



ICRC

## ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

# The Role of Parliamentarians in Implementing International Humanitarian Law

Members of parliament are instrumental in ensuring that international humanitarian law (IHL) is properly implemented under their domestic legal system. Parliamentarians play a unique role in adapting national legislation to give effect to a State's international obligations. Through their oversight responsibilities, parliaments and parliamentarians can ensure that the military and security forces are properly trained and knowledgeable on IHL. Through their leadership and advocacy, they can also raise greater awareness of IHL among the public. Parliamentarians, as political leaders and representatives of the people, must be in the vanguard of efforts to ensure IHL is faithfully applied.

### Implementing international humanitarian law

IHL only applies during armed conflicts, yet the measures needed to implement it must be enacted in both wartime and peacetime. Putting preventive measures in place in times of peace is the best way of achieving full respect for IHL in the event of a conflict.

The implementation of IHL is first and foremost the responsibility of States. This responsibility is set forth in Article 1 common to the four Geneva Conventions of 1949, which requires States to respect and ensure respect for the Conventions in all circumstances. This means that States must take a number of legal and practical measures to ensure respect for the rules of IHL.

### Building a national legal framework on IHL

#### *Become party to IHL treaties and related instruments*

Parliamentarians play a key role in the process by which a State becomes party to international treaties (agreeing to be legally bound by its provisions) and in the national implementation of the rules and principles they embody.

Parliamentarians can take the following steps to ensure that their State becomes party to IHL treaties:

- Determine whether your State is party to existing IHL and IHL-related treaties.<sup>1</sup>
- If the State has not signed and ratified or acceded to a treaty, use parliamentary procedure to ask the government to explain why and to encourage it to do so without delay.
- If the State has signed but not ratified a treaty, use your right to initiate legislation to submit a bill on the matter.

Parliamentarians can also make sure that when their State ratifies or accedes to a treaty, it does not issue reservations or make declarations of understanding that are contrary to the object and purpose of the treaty, or undermine the substance of the treaty. Parliamentarians should regularly check whether past reservations, objections or declarations of understanding are still valid and, if not, use parliamentary procedure or the right of initiative to seek to have the restrictions lifted.

#### *Adopt implementing legislation*

National legislation must be adopted without delay to bring a treaty into effect or to bring domestic law into line with existing treaty obligations. This may require minor or major changes to existing laws, or it may call for entirely new ones. Based on their legislative powers,

parliamentarians play a key role in the adoption of this implementing legal framework.

#### *Ensuring the repression of IHL violations*

Becoming party to IHL treaties and related instruments and adopting appropriate implementing legislation is however not sufficient to guarantee respect for IHL. States must have, under domestic law, the capacity to repress violations of IHL.

States must take all feasible measures to prevent and stop violations of IHL whenever they occur, especially by ensuring that effective sanction mechanisms are in place.

To this end, parliamentarians should make sure that their national judicial authorities have the legislative means to prosecute and punish those who are responsible for serious violations of IHL. National legislation should conform with the rules of IHL, including by criminalizing violations, as required by treaties to which the State is a party, and by providing adequate jurisdiction to the judicial authorities over these crimes<sup>2</sup> while ensuring that judicial guarantees are respected.

#### *Specific implementing measures provided for in IHL*

States are obligated to take several additional measures to give effect to

<sup>1</sup> For a list of relevant treaties, see *International Humanitarian Law*, Handbook for Parliamentarians No. 25, Inter-Parliamentary Union (IPU) and International Committee of the Red Cross (ICRC), 2016, [https://www.icrc.org/en/download/file/40569/en\\_-\\_handbook\\_humanitarian\\_law\\_-\\_web.pdf](https://www.icrc.org/en/download/file/40569/en_-_handbook_humanitarian_law_-_web.pdf) (IPU-ICRC IHL Handbook), p. 12.

<sup>2</sup> See IPU-ICRC IHL Handbook, pp. 30–36 and 49–50.

IHL. This reflects the need to translate IHL into national legislation, procedures and policy.

These measures include:

- translating IHL treaties into national language(s)
- taking into account IHL when selecting military sites and developing weapons and military tactics
- ensuring that protected persons, property and places are properly identified, marked and protected
- producing identity cards and other documents for protected persons
- providing for the establishment of hospital zones, neutralized zones and demilitarized zones
- providing for the establishment and regulation of National Red Cross and Red Crescent Societies and other voluntary aid societies, civil defence organizations and national information bureaus.

Although the responsibility for adopting appropriate regulations lies with the executive branch and the different ministries concerned, parliamentarians can request information from their government on the state of adoption and implementation of these measures.

### **Practical measures to ensure implementation**

#### ***Approve necessary funding***

Parliamentarians may be asked to approve the financial resources for a national action plan to encourage respect for IHL or for a programme relating to the implementation of IHL or IHL-related training.

The funding approved must be sufficient to cover the costs for training armed and security forces, administrative authorities and health-care personnel in the rules of IHL.

The courts must also have the resources they need to play their part if the rules of IHL are violated.

#### ***Protection of the emblems***

The Geneva Conventions and their Additional Protocols require States to

protect and regulate the use of the red cross, red crescent and red crystal emblems, in particular by adopting specific national laws to that effect.<sup>3</sup>

Indeed, any misuse of those emblems tends to weaken their protective effect during an armed conflict, thereby undermining the effectiveness of the humanitarian assistance provided to victims.

States must in particular adopt legislation prohibiting and punishing the unauthorized use of the emblems, in particular perfidious use, which is a war crime.

#### ***IHL training and dissemination***

IHL treaties require States to spread knowledge of the treaties as widely as possible both within the armed forces and among the general public.<sup>4</sup> This dissemination process must begin in peacetime to ensure the underlying humanitarian principles become second nature.

Parliamentarians can contribute to this effort by ensuring that:

- members of the armed forces are sufficiently trained and instructed<sup>5</sup>
- military codes and doctrine comply with the obligations of IHL
- legal advisers duly trained in the application of IHL are made available to the armed forces
- the general public is aware of IHL
- especially relevant sectors of the population (government and civil service, academia, schools, medical professionals and media) receive information on IHL.

#### ***Encouraging national implementation***

Parliamentarians can further encourage the implementation of IHL by:

- requesting the establishment of a national IHL committee or similar body to advise and assist the government in implementing and spreading knowledge of IHL

- establishing a parliamentary body dealing with matters pertaining to IHL
- promoting contact with similar national IHL committees or parliamentary bodies in other countries in order to share experiences and improve national action by drawing on the examples of others.

#### **Facilitating humanitarian action**

Under international law, States bear the primary responsibility for ensuring that the basic needs of civilians under their control are met. However, if States are unable or unwilling to discharge their responsibilities in time of armed conflict, IHL provides for relief action to be taken by others, such as humanitarian organizations, subject to the consent of the State concerned.

Parliamentarians should do all they can to facilitate humanitarian operations undertaken by impartial humanitarian organizations such as the ICRC.

#### **Assistance**

Parliamentarians can also request advice and assistance from national and international IHL experts.

The ICRC's Advisory Service on IHL is available to help parliamentarians and parliamentary legislative and documentation services by providing information, advice and guidelines.

A national implementation database bringing together domestic legislation and case law is also available at <https://www.icrc.org/ihl-nat>.

Model laws on IHL-related themes are available at <https://www.icrc.org/eng/resources/documents/legal-fact-sheet/national-implementation-model-laws.htm>.

At the national level, National Red Cross and Red Crescent Societies, as well as national IHL committees (in States where they exist), can provide additional support.

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<sup>3</sup> For a model law that can serve as a useful reference document to adopt national legislation, see IPU-ICRC IHL Handbook, Annex 4, pp. 103–107.

<sup>4</sup> See ICRC Advisory Services on IHL's factsheet, *The Obligation to Disseminate International Humanitarian Law*, available at: <https://www.icrc.org/en/download/file/1042/obligation-dissemination-ihl.pdf>.

<sup>5</sup> The ICRC has put together IHL training programmes of varying levels to meet the needs of States' armed forces. More information is available at: <https://www.icrc.org/en/what-we-do/building-respect-ihl/dialogue-weapon-bearers>.