



**ICRC**

**ADVISORY SERVICE**  
ON INTERNATIONAL HUMANITARIAN LAW

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**Guidelines for Assessing the  
Compatibility between National Law  
and Obligations under Treaties of  
International Humanitarian Law**

## **Purpose**

Assessing national measures to implement international humanitarian law allows the authorities to verify which measures have already been taken and which remain to be taken in order to honour the obligations undertaken by the State when it became party to treaties of international humanitarian law. Assessment is a tool for the authorities to plan and organize what must be done to bring national law fully into line with international treaties.

## **Structure**

a) This assessment has five parts (see annex 1): Introduction (I), National structures for the implementation of international humanitarian law (II), Relationship between municipal law and public international law (III), Evaluation of national implementation measures (IV), and Conclusions and recommendations (V).

b) Part I may be inspired by similar assessments carried out in other States because it contains general information varying little from one State to another.

c) Parts II and IV examine a variety of areas where national measures have, or have not, been taken. While part II concerns an organizational aspect of the matter, Part IV contains the very substance of the assessment.

Part IV is divided into two chapters, one examining measures which may be considered priorities, and the second non-priority measures.

It is useful to examine each area in three sections: the first (*General remarks*) offers a brief explanation of the issue being addressed, including references to the relevant provisions of applicable treaties; the second (*Assessment*) gives an analysis of relevant national law including jurisprudence; and the third (*Conclusion*) states whether action should be taken, and if so the kind of action needed, or whether no further action is required because the relevant international provisions have been satisfactorily implemented.

d) Part III is essential to understanding how international law in general can be applied at national level, and of special importance for rules which can be directly applied.

e) Part V summarizes the conclusions reached in Parts II and IV and makes recommendations for a series of measures.

f) Finally, the assessment should have annexed copies of all legal texts referred to, or at least the relevant passages in those texts.

## **Contents**

a) The assessment concentrates on national measures required to implement the four Geneva Conventions of 1949 and their Additional Protocols of 1977, the 1954 Hague Convention for the protection of cultural property and its two protocols, the 1980 Convention on conventional weapons and its four protocols, the 1997 Ottawa Convention and the 1998 Rome Statute of the International Criminal Court.

b) The measures considered cover the promotion and teaching of humanitarian law, repression of violations, protection of red cross or the red crescent emblem, protection of persons deprived of their freedom, protection of women and children, marking of certain

persons and objects including structures for the protection and assistance of victims of armed conflict, protection of the natural environment, and restrictions on the means and methods of warfare.

c) The issue of how the authorities organize and coordinate the adoption of national measures to implement international humanitarian law treaties includes the question of an interministerial commission, or other comparable structure, and existing or future cooperation in this field with the National Red Cross or Red Crescent Society.

d) Part IV starts by determining to which humanitarian law treaties the State is party and how it came to be that way (ratification, accession or succession). The analysis should include any reservations made by the State. In cases of succession, or continuation, the validity for the successor State of the reservations made by the predecessor State should be assessed.

Participation in the following treaties is examined:

- the Hague Conventions of 18 October 1907;
- the Geneva Conventions of 1949 and their Additional Protocols of 1977;
- the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, of 14 May 1954;
- the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, of 10 April 1972;
- the Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques, of 10 December 1976;
- the Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons Which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, of 10 October 1980, and its four protocols;
- Convention on the Rights of the Child, of 20 November 1989;
- the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, of 13 January 1993;
- the Convention on Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction, of 18 September 1997;
- the Statute of the International Criminal Court, adopted on July 17, 1998;
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, of 25 May 2000.

For each treaty it should be mentioned whether it has been officially published and, if so, where.

e) As regards translation and availability of the treaties, the assessment focuses on the Geneva Conventions and their Additional Protocols. It explains the legislation applicable to, and the authorities responsible for, the translation of multilateral international treaties.

f) Promotion and teaching of humanitarian law is examined with five groups in mind: armed forces, police and security forces, university students, public officials, and the general public. The assessment also analyses the role given to legal advisers in the armed forces.

g) This part concerns repression of violations of international humanitarian law and war crimes in particular. It analyses in detail the possibilities for prosecuting suspects under national criminal law. The assessment includes aspects such as universal jurisdiction, responsibilities of superiors, statutory limitations, immunities for public officials and the excuse of superior orders.

This part also assesses the compatibility of national law with the Rome Statute of the International Criminal Court, especially as regards cooperation with the Court.

h) As regards the red cross and the red crescent emblem, the assessment looks at the legislative framework regulating the use of the emblem and punishing its misuse.

i) The part on persons deprived of their freedom in connection with armed conflict or other violence distinguishes between the treatment of these persons in general and that of prisoners of war and civilian internees in particular. Judicial guarantees receive particular attention. The procedure for determining prisoner-of-war status is also explored.

j) Regarding the situation of children and women in the event of armed conflict, the assessment examines the treatment of this group, in particular when they are deprived of their freedom. It contains a description of the rules applicable to the recruitment into the armed forces of persons under 18 years of age and their enrolment into military schools.

k) The assessment scrutinizes the manner in which national law ensures that medical personnel and establishments, installations containing dangerous forces, cultural property, and journalists will be readily identified and protected – both in principle and in practice – in armed conflict. It also contains a description of the national rules applicable to the identification of members of the armed forces.

l) Part of the assessment deals with the organization, functioning and activities of various entities whose purpose is to protect and assist the victims of armed conflict. These are the National Red Cross / Red Crescent Society, the civil defence system, the national information bureau, and the graves registration service. It includes an analysis of the national rules applicable to protected zones and localities.

m) Regarding protection of the natural environment, the assessment identifies the legal framework in place to protect the natural environment, including provisions from the point of view of the 1976 Convention on the prohibition of military or any hostile use of environmental modification techniques.

n) When dealing with restrictions on the means and methods of warfare, the assessment analyses the national rules applicable to issues such as military planning and determining the legality of weapons.

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