

# **Fifth Meeting of Representatives of National IHL Committees of Commonwealth Countries**

**26 – 30 April 2021, Online**

## **REPORT**

***‘Partnership, persistence and a sense of  
possibility: National IHL Committees and  
the Commonwealth’***

**Co-hosted by**



Foreign, Commonwealth  
& Development Office



**BritishRedCross**



**ICRC**

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## Introduction

The Fifth Meeting of Representatives of National International Humanitarian Law (IHL) Committees of Commonwealth Countries (the meeting) took place online (MS Teams) from 26-30 April 2021. Co-hosted by the UK National Committee on IHL, the British Red Cross and the International Committee of the Red Cross (ICRC) with support from the Commonwealth Secretariat, the meeting followed similar meetings in Swakopmund (2017), Port of Spain (2013), New Delhi (2009) and Nairobi (2005). While the global pandemic required an online meeting rather than in person, the aim of the event was to bring together representatives of National IHL Committees of Commonwealth countries to discuss developments and current issues in IHL and in particular, the role that National IHL Committees can play in supporting implementation of IHL.

Drawing on the IHL resolution of the 33<sup>rd</sup> International Conference of the Red Cross and Red Crescent, entitled “Bringing IHL Home”, which encouraged strengthening of co-operation between National IHL Committees, the meeting sought to:

1. Understand, share and support follow up to the IHL resolution, including in considering the universality of IHL and its roots in different cultural and religious traditions, and in developing voluntary reports on the implementation of IHL at domestic level;
2. Share information and experiences in the national implementation of IHL and particularly the role that National IHL Committees can play;
3. Address domestic implementation of IHL issues related to topical matters, such as protection of the environment, sexual violence in armed conflict, and starvation (famine prevention and humanitarian access).

A copy of the Programme is at Annex 1.

## Monday 26 April: Opening Session, and the Universality of IHL

### Opening session

**Mr. Andrew Murdoch**, of the UK Foreign, Commonwealth and Development Office and chair of the UK National IHL Committee, opened the session, welcoming all the participants. Mr. Murdoch set the scene by emphasising that the meeting sought to be practical in nature, with the programme designed to provide Committee members with ideas and tools which could be used afterwards. He also believed that, through the participants’ exchanges, they would learn from each other and strengthen the Commonwealth and IHL networks in their entirety, benefitting their contacts and co-operation in the years ahead.

**Lord (Tariq) Ahmad**, as UK Minister responsible for the Commonwealth, expressed his passionate belief that IHL was the crystallisation of values that everyone should hold dear: decency, respect for one another, and a sense of common humanity. Values that, to this day, can be the first victim of any conflict. That is why the work done by the participants, as its champions, was so compelling and so crucial. He thanked the British Red Cross (BRC), the ICRC and the UK National IHL Committee, for organising the event and emphasised that the common language and legal tradition of the Commonwealth, its shared values and commitment to human rights and the rule of law, provided a firm footing for co-operation.

With regards to the Meeting’s agenda, Lord Ahmad expressed his interest in the participants’ findings on IHL and the protection of the environment as the UK Government shapes the agenda for COP26 in November. He also mentioned the special responsibility that Commonwealth countries have to end sexual violence in conflict zones, considering these countries being amongst the largest contributors of uniformed peacekeepers. He encouraged participants to lift and encourage each other in spreading knowledge and understanding, recalling, as a Muslim in the midst of Ramadan, the words of Prophet Mohammed, that “from cradle to grave, we must always seek knowledge”. He then concluded by thanking participants for their partnership and commitment.

**Dr. Helen Durham**, ICRC's Director of International Law and Policy, began by noting that the meeting came in the wake of COVID-19, at a time when humanity was grappling with the effects of the pandemic. This was therefore a time for all to renew their energy and push for respect for IHL. She explained that the pandemic not only poses an additional threat to the lives and well-being of victims of armed conflict, but also raises serious protection issues. It is therefore crucial that key IHL provisions are respected to enable us all to fight the disease while responding to the urgent needs of the vulnerable. Dr Durham highlighted that the fundamental principles of IHL were not new or specifically western, as demonstrated by the ICRC's research, which considers traditional norms of warfare in different parts of the globe and reveals these IHL principles to be universal. Finally, Dr. Durham extended her appreciation to the BRC, the Commonwealth and the UK Government for their assistance in organising the event and wished all participants a fruitful week.

**Mr. Michael Adamson**, Chief Executive of British Red Cross, considered the meeting to be particularly timely given the number of people around the world experiencing acute vulnerability in emergencies, be that related to the pandemic itself, to climate change, to conflict or to some other hazard. The meeting was also taking place at a time when so many of our institutions and current ways of working are under real pressure, the kind of pressure that can jeopardise our ability to protect and provide support to the people who need our help. In many ways, noted Mr. Adamson, the meeting embodied the qualities and values that are important to our ability to find a pathway forwards to tackle these challenges, in particular, the values of partnership, persistence and a sense of possibility.

#### Panel session: The Universality of IHL: roots in the domestic context

The Chair for the session, **Ms. Isabel Letwin**, Director of the UK Ministry of Defence Legal Services, stated that it is increasingly recognised that a common language and point of reference are important to helping to ensure respect for international humanitarian law, but that universal principles can be best understood when explained or promoted taking into consideration the local context. This was one of the major findings of the ICRC's report on the Roots of Restraint in War, published in 2018.<sup>1</sup> In addition, the IHL resolution at the last International Conference of the Red Cross and Red Crescent in 2019 focused on the effective implementation of IHL at the national level. Ms. Letwin then highlighted how this session contributes to anchoring international humanitarian law in the cultural traditions and religions represented in the Commonwealth, before introducing the panellists.

**Dr. Anne Quintin**, Head of Advisory Services, ICRC Geneva, noted that the need to support better implementation of, and compliance with, IHL was recognised in the IHL resolution at the last International Conference of the Red Cross and Red Crescent entitled "Bringing IHL home: A road map for better national implementation of international humanitarian law."<sup>2</sup> She explained that the resolution provides a 'menu' of measures that States and National Societies can take to improve their domestic implementation of IHL. There is still more that could be done to improve IHL implementation in the Commonwealth, for example, it might be possible to use the upcoming 45<sup>th</sup> anniversary of the adoption of Additional Protocols I and II to the 1949 Geneva Conventions as a time to encourage formal adherence to those treaties by States that have not yet done so – and to ensure their implementation in domestic law, policy and military manuals. Another way for a State to help with the implementation of IHL more generally would be to undertake a "compatibility study" or "voluntary report" on how it gives effect to IHL in its national context. Dr. Quintin mentioned that there will be an event on this topic hosted by the ICRC and Switzerland in June 2021 for those States that are interested in producing such reports. Finally, she noted that States have resources available through the ICRC Advisory Service<sup>3</sup> to help with implementing IHL at the domestic level (e.g.

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<sup>1</sup> <https://www.icrc.org/en/publication/roots-restraint-war>

<sup>2</sup> [https://rcrcconference.org/app/uploads/2019/12/33IC-R1-Bringing-IHL-home\\_CLEAN\\_ADOPTED\\_FINAL-171219.pdf](https://rcrcconference.org/app/uploads/2019/12/33IC-R1-Bringing-IHL-home_CLEAN_ADOPTED_FINAL-171219.pdf)

<sup>3</sup> <https://www.icrc.org/en/document/icrc-advisory-services-international-humanitarian-law>

ratification kits, model laws, legislative checklists, etc.). To help give effect to the IHL resolution mentioned above, the ICRC has also released a checklist, *Bringing IHL Home: Guidelines on the National Implementation of International Humanitarian Law*.<sup>4</sup>

**Ms. Tamalin Bolus**, Legal Adviser, ICRC Pretoria, gave a presentation on the development of a new tool which explores the relevance of IHL in African cultural and warfare traditions. After undertaking some research examining the correlation between traditional African customs and practices with the principles and rules of modern IHL, a set of cards was created which depicted the team's findings. A South African artist illustrated the rule or principle being referred to on the card. On the front of the card, an IHL rule is listed alongside a traditional practice; then more detail is given on the back of the card. She expressed hope that this new tool – and the research which underpins it – will give African audiences a greater sense of ownership of IHL.<sup>5</sup>

**Ms. Delia Chatoor**, Trinidad and Tobago Red Cross Society, then spoke on a range of matters relating to IHL treaty accession and possible activities which National IHL Committees might undertake. Given competing domestic priorities, Ms Chatoor noted that National IHL Committees play an important role in providing capacity to their respective States for helping to review and implement IHL treaties. As an example, she mentioned that not many Commonwealth Member Countries in the Caribbean are States Parties to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict or its two Protocols. The task of acceding to and implementing these treaties might not be as onerous as it may seem at the outset because States in the region are already undertaking similar work to protect cultural property from the effects of natural disasters. National IHL Committees could therefore facilitate the examination of these treaties to determine how to amend current practice. Another specific recommendation mentioned was that Member Countries might consider recognising the competence of the International Humanitarian Fact-Finding Commission (IHFFC) if they have not already done so. Finally, Ms Chatoor stressed the importance for Commonwealth Member Countries to work together, notably at the level of the Senior Officials of Commonwealth Law Ministries, to continue dialogue, collaboration and sharing of best practices to help ensure the principles and norms of IHL retain their relevance, efficacy and applicability.

**Mr. Fredrick Tamarua**, Department of Justice and Attorney General, Papua New Guinea, also mentioned the resolution on “Bringing IHL Home”, notably with reference to ways it might be given effect in the context of Papua New Guinea and the Pacific region. He claimed that recently many countries in the Pacific region have experienced a period of relative peace and, though welcome, this has made it challenging to make the case for why it is urgent to accede to IHL treaties or implement IHL at the domestic level. However, the Pacific is not immune to war and the principles which underpin IHL are not foreign concepts. Therefore, he suggested that it is important to underscore the value of IHL for populations and key decision makers who live in the region. Some of the convergences between IHL and traditional practices in the Pacific were explored in the 2009 publication, *Under the Protection of the Palm: Wars of Dignity in the Pacific*.<sup>6</sup> While there is a wide diversity of traditional practices – and while such practices might not mirror modern IHL – Mr Tamarua said that they nevertheless can encourage discussion about what IHL means in particular cultural contexts and help to reinforce the universality of the notion that even wars have limits.

**Dr. Farah Ibrahim**, Department of Philosophy, Kenyatta University, Kenya, rounded out the panel with a presentation on the convergences between IHL and Islamic law. He stated that sources of the law of armed conflict in Islam can be found in the Quran, the Hadith, and the practice of the Four-Rightly Guided Caliphs. Dr Ibrahim noted that IHL and Islam both have

<sup>4</sup> <https://www.icrc.org/en/document/bringing-ihl-home-guidelines-national-implementation-international-humanitarian-law>

<sup>5</sup> <https://www-icrc-org.cdn.ampproject.org/c/s/www.icrc.org/en/document/african-customs-tool-traditional-customs-and-ihl?amp>

<sup>6</sup> <https://www.icrc.org/en/doc/assets/files/other/wars-of-dignity-pacific-2009.pdf>

a general orientation towards respect for the dignity of human life. Then, he detailed a number of shared provisions between IHL and Islamic law, including protections for the young, the aged, refugees, and injured and surrendered troops. Dr Ibrahim also noted that under Islamic law, one must honour both written and verbal agreements. That is to say, Islamic belligerent States should follow IHL treaties on this basis in addition to any reasons for doing so under international law. He concluded by stating that Islamic law and IHL have a similarity of intent, objective, approach and consequence. However, he believed that while failure to follow IHL may have consequences for this life, failure to follow comparable rules in Islamic law could have consequences in the hereafter as well.

The panellists were asked whether there was anything the Commonwealth or National IHL Committees from Member Countries could do to encourage accession to Additional Protocols I and/or II to the Geneva Conventions ahead of the anniversary in 2022. Dr Quintin recommended that National IHL Committees create and maintain a list of the existing IHL treaties to which their State is a party – and equally importantly – to maintain a list of treaties to which it is not. This can support priority setting by identifying which treaties can be quickly ratified/acceded to (including the Additional Protocols if they haven't been already). This can also allow them to consider what challenges have prevented ratification of certain treaties up to this point. It was also recommended that Committees draw up a plan of action for the ratification of/accession to certain treaties and put certain structures in place before ratification/accession (such as weapons reviews). Finally, Committees may wish to consider translating treaty texts into all national languages.

**Ms. Letwin** concluded the session by saying that the topics covered were diverse, but they are linked by the fact that the principles of IHL represent universal norms and can be found in each country's culture and traditions. This is of special relevance to the Commonwealth, with its rich diversity of peoples and nations.

## Tuesday 27 April: Voluntary reports and the role of National IHL Committees

### Opening discussion

**Ms. Kelisiana Thynne**, Legal Adviser, ICRC, chaired the discussion. **Mr. Murdoch** outlined four key points of the UK experience in producing a voluntary report on IHL. Firstly, he noted that the report was always intended to be a public facing document which promotes the UK's record on the implementation of and compliance with IHL. In addition, the report could be used to improve the overall understanding of IHL with the population in general and encourage dialogue on IHL. Secondly, he emphasized how useful it is and has been to have a single reference document containing the essence of IHL implementation for the purposes of preparing drafts and briefs, or responding to IHL questions from Parliament or the public, and in instances where it is necessary to consider new policies. Regarding the process of producing the report, Mr. Murdoch's third point was that after some level of research into the obligations and implementation of IHL, certain gaps may become apparent. He emphasized that there was no obligation to publish these gaps but it could be helpful for identifying follow up steps. The fourth point spoke to a wider objective of the report as a means by which to promote effective IHL implementation globally; by publishing what the UK is doing it would allow for a greater confidence for conversations to take place on the rule of law and the implementation of IHL internationally.

Mr. Murdoch noted that the National IHL Committee had considered various options on who to task the research to, including academic experts and the British Red Cross Society. It was ultimately decided that the research and drafting should be borne in house by the Committee with the assistance of the British Red Cross Society, with the main aim to make the report accessible to a non-expert audience. When considering what to include in the report, Mr. Murdoch shared that other reports of a similar nature were consulted as well as the main framework of IHL treaties and the UK's implementation obligations. The final report was



published in 2019 and is available in both hard copy and online.<sup>7</sup> Mr. Murdoch emphasized that the report has been an incredibly useful document both at conferences and as a scene setter for discussions with other States on the implementation of IHL. They have also published a toolkit to provide some guidance for other interested States, and it includes templates for both long and short form reports.<sup>8</sup>

Mr. Murdoch identified the main audience as being domestic but also noted international interest. The report has been used extensively in Parliament and in outreach activities more generally with NGOs, the public and academia. An important audience that has resulted from the publication of the report has been other government officials and departments, which have used the report to inform parliamentary documents and questions.

Speaking about establishing a National IHL Committee, **Ms. Leda Koursoumba**, Vice President, Cyprus Red Cross Society, noted that Cyprus has done well in establishing their very recent National IHL Committee (NIHLC). She emphasized the harmonious collaboration between the Ministry of Foreign Affairs and the Cyprus Red Cross Society (CRCS) as a key influence in this positive result. She also noted the invaluable support of the ICRC Advisory Service.

Recalling the obligations contained in Common Article 1 and Customary IHL whereby States are bound to respect and ensure respect for IHL, Ms. Koursoumba noted that it is within this framework that States are encouraged to establish a NIHLC with the task to advise, assist, implement, develop and spread knowledge of IHL. Acknowledging the discretionary nature of establishing a committee, she went on to highlight that States decide on whether to create such committees and determine their mandate, structure, powers and functions.

Ms. Koursoumba noted that the idea of establishing a committee had been on the agenda for some time, but that momentum arose following the 33<sup>rd</sup> International Conference of the Red Cross and Red Crescent in 2019. In summary the Ministry of Foreign Affairs is the secretariat, the Committee must meet in plenary twice a year and whenever urgent matters arise. She went on to note that the Committee also has the power to establish sub-working groups for specific topics. It is expected that the Committee will submit an activity report every two years to the Council of Ministers. Noting the key tasks of the Committee thus far, Ms Koursoumba indicated that the Committee advised the Ministry of Foreign Affairs on which of the open pledges Cyprus should co-sponsor from the 33<sup>rd</sup> International Conference. The Committee has also been tasked with undertaking a compatibility study in order to set priorities and submit recommendations by the end of 2021. She ended by emphasizing that efficient IHL committees can be effective and a considerable asset to a State in the implementation of IHL.

#### Working groups on voluntary reporting on IHL

Participants were broken into three working groups chaired by **Ms. Leda Koursoumba, Mr. Andrew Murdoch, and Ms. Kelisiana Thynne** to discuss voluntary reporting on IHL. There is no obligation to report but there are advantages to drafting a voluntary report often done by National IHL Committees.

### 1. Why should your Committee draft a voluntary report?

It is an efficient way for States to demonstrate that they are aware of their obligations internally and also externally, and to affirm their commitment to IHL. For example, it shows their armed forces that IHL is taken seriously by people at the top. It is a way to monitor progress and to roadmap and chart the way forward for implementation of IHL treaties. They

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<sup>7</sup> UK Voluntary Report on the Implementation of International Humanitarian Law at Domestic Level: <https://www.gov.uk/government/publications/implementation-of-international-humanitarian-law-at-domestic-level-voluntary-report>

<sup>8</sup> See UK International humanitarian law implementation report: toolkit: <https://www.gov.uk/government/publications/international-humanitarian-law-implementation-report-toolkit>

also help answer numerous questions which stakeholders have in relation to IHL because there is already something to refer to. They can be updated regularly. Another benefit is ensuring a common script while working cross-government on IHL issues, with a view to a consistent and accurate representation of a State's implementation of IHL. A common understanding is helpful for consistent messaging.

It was suggested that a voluntary report would get the focus around IHL among influential decision-makers; it could for instance be used in a parliamentary debate. The voluntary report could include a summary of actions approved by the Cabinet of Ministers, rules, regulations and good practices, training and capacity building to be taken into consideration within the Government. Another reason is to demonstrate that National IHL Committees have additional value. They can then prove useful for key ministries and competent authorities to take informed steps for the implementation of IHL.

**2. Can you start to put together a plan of action for drafting a report? What are the practical steps necessary?**

An early step while creating a National IHL Committee would be to conduct a compatibility study. This work could also be used for multiple purposes afterwards. Articulating the plan of action and rationale, purpose of the report, managed risks, timelines, modality of internal and external consultation, publication and media plans are important. For the process to be successful, it needs to have a multi-disciplinary approach involving various actors, such as the Government, academia and National Red Cross and Red Crescent Societies. The UK has produced a toolkit that acts as guidance. It is translated into various languages. States can use this approach as good examples and ideas for best practices. States can also use other States' reports as models and make it their own by including their own contexts and topics of interest which the other States haven't covered. It is important to identify who, and which government department would lead the working group for drafting or overseeing the production of a report and be a single point of contact.

**3. What are the topics which would be interesting to include in the report?**

Some reports make links to the cultural contexts and include the roots and universality of IHL. Attention can be drawn to how well has the Government and National Society responded to pledges made during the last International Conference, as well as resolutions from the Conference. The time frame for the reporting cycle was discussed. It was suggested that every time there is an International Conference, a State could report back. That would entail a reporting cycle of around four years. After having finalized the first report, it can be updated on a regular basis with annexes.

**4. Would you feel comfortable exposing gaps and determining ways to address them? How can you start to address gaps – e.g. can it be an agenda item for a National IHL Committee? Or can relevant Ministries be tasked?**

It depends on which area of weakness has been identified. If a State acknowledges a weakness in implementation, it could remedy the matter internally, having it as an agenda item, instead of publishing the fact publicly. A point that should be recognized is that identifying the gaps can take time. However, it will be useful to identify the gaps and to have a shared understanding of them. A way to address gaps lies in the recognition that the Committee or other individuals will continue to work on certain priority areas highlighted as gaps. Positive showcasing of the country's achievements in implementation rather than criticism is favourable. It was suggested that having a confidential consultation within the National IHL Committee, identifying the responsible institutions for gaps and then putting in place an action plan, is an adequate way of addressing the gaps.

**5. What would you need to make it happen, i.e. to draft and publish such a report?**

It is suggested to set up a working group benefitting from teamwork and leadership from relevant stakeholders. There is already public appetite for IHL, as a compelling body of law.

Dissemination is key, because, for example, States are drafting young people into the armed forces but there is a lack of knowledge of IHL. Committees should look into this.

## 6. How would you publicise a report? Who is the audience?

It is suggested to make the report accessible for easy dissemination far and wide. Accordingly, various opportunities in national and international fora can be seized. It was also suggested to publish the reports in all the official languages of a country, as well as translating it into other languages. This is useful in making the report accessible, for instance the UK has translated their toolkit in 5 languages. An important point raised by the group is that the focus should be on who will use this information. Key ministries, also defence lawyers are given as examples, so that they understand the law of the country in which they operate. Academia could also be a useful audience, to show how law is given effect in practice.

## Wednesday 28 April: Protection of the Natural Environment: IHL and Practice

### Opening discussion

**Francisca Pretorius**, Adviser and Head, Office of Civil and Criminal Justice Reform, Commonwealth Secretariat, chaired this session. **Ms. Vanessa Murphy**, Legal Adviser, ICRC spoke first on the ICRC's updated Guidelines on the Protection of the Natural Environment in Armed Conflict.<sup>9</sup> She noted that the combined impacts of environmental degradation, climate risk and attacks on the natural environment have a huge effect on civilians in armed conflict. The ICRC updated Guidelines are essentially a collection of rules and recommendations, together with commentaries, and they do not create new legal obligations. There are four categories of rules in the updated Guidelines:

1. Specific rules that protect the natural environment
2. General IHL rules applicable in relation to the natural environment; the latter is, by default, civilian in character unless the natural environment becomes a military objective; e.g. these rules include the principles of distinction, precaution and proportionality
3. Rules on specific weapons e.g. prohibition of use of biological weapons
4. Rules governing IHL implementation and dissemination.

The five main recommendations for States are:

1. Disseminate IHL rules protecting the natural environment.
2. Adopt and implement measures to increase understanding of the effects of armed conflict on the natural environment prior to and regularly during military operations.
3. Identify and designate areas of particular environmental importance or fragility as demilitarized zones.
4. Exchange examples and good practices of measures that can be taken to comply with IHL obligations protecting the natural environment, through activities such as conferences, military training and exercises, and regional forums.
5. Amend the Penal or Criminal Code or a standalone law on the protection of the natural environment to give effect to the prohibitions.

ICRC sees the International Law Commission's related work on protection of the environment in relation to armed conflicts<sup>10</sup> as complementary to the work of the ICRC through its updated Guidelines.

**Group Captain Joanne Swainston**, Royal Air Force, Assistant Head Legal, Development, Concepts and Doctrine Centre spoke about the practical and operational aspects from the

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<sup>9</sup> <https://www.icrc.org/en/document/guidelines-protection-natural-environment-armed-conflict-rules-and-recommendations-relating>

<sup>10</sup> [https://legal.un.org/ilc/guide/8\\_7.shtml](https://legal.un.org/ilc/guide/8_7.shtml)



UK RAF perspective. Each time there are targeting decisions, environmental impacts are assessed from legal, doctrinal and practical perspectives. The legal reviews are based on Additional Protocol I, Articles 35 and 36, and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (the ENMOD Convention). Commanders make an objective assessment based on international law; military necessity is not the sole consideration. Legal advisers play an important role in impact assessment vis-à-vis the application of the relevant rules.

#### Working groups on protection of the natural environment

Participants were divided into three working groups chaired by **Dr. Robin McNeill Love**, Vice President, International Humanitarian Fact-Finding Commission, **Ms. Gladice D.S. Pickering**, Executive Director, Ministry of Justice, Namibia, and **Group Captain Joanne Swainston** to discuss the implementation of the Guidelines on the Protection of the Natural Environment.

#### **1. What can National IHL Committees do to disseminate IHL rules protecting the natural environment and to advise and assist national authorities in the implementation of these, including by integrating the ICRC Guidelines on the Protection of the Natural Environment into national law, policy and military doctrine, education, training and disciplinary systems as appropriate?**

National IHL Committees could do a compatibility study to see what their legislation already contains in relation to protection of the natural environment. National IHL Committees could engage on IHL dissemination around the guidelines, including through information campaigns (maybe through the National Red Cross or Red Crescent Society) and internal government training and dissemination sessions. In many if not all of our countries we have charities, NGOs and others who have a great interest in the climate crisis. The climate crisis could therefore be a way to get people interested in IHL, and to introduce them to the Guidelines. In National IHL Committees, often government ministries which are responsible for environmental matters aren't represented or they are not fully aware of the relevance of IHL to their day-to-day work. Consequently, discussion of the protection of the natural environment during armed conflicts would be a good way to get new parts of government involved in the IHL Committee and to take IHL into account in their planning and analyses. With the United Nations Climate Change Conference (COP26) later this year, States could capitalise on the interest in climate and the environment. Each country will need to look at the ICRC Guidelines to make sure that their own views are in accordance with the Guidelines. Some countries have a different view about certain rules – as a practical matter, they will need to study the Guidelines and see where they are compatible with their laws as well as their own legal positions, and identify and understand any differences.

#### **2. Can you put together a plan of action to disseminate and implement the Guidelines?**

National IHL Committees could develop a plan of action around the Guidelines including a series of trainings for the military on the protection of the natural environment (scenarios in military exercises could be useful, for example) and/or a project on mapping of fragile eco-systems which might require special protection and marking. A plan of action could also be to consider the Guidelines and what is required in terms of implementation; more broadly it could include conducting a compatibility study. The driving force is to address causes of loss of biodiversity by mainstreaming the importance of biodiversity in society and encourage safeguarding eco-systems and the use of eco-friendly services and products. National IHL Committees can take on the subject as a special subject; it is a way for their country to show that they are taking seriously climate change and the climate crisis.

**3. Who should be involved from your government? Do you have the procedures to co-opt them into the National IHL Committee?**

Ministries of Foreign Affairs, Justice, Defence and so on are the usual members of National IHL Committees. However, to address the protection of the natural environment, representatives of the Ministry for the Environment, the Ministry of Health, the Ministry responsible for World Heritage, and geospatial mapping colleagues could be co-opted. There would need to be significant consultation with various sections of government – members of the inter-ministerial committee would need to be involved. Many of the members of the Commonwealth are from small island states where matters related to the sea and natural resources are areas of vital interest, and the agencies responsible for these will also need to be engaged.

**4. What are the particular issues of protection of the natural environment which would resonate with your government and military?**

Some issues raised were mapping of the fragile eco-systems, domestic legislation to prohibit damage to the natural environment, and dissemination about the civilian nature of the environment. In relation to tourism and natural beauty, there might be areas which would be particularly open to protection. All of the Commonwealth countries have national sites, national parks or similar that they are very proud of and they want to protect and these IHL rules also help us do that. These are areas that resonate. It was also mentioned that outer space should be protected.<sup>11</sup>

**5. How can IHL rules protecting the natural environment be integrated into military operational planning and the conduct of operations?**

This might be a question for the military members of the National IHL Committees – and once again a reminder to integrate military officers into the National IHL Committee, and also to ensure that the Ministries of Defence and the Environment are able to be put in touch to discuss such matters. National IHL Committees are particularly well placed to facilitate the engagement between such Ministries. They could see, through their military members, or those associated with the Ministry of Defence, whether the protection of the natural environment can be included in military exercises.

Some participants noted that they have special environmental protection officers in the military. Some also noted that they have a criminal offence if an attack causes widespread, long-term and severe damage to the natural environment, so it is a requirement for them to take the environment into consideration prior to an attack. Another participant mentioned their “Waste Management Act”, where they have an obligation to carry out assessments on the environmental impact that a certain activity or undertaking will have. In some states, a number of the military bases are located relatively close to nature reserves and residential areas. Efforts have been made to apply general environmental procedures to such situations.

Countries sometimes are willing to exchange information about their cultural heritage sites, but sometimes they consider that, should they give away such information, these sites may then become a target. Within the Commonwealth there could be a scheme to share information about special sites of the environment and this could be a model for others.

**6. What laws would need to be developed/amended? Can you propose amendments through the National IHL Committee?**

The criminal law might need to be amended – for example, do they have a crime of widespread, long-term and severe damage to the environment as a war crime? They may wish to consider whether there are other regulatory frameworks which need amending such as world heritage laws or laws around fragile ecosystems. The National IHL Committees

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<sup>11</sup> See <https://www.icrc.org/en/document/potential-human-cost-outer-space-weaponization-ihl-protection>.

should, once again, be well placed to conduct a compatibility study of relevant laws and then to propose any necessary gap filling.

## Thursday 29 April: Prevention and repression of sexual violence in armed conflict

### Opening discussion

**Dr. Tawanda Hondora**, Adviser and Head, Rule of Law Section, Commonwealth Secretariat, chaired the session. **Ms. Kelisiana Thynne**, Legal Adviser, ICRC, presented on sexual violence in armed conflict and the domestic implementation of serious crimes. She opened by giving some statistics about sexual violence in the last year of the pandemic. The biggest challenges include lack of hard data to establish dialogue to address needs. This is because everyone is at home and the space for victims to access support services (e.g. healthcare-related, rape kit assistance) has shrunk. The UN has called sexual violence the “shadow pandemic”. She noted that conflict related sexual violence is not a new challenge but needs greater responses and poses more challenges. She reminded participants that the definition of sexual violence may include forced stripping, forced pregnancy and forced sterilisation, and that both men and women are protected under IHL. To be prohibited under IHL, sufficient nexus with armed conflict must be established; what constitutes “nexus” is considered by international tribunals.

She then spoke about the ICRC’s domestic legal checklist for the prevention and repression of sexual violence in armed conflict.<sup>12</sup> NIHLC can play an important role in applying the ICRC Checklist. Committees can help to harmonise the domestic framework with international law, and to interpret the law governing access to healthcare without discrimination to take account of barriers to access in humanitarian contexts.

A question was asked about the connection with UN Security Council Resolution 1325 on Women, Peace and Security (WPS). Ms. Thynne noted that it is important in terms of fulfilling the requirements of the resolution for States to have a national action plan on WPS, and reviewing domestic legislation on conflict-related sexual violence to help ensure that it is in line with IHL, can be part of that national action plan.

### Working groups on prevention and repression of sexual violence

The purpose of the working groups was to encourage National IHL Committee representatives to engage with the domestic legislation checklist for sexual violence prevention and repression, and to start to think about a plan of action to implement these issues. Participants were separated into three working groups chaired by **Ambassador A M J Sadiq**, Sri Lanka National IHL Committee, **Ms. Catherine Gribbin**, Legal Adviser, Canadian Red Cross, and **Ms. Marie-Pierre Olivier**, Legal Adviser, Legal Policy, Governance and Peace Directorate, Commonwealth Secretariat.

#### 1. What, if any, are the sensitivities in addressing sexual violence legislation in your context?

Sexual and gender-based violence is rooted in culture and society and not exclusive to the context of armed conflict. Laws are often viewed through the patriarchal standpoint. There are taboos associated with discussing sexual violence. Even when there is existing robust legislation in a domestic context, there is room for sensitizing armed forces on the issue. In certain contexts, there might not be the political will to address serious violations. Some legislation has not been modernized or is not yet gender-sensitive. The benefit is that, by signing international instruments, countries can bring inclusive terms and definitions into their domestic legislation.

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<sup>12</sup> <https://www.icrc.org/en/document/checklist-domestic-implementation-international-humanitarian-law-prohibiting-sexual>

## **2. How do you overcome those sensitivities?**

Even where there is the necessary legislation, it is also important to ensure that armed forces personnel are trained and sensitized on the issue. To ensure successful prosecution needs gathering evidence, which requires training on how to preserve and collect evidence. Ensuring that victims are provided protection and services is also important. It is helpful to involve community/faith leaders who can bring these issues to the agenda at local and other levels.

## **3. How would you go about using the checklist or other similar tools? What do you find useful? What would you need more information on?**

The challenge for some countries is the culture in their societies and armed forces. There is a greater need for emphasis on education and awareness raising, both within the armed forces and society. Strong leaders, and participation of society, are needed to change the culture and conversation. If countries can have some reference to model provisions addressing different categories of sexual violence, that will be helpful and enable States to have a parallel approach and common expected standards of IHL. The dialogue around UN Resolution 1325: the 20<sup>th</sup> anniversary last year provides opportunities to think about the impact of the resolution; it could be beneficial to take the momentum that already exists and build onto that.

## **4. What role can National IHL Committees play in assessing your national legislation? Can you start to develop a plan of action for such an assessment?**

National IHL Committees can engage their Governments to check what their national legislation already contains and what can be added and amended. They can play a role in continuing the conversation, advocating for the message, and making sure that the issue is prioritized and constantly on the agenda. The National Red Cross or Red Crescent Society must be brought into the picture so that its Legal Adviser and/or Director, International Relations could, once adequately briefed, approach the key Ministries. The ICRC Regional Delegation could also organize a virtual workshop/seminar to highlight these concerns. The relevant Regional Secretariats (e.g. CARICOM, SARC, ECOWAS) could also be encouraged to review the issues.

## **5. What are the next steps after assessing your national legislation against the checklist or other similar tools? What are the challenges and opportunities?**

The first step is trying to work out what success looks like, how the legislation works out. How to know that your legislation is working and how do you determine success. Evaluation of this. Constant review of legislation's impact is also worthwhile. A quick win would be to put the checklist onto the agenda of the National IHL Committee, if not already on the agenda, with a view to setting the process going forward. National IHL Committees should be disseminating information, for example, the checklist and information acquired from meetings such as this meeting. Even though a country might be peaceful, these discussions have to be had because there could be instances in future where such countries could be engaged in armed conflict or have to deal with IHL issues.

Friday 30 April: Famine and starvation in armed conflict, and closing

Opening discussion

**Dr. Cordula Droege**, Chief Legal Adviser and Head of the Legal Division of the ICRC, opened the session by voicing concern about the numerous cases of famine and starvation that the Red Cross and Red Crescent Movement witnesses in its delegations across the globe. She

stressed that long-term conflict and environmental degradation are often the underlying factors of famine and starvation.

**Mr. Nick Dyer**, UK Special Envoy for Famine Prevention and Humanitarian Affairs, contributed a video message, introduced by **Mr. Matthew Wyatt**, Humanitarian Director of the Foreign, Commonwealth and Development Office, UK, who noted that millions of people around the world are facing risks of starvation. Mr. Dyer drew attention to the striking challenge of growing humanitarian need, which is outpacing resources, and intensified by armed conflicts, COVID-19 and climate change. He noted that famine is man-made and entirely preventable, often driven by conflict and triggered by deliberate methods of warfare like siege tactics and attacks on livelihoods. Mr Dyer outlined how consequences of conflict, such as limits on free movement and difficulties regarding food production and supply, have devastating human impacts.

Mr Dyer went on to stress that tactics employed in conflict zones which lead to deliberate suffering, including starvation, are clear contraventions of IHL and that therefore work in this area is highly important. He noted the need for collaboration on effective domestic IHL compliance and the promotion of an international framework of shared rules, creating conditions for the rule of law, accountability, and transparency. He flagged initiatives like national voluntary reporting on IHL and peer-to-peer support as good practice examples and highlighted the need for awareness raising and capacity building. Mr. Dyer stated that the work of the Red Cross and Red Crescent Movement is critical, and that the UK has been a long-term supporter in terms of funding and policy dialogue. Finally, he drew attention to the UK Call to Action to Prevent Famine, an initiative under the new UK Foreign, Commonwealth and Development Office (FCDO).

Mr Wyatt then continued to elaborate on the Call to Action on Famine Prevention of the UK FCDO, the core objective of which is to mobilise the international community to target and prioritise resources to respond to the worst food insecurity situations and to address the key drivers. He stressed that this does not only involve funding, but also humanitarian diplomacy and a particular focus on improving humanitarian access and the protection of civilians. Mr. Wyatt then explained the four key areas of the Call to Action: 1) mobilise donors to target resources to the most vulnerable people, 2) improving humanitarian access and protection of civilians in conflict and crises, 3) data and coordination, and 4) strengthening resilience to food insecurity through climate change and peacebuilding tools. He stressed the need for humanitarian diplomacy and drew attention to the work of the UK to improve the advocacy of UN Security Council Resolution 2417/2018 on Conflict and Hunger. Finally, he reiterated the deep commitment of the UK to working with Commonwealth partners and thanked the Red Cross and Red Crescent Movement for their valuable work and partnership.

**Ms. Rashmin Sagoo**, International Law Adviser at the British Red Cross, stressed that IHL compliance can avoid or help reduce the risk of conflict-related famine and food insecurity. She provided an overview of the key IHL provisions on famine, namely, the prohibition on directing attacks against civilian objects, the prohibition on indiscriminate and disproportionate attacks, the prohibition on the use of certain weapons, and the prohibition on forced displacement of civilians. With regard to key IHL treaty rules, Ms. Sagoo mentioned starvation as a method of warfare, protection of objects indispensable to the survival of the civilian population, humanitarian access and humanitarian relief operations, protections for humanitarian relief personnel and objects, and duties to persons deprived of their liberty.

Ms. Sagoo explained how National IHL Committees might engage on issues concerning famine and armed conflict. She suggested a review of domestic law, policy and administrative measures concerning the facilitation of humanitarian access, potentially inspired by international disaster law, and encouraged States parties to the Rome Statute of the International Criminal Court to accede to the amendment to Article 8 on intentionally using starvation of civilians as a method of warfare in non-international armed conflicts, as well as to implement the provision at the national level. Ms. Sagoo suggested that National IHL Committees consider whether armed forces could give more prominence to the issue of famine

in conflict in military exercises, training, and manuals, and how best to factor in local customs and the needs of groups who may have a particular vulnerability. Finally, she stressed that States not directly affected by famine issues can still play a role and be actively involved through statements in international institutions and multilateral groups.

It was suggested, during the questions section, that the following actions could be helpful: building a group of like-minded States on protection and access, including less conventional engagements with countries which may be supporters of non-State armed groups; asking the Commonwealth Secretariat to commission a report on ways the Commonwealth might support famine prevention; and seeking an agreed interpretation of withholding arbitrary consent or other relevant international legal norms.

**Dr. Robin McNeill Love**, Vice-President of the International Humanitarian Fact-Finding Commission (IHFFC), drew attention to the work of the IHFFC in investigating grave breaches of IHL and to the institution's relevance for all aspects of IHL discussed during this meeting. He encouraged participants to ask their respective States to put forward candidates for election to the Commission and stressed that greater geographical representation is desired.

#### Closing session

**Lieutenant General James Swift**, Chief of Defence People, Ministry of Defence, UK, commented that the event reminded him of what makes a Commonwealth: shared fundamental values, respect for fundamental dignity, respect for freedom and the rule of law. He explained that the world has faced and continues to face the effects of the Coronavirus and the rapid devastation it causes. Another observable and disturbing phenomenon is that the world has become less safe and less free. Open societies and the liberties on which they are built are coming under growing pressure in the physical world and online. The UK Government's recently published Integrated Review lists as its first goal the support of open societies and defence of human rights as a force for good in the world, which is why the work of the participants at this meeting increases in importance. The Lieutenant General encouraged countries who had not already established IHL Committees to 'take the plunge' and do so, as they were needed now more than ever.

**Francisca Pretorius**, Commonwealth Secretariat, congratulated everyone for their sustained commitment and participation during the week. She thanked the ICRC, BRC and the UK IHL Committee for hosting the event. Whilst the countries of the Commonwealth are not generally theatres of armed conflict, this is not a reason to ignore IHL and its implementation. IHL is also about prevention and preparedness. Ratifying and implementing IHL treaties puts into action a country's commitment to protecting the lives of its citizens, during a time of new threats to international peace and security. The Secretariat takes its role seriously to encourage its member countries to fully meet their international obligations, including those under IHL. To this end, National IHL Committees are crucial partners for the Secretariat as they play an essential role in supporting a country's efforts.

**Dr. Cordula Droege** closed the meeting with some remarks from the ICRC, thanking the hosts for their stewardship and commending everyone for their active participation. Dr. Droege also commended the great work IHL Committees do to ensure that civilians receive even greater protection at times of armed conflict, because it is only through compliance with IHL that this can be achieved. ICRC urges the continuation of these conversations. An online community exists for IHL Committees and similar entities of IHL, which members of IHL Committees can access by sending an email to the ICRC Advisory Service. Dr. Droege encouraged participants to keep up the good work and to engage further with each other on these issues.



## Annex 1

### Fifth Meeting of Representatives of National IHL Committees of Commonwealth Countries

26-30 April 2021

#### Programme

Day	Time	Subject / Format	Speakers / Panellists
<b>Monday 26 April</b>	10.00 – 10.30 BST	<b>Opening</b>	Lord Ahmad, Minister of State, Foreign, Commonwealth & Development Office, UK Government  Dr Helen Durham, Director of International Law and Policy, International Committee of the Red Cross (ICRC)  Mr Michael Adamson, Chief Executive, British Red Cross
Chair: Mr Andrew Murdoch, Foreign, Commonwealth & Development Office			
Chair: Ms Isabel Letwin, Director, Ministry of Defence Legal Services	10.30 – 12.00 BST	<b>The Universality of IHL: roots in the domestic context</b> Panel presentations followed by 5 minutes coffee break and then discussion	<i>Follow up from the 33<sup>rd</sup> International Conference – Bringing IHL Home</i> Dr Anne Quintin, Head of Advisory Services, ICRC Geneva  <i>Trends in the Commonwealth on treaty accession and suggestions for the work of National IHL Committees</i> Ms Delia Chatoor, Trinidad and Tobago  <i>The relevance of IHL in Southern African cultural and warfare traditions</i> Ms Tamalin Bolus, Legal Adviser, ICRC Pretoria  <i>Traditional warfare practices in the Pacific</i> Mr Fredrick Tamarua, Department of Justice and Attorney General, Papua New Guinea  <i>IHL and Islamic law</i> Dr Farah Ibrahim, Department of Philosophy, Kenyatta University, Kenya
<b>Tuesday 27 April</b>	10.00 – 10.30 BST	<b>National IHL Committees and</b>	<i>The Voluntary Report of the UK</i> Mr Andrew Murdoch, UK National IHL Committee

Chair: Ms Kelisiana Thynne, Legal Adviser, ICRC		<b>Voluntary reporting on IHL</b> Panel discussion	<i>Establishing a National IHL Committee</i> Ms Leda Koursoumba, Vice President, Cyprus Red Cross Society
	10.30 – 11.30 BST	<b>Voluntary reporting on IHL: National implementation</b> Working groups	<i>Working group 1</i> Chair: Ms Leda Koursoumba, VP, Cyprus RCS  <i>Working group 2</i> Chair: Mr Andrew Murdoch, UK National IHL Committee  <i>Working group 3</i> Chair: Ms Kelisiana Thynne, ICRC
Chair: Ms Kelisiana Thynne	11.30 – 12.00 BST	<b>Voluntary reporting on IHL</b> Feedback	Chairs from previous session to report back
<b>Wednesday 28 April</b> Chair: Francisca Pretorius, Adviser and Head, Office of Civil and Criminal Justice Reform, Commonwealth Secretariat	10.00 – 10.30 BST	<b>Protection of the Natural Environment: IHL and Practice</b> Presentations	Ms Vanessa Murphy, Legal Adviser, ICRC Geneva  Group Captain Joanne Swainston, Royal Air Force, Assistant Head Legal, Development, Concepts and Doctrine Centre
	10.30 – 11.30 BST	<b>Protection of the Natural Environment: National implementation</b> Working groups	<i>Working group 1</i> Chair: Dr Robin McNeill Love, Vice President, International Humanitarian Fact-Finding Commission  <i>Working group 2</i> Chair: Ms Gladice D.S Pickering, Executive Director, Ministry of Justice, Namibia  <i>Working group 3</i> Chair: Group Captain Joanne Swainston, Royal Air Force, Assistant Head Legal, Development, Concepts and Doctrine Centre
Chair: Francisca Pretorius	11.30 – 12.00 BST	<b>Protection of the Natural Environment</b> Feedback	Chairs from previous session to report back

<b>Thursday 29 April</b> Chair: Dr. Tawanda Hondora, Adviser and Head, Rule of Law Section, Commonwealth Secretariat	10.00 – 10.30 BST	<b>Sexual violence in armed conflict: domestic implementation of serious crimes</b> Presentation	Ms Kelisiana Thynne, Legal adviser, ICRC Geneva
	10.30 – 11.30 BST	<b>Sexual violence in armed conflict: National implementation</b> Working groups	<p><i>Working group 1</i> Chair: Ambassador A M J Sadiq, Sri Lanka National IHL Committee</p> <p><i>Working group 2</i> Chair: Ms Catherine Gribbin, Legal Adviser, Canadian Red Cross</p> <p><i>Working group 3</i> Ms Marie-Pierre Olivier, Chair: Legal Adviser, Legal Policy, Governance and Peace Directorate, Commonwealth Secretariat</p>
Chair: Dr. Tawanda Hondora	11.30 – 12.00 BST	<b>Sexual violence in armed conflict</b> Feedback	Chairs from previous session to report back
<b>Friday 30 April</b> Chair: Dr Cordula Droege, Chief Legal Adviser and Head of the Legal Division, ICRC	10.00 – 11.00 BST	<b>Starvation and famine in times of armed conflict: Legal and policy issues</b> Presentation	<p>Mr Nick Dyer, UK Special Envoy for Famine Prevention and Humanitarian Affairs (video)</p> <p>Mr Matthew Wyatt, Humanitarian Director, Foreign, Commonwealth &amp; Development Office</p> <p>Ms Rashmin Sagoo, International Law Adviser, British Red Cross</p>
	11.00 – 11.30 BST	<b>Closing</b>	<p>Lieutenant General James Swift, Chief of Defence People, Ministry of Defence, United Kingdom</p> <p>Francisca Pretorius, Commonwealth Secretariat</p> <p>Dr Cordula Droege, ICRC</p>

29.04.21