



ICRC

## ADVISORY SERVICE

### ON INTERNATIONAL HUMANITARIAN LAW

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## Legal advisers in armed forces

By ratifying the Geneva Conventions of 1949 and their Additional Protocols of 1977, a State commits itself to respecting and ensuring respect for these international legal instruments in all circumstances. Knowledge of the law is an essential precondition for its proper application. The aim of requiring legal advisers in the armed forces, as stipulated in Article 82 of Additional Protocol I, is to improve knowledge of – and hence compliance with – international humanitarian law. As the conduct of hostilities was becoming increasingly complex, both legally and technically, the States considered it appropriate when negotiating Additional Protocol I to **provide military commanders with legal advisers to help them apply and teach international humanitarian law.**

### **An obligation for States and for parties to conflict**

*“The High Contracting Parties at all times, and the Parties to the conflict in time of armed conflict, shall ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the Conventions and this Protocol and on the appropriate instruction to be given to the armed forces on this subject.”* (Additional Protocol I, Article 82).

Like all other rules enshrined in a treaty, Article 82 is mandatory. Its aim is to ensure that military commanders have access to sound advice on how to apply and teach the Conventions and Additional Protocol I.

The choice of words in Article 82 implies that the States Parties (and national liberation movements, who come under the heading of “Parties to the conflict”, albeit for a limited period) are responsible for this task and must ensure that it is carried out. To comply with this requirement States must therefore pass their own rules, to ensure that their armed forces do have legal advisers.

While Article 82 is just one provision of Additional Protocol I, its aim is part of the general obligation on the States Parties to **disseminate** the

provisions of international humanitarian law as widely as possible, in particular by including the study of this branch of law in their military training programmes.

### **The role of the legal adviser**

Article 82 gives a flexible definition of the legal adviser’s role, while still laying down certain rules. Legal advisers have a dual role: they advise military commanders on the correct application of the Conventions and of Additional Protocol I, and they give commanders guidance on how to teach these to the armed forces for which they are responsible. While these tasks are separate, they are also complementary, because training military personnel properly in time of peace will make the adviser’s advice more effective in time of war. Article 82 therefore outlines the work of legal advisers, while leaving each High Contracting Party responsible for specifying their role and the conditions under which they fulfil it.

### **Expertise**

While Additional Protocol I leaves States Parties a certain degree of freedom as to the functions of their legal advisers, it does demand that they possess an **adequate level of expertise in international**

**humanitarian law** if they are to advise military commanders effectively.

This obligation is analogous to that contained in Article 6 of the same protocol (*Qualified persons*), under which the States Parties must endeavour to train qualified personnel to facilitate the application of the Conventions and of Additional Protocol I.

The States are free to choose civilian or military legal advisers. However, the role of the legal adviser, which is primarily preventive and operational, differs from that of the judge advocate, who is concerned with military justice.

The States Parties must specify the role and position of their legal advisers in precise terms, so that the advisers can carry out the tasks assigned to them under Article 82 effectively and efficiently.

### **Tasks**

The tasks of legal advisers in time of peace differ from those they are required to perform during an armed conflict.

**In peacetime**, their main task is to support the teaching of international humanitarian law. The target group consists primarily of students at military schools, headquarters staff

of the unit to which they are attached, junior commanders and soldiers, especially on exercise.

Advisers may also help to train assistant advisers who, in turn, can be attached to subunits, take part in planning for major exercises and for operations and assess the legal consequences of executing these plans, particularly with regard to the intended means and methods.

Advisers can also be involved in the process of examining new weapons, means and methods of warfare stipulated in Article 36 of the Additional Protocol I.

**In time of war**, the legal adviser's main task is to advise on the application of, and compliance with, international humanitarian law. In particular, legal advisers can give an opinion on current and planned military operations, apply their expertise to specific issues facing a commander, verify observance of the legal consultation process as it involves units under command and remind commanders of their obligations within the meaning of Article 87 of Additional Protocol I (*Duty of commanders*). In the case of joint or multilateral operations, the legal advisers of the various armed forces involved should cooperate to ensure a degree of consistency,

especially in the interpretation of the law.

However, the legal adviser does not replace the commander. Commanders always retain their leading role and their responsibility within the decision-making process. The role of the adviser is limited to briefing senior officers operating in an increasingly complex legal environment.

#### ***The adviser's position in the hierarchy***

Having clearly specified the role of its legal advisers, the State Party must also specify the **level in the command structure at which they are to provide their expertise**. Article 82 implies two levels:

- in their role as consultants regarding the application of the Conventions and of Additional Protocol I, advisers could be attached to larger units and higher levels of command;
- where advisers are to support the teaching of international humanitarian law, it is useful to place them in a more operational context, at perhaps brigade or regimental level.

The State Party must also specify the **hierarchical relationship** between legal advisers and the commanders they support.

There are two options: legal advisers may be placed exclusively under the command of the officer commanding the unit or headquarters to which they are attached, or they may be placed under the command both of that commander and of the legal department of their ministry of defence.

#### **Support for training**

Introducing legal advisers into the armed forces demonstrates a State Party's commitment to improve respect for international humanitarian law and compliance with it. The States Parties to the Geneva Conventions and to Additional Protocol I are hence required to fulfil their commitments by applying the provisions of Article 82. **The ICRC is prepared to support them in this, and is willing to help train legal advisers**, e.g. by running courses and seminars for armed forces

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