

NATIONAL COMMITTEES ON INTERNATIONAL HUMANITARIAN LAW

GUIDANCE ON COMPOSITION AND ROLES

A. Background

National Committees for the implementation of international humanitarian law (IHL) exist in many countries to advise and assist governments in implementing and spreading knowledge of IHL. Given its functions, a National Committee on International Humanitarian Law (“the Committee”) requires a wide range of expertise.

The Committee must include representatives of the Government Ministries¹ concerned with implementing IHL. Precisely which Ministries are relevant will depend on the Committee’s level of authority, mandate as well as the specific needs and political environment of the State, but they are likely to include Ministries of Defence, Foreign Affairs, Internal Affairs, Justice, Health, Education and Culture. It would be an asset to also have representatives of Parliament, members of the Judiciary, representatives of the Prosecuting Authority, representatives of national disaster management structures, representatives of the police, and personnel from the Headquarters of the Armed Forces.

In addition, some Committees may find it valuable to invite participation from arms control bodies established under national law, the local arms manufacturing industry (where relevant), and the constituent parts of the Armed forces (e.g., Army, Air Force, Navy, Marines, Coast Guard, Gendarmerie).

Finally, it is important that the Committee consider including other qualified persons. These may be individuals not associated with Government Ministries but who are appointed for their legal, educational, communications or other expertise. The Committee should therefore consider inviting IHL specialists from Universities (especially law faculties) and humanitarian organizations. Finally, it is likely that the National Red Cross or Red Crescent Society will already be involved in some of the activities and functions mentioned above. The National Society often possesses valuable knowledge and experience, which can help achieve the committee’s objectives. In some States where such Committees exist, it was the National Society that requested its setting up and hence was instrumental in its formation. In many States, the National Society provides the committee’s secretariat. Considering the position and experience of a National Society, it is important that the Committee include representatives of the National Society.

B. Authority and Seniority of members

In some countries the Committee is located in the Office of the President or Prime Minister and this provides a natural leadership authority to the Committee who will have to be chaired by a senior representative of the President or Prime Minister (or equivalent). If the Committee is located in the Foreign Affairs Ministry or the Justice Ministry, it will probably change the identity of the leadership (chairperson) of the Committee. Also, if the Committee is established through executive decision (e.g., Cabinet decisions, Presidential Decrees, Executive Orders) its authority may be different from a Committee established through Ministerial decree or through legislative action. Careful thought must be given to the structure, authority, funding, and level of support (secretariat function) required for the Committee to discharge its functions.

¹ In some countries, the term ‘Department’ is used as the equivalent of a ‘Ministry’. For the purposes of this documents, the term ‘Ministry’ includes a ‘Department’ where the context justifies it.

It is recommended that members of the Committee should have the necessary level of expertise and authority to make commitments on the principals' behalf. This will increase the chances of the Committee's recommendations/advice being followed up. Members should therefore be middle to senior level officials. Except for the chairperson of the Committee, appointing very high-level representatives might facilitate decision-making and enhance the Committee's authority, but they may not always have the required availability to attend regular meetings and take part in other Committee activities.

In addition, reducing member turnover enhances efficiency. It is therefore important to appoint members in such a way as to reduce turnover and ensure consistency in meeting attendance. This can be done through ensuring that it is the Ministries/agencies themselves that are represented members of the Committee, rather than any particular individual(s). Notwithstanding, there may be instances where, due to practical considerations that will enhance continuity and sustainability, individuals may be appointed as such.

Ensuring that the Committee has a proper legal basis (whether this be a law, Ministerial Decree, Cabinet Memorandum or other relevant document) can also assist in ensuring continuity of the Committee and promoting awareness of the role of the members of the Committee.

C. Roles of various members

1. Defence

- a. The civilian arm of the Ministry of Defence often plays an important role in the domestication of IHL instruments, for example in drafting legislation to implement the Geneva Conventions and their Additional Protocols. The civilian arm also frequently oversees the investigation and prosecution of IHL violations committed by its armed forces. Engagement with these representatives is therefore vital. It would be the role of the civilian arm of the Ministry of Defence on the Committee to oversee the Armed Forces activities relating to the implementation of IHL, actively engage in efforts towards treaty domestication, and to provide statistics and information related to weapons and disarmament efforts which is usually required by the MFA to produce regular reports under treaties that either regulate or completely prohibit the use of certain weapons.
- b. The armed forces of a country are under many obligations contained in the Geneva Conventions and the Additional Protocols, and their compliance with these obligations is crucial to uphold IHL in times of armed conflict. Representatives of the armed forces could engage other Committee members on efforts being undertaken to disseminate IHL to the armed forces; to capacitate legal advisors within the armed forces; to incorporate IHL into doctrine and tactics; to apply IHL in exercises and operations; to establish adequate disciplinary measures to ensure compliance and accountability and to punish violations; and to clarify use of the Red Cross/Red Crescent emblem within the armed forces etc. In addition, it is important for the armed forces to be represented in Committees where that military is contributing troops to peacekeeping missions, as they can keep the Committee updated on their deployment and can also be held accountable by the Committee as to the IHL training for those deployed troops.
- c. In many instances, and notwithstanding the concept of joint operations, it is critical that the constituent components of the armed forces (e.g., Army, Navy, Air Force, Marines, Joint Operations Command, Gendarmerie or other militias incorporated into the armed forces, and other components such as Military Health Services or Space Forces constituting entities separate from the others) are aware of and implement the specialized portions of IHL that are applicable to their specific kind of operations and battlespace. The IHL applicable in naval warfare might, as an example, be neglected if the representation at the Committee is skewed toward an Army (land-based operations) approach. The various components usually train and prepare separately for warfare so incorporating all components would be an important step.

2. Foreign Affairs

- a. In many countries the Ministry of Foreign Affairs contains a desk or focal point for humanitarian issues, including respect for IHL. The role of this desk is to ensure that issues discussed at meetings of the Committee complement other efforts being undertaken by the Ministry of Foreign Affairs on related topics at the regional and global level.
- b. In addition, many IHL instruments concern disarmament issues, including the 1997 Anti-Personnel Mine Ban Convention 2008, the Convention on Cluster Munitions, as well as the 2017 Treaty Prohibiting Nuclear Weapons. Ministries of Foreign Affairs usually maintain a Disarmament desk that plays an important role not only in the implementation of these Treaties, but also in ensuring regular reporting as required by the Treaties.

3. Government Legal Counsel on International Law

- a. Any discussion concerning ratification or signature of IHL instruments would require an analysis from the equivalent of the national legal counsel on international law issues of a Government. Where such an Office is established outside the traditional Justice Ministry structures, for example within the Ministry of Foreign Affairs or Presidency, it may play a very important role relating to whether a specific treaty fits within the foreign policy objectives and priorities of the country in question. Including this Office in the Committee would allow representatives of the Committee to answer questions from other Committee members concerning priority instruments for the Committee to consider, and any questions requiring expert legal advice on international law and treaty law from the perspective of the country in question.

4. Home Affairs

- a. Many instruments of IHL would implicate Home/Internal Affairs in their implementation, notably the 2009 Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa. The role of Home Affairs representatives on the Committee would be to ensure that such IHL treaties being considered for ratification are properly implemented and complied with in the domestic setting. Home/Internal Affairs would also be implicated in discussions concerning Missing Persons, particularly people who go missing in times of armed conflict. Their role in this file would relate to identification etc of missing persons.

5. Justice

- a. The Ministry of Justice play an important legal role on the Committee, notably ensuring that IHL treaties that are being considered for ratification are coherent with domestic laws and policies and commenting on priority files being considered by the Committee. Ministry of Justice representatives will be involved in drafting of domesticating legislation, and so the Committee would be a sensible setting for them to raise questions related to domestication of IHL instruments. For IHL matters pertaining to international criminal justice, the perspective of Justice representatives would be crucial.
- b. Depending on how the Ministry of Justice is structured, it may also contain an Office responsible for international law advice to Government, the National Prosecuting Authorities and the Judiciary, and the degree of separation between these functions in any particular Government will determine whether the Ministry of Justice has to fill multiple seats with representatives of all the mentioned elements, or whether the mentioned elements will fill seats on their own accord.

6. Health

- a. One of recurring IHL violations witnessed in armed conflicts is violence against healthcare personnel, vehicles and structures. Ministries of Health would typically be involved in work against such violations (within the ICRC the Project is known as Healthcare in Danger). Ministry of Health representatives would also have a say in discussions on refugees and internally displaced persons, as well as in discussions on rehabilitation for the war wounded and sick and issues related to sexual violence in armed conflict. Finally, in many countries the Ministry of Health is the Line Ministry for the National Red Cross/Red Crescent Society and would therefore have a contribution to make to discussions concerning ratification and domestication of the Third Additional Protocol to the Geneva Conventions on the Red Crystal emblem.

7. Education

- a. One of the main obligations on States Parties to the Geneva Conventions and their Additional Protocols is to disseminate the contents of the Conventions and their Protocols widely in both times of peace and times of war.² Depending on how the government is structured, there may be multiple representatives for primary, secondary and tertiary education levels.

8. Culture

- a. One of the core treaties of IHL is the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, together with its Protocols of 1954 and 1999. There are a number of important tasks for States Parties to these instruments, which would usually be implemented by a Ministry of Culture. This includes compiling lists of protected property and placing visible emblems on such property throughout the country.

9. Finance

- a. The role of Finance Ministry representatives on the Committee is to support the Committee in its efforts to secure an annual budget, both for the normal running of the Committee as well as for special projects or events to be held throughout the year. When Ministry of Finance representatives truly understand the work of a Committee, it is usually smoother process to ensure a budget is set aside at the national level.

10. Police (including the Coastguard, Customs and Immigration, Gendarmerie, where applicable)

- a. There can be occasions where the Police (including the Coastguard and Gendarmerie, where applicable) of a country are asked to respond to violence in the setting of an armed conflict, in which case they need to understand IHL and the differences between IHL and the use of force framework under which they traditionally respond to violence not reaching the threshold of an armed conflict. In addition, some Police Forces deploy their members as part of the civilian component to a peacekeeping mission, in which case it is essential that they understand the IHL regime. The role of Police on the Committee would therefore be to keep their colleagues updated on developments and updates in IHL. This is not strictly necessary however, as it could also be achieved by ensuring regular IHL dissemination sessions for Police Forces.
- b. In countries with a coastline, the Police (including the Coastguard, Customs and Immigration, Gendarmerie, where applicable) officials would play a very important role in regulating the arms trade,

² See for example art 47 of GCI and art 19 of APII.

and so would need to be included in any discussions pertaining to the 2013 Arms Trade Treaty (to be noted that other relevant authorities also play a crucial role in the implementation of this instrument).

11. Academics

- a. It is very useful to invite IHL academics to sit on the Committee. They often have specialized expertise on IHL issues that government representatives may not have, and usually have contacts in the form of other academics focusing on IHL in the region that can be useful contacts for the Committee. An academic's role on the Committee would be to highlight new research/developments on specific IHL issues being discussed by the Committee, for the members to consider. Academics can also provide short training sessions for the Committee members on relevant areas of IHL that may be of interest for the government.

12. Judiciary

- a. Education for Judges is usually focused on domestic law, and so many judicial representatives are not familiar with issues related to IHL. As such, when cases related to IHL are brought to them (due to their armed forces being involved in an armed conflict as peacekeepers, or extradition requests to States involved in armed conflict, or an ongoing armed conflict on their territory) they are not necessarily familiar with relevant IHL legislation in the country. By including the Judiciary on the membership of the Committee, a government ensures that if/when a case involving IHL is heard before the courts, there will be an understanding of the issues and applicable law. The role of judicial representatives on the Committee is largely to follow the proceedings of the Meeting, and to ensure colleagues within the Judiciary are aware and can access IHL documents, if they are interested.

13. Parliament

- a. The Legislative branch of government plays a vital role in the domestication of IHL instruments. Where Parliament representatives (often from relevant Parliamentary Committees) sit on the Committee, they can have advance knowledge of IHL instruments ratified by the State, which would normally be transmitted to Parliament for domestication. Involving Parliamentary representatives in the earlier stages of the process, through their membership on the Committee, often helps to speed up the domestication process. The role of Parliamentary representatives on the Committee is largely to follow the proceedings of the Meeting, and to ensure colleagues within the Legislature are aware and can access IHL documents (such as relevant Treaties, laws and explanatory notes), if they are interested. When a draft IHL Bill is being sent to Parliament, these representatives become crucial in helping to advance the Bill through the legislative process.

14. Prosecuting Authority

- a. Depending on the level of autonomy that a national prosecuting authority has under the Ministry of Justice, it may be advisable to have separate national prosecuting authority representation on the Committee. Some countries maintain specialized prosecution units for crimes such as international crimes (including war crimes, terrorist related crimes, and other important treaty crimes) and such a structure enhances capacity and sustainability. Notwithstanding a specialized capability, the awareness and pro-active capacitation that the Committee can bring within a national prosecuting authority for the possible cooperation with other countries or the prosecution of IHL related crimes is a valuable element of membership. This would particularly relate to mutual assistance and prosecution for war crimes.

15. Arms control bodies established under national law and the local arms manufacturing industry

- b. The IHL obligations relating to the assessment of new weapons for IHL compliance in countries that maintain an arms-manufacturing industry may justify the co-opting of a representative from national arms control bodies as well as from the local arms manufacturing industry. Such representation (even if ad hoc) could significantly enhance the awareness within the arms manufacturing and trading circles of the need to ensure that weapons comply with the requirements of IHL.

16. National Disaster Management structures

- a. When an armed conflict occurs, or even when a Government is asked to assist other Governments involved in an ongoing armed conflict, the national disaster management structures frequently contain the necessary expertise and equipment to provide effective assistance. To include a representative from such structures in the Committee could significantly enhance understanding of their status, role, protection and function, while furthering their own understanding of the environment that they may be asked to operate in.

17. National Red Cross/Red Crescent Society

- a. While State authorities bear the main responsibility for implementing IHL in their territory, National Red Cross or Red Crescent Societies, in their capacity as auxiliaries to the public authorities in humanitarian matters and on account of the variety of activities they carry out, play an important role alongside their governments in ensuring respect for IHL in their respective countries. Many National Societies also help promote, disseminate and implement IHL as part of their statutory responsibilities, so they could be invited to contribute to and be involved in the work of the Committee. Their role on the Committee could be to update members on the latest humanitarian developments in the country (priorities, disasters etc.) and on the Red Cross Movement's response. An additional role would be to support the dissemination of IHL principles in the country, through their many offices and branches.

18. ICRC

- a. The ICRC is often invited to meetings of the Committee, either as coopted members when needed or as permanent members (this is usually the case where the ICRC has a presence in the country in question). The role of the ICRC in the Committee is to act as an IHL expert, providing training and updates on the law, and advising on how IHL can be implemented into domestic legislation. Another function of the ICRC is to highlight to the Committee upcoming events, meetings, publications etc. that would be of interest to the Committee members. The ICRC brings to the Committee an international perspective as well as experience from other countries within the region and beyond.

D. Additional members to consider

The ideal of a broad membership base, which includes representatives from civil society, should be balanced with the need for confidentiality in its discussions. Committees must therefore ensure that the participation of representatives of civil society (such as NGOs or professional associations) or media as full members of the Committee will contribute positively to its long-term work and not deter frank and effective discussion among members who represent various authorities. A possibility is to involve representatives of civil society in the Committee's activities on an ad-hoc basis, in particular when it comes to conferences and meetings on specific subjects or exchanges of information. Another possibility is to include such participation by inviting the National Human Rights Commission to sit on the Committee. Doing so can improve complementarity between the Committee and the relevant human rights institution, and can also facilitate the sharing of expertise and capacity-building.

E. Peer to peer engagement on composition of National Committees on IHL

In order to encourage peer to peer engagement between Committees, the ICRC has created a platform that provides for such interaction. Committees can to share experiences and challenges related to composition and membership as well as a wide variety of other issues, and can ask pertinent questions to other Committees.

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 armed conflict and other situations of violence and to provide them with assistance. The ICRC 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 Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.