001 <u>Operation:</u> Ministerial Resolution No. 240-2001-JUS of 23 July 2001 (regulations of procedure and operation)</p>	<p><u>Representatives:</u> Justice, Foreign Affairs, Interior, Defence and academic circles <u>Chairmanship and secretariat:</u> Ministry of Justice</p>	<p>■ To carry out studies and make recommendations on implementation of international humanitarian law; ■ to contribute to the monitoring of the implementation of this body of law; ■ to help spread knowledge of this body of law.</p>
<p>Philippines</p>	<p>Philippine National Red Cross International Humanitarian Law National Committee c/o Philippine National Red Cross Bonifacio Drive, Port Area P.O. Box 280 2803 Manila Fax +63 2 257 08 57</p>	<p><u>Established:</u> 2000 <u>Legal basis:</u> Decision of the Philippine National Red Cross upon approval by its Board of Governors on 26 April 2000 <u>Operation:</u> internal regulations</p>	<p><u>Representatives:</u> Foreign Affairs, Defence, Interior, Education, Justice, armed forces, police, Commission on Human Rights, Philippine Society on International Humanitarian Law, Philippine Campaign to Ban Landmines, Philippine Coalition to Stop the Use of Children as Soldiers, various other legal and academic circles and Philippine National Red Cross <u>Chairmanship and secretariat:</u> Philippine National Red Cross</p>	<p>■ To act as an Advisory body on international humanitarian law, especially with respect to the promotion of this body of law, the development of dissemination strategies, the emblem campaign, networking, and assistance to victims of war.</p>

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Poland	Commission for International Humanitarian Law Affairs c/o Ministry of Foreign Affairs Legal and Treaty Department Al. J. ch. Szucha 23. 00-580 Warsaw Tel. +48 225239424 Fax +48 225238329	<u>Established: 2004</u> Legal basis: Regulation No. 51 of 20 May 2004 issued by the Prime Minister	<u>Representatives:</u> Foreign Affairs, Internal Affairs and Administration, Finance, Culture and National Heritage, Science, Health, National Education, Defence, Justice, Prime Minister's Office <u>Chairmanship:</u> Ministry of Foreign Affairs <u>Vice-Chairmanship:</u> Prime Minister's Office <u>Secretariat:</u> appointed by the Chairman	<ul style="list-style-type: none"> ■ To promote the norms of international humanitarian law and introduce them into the Polish legal system; ■ to analyse international agreements on international humanitarian law and put forward proposals for legislation to implement them; ■ to advise the prime minister on legislative and educational activities in the field of international humanitarian law; ■ to analyse legislation being prepared, assess government programmes and review relevant documents; ■ to prepare educational projects in the field of international humanitarian law; ■ to maintain ties with other committees in Poland and abroad concerned with international humanitarian law; ■ to formulate Poland's position at international conferences on the basis of proposals made by the minister in charge.

Senegal	Haut Commissariat aux droits de l'homme et à la promotion de la paix	<u>Established:</u> 2004 <u>Legal Basis:</u> Decree N° 2004-657 relating to the creation, the organization and the functions of the High Commission for Human Rights and the Promotion of Peace	<u>Chairmanship:</u> High Commissioner <u>Representatives:</u> Human Rights Office; unit for the follow-up of International Law; unit for the documentation and promotion of human rights law and international humanitarian law	<ul style="list-style-type: none"> ■ To receive and conduct investigations into complaints made by legal or physical persons and organizations working in the field of human rights and international humanitarian law; ■ to promote the reception, integration and implementation into domestic law of international treaties relating to human rights law or international humanitarian law; ■ to contribute to the dissemination of human rights law and international humanitarian law.
Serbia	National Committee on International Humanitarian Law c/o Ministry of Foreign Affairs 26, Kneza Milosa St. 11000 Belgrade, Serbia Montenegro Tel. + 381 11 3618 043 Fax +381 11 3068 531	<u>Creation:</u> 2004 <u>Legal base:</u> Decision of the Council of Ministers of 10 December 2004	<u>Representatives:</u> Ministries of Foreign Affairs and of Defence, Ministries of Interior and of Justice, Red Cross Society of Serbia, International Law Association of Serbia, experts and academics	<ul style="list-style-type: none"> ■ To develop and implement IHL by proposing measures for national implementation, promoting dissemination and training and cooperating with the ICRC and other bodies; ■ to report to the Council of Ministers; ■ to complement the activities of the IHL Commission of the Serbian Red Cross Society.
Seychelles	National Committee on International Humanitarian Affairs Maison Quéau de Quinssy PO Box 656 Victoria, Mahé	<u>Established:</u> 2001 <u>Legal basis:</u> Decision of the Council of Ministers of 23 May 2001	<u>Representatives:</u> Foreign Affairs, Public Prosecutor's Office, Health, Education, Defence, police, Seychelles Red Cross Society, Ombudsman, and LUNGOS (Liaison Unit of NGOs)	<ul style="list-style-type: none"> ■ To review national legislation and propose to the government the adoption of measures needed to implement the rules of international humanitarian law and human rights law; ■ to monitor and coordinate the application of these rules; ■ to promote and disseminate these rules at the national level; ■ to take part in the drafting of reports to be submitted to United Nations treaty monitoring bodies.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Slovakia	National committee on International Humanitarian Law c/o Slovak Red Cross Grösslingova 24 81446 Bratislava Tel. +421 2 52925305 Fax +421 2 52923279	<u>Established:</u> 2001 <u>Legal basis:</u> Decision of the Ministry of Foreign Affairs of 20 September 2001 (statutes of the Committee)	<u>Representatives:</u> Foreign Affairs, Defence, Justice, Interior, Health, Education, Culture, armed forces, Ombudsman, and Slovak Red Cross <u>Chairmanship:</u> Ministry of Foreign Affairs <u>Secretariat:</u> Slovak Red Cross	<ul style="list-style-type: none"> ■ To analyse the implementation status of international humanitarian law in national law and its application by national courts and administrative authorities; ■ to propose to the authorities the adoption of measures to ensure effective implementation of this body of law; ■ to propose Slovakia's participation in other humanitarian law treaties; ■ to help spread knowledge of this body of law in schools, the armed forces, and the police; ■ to cooperate with national committees of other countries and with international organizations.
Slovenia	Interdepartmental Commission for International Humanitarian Law c/o Ministry of Foreign Affairs Presnova cesta 25 1000 Ljubljana	<u>Established:</u> 1999 <u>Legal basis:</u> Governmental Decree No. 762-01/99-(B) of 2 April 1999	<u>Representatives:</u> Foreign Affairs, Defence, Health, Education, Science and Sports, Interior, Justice, Immigration and Refugees, Environment, Labour, Family and Social Affairs, Culture, Slovenian Red Cross <u>Chairmanship:</u> external consultant <u>Secretariat:</u> Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To promote activities for the application of international humanitarian law, primarily the Geneva Conventions and their Additional Protocols, and for the dissemination of this body of law.

South Africa	National Committee on International Humanitarian Law c/o Department of Foreign Affairs	<u>Established:</u> 2006 <u>Legal basis:</u> Decision of the Executive Management Committee of the Department of Foreign Affairs of April 2006	<u>Representatives:</u> Foreign Affairs, Justice, Defence, Police, Health and Education, as well as co-opted members from outside the government (e.g. academic circles, ICRC) <u>Chairmanship:</u> Department of Foreign Affairs	<ul style="list-style-type: none"> ■ To act as a focal point and to provide leadership on all matters related to the domestic implementation and dissemination of IHL
Sri Lanka	National Committee on International Humanitarian Law c/o Ministry of Foreign Affairs Republic Building P.O. Box 583 Colombo 1 Tel. +94 325371 Fax +94 333450	<u>Established:</u> 2000 <u>Legal basis:</u> Decision of the Cabinet of Ministers of March 2000	<u>Representatives:</u> Foreign Affairs, Justice, Defence, Interior, Culture, Health, Public Prosecutor's Office, armed forces, and police <u>Chairmanship and secretariat:</u> Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To consider issues relating to national implementation of international humanitarian law; ■ to promote accession to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Sudan	National Committee on International Humanitarian Law c/o Ministry of Justice Khartoum	<u>Established:</u> 2003 <u>Legal basis:</u> Presidential Decree No. 48 of 8 February 2003 <u>Operation:</u> internal regulations	<u>Representatives:</u> Justice, Foreign Affairs, Interior, Health, Education, Higher Education, Defence, Humanitarian Affairs, International Cooperation, Information, Council of Ministers, Chairman of the Law Commission of the National Assembly, Sudanese Intelligence, Sudanese Red Crescent and independent dignitaries and experts <u>Chairmanship:</u> Ministry of Justice <u>Secretariat:</u> consists of the chairman, the rapporteur, the executive and the finance director, plus other persons appointed by the chairman	<ul style="list-style-type: none"> ■ To review national legislation to determine whether it is in harmony with IHL and to suggest possible improvements; ■ to set up the mechanisms and take measures needed to implement IHL; ■ to approve programmes to spread knowledge of IHL and follow up implementation of legislative provisions in this area; ■ to consider, approve and/or organize workshops and any other activity relating to IHL in Sudan and to participate in conferences and other activities abroad; ■ to take part in studying new developments in IHL and make recommendations to the relevant national authorities; ■ to cooperate and exchange experiences with national, regional and international organizations and assist the relevant national authorities in the drafting of reports; ■ to coordinate government efforts and to advise the State on IHL.

Swaziland		<u>Established:</u> 2004 <u>Legal basis:</u> Cabinet Paper of 23 November 2004	<u>Representatives:</u> Private and Cabinet Office, Ministry of Foreign Affairs and Trade, Ministry of Defence, Ministry of Health and Social Welfare, Ministry of Home Affairs, Ministry of Education, Attorney General's Office, Royal Swaziland Police, Correctional Services, University of Swaziland, and Baphalali Swaziland Red Cross Society <u>Chairmanship:</u> Ministry of Foreign Affairs and Trade	<p>■ To take measures and set up the mechanisms needed to implement IHL</p>
Sweden	Swedish Total Defence Council for International Humanitarian Law c/o Ministry of Defence Jakobsgratan 9 103 33 Stockholm Tel. +46 8 763 10 00 Fax +46 8 723 11 89	<u>Established:</u> 1991 <u>Legal basis:</u> Government Decision of 20 June 1991 (Bill 1990/91:102)	<u>Representatives:</u> Foreign Affairs, Defence, Armed forces, Military Institute, Civil Defence, Health, and Swedish Red Cross <u>Chairmanship and secretariat:</u> Ministry of Defence	<p>■ To monitor implementation of international humanitarian law at the national level;</p> <p>■ to spread knowledge of this body of law in Sweden.</p>
	Advisory Group on Public International Law c/o Ministry for Foreign Affairs Gustav Adolfs Torg 1 P.O. Box 161 21 103 39 Stockholm Tel. +46 8 405 5985	<u>Established:</u> 1995 <u>Legal basis:</u> Decision of the Ministry of Foreign Affairs	<u>Representatives:</u> Foreign Affairs, Defence, armed forces, Military Institute, Civil defence, Swedish Red Cross, Save the Children Fund, and legal experts <u>Chairmanship:</u> Ministry of Foreign Affairs	<p>■ To monitor progress in international humanitarian law matters and recommend to the government possible areas of future developments.</p>

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Syria	National Committee on International Humanitarian Law	<u>Established:</u> 2004 <u>Legal basis:</u> Decree No. 2.989 of 2 June 2004	<u>Representatives:</u> Foreign Affairs, Defence, Interior, Justice, Red Crescent Affairs and the Law of the Sea, Higher Education, Syrian Arab Red Crescent and Syrian Civil Defence <u>Chairmanship:</u> Ministry for Red Crescent Affairs and the Law of the Sea	<ul style="list-style-type: none"> ■ To coordinate national action to disseminate international humanitarian law and to improve knowledge of the law; ■ to adopt national legislation; ■ to examine violations of the law; ■ to support the Syrian Arab Red Crescent and the General Directorate for Civil Defence and International Cooperation.
Tajikistan	Commission on the Implementation of International Humanitarian Law under the Government of the Republic of Tajikistan Prospekt Rudaki 80 734001 Dushanbe Tel. +992372 24 76 46 Fax +992372 21 40 29	<u>Established:</u> 1999 <u>Legal basis:</u> Governmental Decree No. 277 of 2 July 1999 <u>Operation:</u> internal regulations of 3 August 1999	<u>Representatives:</u> Deputy Prime Minister, Justice, Defence, Security, Interior, Health, Foreign Affairs, Culture, Education, Labour, Environment, Emergency Situations, Presidential Administration and Guard, Border-Protection Committee, academic circles, and Red Crescent Society of Tajikistan <u>Chairmanship:</u> Deputy Prime Minister <u>Vice-Chairmanship:</u> Ministry of Justice <u>Secretariat:</u> Directorate for Constitutional Guarantees of Citizens' Rights	<ul style="list-style-type: none"> ■ To promote the national implementation of international humanitarian law and the ratification of the instruments composing it; ■ to analyse national legislation and make proposals for bringing it into line with the requirements of humanitarian law; ■ to coordinate the activities of the bodies involved in its implementation; ■ to help spread knowledge of this body of law, especially by developing courses in international humanitarian law intended for all levels of teaching and for use in the armed forces; ■ to cooperate with bodies of the State and with international organizations on matters relating to the development of humanitarian law.

Togo	<i>Commission interministérielle de mise en œuvre du droit international humanitaire</i> c/o Ministère de la Justice et des Droits de l'Homme P.O. Box 1325 Lomé	<u>Established:</u> 1997 <u>Legal basis:</u> Interministerial Order No. 97-031 of 11 June 1997	<u>Representatives:</u> Justice, Defence, Interior, Foreign Affairs, Health, Women's Affairs and Social Welfare, National Human Rights Commission, Togolese Red Cross, academic and religious circles <u>Chairmanship and secretariat:</u> Ministry of Justice and Human Rights	<ul style="list-style-type: none"> ■ To review and propose to the government laws and regulations for the application of international humanitarian law; ■ to contribute to the promotion and teaching of this body of law and to making it more accessible to the public; ■ to monitor respect for and implementation of this body of law.
Trinidad and Tobago	Interministerial Committee on International Humanitarian Law c/o Ministry of Enterprise Development and Foreign Affairs 1 Queen's Park West Port of Spain Tel. + 1 868 623 4116 Fax + 1 868 624 4220	<u>Established:</u> 1997 (ad hoc), 2001 (ad hoc) <u>Legal basis:</u> Cabinet Decision No. 211 of 21 February 2001	<u>Representatives:</u> Foreign Affairs, Defence, Security, Education, Health, Culture, Trinidad and Tobago Red Cross Society, and Public Prosecutor's Office <u>Chairmanship:</u> Ministry of Foreign Affairs	<ul style="list-style-type: none"> ■ To review and present to the government suitable recommendations relating to the 1954 Hague Convention for the protection of cultural property in the event of armed conflict and its two Protocols, and the 1980 Convention on Certain Conventional Weapons and its five Protocols.
Tunisia	Commission nationale de droit international humanitaire c/o Ministry of Justice and Human Rights	<u>Established:</u> 2006 <u>Legal basis:</u> Decree No. 2006-1051 of 20 April 2006	<u>Representatives:</u> Ministry of Justice and Human Rights and other concerned Ministries, the General Commissioner for Human Rights, the High Committee for Human Rights and Fundamental Freedoms, the Tunisian Union of Solidarity, the Tunisian Red Crescent, and chosen experts in the field of IHL. <u>Chairmanship:</u> Minister of Justice and Human Rights or his representative	<ul style="list-style-type: none"> ■ To prepare recommendations for the adaptation of national legislation and practice to the requirements of IHL; ■ to draw up and carry out an annual strategy for the dissemination and national implementation of IHL in conjunction with relevant national bodies. ■ when called upon to do so, to issue legal recommendations on questions related to IHL and its field of application.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Ukraine	Interdepartmental Committee for the Implementation of International Humanitarian Law in Ukraine V. Grushevskogo 12/2 252008 Kiev Tel. +380 44 293 4405 Fax +380 44 229 7971	<u>Established:</u> 2000 <u>Legal basis:</u> Resolution of the Cabinet of Ministers No. 1157 of 21 July 2000 <u>Operation:</u> internal regulations and composition approved on 21 July 2000	<u>Representatives:</u> Cabinet of Ministers, Emergency Situations, Finance, Interior, Health, Foreign Affairs, Economy, Education, Justice, Culture, armed forces, Human Rights, and Ukrainian Red Cross Society <u>Chairmanship:</u> Ministry of Justice <u>Vice-chairmanship:</u> Ukrainian Red Cross Society <u>Secretariat:</u> Cabinet of Ministers	<ul style="list-style-type: none"> ■ To study and analyse Ukrainian legislation on international humanitarian law and prepare proposals, in order to bring this legislation into compliance with the regulations of international agreements to which Ukraine is a party; ■ to coordinate activities of the ministries, other authorities and public organizations with an interest in the implementation of international humanitarian law; ■ to inform and assist organs of local and State authorities in their activities for the promotion and dissemination of international humanitarian law.
United Arab Emirates	National Committee on International Humanitarian Law	<u>Established:</u> 2004 <u>Legal basis:</u> Decision of the Council of Ministers No. 32 of 1 November 2004	<u>Representatives:</u> Ministries of Foreign Affairs; Interior; Justice, Islamic Affairs and Awqaf; Supreme Command of the Armed Forces; National Security; University of the United Arab Emirates; and UAE Red Crescent Society <u>Chairmanship:</u> Deputy Prime Minister and Minister of State for Foreign Affairs <u>Secretariat:</u> UAE Red Crescent Society	<ul style="list-style-type: none"> ■ To reinforce the implementation of international humanitarian law and to ensure coordination among the competent State authorities; ■ to review IHL related legislation and to submit recommendations thereon; ■ to collect data and statistics related to the contributions of the State in this field; ■ to reinforce cooperation and an exchange of experiences with the unions, societies, and other organizations active in the field of IHL; ■ to set up plans and training programs and to organize seminars to ensure the raising of awareness and the dissemination of IHL.

<p>United Kingdom</p>	<p>Inter-departmental Committee for International Humanitarian Law</p> <p>c/o Foreign and Commonwealth Office Whitehall London SW1A 2AH Tel. +44 20 7270 3562</p>	<p><u>Established:</u> 1999</p> <p><u>Legal basis:</u> Decision of the Foreign & Commonwealth Office</p>	<p><u>Representatives:</u> Foreign Affairs, Justice, Interior, Defence, Education, Environment, Trade, Health, Social Security, Culture, International Development, and British Red Cross</p> <p><u>Chairmanship and secretariat:</u> Foreign & Commonwealth Office</p>	<ul style="list-style-type: none"> ■ To ensure inter-departmental consultation and coordination on international humanitarian law issues; ■ to review national legislation in order to identify additions and amendments needed for full implementation of the obligations arising from this body of law; ■ to encourage the dissemination of this body of law in the armed forces and among other parts of the population; ■ to consider the advisability of United Kingdom participation in international treaties and conferences relating to this body of law; ■ to monitor new developments in this area of law and review the implications for the United Kingdom; ■ to promote consultations between the government, the British Red Cross, and other organizations concerned; ■ to consider giving assistance to other States in implementing humanitarian law.
<p>Uruguay</p>	<p><i>Comisión Nacional de Derecho Humanitario (CNDH-Ur)</i></p> <p>c/o Ministerio de Relaciones exteriores, Dirección de Derechos Humanos Colonia 1206 11600 Montevideo Tel. +5982 902 7806 or +5982 902 1327 (2215)</p>	<p><u>Established:</u> 1992</p> <p><u>Legal basis:</u> Executive Decrees No. 677/992 of 24 November 1992 and No. 244/996 of 3 June 1996</p>	<p><u>Representatives:</u> Foreign Affairs, Defence, Justice, Interior, Health, Education and Culture, Supreme Court, Uruguayan Red Cross, and academic circles</p> <p><u>Chairmanship:</u> Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> ■ To make recommendations on dissemination of international humanitarian law at all levels of public and private education; ■ to make recommendations on implementation of and respect for this body of law through the adoption of legislative provisions, regulations and other measures that ensure the application of this body of law.

Country	Name and address of committee	Year established/Legal basis/Operation	Composition	Mandate
Yemen	National Committee for International Humanitarian Law Affairs c/o Yemen Red Crescent Society P.O. Box 1257 Sana'a	<u>Established:</u> 1999 <u>Legal basis:</u> Presidential Decree No. 408/1999 of 11 December 1999 <u>Operation:</u> internal regulations	<u>Representatives:</u> Foreign Affairs, Legal Affairs, Justice, Education, Information, Defence, Interior, and Yemen Red Crescent Society <u>Chairmanship:</u> Ministry of Foreign Affairs <u>Vice-chairmanship:</u> Ministry of Health <u>Secretariat:</u> Yemen Red Crescent Society	<ul style="list-style-type: none"> ■ To review national legislation and make proposals for its amendment so as to keep pace with new features and developments of international humanitarian law; ■ to define mechanisms, measures and procedures capable of guaranteeing application of this body of law and effective implementing of its provisions; ■ to adopt plans and programmes for the dissemination of this body of law at all levels of society and for monitoring its application; ■ to supervise implementation of the provisions of the law regulating use of the red cross and red crescent emblems and prohibiting their misuse; ■ to decide on the organization of seminars and other events relating to humanitarian law at the national level, and take part in appropriate regional and international events; ■ to take part in the examination of draft humanitarian law treaties and make proposals and recommendations pertaining to them; ■ to promote cooperation and the exchange of expertise with regional and international organizations working in the area of humanitarian law, and lend support to government authorities preparing studies and reports requested by these organizations.

Zimbabwe	<p>Interministerial Committee for Human Rights and Humanitarian Law</p> <p>c/o Ministry of Justice, Legal and Parliamentary Affairs P.O. Box 7744 Harare</p>	<p><u>Established:</u> 1993</p> <p><u>Legal basis:</u> Cabinet Decision</p>	<p><u>Representatives:</u> Foreign Affairs, Defence, Interior, Justice, Culture, Education, Health and Children, Youth, Equality and Employment, President's Office, Ombudsman, Public Prosecutor's Office, and Judiciary</p> <p><u>Chairmanship:</u> Ministry of Justice</p>	<p>■ To advise on the adoption of new humanitarian law treaties;</p> <p>■ to analyse measures of national implementation.</p>
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ICRC Advisory Service on IHL
Updated 31 January 2007/SHN

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 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.



ICRC