



ICRC

INTERGOVERNMENTAL PROCESS ON
STRENGTHENING RESPECT FOR
INTERNATIONAL HUMANITARIAN LAW (IHL)

ICRC
REPORT ON
EXISTING MECHANISMS, PROCESSES AND
INITIATIVES DEALING WITH IHL

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I. CHAPTER 1: INTRODUCTION

In accordance with the provisional work plan for 2017 established at the First Formal meeting in the intergovernmental process on strengthening respect for international humanitarian law (IHL) (held on 28–29 November 2016), one of the two topics on the agenda of the Second Formal Meeting, scheduled for 10–12 April 2017, is the presentation of a detailed report on existing mechanisms dealing with IHL.¹

An outline of the report was circulated to all Permanent Missions in Geneva, in order to gather delegations' views, and was examined at an open-ended consultation meeting held on 23 January 2017 in Geneva. A draft of the report, which took into consideration the views received, was then circulated to all Permanent Missions in February 2017. The draft was discussed at an informal meeting held in Geneva on 22 February 2017. On that occasion, States were also invited to send any further written comments to the ICRC by 6 March 2017. No written feedback was received by that date.

This report is factual and descriptive in nature. It does not offer judgment on the work of any international or regional mechanism, process or initiative, as this is beyond the scope of resolution 2 of the 32nd International Conference of the Red Cross and Red Crescent (International Conference), and outside the scope of the ICRC's mandate and principles. The report is intended to provide a useful factual basis to help inform the further discussions of States in the intergovernmental process, namely the discussions 'to find agreement on features and functions of a potential forum of States, and to find ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums'.²

The report serves in particular for States to draw conclusions on the question of whether existing mechanisms are sufficient from a legal and practical aspect, for the goal of strengthening respect for IHL. Such an analysis/evaluation is within the purview of States, given that it is States who primarily take part in the work of these mechanisms.

The report cannot cover all mechanisms that have included a reference to IHL on a one-off basis. Apart from Chapter 2, it presents mechanisms whose general mandate, while in the vast majority of cases not specifically referring to IHL, allows them to examine situations of armed conflict, due to which they have occasionally made reference to IHL.

¹ The preparation of such a report was not specified in resolution 2 of the 32nd International Conference of the Red Cross and Red Crescent in 2015, which provides the basis for the intergovernmental process. See 32nd International Conference, Resolution 2, 'Strengthening Compliance with International Humanitarian Law', 32IC/15/R2 (8-10 December 2015): http://rcrcconference.org/wp-content/uploads/sites/3/2015/04/32IC-AR-Compliance_EN.pdf. However, at the First Formal meeting in November 2016, some States requested that such a report be prepared by the ICRC to help inform discussions in the intergovernmental process. The present report is submitted in follow-up to that request.

² Resolution 2, para 2.

There are several mechanisms that could fall within multiple categorizations. We have sought to adopt a methodology whereby basic information is provided with respect to each mechanism, whenever possible, regarding its composition and/or participants; mandate; periodicity and activities.

For the purposes of this report, the reference to ‘international’ mechanisms encompasses only those comprising or potentially comprising all States, that is, mechanisms which are global or universal in nature. It includes mechanisms which are cross-regional as well. ‘Regional’ mechanisms, which may encompass two or more States, are those that are not of global composition.

The report covers mechanisms, processes and initiatives, so as to reflect better the variety of forms in which IHL is or may be discussed, some of which have less structure, permanence, and regularity than others.

In preparing the report, we have relied on publicly available information, including information available from online sources, in English and French.

II. CHAPTER 2 – EXISTING MECHANISMS WITHIN IHL TREATIES

This chapter provides an overview of mechanisms provided for in the 1949 Geneva Conventions and their 1977 Additional Protocols, as well as in other IHL treaties.

A. 1949 Geneva Conventions and 1977 Additional Protocols

1. Protecting Powers and their substitutes

The Protecting Powers are provided for in common Articles 8/8/8/9 of the 1949 Geneva Conventions and Article 5 of Additional Protocol I, and applies in international armed conflicts only. It obliges each Party to the conflict to designate a neutral State, with the agreement of the other side, to safeguard its humanitarian interests, and to thus monitor compliance with IHL. In practice, the Protecting Powers system has been used on very few occasions since World War II, the last reported instance having occurred three decades ago (the international armed conflict between the United Kingdom and Argentina over the Falklands/Malvinas Islands in 1982). The Parties may also agree to entrust the duties of a Protecting Power to ‘an organization which offers all guarantees of impartiality and efficacy’.³

2. Enquiry procedure

The formal Enquiry Procedure was first provided for in the 1929 Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field.⁴ Also applicable only in international armed conflict, it was later repeated,

³ Common Art. 10/10/10/11 and Art. 5 of AP I.

⁴ Article 30.

with additional details, in the 1949 Geneva Conventions.⁵ Pursuant to this mechanism, an enquiry into an alleged violation of the Geneva Conventions must take place at the request of a party to the conflict. The details of the procedure are to be decided by the belligerents or by an umpire whom they appoint. If the enquiry concludes that a violation of the Conventions occurred, the parties are obliged to put an end to it and to repress it with the least possible delay. Very few attempts to use the Enquiry Procedure have been made since the 1929 Convention was adopted, and none resulted in its actual launching.

3. International Humanitarian Fact-Finding Commission (IHFFC)

The IHFFC⁶ was created in 1991 pursuant to Article 90 of Additional Protocol I. The IHFFC is composed of 15 individuals acting in their personal capacity. In 2009, the UN General Assembly granted the Commission observer status.⁷ The IHFFC is competent to: a) enquire into any facts alleged to be a grave breach or other serious violation of the 1949 Geneva Conventions or Additional Protocol I, and b) facilitate, through its good offices, the restoration of an attitude of respect for these instruments. The competence of the IHFFC is mandatory if the relevant States involved in an international armed conflict are Parties to the Protocol and have made a formal declaration accepting its competence, and one of them requests its services. The parties to an armed conflict may also use the services of the Commission on an ad hoc basis, in which case all parties concerned must give their consent. Following an investigation, the IHFFC is meant to present its conclusions to the parties, together with any recommendation it might deem appropriate. The report is not disclosed publicly, unless all parties to the conflict agree to do so. The IHFFC has indicated its readiness to engage in fact-finding in situations of non-international armed conflict, in addition to international armed conflicts. The IHFFC has not been triggered to date.

4. Meetings of the High Contracting Parties to Additional Protocol I

Pursuant to Article 7 of Additional Protocol I, the depositary of the Protocol, i.e. the Swiss Federal Council, shall convene a meeting of the States parties thereto 'to consider general problems concerning the application of the Conventions and of the Protocol' if requested to do so by one or more parties to the Protocol and agreed to by the majority of States parties to that treaty. No such meeting has been held since the Additional Protocol came into force.

⁵ Common Articles 52/53/132/149.

⁶ See: IHFFC:

<http://www.ihffc.org/index.asp?Language=EN&language=en&language=en&page=home&do=-1>.

⁷ A/RES/64/121, December 2009.

B. Other IHL treaties, on weapons and cultural property

1. Weapons treaties

- i. Biological Weapons Convention (BWC)⁸
 - **Objective:** to ban the development, production and stockpiling of bacteriological (biological) and toxin weapons.
 - **States Parties:** 178 States Parties, 6 Signatories
 - **Organisational structure:** In 2006, an Implementation Support Unit (ISU) was established within the Geneva Branch of the UN Office for Disarmament affairs.⁹
 - **Compliance mechanisms:**
 - A Meeting of States Parties (MSP) is organised every year. Prior to each MSP, a Meeting of Experts is usually held and prepares a factual report of its deliberations for the MSP. The ISU provides an annual report of its activities to the MSP.
 - Every five years, a Review Conference is held to review the operation of the BWC, with a view to assuring that the purposes of the preamble and the provisions of the Convention are being realized.¹⁰
 - States Parties may lodge a complaint with the UN Security Council (UNSC) if it finds that another State Party is acting in breach of its obligations under the Convention and request the UNSC to take this under consideration.¹¹ This mechanism has never been used.
 - In 1986, the Second Review Conference agreed to the exchange of Confidence Building Measures (CBMs) 'in order to prevent or reduce the occurrence of ambiguities, doubts and suspicions and in order to improve international co-operation in the field of peaceful biological activities'.¹² There are currently 6 CBMs under which reports are to be submitted on an annual basis. The CBMs are voluntary measures.
- ii. Convention on Certain Conventional Weapons (CCW)¹³
 - **Objective:** to ban or restrict the use of specific types of weapons that are considered to cause unnecessary or unjustifiable suffering to combatants or to affect civilians indiscriminately.
 - **States Parties:** 123 States Parties, 5 Signatories
 - **Organisational structure:** In 2009, an Implementation Support Unit (ISU) was established¹⁴ to provide administrative assistance for Meetings, facilitate

⁸ Adopted 16 December 1971, entered into force 26 March 1975.

⁹ Sixth Review Conference BWC, Geneva 20 November – 8 December 2006, Final Document (BWC/CONF.VI/6), available at : <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/600/30/PDF/G0760030.pdf?OpenElement>

¹⁰ Article XII BWC.

¹¹ Article VI BWC.

¹² Second Review Conference BWC, Geneva 8 – 26 September 1986, Final Document (BWC/CONF.II/713), available at : https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/assets/media/bwcdocuments/1986-09-2RC/BWC_CONF.II_13.pdf

¹³ Adopted 10 October 1980, entered into force 2 December 1983.

communications between High Contracting Parties (HCPs), serve as a focal point, support HCPs in the implementation of the CCW and its Protocols, and contribute to the promotion of universalisation of the CCW and its Protocols.

- Compliance mechanisms:

- A Meeting of HCPs is held every year.
- Every five years, a Review Conference is held to review the status and operation of the Convention and its protocols.
- HCPs at their annual meetings or in Review Conferences, may establish a Group of Governmental Experts (GGE), which is an expert subsidiary body of the CCW mandated to discuss and make recommendations to HCPs on issues of concern that may lead to the strengthening of the CCW.¹⁵
- Amended Protocol II has its own implementation structure consisting of annual conferences of HCPs, in which they consult and cooperate with each other on all issues related to the operation of the Protocol. HCPs shall further provide annual reports to the Depository.¹⁶
- States Parties to Protocol V also hold separate Annual Conferences.¹⁷ Further meetings of experts are held; a report is provided to the Annual Conferences.¹⁸
- During the 2006 Review Conference, HCPs decided to establish a compliance mechanism, thus undertaking to consult each other and to cooperate bilaterally, through the UN Secretary-General, or through other voluntary international procedures, regarding any concerns which relate to the fulfilment of their legal obligations or to resolve any issue that may arise with regard to the interpretation and application of the provisions of the Convention. A key component of this mechanism is national annual reporting.¹⁹

¹⁴ Meeting of HCPs to the CCW, Geneva 12-13 November 2009, Final Report 20 November 2009 (CCW/MSP/2009/5), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/648/37/PDF/G0964837.pdf?OpenElement>

¹⁵ E.g. the Second Review Conference CCW, Geneva 11-21 December 2001, established an open-ended GGE to: (1) 'discuss ways and means to address the issue of Explosive Remnants of War (ERW)' and (2) 'further explore the issue of mines other than anti-personnel mines' (MOTAPM). See Final Document (CCW/CONF.II/2), available at: <http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=CCW/CONF.II/2&Lang=E>. The GGE's work on ERW led to the negotiation and adoption of Protocol V to the CCW in 2003. The GGE continued its work on MOTAPM but as no consensus could be reached on the matter, HCPs did not renew its mandate. See also Meetings of the States Parties, available at: [http://www.unog.ch/80256EE600585943/\(httpPages\)/CE461DB2A1D128A5C12573CD004DB6F3?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/CE461DB2A1D128A5C12573CD004DB6F3?OpenDocument).

¹⁶ Article 13 Amended Protocol II to the CCW.

¹⁷ Article 10 Protocol V to the CCW.

¹⁸ Meetings of the States Parties, available at: [http://www.unog.ch/80256EE600585943/\(httpPages\)/CE461DB2A1D128A5C12573CD004DB6F3?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/CE461DB2A1D128A5C12573CD004DB6F3?OpenDocument)

¹⁹ Decision on a Compliance Mechanism applicable to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be excessively injurious or to have Indiscriminate Effects, as adopted by the Third Review Conference on 17 November 2006, available at: [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/5A1EC120B18FE5EBC125726C00629C1F/\\$file/Compliance.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/5A1EC120B18FE5EBC125726C00629C1F/$file/Compliance.pdf)

- States Parties can seek support from the ISU on the implementation of the Convention and its Protocols.²⁰

iii. Chemical Weapons Convention (CWC)²¹

- **Objective:** the CWC aims to eliminate an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons by States Parties.
- **States Parties:** 192 States Parties, 1 Signatory
- **Organisational structure:** the CWC is implemented by the Organization for the Prohibition of Chemical Weapons (OPCW). The Conference of the States Parties is the principal organ of the OPCW and consists of all OPCW members. It oversees the implementation of the CWC and acts in order to promote the object and purpose of the Convention. Additionally, there is an Executive Council that consists of 41 Members elected for two years, and a Technical Secretariat assists the Conference and the Council in the performance of their functions.
- **Compliance mechanisms:**
 - The Conference of States Parties meets annually.²²
 - Every five years, a Review Conference is held to review the operation of the CWC.²³
 - The OPCW prepares annual reports on the implementation of the CWC.²⁴
 - The Verification Annex to the CWC provides a comprehensive regime for verifying all chemical weapons-related activities, as well as routine monitoring of the chemical industry through on-site inspections. States Parties are required to provide declarations with information on chemical weapons storage facilities, destruction facilities, production facilities, and past production facilities. They also have to submit declarations related to toxic chemicals and precursors mentioned in the three schedules of chemicals (annexed to the Convention) and on other chemical production facilities producing discrete organic chemicals. Declarations are checked and confirmed independently by OPCW inspectors.²⁵
 - There is a 'challenge inspection' procedure whereby any State Party in doubt about another State Party's compliance can request the Director-General to send an inspection team.²⁶ There is no right to refusal for such an inspection. This mechanism has never been used.

²⁰ Meeting of HCPs to the CCW, Geneva 12-13 November 2009, Final Report 20 November 2009 (CCW/MSP/2009/5) para. 36(d), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/648/37/PDF/G0964837.pdf?OpenElement>

²¹ Adopted 3 September 1992, entered into force 19 April 1997.

²² Article VIII(11) CWC.

²³ Article VIII(22) CWC.

²⁴ Annual Reports of the OPCW, available at: <https://www.opcw.org/documents-reports/annual-reports/>

²⁵ The Verification Regime of the Chemical Weapons Convention: an Overview, 28 November 2008, available at: <https://www.opcw.org/news/article/the-verification-regime-of-the-chemical-weapons-convention-an-overview/>

²⁶ Article IX CWC.

iv. Anti-Personnel Mine Ban Convention (APMBC)²⁷

- **Objective:** The APMBC, *inter alia*, prohibits the use, development, production and transfer of anti-personnel mines, requires the destruction of stockpiled anti-personnel mines, and the destruction of all anti-personnel mines in mined areas.²⁸ In addition, it requires States Parties to provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs.
- **States Parties:** 162 States Parties, 1 Signatory
- **Organisational structure:** There is an Implementation Support Unit, hosted by the Geneva International Centre for Humanitarian Demining. It provides support to all States Parties in their implementation efforts.
- **Compliance mechanisms:**
 - Meetings of States Parties are convened 'regularly' in order to consider any matter with regard to the application or implementation of the APMBC.²⁹ Such meetings have been held almost every year.
 - Every five years, a Review Conference is held to review the operation and status of the APMBC.³⁰
 - The APMBC has five different Committees, one of which is the Committee on Cooperative Compliance, which meets formally on an annual basis, and informally on a regular basis. This Committee considers whether a concern about compliance with the Convention's prohibitions is potentially credible and, if so, considers any follow up that might be appropriate for States Parties to better understand the situation. It can make suggestions on steps States Parties concerned could take to ensure that the APMBC remains strong and effective. It can also provide preliminary observations at the intersessional meetings and conclusions and recommendations at Meetings of States Parties or Review Conferences.³¹
 - All States Parties are required to report to the UN Secretary-General no later than 180 days after the entry into force of the Convention,³² and then to submit reports annually on the status of their treaty implementation.³³
 - If there are concerns about a State's compliance with the treaty, clarification may be sought through the UN Secretary-General and if necessary a meeting of States Parties may be held. This meeting can decide to send an obligatory fact-finding mission to the relevant territory of the concerned State. On the basis of the mission's report, the meeting of States Parties may propose corrective actions or legal measures in accordance with the UN Charter.³⁴ This mechanism has never been used.

²⁷ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, adopted 18 September 1997, entered into force 1 March 1999.

²⁸ APMBC, 'Overview and Convention Text': <https://www.apminebanconvention.org/overview-and-convention-text/>.

²⁹ Article 11(1) APMBC.

³⁰ Article 12 APMBC.

³¹ Committee on Cooperative Compliance, available at: <https://www.apminebanconvention.org/committees/committee-on-cooperative-compliance/>.

³² Article 7(1) APMBC.

³³ Article 7(2) APMBC.

³⁴ Article 8 APMBC.

- Where a dispute between States Parties occurs with regard to the application or the interpretation of the APMCB, they may bring any such dispute before a Meeting of the States Parties. The Meeting of the States Parties may contribute to the settlement of disputes by whatever means it deems appropriate.³⁵

v. Convention on Cluster Munitions (CCM)³⁶

- Objective: to prohibit all use, production, transfer and stockpiling of cluster munitions. In addition, it establishes a framework for cooperation and assistance to ensure adequate care and rehabilitation to survivors and their communities, clearance of contaminated areas, risk reduction education and destruction of stockpiles.³⁷
- States Parties: 100 States Parties, 19 Signatories
- Organisational structure: An Implementation Support Unit was established in 2015 to support and coordinate the work of the CCM and its intersessional work.
- Compliance mechanisms:
 - The States Parties meet regularly in order to consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of the Convention.³⁸ These meetings have been held almost every year since the CCM's entry into force.
 - The first Review Conference took place in 2015 to review the operation and status of the CCM.³⁹
 - All States Parties are required to report to the UN Secretary-General no later than 180 days after the entry into force of the Convention,⁴⁰ and then to submit reports annually on the status of their treaty implementation.⁴¹
 - If there are concerns about a State's compliance with the treaty, clarification may be sought through the UN Secretary-General and if necessary a meeting of States Parties may be held. This meeting can adopt general procedures or specific mechanisms for clarification of compliance, including facts, and draft resolutions of instances of non-compliance with the provisions of this Convention.⁴² This mechanism has never been used.
 - In any dispute involving two or more States Parties, efforts shall be made to settle the issue by negotiation or other peaceful means of their choice, such as referring the matter to the International Court of Justice in accordance with the Court's statute.⁴³ The Meeting of the States Parties may contribute to the settlement of disputes by whatever means it deems appropriate.⁴⁴

³⁵ Article 10 APMBC.

³⁶ Adopted 20 May 2008, entered into force 1 August 2010.

³⁷ See: CCM: <http://www.clusterconvention.org/>.

³⁸ Article 11(1) CCM.

³⁹ Article 12(1) and (2) CCM.

⁴⁰ Article 7(1) CCM.

⁴¹ Article 7(2) CCM.

⁴² Article 8 CCM.

⁴³ Article 10(1) CCM.

⁴⁴ Article 10(2) CCM.

vi. Arms Trade Treaty (ATT)⁴⁵

- Objective: to regulate international trade in conventional arms by establishing the highest possible common international standards and to prevent and eradicate the illicit trade in conventional arms and prevent their diversion.
- States Parties: 91 States Parties, 39 Signatories.
- Organisational structure: A Secretariat is established to assist States Parties in the effective implementation of the ATT.
- Compliance mechanisms:
 - Regular Conferences of States Parties are convened one year following entry into force, and thereafter at such times as may be decided by the CSP, among other things, to review the implementation of the ATT and to consider issues arising from its interpretation.⁴⁶
 - The Second CSP in 2016 established three working groups on implementation, universalisation, and transparency and reporting.
 - States Parties are required to provide an initial report on measures taken to implement the ATT.⁴⁷
 - States Parties also have to submit annual reports on their actual or authorized exports and imports of conventional arms.⁴⁸
 - Additionally, States Parties are encouraged to report to other States Parties, through the ATT Secretariat, information on measures taken in addressing the diversion of transferred conventional arms covered by the Treaty.⁴⁹

2. Cultural Property

i. Convention for the Protection of Cultural Property in the Event of Armed Conflict⁵⁰

- Article 10 of the Convention provides that during an armed conflict, cultural property under special protection shall be open to 'international control', while the procedure is elaborated in the Regulations for the execution of the Convention.
- The international control procedure requires the involvement and cooperation of three partners:
 - First, Parties to the Convention must appoint a 'representative for cultural property' as soon as they are engaged in an international armed conflict;⁵¹
 - Second, delegates of Protecting Powers (or of substitutes to the Protecting Powers) must also be appointed and accredited;⁵²

⁴⁵ Adopted 2 April 2013, entered into force 24 December 2014.

⁴⁶ Article 17(1) and (4) ATT.

⁴⁷ Article 13(1) ATT.

⁴⁸ Article 13(3) ATT.

⁴⁹ Article 13(2) ATT.

⁵⁰ Adopted 14 May 1954.

⁵¹ Regulations, Art. 2(a) and 18.

⁵² Regulations, Art. 2(b), 3 and 9.

- Lastly, a Commissioner-General for Cultural Property must be chosen among a list of international experts to be prepared by the Director-General of UNESCO⁵³ and is accredited to the State involved in an international armed conflict.
- The Commissioner-General is allowed to ‘deal with all matters referred to him in connexion with the application of the Convention, in conjunction with the representative of the Party to which he is accredited and with the delegates concerned’.⁵⁴ In particular, he may undertake investigations, make representations to the Parties to the conflict or their Protecting Powers, and may exercise the functions of the Protecting Power, in the absence of such a Power.⁵⁵ The Commissioner-General may also have recourse to the support of an ‘an inspector of cultural property’, to be charged with a specific mission, or may also request the services of experts.⁵⁶

ii. 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict⁵⁷ (1999 Second Protocol)

In addition to the role conferred by it to the Protecting Powers,⁵⁸ the 1999 Second Protocol establishes a supervisory body to monitor its implementation in the form of a Committee composed of twelve Parties.⁵⁹ The Committee meets once a year in ordinary session and in extraordinary session whenever it deems necessary⁶⁰ and is mainly tasked to:

1. Grant, suspend or cancel enhanced protection for cultural property;
2. Monitor and supervise the implementation of the 1999 Second Protocol;
3. Consider and comment on reports of the Parties and to prepare its own report on the implementation of the 1999 Second Protocol.

iii. In addition, the 1954 Hague Convention and the 1999 Second Protocol also:

1. Establish a reporting requirement for States parties that are requested to submit at least once every four years a report on the implementation of the 1954 Hague Convention to the Director-General of UNESCO and a report on the implementation of the 1999 Second Protocol to the Committee,⁶¹
2. Provide for the possibility of having regular meetings of Parties to the Convention and its Protocols, the purpose of which includes studying problems concerning their application and to formulate recommendations as appropriate.⁶²

⁵³ Regulations, Art. 1 and 2(c), and 4.

⁵⁴ Regulations, Art. 6(1).

⁵⁵ Regulations, Art. 6.

⁵⁶ Regulations, Art. 7.

⁵⁷ Adopted 26 March 1999, entered into force 9 March 2004.

⁵⁸ 1999 Second Protocol, Art 34, 35 and 36.

⁵⁹ 1999 Second Protocol, Art. 27(1).

⁶⁰ 1999 Second Protocol, Art. 24(2)

⁶¹ 1954 Hague Convention, Art. 26(2); 1999 Second Protocol, Art. 37.

⁶² 1954 Hague Convention, Art. 27; 1999 Second Protocol, Art. 23.

III. CHAPTER 3: INTERNATIONAL MECHANISMS

This chapter provides an overview of mechanisms within intergovernmental organizations, UN treaty-bodies, international courts and tribunals, and miscellaneous mechanisms that cannot be categorized in any of the first three sections.

A. Intergovernmental organizations

1. *UN General Assembly (UNGA)*

- Composition: comprises all members of the UN.
- Mandate: The UNGA is the chief deliberative, policy-making and representative organ of the UN. It is a forum for multilateral discussion of the full spectrum of international issues covered by the UN Charter.⁶³ It has no explicit mandate for IHL but it may and does consider IHL issues on occasion.
- Periodicity: meets from September to December annually, and thereafter from January to August, as required.
- Activities: the UNGA is empowered by the UN Charter to undertake a wide range of activities.⁶⁴ Its activities in the past that have related to IHL include in particular the *adoption of resolutions*. Some resolutions are relevant to IHL or specifically refer to IHL. Some of these are context-specific, concerning IHL issues in a particular armed conflict. Others relate to a particular issue,⁶⁵ or are more general—for example the biennial resolution on ‘Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of Armed Conflict’,⁶⁶ considered by the (Legal) 6th Committee of the UNGA, the primary forum for the consideration of legal questions in the UNGA. All UN member States are entitled to representation on the Sixth Committee as one of the main committees of the UNGA.

2. *UN Security Council (UNSC)*

- Composition: fifteen Members of the UN, comprising the Permanent Five Members and ten non-permanent members.

⁶³ UN, ‘Functions and Powers of the General Assembly’: <http://www.un.org/en/ga/about/background.shtml>.

⁶⁴ See UN Charter, arts 9-22.

⁶⁵ E.g. UNGA Resolution 60/147 on ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (16 December 2005); UNGA Resolution 69/132 (11 December 2014) on Global Health and Foreign Policy, which refers to IHL; UNGA Resolution 69/182 (18 December 2014), on ‘Extrajudicial, Summary or Arbitrary Executions’.

⁶⁶ E.g. the most recent resolution adopted on the status of the protocols was UNGA Res 71/144 (13 December 2016), informed in part by the ‘Report of the Secretary-General on the Status of the Protocols Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of Armed Conflicts’, UN Doc A-71-183 (22 July 2016).

- Mandate: The UNSC is conferred with primary responsibility for the maintenance of international peace and security.⁶⁷
- Periodicity: meets as needed.
- Activities: The specific powers granted to the UNSC for the discharge of its duties are laid down in the UN Charter Chapters VI (Pacific Settlement of Disputes), VII (Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression), VIII (Regional Arrangements) and XII (International Trusteeship System).⁶⁸ Activities undertaken by the UNSC relevant to IHL include:
 - Adoption of resolutions,⁶⁹ in which the UNSC may, for example, express concern about violations of IHL, establish peacekeeping missions in response to situations where IHL violations have occurred, establish periodic thematic or country reports, or establish sanctions committees.
 - Formal debates on thematic agenda items—e.g. the UNSC has discussed protection of civilians in armed conflict⁷⁰ and children and armed conflict.⁷¹
 - Establishment of a monitoring and reporting mechanism (MRM) on grave violations against children in armed conflict.⁷²
 - Establishment of Monitoring, Analysis and Reporting Arrangements on conflict-related sexual violence.⁷³
 - Establishment of such subsidiary organs as it deems necessary for the performance of its functions, e.g. international tribunals.⁷⁴
 - Establishment of commissions of inquiry regarding violations of international human rights law and IHL.

⁶⁷ UN Charter art 24(1).

⁶⁸ UN Charter art 24(2).

⁶⁹ E.g. the UNSC Resolutions on Women, Peace and Security (seven resolutions since 2000, beginning with UNSC Res 1325 (2000)).

⁷⁰ E.g. During 2014-2015, the UNSC held six meetings to consider the protection of civilians in armed conflict, and adopted two resolutions and two presidential statements: UN Department of Political Affairs–Security Council Affairs Division, ‘Repertoire of the Practice of the Security Council’, 19th Supplement, 2014-2015, section 29: http://www.un.org/en/sc/repertoire/2014-2015/Part%20I/Thematic%20issues/2014-2015_Protection%20of%20civilians.pdf.

⁷¹ E.g. during 2014-2015, the UNSC held four meetings and adopted two resolutions relating to ‘Children and armed conflict’: UN Department of Political Affairs–Security Council Affairs Division, ‘Repertoire of the Practice of the Security Council’, 19th Supplement, 2014-2015, section 28: http://www.un.org/en/sc/repertoire/2014-2015/Part%20I/Thematic%20issues/2014-2015_Children%20and%20armed%20conflict.pdf.

⁷² The MRM is based on UNSC Resolution 1612 (2005), supplemented by Resolution 1882 of 2009 and Resolution 1998 of 2011. The resolution established the UN Security Council Working Group on Children and Armed Conflict and laid the groundwork for the MRM. The purpose of the MRM is ‘to provide for the systematic gathering of accurate, timely and objective information on ‘six grave violations’ committed against children in armed conflict. Such information is used to foster accountability and compliance of parties to conflict with international child protection standards. The MRM is established in country-situations where parties to conflict have been listed in the annexes of an annual report of the Secretary-General on children and armed conflict: UN, Office of the Special Representative of the Secretary-General for Children and Armed Conflict’, <https://childrenandarmedconflict.un.org/our-work/monitoring-and-reporting/>.

⁷³ E.g. see UNSC Res 1960 (16 December 2010); UN Women, ‘Monitoring, Analysis, and Reporting Arrangements on Conflict-Related Sexual Violence’: <http://www.endvawnow.org/en/articles/1526-monitoring-analysis-and-reporting-arrangements-on-conflict-related-sexual-violence.html>.

⁷⁴ See further below section C regarding international courts and tribunals.

3. UN Human Rights Council (HRC)

- **Composition:** 47 UN Member States elected by the UNGA.
- **Mandate:** the HRC was created by UNGA resolution 60/251 (15 March 2006). It is responsible for strengthening the promotion and protection of human rights and for addressing situations of human rights violations and making recommendations on them.
- **Periodicity:** The Human Rights Council meets in regular sessions three times a year and has also held numerous special sessions, mainly on country specific issues.
- **Activities:** The HRC reviews States' compliance with international human rights law. The activities of the HRC that relate sometimes to IHL include:
 - *Adoption of resolutions*, country-specific and thematic, which may sometimes refer to IHL.
 - *Holding special sessions*.
 - *Holding discussions of experts*, which sometimes involve IHL issues.⁷⁵
 - The *Universal Periodic Review Mechanism*, which allows for periodic examinations of every State's human rights record. The UPR is mandated to assess the extent to which States respect their human rights obligations. In addition, the review is to take into account applicable IHL.⁷⁶
 - The *Advisory Committee*, which comprises 18 experts and serves as the HRC's 'think-tank', providing it with expertise and advice on thematic human rights issues. Its work occasionally may include reference to IHL.⁷⁷
 - *Special Procedures*, which are independent human rights experts or groups with mandates to report and advise on human rights from a thematic or country-specific perspective.⁷⁸ They are appointed by the HRC and serve in their personal capacities; their expertise is primarily in international human rights law. With the support of the Office of the United Nations High Commissioner for Human Rights, Special Procedures undertake country visits; act on individual cases of alleged violations and concerns of a broader, structural nature by sending communications to States; conduct thematic studies and convene expert consultations, contributing to the development of international human rights standards; engage in advocacy and raise public awareness; and provide advice for technical cooperation. Special Procedures

⁷⁵ E.g. see 'Summary of the HRC Interactive Panel Discussion of Experts on the Use of Remotely Piloted Aircraft or Armed Drones in Compliance with International Law: Report of the OHCHR', UN Doc A/HRC/28/38 (15 December 2014), available at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/layouts/15/WopiFrame.aspx?source=EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_38_ENG.doc&action=default&DefaultItemOpen=1.

⁷⁶ Human Rights Council Res 5/1 (18 June 2007), 'Institution-Building of the United Nations Human Rights Council', Annex, para 2: 'given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the review shall take into account applicable international humanitarian law'.

⁷⁷ E.g. there is some reference to IHL in the 'Final Research-Based Report of the Human Rights Council Advisory Committee on Best Practices and Main Challenges in the Promotion and Protection of Human Rights in Post-Disaster and Post-Conflict Situations': UN Doc A/HRC/28/76 (10 February 2015).

⁷⁸ For further information see UN, Research Guides, 'Special Procedures': <http://libraryresources.unog.ch/c.php?g=462681&p=3162781>. As of 30 September 2016, there are 43 thematic and 14 country mandates: UNOHCHR, 'Special Procedures of the Human Rights Council', <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>.

report annually to the Human Rights Council and certain mandates also report to the General Assembly.

- While the focus of the Special Procedures is on human rights, there are some Special Procedures whose work has involved consideration of IHL in addition to international human rights law. Among those with thematic mandates, these include, for example:
 - The Working Group on Arbitrary Detention;⁷⁹
 - The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;⁸⁰
 - The Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health;⁸¹
 - The Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism;⁸²
 - The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.⁸³
- A number of resolutions have established Commissions of Inquiry, composed of independent experts, to undertake and present fact-finding or other reports to the Council, some of which involve situations of armed conflict and therefore refer to IHL.

4. UN Economic and Social Council (ECOSOC)

- Composition: 54 UN Members elected by the UNGA.
- Mandate: ECOSOC may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the UNGA and any specialized agency concerned. It can also prepare and submit to the UNGA draft conventions, and call international conferences, on matters falling within its competence.⁸⁴ It also adopts resolutions that on occasion deal with IHL.
- Periodicity: Varies from one activity to another.
- Activities: It is notably within the Humanitarian Affairs Segment (HAS) that IHL is occasionally dealt with. The HAS is a platform for discussing activities and issues related to strengthening the coordination of the humanitarian assistance of the UN. Participants include UN Member States, members of the UN and non-UN

⁷⁹ Established by Resolution 1991/42 of the former UN Commission on Human Rights. Its mandate was clarified and extended by Resolution 1997/50 and Resolution 24/7 (26 September 2013).

⁸⁰ Established by Resolution 1985/33 of the former UN Commission on Human Rights. Its mandate was extended by HRC Resolution 25/13 (March 2014). The mandate comprises three main activities: 1) transmitting urgent appeals to States with regard to individuals reported to be at risk of torture, as well as communications on past alleged cases of torture; 2) undertaking fact-finding country visits; and 3) submitting annual reports on activities, the mandate and methods of work to the Human Rights Council and the General Assembly. For further information see OHCHR, 'Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>.

⁸¹ E.g. the Special Rapporteur produced a thematic Report on the right to health in situations of conflict or insecurity, UN Doc A/68/297 (9 August 2013).

⁸² See <http://www.ohchr.org/EN/Issues/Terrorism/Pages/SRTerrorismIndex.aspx>.

⁸³ See <http://www.ohchr.org/EN/Issues/Executions/Pages/SRExecutionsIndex.aspx>.

⁸⁴ Art. 62 of the Charter of the United Nations.

humanitarian and development community, and other relevant stakeholders. The segment consists of a General Debate, where an annual ECOSOC humanitarian resolution is discussed, High-Level Interactive Panels, and a number of side events. On some occasions, reference may be made to IHL in some of these events or documents.

5. *UN Secretariat and organizations, funds and programmes*

A number of other UN organizations, funds and programmes as well as the UN Secretariat have carried out activities within their thematic expertise that touched upon issues of IHL. These included, for example, the following activities:

- *UN Secretariat*: the UN Secretary-General as well as various departments of the UN Secretariat have dealt with IHL issues. This includes, for example, regular reports by the UN Secretary-General on protection of civilians in armed conflict⁸⁵ or children and armed conflicts.⁸⁶ In addition, there is the UN Secretary-General's Mechanism for Investigation of Alleged Use of Chemical and Biological Weapons.⁸⁷
- A number of *Special Representatives and Envoys of the UN Secretary-General* deal with IHL issues, such as the Special Representative for Children and Armed Conflict or the Special Representative on Sexual Violence in Conflict. In particular a number of reports by the *Office of the High Commissioner for Human Rights (OHCHR)* have dealt with IHL, together with human rights issues.⁸⁸
- *United Nations Educational, Scientific and Cultural Organization (UNESCO)*: In November 2015, the 38th General Conference of UNESCO adopted a Strategy for the reinforcement of the Organization's actions for the protection of culture and the promotion of cultural pluralism in the event of armed conflict.
- *United Nations Children's Fund (UNICEF)*: UNICEF's work includes work on improving protection of children including in armed conflicts.⁸⁹
- *United Nations Environment Programme (UNEP)*: The UN Environment Assembly adopted in May 2016 a resolution entitled 'Protection of the environment in areas affected by armed conflict'.⁹⁰

⁸⁵ See the report (S/2016/447) of 13 May 2016 http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2016/447.

⁸⁶ See the report (A/70/836-S/2016/360) of 20 April 2016: http://www.un.org/ga/search/view_doc.asp?symbol=s/2016/360.

⁸⁷ Under this mechanism, UN Member States can request and thereby authorize the UN Secretary-General to launch an investigation in case of alleged use of these weapons. This can include dispatching a fact-finding team to the site of the alleged incident.

⁸⁸ E.g. a 2015 Report considering the protection of economic, social and cultural rights in situations of armed conflict, with a specific focus on the rights to health and to education: 'Report of the UN High Commissioner for Human Rights' UN Doc E72015759 (19 May 2015); and OHCHR, *International Legal Protection of Human Rights in Armed Conflict* (New York and Geneva, 2011).

⁸⁹ See: UNICEF, 'Child Protection for Violence, Exploitation and Abuse': https://www.unicef.org/protection/57929_57990.html.

⁹⁰ UNEA Resolution 2/15 (2016). See UNEP: <https://wedocs.unep.org/handle/20.500.11822/11189>.

6. Commonwealth

- **Composition:** 52 States in the Americas, Africa, Asia, Europe, and the Pacific.⁹¹
- **Mandate:** The Commonwealth is a voluntary association of independent States that consult and co-operate in the common interests of their peoples and in the promotion of international understanding and world peace.⁹²
- **Periodicity:** Varies from one activity to another.
- **Activities:**
 1. *Adoption of model legislation:* The Commonwealth Secretariat occasionally adopts model legislation on a wide variety of topics.⁹³
 2. *Joint Seminar of the Commonwealth Secretariat and the British Red Cross:* Since 2015, the Commonwealth Secretariat and the British Red Cross have jointly organized seminars on IHL and disaster law.
 3. *Meeting of Senior Officials of Commonwealth Law Ministries and of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions:* These meetings are held on a triennial basis and sometimes deal with IHL issues.

7. Inter-Parliamentary Union (IPU)

- **Composition:** The IPU is composed of 171 Member Parliaments and 11 Associate Members.⁹⁴
- **Mandate:** The IPU is the focal point for worldwide parliamentary dialogue and it works 'for peace and cooperation among peoples and for the solid establishment of representative institutions.'⁹⁵
- **Periodicity:** Varies from one activity to another.
- **Activities:**
 1. *Handbooks for Parliamentarians:* The IPU has released, jointly with the ICRC, an IHL Handbook for Parliamentarians,⁹⁶ which includes several model laws of relevance to IHL implementation.⁹⁷
 2. *Committee to promote respect for IHL:* The Committee is mandated, *inter alia*, to work to promote respect for IHL and refugee protection. It monitors ratification of relevant international instruments and their implementation, including by means of undertaking missions, and raises awareness in parliaments on issues requiring parliamentary action. The Committee holds one open meeting at one Assembly session per year, at which topics of relevance to IHL are discussed.

⁹¹ The Commonwealth, 'Member Countries': <http://thecommonwealth.org/member-countries>.

⁹² Preamble of the Charter of the Commonwealth.

⁹³ E.g. it has drafted a model law on implementing the Rome Statute of the International Criminal Court, which was approved by the Commonwealth Law Ministers in 2011: <http://thecommonwealth.org/media/press-release/commonwealth-revises-model-law-implementing-rome-statute-promote-ending-impunity>.

⁹⁴ IPU, 'About Us': <https://beta.ipu.org/about-us>.

⁹⁵ Art. 1(2) of the Statutes of the IPU (adopted in 1976, revised in October 1983 and amended in April 2003, October 2013 and March 2016): <https://beta.ipu.org/documents/statutes-and-rules/2016-07/statutes-inter-parliamentary-union>.

⁹⁶ The most recent edition was released in 2016: <http://www.ipu.org/PDF/publications/ihl-en.pdf>.

⁹⁷ These are: Model Legislative Provisions on the Recruitment or Use of Children in Armed Conflict; Model law on the Emblems: National Legislation on the Use and Protection of the Emblem of the Red Cross, Red Crescent and Red Crystal; Legislation for Common Law States on the 2008 Convention on Cluster Munitions; Model Geneva Conventions (Consolidated) Act.

3. *Resolutions and reports of the Assembly*: The Assembly frequently adopts resolutions and reports on a variety of topics, some of which may relate, to varying degrees, to IHL.⁹⁸

B. Expert bodies (treaty-based)

- **Composition**: The UN human rights treaty body system is made up of committees of independent experts, elected by a meeting of States Parties, and chosen in their personal capacity. Their specific expertise is in human rights. There are currently ten human rights treaty bodies.⁹⁹
- **Mandate**: Human rights treaty bodies are charged with monitoring the implementation of their respective core international human rights treaty. The work of some of these treaty bodies relates on occasion to situations of armed conflict, in which case they sometimes specifically refer to IHL.

One of the core international human rights treaties directly concerns armed conflict - the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. The Committee on the Rights of the Child monitors the implementation of this treaty, and given that IHL is the body of law specifically applicable in armed conflict, the Committee's work on international human rights law also involves consideration of matters relevant to IHL.

- Depending on their mandate, the activities undertaken by human rights treaty bodies may include:
 - Receiving periodic reports from States parties, engaging in a dialogue with and issuing concluding observations on a State's compliance with its obligations under the relevant treaty. Where a State is engaged in armed conflict, and thus IHL applies at the same time as international human rights law, a Committee will sometimes refer to this.
 - Receiving and issuing findings with respect to individual complaints—some of these have involved IHL issues.
 - Initiating, on their own initiative, inquiries if they receive reliable information containing well-founded indications of systematic violations of the relevant treaty by a State party.¹⁰⁰
 - Issuing general comments or general recommendations—i.e. comments or observations of a general nature on how the relevant treaty provisions should be interpreted. Sometimes these refer to armed conflict and IHL.¹⁰¹
 - Holding days of general discussion/thematic debates.¹⁰²

⁹⁸ E.g. in March 2016, it adopted a resolution on the protection of cultural property: www.ipu.org/conf-e/134/Res-2.pdf.

⁹⁹ For detailed information see: OHCHR, 'Monitoring the Core International Human Rights Treaties': <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>.

¹⁰⁰ E.g. the Committee Against Torture, pursuant to Art. 20 of the Convention against Torture.

¹⁰¹ E.g. UN Human Rights Committee General Comment No. 29 (2001) on States of Emergency (article 4), para 4; UN Committee on Economic, Social and Cultural Rights, General Comment No. 3, para 10, and General Comment No.12, para 17. See also General Comment No.12, para 57. General Comment No. 35, on Liberty and Security of Person (15 December 2014), paras 15, 31, and 64-66.

¹⁰² E.g. the Committee on the Rights of the Child held a Day of General Discussion on the Right of the Child to Education in Emergency Situations, in which it confirmed that States' duty to provide education remains unaffected even in times of emergency and conflict: 'Day of General Discussion on

- Taking early warning measures aimed at preventing existing situations escalating into conflicts and urgent procedures to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of a Convention.¹⁰³
- One Committee (The Subcommittee on Prevention of Torture) is mandated to conduct visits to places where persons may be deprived of their liberty in order to prevent torture.

C. Courts and Tribunals

1. International Court of Justice

The International Court of Justice is mandated to adopt advisory opinions and decide on contentious cases. The Court's jurisdiction comprises all cases which the parties to the Statute of the Court refer to it, and all matters specially provided for in the UN Charter or in other treaties.¹⁰⁴ Some of the cases dealt with by the Court have included reference to IHL.¹⁰⁵

2. Courts and tribunals with a mandate pertaining to individual criminal responsibility

There are a range of mechanisms of international criminal justice, which have been significantly developed over the past couple of decades. Their general aim is to establish individual criminal responsibility after alleged crimes under international law, including war crimes, have been committed. Their focus is not on prevention, but on punishment and deterrence.

Such mechanisms include or have included the International Criminal Court;¹⁰⁶ the International Criminal Tribunal for the Former Yugoslavia (ICTY);¹⁰⁷ the International Criminal Tribunal for Rwanda (ICTR);¹⁰⁸ the International Residual Mechanism for

the Right of the Child to Education in Emergency Situations: Recommendations', forty-ninth session, 19 September 2008.

¹⁰³ E.g. the Committee on the Elimination of Racial Discrimination.

¹⁰⁴ Statute of the ICJ, art. 36(1). States party to the Statute may also declare that they recognize compulsory jurisdiction of the Court: art 36(2).

¹⁰⁵ E.g. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA)*, Merits (27 June 1986) [1986] ICJ Rep 14; *Legality of the Threat or Use of Nuclear Weapons* (8 July 1996) [1996] ICJ Rep 226.

¹⁰⁶ Established by the Rome Statute (adopted on 17 July 1998, entered into force on 1 July 2002).

¹⁰⁷ The UNSC established the ICTY in 1993, with a mandate to prosecute persons responsible for crimes under international law committed in the territory of the former Yugoslavia since 1991. The Statute lists grave breaches of the Geneva Conventions of 1949, violations of the laws or customs of war, genocide, and crimes against humanity.

¹⁰⁸ The UNSC created the ICTR in 1994 with a mandate to prosecute persons responsible for crimes under international law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994. The Statute lists genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions of 1949 and of Additional Protocol II.

Criminal Tribunals;¹⁰⁹ the Special Tribunal for Lebanon;¹¹⁰ the former Special Court for Sierra Leone,¹¹¹ and the Extraordinary Chambers in the Courts of Cambodia.¹¹²

D. International Conference of the Red Cross and Red Crescent

- **Composition**: All States parties to the Geneva Conventions, and representatives from all components of the Red Cross and Red Crescent Movement (the Movement), which comprises the ICRC, the International Federation of Red Cross and Red Crescent Societies and the 190 National Red Cross and Red Crescent Societies).¹¹³ In addition, in recent years some regional organizations and non-government organizations have been invited to follow the proceedings.
- **Mandate**: The International Conference is ‘the supreme deliberative body for the Movement. At the International Conference, representatives of the components of the Movement meet with representatives of the States Parties to the Geneva Conventions, the latter in exercise of their responsibilities under those Conventions and in support of the overall work of the Movement in terms of Article 2. Together they examine and decide upon humanitarian matters of common interest and any other related matter.’¹¹⁴ The Conference’s functions include contributing ‘to the unity of the Movement and the achievement of its mission in full respect of the Fundamental Principles’, and contributing ‘to the respect for and development of [IHL] and other conventions of particular interest to the Movement’.¹¹⁵ The Conference is preceded by the Council of Delegates, which also takes place in between the quadrennial Conferences, comprising all components of the Movement, which adopts the agenda of the Conference and proposes the Conference officers for election.¹¹⁶
- **Periodicity**: Every four years, unless it decides otherwise.¹¹⁷
- **Activities**: Activities of relevance to IHL include:
 - *Adoption of decisions, recommendations or declarations in the form of resolutions*, including on matters of IHL.¹¹⁸ Resolutions are the formal

¹⁰⁹ This is mandated to perform a number of essential functions previously carried out by the ICTR and ICTY: UN, ‘Mechanism for International Criminal Tribunals’: <http://www.unmict.org/en/about>.

¹¹⁰ Inaugurated in 2009, its primary mandate is to hold trials for the people accused of carrying out the attack of 14 February 2005, which killed 22 people, including the former Prime Minister of Lebanon, and injured many others: ‘About the STL’: <https://www.stl-tsl.org/en/about-the-stl>.

¹¹¹ Set up in 2002 following a request to the UN by the Government of Sierra Leone for a special court to address serious crimes against civilians and UN peacekeepers committed during the 1991-2002 civil war. Its mandate was completed in 2013 and the Residual Special Court for Sierra Leone now oversees the continuing legal obligations of the Court following its closure: ‘Special Court for Sierra Leone, Residual Special Court for Sierra Leone’: <http://www.rscsl.org/>.

¹¹² A special Cambodian Court, created by the Cambodian Government and the UN, which receives international assistance through the UN Assistance to the Khmer Rouge Trials. UN, ‘Extraordinary Chambers in the Courts of Cambodia’: <https://www.eccc.gov.kh/en>.

¹¹³ Art 9 of the Statutes of the International Red Cross and Red Crescent Movement.

¹¹⁴ Art. 8 of the Statutes.

¹¹⁵ Arts 10(1) and 10(2) of the Statutes.

¹¹⁶ For further detail see articles 12-15 of the Statutes.

¹¹⁷ Article 11(1) of the Statutes.

¹¹⁸ Article 10(5) of the Statutes.

outcomes of International Conferences.¹¹⁹ There is usually a general resolution that invites all members of the Conference to review and report on their progress in implementing resolutions and pledges, and requests the ICRC¹²⁰ to report to the next International Conference on the follow-up to resolutions and pledges.¹²¹

- *Submission of pledges*: In addition to resolutions, the members of the Conference may submit, either individually or jointly with other members of the Conference, voluntary humanitarian commitments in the form of pledges for the four-year period until the next International Conference.
- *Assignment of mandates to the ICRC and the Federation, within the limits of their statutes and the Statutes of the Movement*.¹²²
- *Establishment of subsidiary bodies for the duration of the Conference, in accordance with the Rules of Procedure*.¹²³ For example, at the 32nd International Conference in 2015, there were five commissions established as subsidiary bodies. These commissions, one of which was dedicated to IHL, aimed to offer a space for an exchange of best practices and experiences.¹²⁴ In preparation for these commissions reports may be prepared for consideration.
- *Mandate under Resolution I of the International Conference of the Red Cross and Red Crescent (1995)*). In 1995, a mandate was given to Switzerland as the depository of the 1949 Geneva Conventions by means of Resolution I of the 26th International Conference of the Red Cross and Red Crescent, which endorsed Recommendation VII of the Intergovernmental Group of Experts for the Protection of War Victims. Recommendation VII requests 'the depository to organize periodical meetings of the States party to the 1949 Geneva Conventions to consider general problems regarding the application of IHL'. Acting on Recommendation VII and on Resolution I of the 26th International Conference, the Swiss Government convened the First Periodical Meeting of States Parties to the Geneva Conventions on general problems relating to the application of IHL. The only meeting of this kind took place in Geneva, on 19–21 January 1998.

E. Miscellaneous

1. Montreux Document Forum

Composition: Participants of the Montreux Document on Pertinent Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict, and the ICRC. The Montreux Document is

¹¹⁹ E.g. Resolution 1 of the 32nd International Conference, 'Strengthening IHL Protecting Persons Deprived of their Liberty', Res.32IC/15/R1 (2015) and Resolution 2 of the 32nd International Conference, 'Strengthening Compliance with IHL', Res. 32IC/15/R2 (2015).

¹²⁰ As well as the International Federation on matters unrelated to IHL.

¹²¹ See, e.g. Resolution 10 of the 32nd International Conference, 'Power of Humanity', Res.32IC/15/R10 (2015), OP2 and OP3.

¹²² Article 10(6) of the Statutes.

¹²³ Article 10(8) of the Statutes.

¹²⁴ Power of Humanity: Red Cross Red Crescent, 'Commissions': <http://rcrcconference.org/international-conference/commissions/>.

supported by 54 States and 3 International Organizations.¹²⁵ Observers may be invited.

Mandate: The Montreux Document Forum (MDF) was launched in December 2014. The MDF provides a venue for informal consultation and facilitates coordination and communication among Montreux Document participants in relation to outreach, implementation and good practices. It assists States in implementing the rules and good practices contained within the Montreux Document.

Periodicity: As a rule, the MDF meets once a year in Geneva. Ad hoc meetings can be convened as necessary.

Activities: During the plenary meetings, Montreux Document participants have had exchanges on issues related to outreach and national implementation and shared good practices and challenges on the regulation of PMSCs. A number of tools have been or are being developed to assist Montreux Document participants with implementation. For example, the Working Group on the International Code of Conduct Association (ICoCA) has allowed interested Montreux Document participants to follow the work of the ICoCA on certification, monitoring and complaints procedures related to PMSCs and to provide advice on these issues.

2. Conference of High Contracting Parties to the Fourth Geneva Convention

On rare occasions, the UNGA recommended the convening of a Conference of High Contracting Parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. UNGA resolution 64/10 of 2009, for instance, prompted Switzerland in its capacity as depositary of the fourth Geneva Convention to initiate extensive consultations on the opportuneness of such a conference. 128 High Contracting Parties ultimately gathered on 17 December 2014 for a Conference of High Contracting Parties to the Fourth Geneva Convention and adopted by consensus a 10-point declaration. A certain number of States Parties expressed their opposition to the holding of this conference and did not participate. As per resolution 64/10, the conference was context-specific, relating to 'measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1'. A similar conference had taken place in 1999 and reconvened in 2001.

¹²⁵ See Montreux Document Forum, 'Participating States and International Organisations': <http://www.mdforum.ch/en/participants>.

IV. CHAPTER 4: REGIONAL AND SUB-REGIONAL MECHANISMS

The first section of this chapter discusses mechanisms that exist within intergovernmental organizations. The second section relates to relevant activities undertaken by treaty-based expert bodies, while the third section covers relevant activities undertaken by courts.

A. Intergovernmental Organizations

At the regional level, some intergovernmental organizations have included IHL in their activities, with varying levels of regularity. The following organizations are included in this report: the African Union, Asian-African Legal Consultative Organization, Commonwealth of Independent States, the Council of Europe, the Economic Community of West African States, the European Union, the League of Arab States, and the Organization of American States. The overarching mandate of all of these organizations does not explicitly refer to IHL. Where an activity of these mechanisms is carried out pursuant to a more specific mandate that mentions IHL, this is reflected in the text below.

1. *African Union (AU)*

- Composition: 55 African States.¹²⁶
- Mandate: The AU's objectives are, inter alia, to promote peace, security and stability on the continent, and promote protection of human and peoples' rights.¹²⁷
- Periodicity: Varies from one activity to another.
- Activities: The Assembly of the AU adopts a number of decisions, declarations and resolutions which on occasion have referred to IHL. Resolutions, statements and communiqués of the Peace and Security Council have also referred to IHL, for example, in documents relating to the protection of civilians, or terrorism. The African Commission on Human and Peoples' Rights promotes and protects human rights in the Member States of the AU which have ratified the African Charter on Human and Peoples' Rights (the Banjul Charter).¹²⁸ The Commission accepts complaints from individuals, groups of individuals, non-governmental organizations and States concerning alleged violations of the Banjul Charter. While the focus of the Commission is on human rights, on occasion in the course of its work the Commission has referred to IHL.¹²⁹ The African Commission on Human and Peoples' Rights has also undertaken a number of activities that have occasionally referred to IHL, such as resolutions, fact-finding missions, general

¹²⁶ AU, 'Press Release: 28th African Union Summit' (2 February 2017): <https://www.au.int/web/en/pressreleases/20170202/28th-african-union-summit-concludes-swearing-new-commission-and-readmission>.

¹²⁷ See Art. 3 of the Constitutive Act of the AU.

¹²⁸ 1520 UNTS. 217 (27 June 1981).

¹²⁹ E.g. IHL is referred to in General Comment No.3 on The Right to Life (Article 4) (adopted during 57th Ordinary Session, 4-18 November 2015): <http://www.achpr.org/instruments/general-comments-right-to-life/>, paras 13, 32, 33; IHL is also referred to briefly in a Resolution of Human Rights in Conflict Situations, ACHPR/Res.332 (EXT.OS/XIX) 2016 (25 February 2016): <http://www.achpr.org/sessions/19th-eo/resolutions/332/>.

comments and reports of special mechanisms. In 2009 the AU Heads of State adopted the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),¹³⁰ which recognizes the rights of internally displaced persons that are recognized in human rights law and IHL.

2. Asian-African Legal Consultative Organization (AALCO)

- Composition: 47 States from Asia and Africa.¹³¹
- Mandate: Amongst other activities, AALCO serves as an advisory body to its Member States in the field of international law.¹³²
- Periodicity: Varies from one activity to another.
- Activities: The ICRC and AALCO have jointly convened various workshops on IHL.¹³³

3. The Caribbean Community (CARICOM)

- Composition: 15 full members, 5 associate members and 8 observers.¹³⁴
- Mandate: To work to deepen integration of the CARICOM community and contribute to the improvement of the quality of life.¹³⁵
- Periodicity: Varies from one activity to another.
- Activities: The ICRC and CARICOM Secretariat signed a Cooperation Arrangement on 1 March 2007, which amongst other issues, facilitates the promotion, ratification and implementation by CARICOM member states of the major IHL instruments. The CARICOM Council on Foreign and Community Relations (COFCOR) is a secondary body of the CARICOM Secretariat and consists of Ministers of Foreign Affairs of all Member States. The COFCOR occasionally considers IHL issues. The CARICOM Legal Affairs Committee (LAC) is a recognised body of the CARICOM Secretariat which consists of Ministers of Legal Affairs or Attorneys General of all Member States. The LAC considers IHL topics on occasion, and has a specific Agenda on IHL. The CARICOM Implementation Agency for Crime and Security (CARICOM IMPACS) is designed to administer a collective response to the crime and security priorities of Member States under the directives of the Council of Ministers of National Security and Law Enforcement. It has for instance actively promoted the ratification and implementation of the Arms Trade Treaty in CARICOM member States as well as the drafting of a CARICOM Model Legislation to Facilitate the Implementation of the ATT.

¹³⁰ See: AU, 'African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)': <https://www.au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>.

¹³¹ AALCO, 'About AALCO': <http://www.aalco.int/scripts/view-posting.asp?recordid=1>.

¹³² See Art. 2 of the Statutes of the Organization.

¹³³ E.g. ICRC and AALCO Workshop on IHL, New Delhi (May 2014). See: <http://blogs.icrc.org/new-delhi/2014/05/06/icrc-aalco-workshop-to-confer-on-challenges-facing-ihl/>.

¹³⁴ CARICOM : <http://caricom.org/membership>.

¹³⁵ For the full Mission statement see: CARICOM, <http://caricom.org/about-caricom/who-we-are/vision-mission-and-core-values>.

4. Commonwealth of Independent States (CIS)

- Composition: The CIS is a regional organization comprising 12 States.¹³⁶
- Mandate: 'The [CIS] serves the further development and strengthening of relations of friendship, good neighborhood, international harmony, trust, mutual understanding and mutually beneficial cooperation between member states.'¹³⁷
- Periodicity: Varies from one activity to another.
- Activities: The Inter-Parliamentary Assembly of the CIS (IPA CIS) has adopted model legislation or practical advice on topics of relevance to IHL, such as national implementation of the Biological Weapons Convention; protection of cultural property in the event of armed conflict; missing persons; and use and protection of the Red Cross, Red Crescent and Red Crystal emblems. Model provisions compatible with IHL requirements and to be adopted in the penal code were also adopted. In 2004, the ICRC and the IPA CIS signed a cooperation agreement.

5. Council of Europe (CoE)

- Composition: 47 European States.
- Mandate: The aim of the CoE is to achieve greater unity between its members. It is tasked, amongst other things, with discussing questions of common concern and engaging in common action in legal matters and working towards the maintenance and further realization of human rights and fundamental freedoms.¹³⁸
- Periodicity: Varies from one activity to another.
- Activities: Some guidelines adopted by the Committee of Ministers as well as resolutions of the Parliamentary Assembly of the CoE have referred to IHL. IHL matters are also occasionally one of many topics considered by the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI), an intergovernmental committee bringing together legal advisers of ministries of foreign affairs of member States of the Council of Europe, and some observer States and organizations.¹³⁹

6. Economic Community of West African States (ECOWAS)

- Composition: 15 West African States.
- Mandate: Its aims are 'to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress and development of the African Continent.'¹⁴⁰
- Periodicity: Varies from one activity to another.

¹³⁶ See CIS, 'About Commonwealth of Independent States': <http://www.cisstat.com/eng/cis.htm>.

¹³⁷ Art. 1 of the Charter of the CIS, unofficial English translation.

¹³⁸ Art. 3(1) of the Statute of the Council of Europe.

¹³⁹ Council of Europe, 'Committee of Legal Advisers on Public International Law': <http://www.coe.int/en/web/cahdi>. See also CAHDI: 'Opinions on International Humanitarian Law': <http://www.coe.int/en/web/cahdi/humanitarian-international-law-theme>.

¹⁴⁰ Art. 3(1) of the Revised ECOWAS Treaty of 1993.

- Activities: Activities relevant to IHL include an annual Review Meeting on the Promotion of IHL Implementation, held jointly by ECOWAS and the ICRC,¹⁴¹ and workshops on IHL organized jointly by the ECOWAS Standby Force and the ICRC. ECOWAS has also adopted a convention on Small Arms and Light Weapons which addresses small arms and light weapons transfers in West Africa and denies transfer of said weapons if they were to be used to violate IHL.

7. European Union (EU)

- Composition: 28 European States.
- Mandate: The EU is an economic and political union whose work spans diverse policy areas, from external relations and security, justice, human rights and migration, to climate, environment and health.¹⁴²
- Periodicity: Varies from one activity to another.
- Activities: The Council of the EU adopted the 'EU guidelines on promoting compliance with international humanitarian law',¹⁴³ as well as the 'EU guidelines on children and armed conflict'.¹⁴⁴ A few resolutions of the European Parliament and conclusions of the European Council have referred to IHL. IHL issues are also sometimes considered by the EU Council Working Party on Public International Law (*Comité Juridique*) (COJUR).¹⁴⁵

8. League of Arab States (LAS)

- Composition: 22 independent Arab States on the territory of northern and north-eastern part of Africa and southwest Asia.¹⁴⁶
- Mandate: The LAS 'has as its purpose the strengthening of the relations between the member-states, the coordination of their policies in order to achieve co-operation between them and to safeguard their independence and sovereignty; and a general concern with the affairs and interests of the Arab countries.'¹⁴⁷
- Periodicity: Varies from one activity to another.

¹⁴¹ During one of these meetings the ECOWAS Plan of Action on Implementation of IHL in West Africa (2009–2014) was adopted. The Plan of Action was then endorsed in the ECOWAS Humanitarian Policy and its corresponding Plan of Action (2012–2017). These documents were adopted by Ministers in charge of humanitarian affairs during the ECOWAS member States meetings of March 2012.

¹⁴² See: Art. 2 of the Lisbon Treaty, and EU, 'The EU in Brief': https://europa.eu/european-union/about-eu/eu-in-brief_en.

¹⁴³ Adopted in 2005 and updated in 2009: <http://www.consilium.europa.eu/uedocs/cmsUpload/st16841en09.pdf>.

¹⁴⁴ Adopted in 2003 and updated in 2008: <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesChildren.pdf>.

¹⁴⁵ See: European Council, 'Working Party on Public International Law': <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-public-international-law/>. See also: F Hoffmeister, 'Comité Juridique' (COJUR), in Oxford Public International Law: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2049>, paras 16–19.

¹⁴⁶ 'Arab League Online: Presentation of the Arab League': <http://www.arableagueonline.org/>. One World Nations Online, 'League of Arab States': http://www.nationsonline.org/oneworld/arab_league.htm.

¹⁴⁷ Art. 2 of the Charter of the League of Arab States.

- Activities: The LAS, in cooperation with the relevant national IHL committee and the government of a member State, organizes a biennial Meeting of Arab Government Experts on IHL. The ICRC contributes to the organization of the event.¹⁴⁸

9. Organization of American States (OAS)

- Composition: 35 States of the Americas.¹⁴⁹
- Mandate: The OAS, amongst other things, is tasked with strengthening the peace and security of the continent.¹⁵⁰
- Periodicity: Varies from one activity to another.
- Activities: The OAS General Assembly first adopted an IHL-specific resolution in 1994. The resolution, named ‘Promotion of and respect for international humanitarian law’ was adopted on an annual basis between 1994 and 2011, and the last IHL-specific resolution was adopted in 2013.¹⁵¹ In 2014, the General Assembly started adopting a biennial resolution on ‘Promotion of international law’,¹⁵² which reaffirms the mandates included in the previous relevant resolutions, including the IHL-specific resolutions. The OAS Committee on Judicial and Political Affairs (CAJP) of the Permanent Council holds special sessions on IHL and organizes a course on IHL, with the support of the Department of International Law of the OAS Secretariat for Legal Affairs and the ICRC. The Inter-American Juridical Committee (IAJC) proposes model legislation to the Permanent Council for its consideration, which sometimes relates to IHL.¹⁵³ The Inter-American Commission on Human Rights (IACHR) has a mandate to promote the observance and protection of human rights.¹⁵⁴ While its mandate does not refer to IHL, the IACHR has on occasions referred to IHL in carrying out the activities that fall under its mandate, such as issuing decisions on individual communications, preparing thematic reports or country reports on the human rights situation in a State.

¹⁴⁸ At the end of the meeting, participants adopt a ‘Regional Plan of Action for the Implementation of IHL in Arab States’ which is meant to be a roadmap for IHL implementation until the next meeting.

¹⁴⁹ OAS, ‘Who We Are’: http://www.oas.org/en/about/who_we_are.asp.

¹⁵⁰ See: Art. 2 of the Charter of the Organization of American States.

¹⁵¹ See: AG/RES 2795 (XLIII-O/13) (5 June 2013): www.oas.org/en/sla/dil/docs/AG-RES_2795_XLIII-O-13_eng.pdf.

¹⁵² See: AG/RES. 2852 (XLIV-O/14) (4 June 2014): www.oas.org/en/sla/dil/docs/ag-res_2852_xliv-o-14.pdf.

¹⁵³ E.g. in March 2013 the IAJC presented to the Permanent Council a report on ‘Model Legislation on protection of cultural property in the event of armed conflict’: see: http://www.oas.org/en/sla/iajc/docs/ijc_current_agenda_Model_legislation_protection_cultural_property.pdf and OAS General Assembly Resolution AG/RES. 2650 (XLI-O/11), ‘Promotion of and respect for international humanitarian law’ of 7 June 2011, para. 12.

¹⁵⁴ See: Art. 46 of the Charter of the OAS.

10. Organization for Security and Co-operation in Europe (OSCE)

- **Composition:** 57 States from Europe, Central Asia and North America.¹⁵⁵
- **Mandate:** to address a wide range of security-related concerns, including arms control, confidence-building measures, security-building measures, human rights, national minorities, democratization, policing strategies, counter-terrorism and economic and environmental activities.¹⁵⁶
- **Periodicity:** Varies from one activity to another.
- **Activities:** The OSCE's work sometimes includes consideration of IHL issues, e.g. in 2014 it held a regional conference on the Role of Domestic Jurisdictions in the Implementation of IHL—Law and Practice.¹⁵⁷

B. Expert Bodies (treaty-based)

Some regional human rights treaties mandate the constitution of a monitoring body that has the task of overseeing the implementation of its constitutive treaties.¹⁵⁸ None of the regional treaty-based bodies have a mandate that refers to IHL. However, the African Committee of Experts on the Rights and Welfare of the Child has referred to IHL on some occasions.

1. African Committee of Experts on the Rights and Welfare of the Child (ACERWC)

- **Composition:** 11 experts, supported by a secretariat.¹⁵⁹
- **Mandate:** The Committee's functions include monitoring implementation of the African Charter on the Rights and Welfare of the Child.¹⁶⁰ The African Charter on the Rights and Welfare of the Child, from which the Committee sources its mandate,¹⁶¹ does not refer to IHL.
- **Periodicity:** The Committee holds ordinary sessions twice a year.
- **Activities:** In addition to its regular activities (including considering State Party reports on compliance with the African Charter on the Rights and Welfare of the Child and issuing general recommendations; providing views on individual complaints of violations, and interpreting the provisions of the African Charter, for example through general comments), the Committee engages in other ad hoc activities, some of which may include references to IHL. In 2016, the Committee

¹⁵⁵ OSCE, 'Who We Are: Participating States': <http://www.osce.org/participating-states>.

¹⁵⁶ OSCE, 'Who We Are': <http://www.osce.org/whatistheosce>.

¹⁵⁷ See the Conference report, at OSCE: <http://www.osce.org/odihr/142256>.

¹⁵⁸ These monitoring bodies include the courts that oversee the implementation of regional human rights treaties. These mechanisms are discussed in section C of this chapter.

¹⁵⁹ See: AU, 'Judicial and Human Rights Institutions': <https://www.au.int/en/organs/cj>; ACERWC, 'The Experts': <http://www.acerwc.org/the-experts/>.

¹⁶⁰ See: art. 32 – 46 of the African Charter on the Rights and Welfare of the Child.

¹⁶¹ Adopted by OAU Heads of States and Government on 11 July 1990, entered into force 29 November 1999, arts 32 - 41.

released its first 'Continental Study on the impact of conflicts and crisis on children in Africa.'¹⁶²

C. Courts

While there is no regional or sub-regional court mandated to adjudicate on IHL questions, mention can be made of regional courts that are mandated with the protection of human rights.

1. *European Court of Human Rights (ECtHR)*

The ECtHR rules on individual or State applications alleging violations of human rights set out in the European Convention on Human Rights. On some occasions, the court has been requested to adjudicate on allegations of human rights violations in a situation of armed conflict. Accordingly, although the court's mandate does not include IHL, the court has referred to this body of law in its case law.¹⁶³

2. *Inter-American Court of Human Rights (IACtHR)*

The IACtHR has the competence to determine whether the conduct or laws of a State are compatible with the American Convention on Human Rights,¹⁶⁴ and its mandate does not include adjudicating on IHL. However, the IACtHR has also referred to IHL in its case law, as it has been seized of cases where the allegations of human rights violations occurred within the context of an armed conflict.¹⁶⁵

3. *Courts within the African system*

The African Court on Human and Peoples' Rights has advisory and contentious jurisdiction concerning the interpretation and application of the Banjul Charter, as well as of the Protocol that established the Court, and of any other relevant human rights instrument ratified by the State Party concerned, including the Protocol to the Banjul Charter on the rights of women in Africa, known as the Maputo Protocol, which calls on State Parties to respect and ensure respect for IHL (article 16). The Court was established in 1998 to complement and reinforce the functions of the African

¹⁶² See: ACERWC: <http://www.acerwc.org/the-committee-releases-its-study-on-children-and-armed-conflicts/>.

¹⁶³ Examples of recent decisions that refer to IHL include: ECtHR, *Hassan v. the United Kingdom* (Grand Chamber), Application no. 29750/09, 16 September 2014, and ECtHR, *Jaloud v. the Netherlands* (Grand Chamber), Application no. 47708/08, 20 November 2014.

¹⁶⁴ Art. 63(2) of the American Convention on Human Rights.

¹⁶⁵ See, e.g., IACtHR, *Las Palmeras v. Colombia, Judgment (Preliminary Objections)* of 4 February 2000, Ser. C, No. 67; IACtHR, *Bámaca Velásquez v. Guatemala, Judgment (Merits)* of 25 November 2000, Ser. C, No. 70; IACtHR, *Serrano-Cruz Sisters v. El Salvador, Judgment (Merits, Reparations and Costs)* of 1 March 2005, Ser. C, No. 118; IACtHR, *Santo Domingo Massacre v. Colombia, Judgment (Preliminary Objections, Merits, Reparations and Costs)* of 30 November 2012, Ser. C, No. 259.

Commission on Human and Peoples' Rights.¹⁶⁶ In 2003, a Protocol to establish the African Court of Justice and Human Rights was adopted. This Court is to be the main judicial organ of the AU, and will be a merger of the African Court on Human and Peoples' Rights and the Court of Justice of the AU.¹⁶⁷ Once it is operational, it will have jurisdiction over all cases and disputes submitted to it which relate to international law broadly, which includes IHL.¹⁶⁸

V. CHAPTER 5: ICRC ACTIVITIES

The ICRC carries out a range of functions aimed at promoting respect for IHL and preventing violations of IHL. These include both functions in peace time, outside the context of armed conflict, and functions while an armed conflict is ongoing (e.g. visits to detainees, protection of the civilian population, confidential representations in the event of violations of IHL, etc.). The ICRC carries out some of these tasks on the basis of specific mandates provided for in the Geneva Conventions in international armed conflict.¹⁶⁹ It is also entitled to offer its services to the parties to a non-international armed conflict pursuant to common Article 3 to the Geneva Conventions. Activities carried out on this basis are subject to the consent of the parties or actors in question. The ICRC's mandate is also provided for in the Statutes of the International Red Cross and Red Crescent Movement, which are adopted by the members of the International Conference of the Red Cross and the Red Crescent.¹⁷⁰

Given its working method of confidentiality, States will appreciate that the ICRC is not in a position to disclose information about all of its activities, as some of them are part of the ICRC's confidential and bilateral dialogue with relevant actors. This

¹⁶⁶ See: African Court on Human and Peoples' Rights: <http://en.african-court.org/>. See also: International Justice Resource Center, 'African Human Rights System': http://www.ijrcenter.org/regional/african/#African_Court_on_Human_and_Peoples8217_Rights.

¹⁶⁷ The AU Constitutive Act provided for an African Court of Justice to be established as one of the AU's principal organs. The Protocol of the Court was adopted in July 2003. In June 2014, the Assembly adopted a further Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Assembly/AU/Dec.529(XXIII)). The African Court of Justice and Human Rights has not yet become operational. See: AU, 'Judicial and Human Rights Institutions': <https://www.au.int/en/organs/cj>.

¹⁶⁸ See art.28, Statute of the African Court of Justice and Human Rights', Annex to the 2008 Protocol on the Statute of the African Court of Justice and Human Rights: http://www.africancourtcoalition.org/images/docs/legal-texts/acjhr_protocol.pdf. Transition to the Court will begin after 15 Member States have ratified the 2008 Protocol. See: AU, 'Judicial and Human Rights Institutions': <https://www.au.int/en/organs/cj>.

¹⁶⁹ For example, Art. 126(4) GCIII, Art. 143(5) GCIV.

¹⁷⁰ However, the ICRC's role in monitoring compliance with IHL is characterized by certain limits that are inherent to its mission and working method. Except in strictly defined circumstances, the ICRC focuses on a confidential and bilateral dialogue with each party to an armed conflict with the aim of persuading those responsible for violations to change their behaviour and meet their obligations. Confidentiality has proven to be an indispensable tool for obtaining direct access to victims of armed conflicts and for being able to undertake operational work of long duration. It is also key to staff security, particularly in contexts where the ICRC is the only humanitarian organization providing services on the ground.

chapter sets out to provide an overview of the ICRC's activities as they relate to the ICRC's role of promoting IHL. Broadly speaking, these activities are advocating in favour of the law, helping to disseminate and teach it, and urging States to adopt national measures necessary for its implementation.

The ICRC, through its Advisory Service on International Humanitarian Law, supports States' efforts to ratify and accede to IHL (or related) instruments, to disseminate knowledge of this body of law and implement their IHL obligations at the national level.¹⁷¹ In addition to the Advisory Service, other ICRC units are involved in the organization of the activities described below, including the Unit for Relations with Arms Carriers,¹⁷² and the ICRC Law and Policy Forum.¹⁷³

A. Activities at the regional level

Through its staff based both in the field and at headquarters, the ICRC facilitates a variety of activities at the regional level. For the purpose of this section, these activities are divided as follows: (1) periodic regional or sub-regional meetings of State representatives, (2) sub-regional peer-to-peer meetings of national IHL committees, and (3) other relevant activities.

1. Periodic regional or sub-regional meetings of State representatives

The ICRC started regularly co-organizing periodic meetings dedicated to IHL in some regions or sub-regions in 2001. These meetings, which—at a minimum—gather State representatives from within a region or sub-region, vary in their functions and features, but they all offer a platform for participants to discuss contemporary IHL issues and share information about IHL implementation in their respective countries. For example, in Africa there is an Annual Regional Seminar on IHL, organized by the ICRC and the Department of International Relations and Cooperation, Government of South Africa, and a Regional Seminar on IHL National Implementation, organized by the ICRC, the Government of Kenya and the national IHL committee of Kenya. In the Americas, there is a Continental Conference of National Committees for the Implementation of IHL of the Americas, organized by the ICRC, the government and

¹⁷¹ Amongst other activities, the Advisory Service maintains bilateral contacts with national authorities and offers them legal and technical assistance; organizes thematic expert meetings; supports the work of national IHL committees and similar bodies and it facilitates the exchange of information on national IHL implementation measures through, for example, regional and international peer meetings for relevant State authorities. It should be noted that some mechanisms discussed in chapter 3 and 4 could also have been included in this chapter. Indeed, some activities, be they meetings or courses, are jointly organized by the ICRC, an international, regional or sub-regional organization and/or a State. These include some of the activities organized by the LAS and ECOWAS.

¹⁷² The Unit for Relations with Arms Carriers works with Arms carriers to ensure that IHL and other applicable norms, such as international human rights law, are integrated into training, education, doctrine, rules of engagement and sanctions regimes.

¹⁷³ The Law and Policy Forum brings together ICRC's various training and outreach capacities in humanitarian law and action, with a view to promote IHL and other relevant norms, and to influence key actors and decision-makers on humanitarian issues of importance to the organization. It carries out direct outreach activities to key external audiences, following a thematic approach and pursuing academic excellence.

the national IHL committee of the host State, which changes from one meeting to another. In Asia, there is a Conference on IHL in East and Southeast Asia, which is organized by the ICRC, the government and the national IHL committee of a host State, which changes from one meeting to another. There is also a South Asian Conference on IHL, organized by the ICRC and the government of a host State, which changes from one meeting to another. In Eastern Europe and Central Asia, there is a Regional Seminar on Implementation of IHL, organized by the ICRC and the authorities of a host State, which changes from one meeting to another.

2. Sub-regional peer-to-peer meetings of national IHL committees (NCIHL)

In addition to the periodic regional or sub-regional meetings, the ICRC facilitates or has facilitated peer-to-peer meetings of national IHL committees.¹⁷⁴ The sub-regional peer-to-peer meetings of national IHL committees gather a smaller subset of States that also attend the larger periodic regional or sub-regional meeting of State representatives. The sub-regional peer-to-peer meetings provide a platform for State representatives who are members of national IHL committees to share challenges these committees face and best practices in promoting IHL at the national level, and to identify avenues for cooperation. The participating States may vary from one year to another.¹⁷⁵

3. Other relevant activities

In addition to the meetings of State representatives or national IHL committees that the ICRC regularly co-organizes, the ICRC facilitates other activities relevant to IHL. Some of these activities are held on a regular basis, whereas others are held on an ad hoc basis. The ICRC sometimes organizes these activities on its own, whereas in other cases the ICRC organizes an activity in cooperation with one or a few other stakeholders. These activities can broadly be categorized as follows: (1) thematic meetings, gathering experts to discuss particular topics, e.g. to share information between peers and increase awareness on a specific issue; (2) meetings with the judicial sector (3) legislative drafting workshops, to assist States in their efforts to fulfil their obligations relating to the implementation of IHL norms into their domestic legal order; (4) seminars with military armed forces and police and law enforcement agencies, and (5) IHL courses.

¹⁷⁴ Close to 110 States have created either national inter-ministerial working groups, often called committees for the implementation of IHL, or national IHL committees. For more information, see: ICRC, 'National Committees', at <https://www.icrc.org/en/war-and-law/ihl-domestic-law/national-committees>.

¹⁷⁵ E.g. a Peer to Peer Meeting of Indian Ocean Islands' National IHL Committees on the Implementation of IHL; Sub-regional Peer to Peer Meeting of National IHL Committees in Southern Africa; and Regional Meeting of National Committees on IHL in Central and South Eastern Europe.

B. Activities at the international level

As is the case at the regional level, the ICRC organizes a variety of activities at the international level. For the purpose of this section, these activities are divided as follows: (1) periodic meetings of State representatives, (2) periodic meetings of national IHL committees, and (3) other relevant activities. The features and functions of the following activities may vary from one year to another.

1. Periodic meetings of State representatives

Currently, the ICRC does not organize, at the universal level, meetings that are similar to those described in sub-section 1 of section A on activities at the regional level. Indeed, there are no meetings organized annually or biennially that gather State representatives from various sectors to discuss relevant IHL topics and provide space for States to share information about the state of play of IHL implementation within their country. However, the ICRC does periodically organize other meetings of State representatives, including:

- The annual Senior Workshop on International Rules governing Military Operations (SWIRMO), organized by the ICRC and the armed forces of the host State, which changes from one meeting to another. The workshop gathers States from all regions, and includes discussion of current issues of relevance for senior military experts, and peer-to-peer exchanges.
- The quadrennial Commonwealth Red Cross and Red Crescent Conference on International Humanitarian Law, organized by the ICRC, the government of the host State, and the National Red Cross or Red Crescent Society of the host State (which changes from one meeting to another), with support from the Commonwealth Secretariat and the British Red Cross. The Conference gathers States from the Commonwealth, and involves peer-to-peer exchanges, and thematic discussions on IHL-related topics.

2. Periodic meetings of national committees on IHL (NCIHL)

In addition to the periodic meetings of State representatives organized by the ICRC, the ICRC also convenes periodic meetings of NCIHL. The composition of NCIHL and other similar bodies varies from State to State. It often includes representatives of National Red Cross and Red Crescent Societies and in some cases is chaired by the National Society. Independent experts, academics and others, including civil society may also be associated to the work of NCIHL. NCIHL usually are tasked with responsibilities that relate to the dissemination of IHL and domestic implementation of IHL obligations. Accordingly, these meetings are a useful platform for stakeholders involved in such activities. Such meetings include:

- The Universal Meeting of national committees and similar bodies on IHL. There are currently 109 national committees or similar bodies on IHL. The meeting gathers their representatives, and States that do not have a national

IHL committee are invited to attend as observers. Activities include thematic sessions on IHL-related topics and peer-to-peer exchanges related to the dissemination and domestic implementation of IHL. The Universal Meeting, which is an ICRC-conceptualized and developed initiative, does not have a fixed periodicity. The most recent, fourth such meeting, which took place in 2016, was held six years after the previous meeting.¹⁷⁶

- The Meeting of Representatives of NCIHL of Commonwealth States. This meeting is quadrennial, and is organized by the ICRC, the government of the host State, and the National Red Cross or Red Crescent Society of the host State (which changes from one meeting to another), with support from the Commonwealth Secretariat and the British Red Cross. The meeting gathers senior representatives of national IHL committees from Commonwealth States. States that do not have a national IHL committee are also invited to attend. Activities include thematic sessions; peer-to-peer exchanges, and discussions on relevant follow-up to the recommendations of the previous Commonwealth Red Cross and Red Crescent IHL Conference, and relevant resolutions and pledges made at the previous International Conference of the Red Cross and Red Crescent.

3. Other relevant activities

In addition to the periodic meetings of State representatives or NCIHL that the ICRC regularly organizes, the ICRC facilitates other activities relevant to IHL. These include thematic expert meetings, and IHL training courses and seminars.

¹⁷⁶ While the ICRC usually solely organizes this meeting, the fourth and most recent meeting (2016) was organized with the support of the Swiss government and the involvement of the Swiss Interdepartmental Committee for IHL, and the Swiss Red Cross Society.

QUESTIONS FOR DISCUSSION

Resolution 2 of the 2015 International Conference stressed: *that the imperative need to improve compliance with IHL was recognized by all States in the consultation process facilitated by the ICRC and Switzerland as a key ongoing challenge, and that more can be done to address the **current weaknesses and gaps in the implementation of IHL**, including by non-State parties to armed conflict.* (Preambular paragraph 4.)

- 1) What conclusions can be drawn from the Report regarding the ‘current weaknesses and gaps in the implementation of IHL’?

According to the Work Plan of the intergovernmental process for 2017, the Second Formal Meeting in April will focus on the features and functions of a potential forum of States. Ways of enhancing the implementation of IHL using the potential of the International Conference and IHL regional forums are specific topics planned for discussion in the second half of this year. The questions below have been formulated with this timetable in mind:

- 2) What lessons can be learned from existing mechanisms dealing with IHL that could usefully inform the discussion about:
 - a. the features and functions of a potential forum of States, and
 - b. enhancing the implementation of IHL using the potential of the International Conference and IHL regional forums?