Promoting respect for international humanitarian law

A handbook for parliamentarians in Samoa
Promoting respect for international humanitarian law

‘Pacific Islanders are no longer just Islanders in and of the Pacific Ocean, but Pacific Islanders in the Global Ocean . . . There is no doubt there is a need for the application of IHL in the Pacific.’

Dr Langi Kavaliku (2006), former Pro-Chancellor and founding member of the University of the South Pacific and former Deputy Prime Minister of Tonga.
Samoa Red Cross Society is part of the International Red Cross and Red Crescent Movement (the Movement). The Movement has millions of committed members and volunteers worldwide, making it the largest global humanitarian network.

The Movement consists of three components: the International Committee of the Red Cross (ICRC) with a focus upon assisting during times of armed conflict; 188 Red Cross and Red Crescent National Societies (such as Samoa Red Cross Society), providing humanitarian services to people within their own countries and internationally; and the International Federation of Red Cross and Red Crescent Societies (the Federation) which co-ordinates the assistance provided by National Societies during times of natural disasters.

The ICRC, the Federation and all National Societies are guided in their work by seven Fundamental Principles:

**Humanity** The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

**Impartiality** It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

**Neutrality** In order to continue to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

**Independence** The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

**Voluntary service** It is a voluntary relief movement not prompted in any manner by desire for gain.

**Unity** There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

**Universality** The International Red Cross and Red Crescent Movement, in which all Societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.
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Azerbaijan, Baku. A special treatment unit for prisoners suffering from tuberculosis
Photo: ICRC/B. Hoffman
Even wars have limits

The idea expressed by international humanitarian law is simple and compelling: even wars have limits.

It is with this basic but essential idea in mind that Samoa Red Cross Society is proud to produce this handbook. We hope to enhance your understanding of the nature and importance of international humanitarian law (IHL) and encourage you to more effectively promote respect for this increasingly relevant area of international law.

The Red Cross and Red Crescent Movement and IHL

IHL and the establishment of the Movement are intimately connected. In 1859, Henry Dunant, a young Swiss man, came upon the scene of a bloody battle in Solferino, Italy, between the armies of imperial Austria and the Franco-Sardinian alliance. Some 40,000 men lay dead or dying on the battlefield and the wounded were lacking medical attention. Dunant organised local people to bind the soldiers’ wounds and to feed and comfort them. On his return to Switzerland, he proposed two ideas. One was the creation of national relief societies to assist the armed forces’ medical services in time of war. The other was a treaty committing governments to protect those giving help to the wounded on the battlefield.

To promote these ideas, in 1863 Dunant and others set up what would become the International Committee of the Red Cross. The following year the first Geneva Convention was adopted (initially by 12 States), offering care for the wounded and defining medical services as “neutral” on the battlefield.

IHL and the Movement – the ICRC, the National Societies and their Federation – have remained intrinsically related. The Geneva Conventions and their Additional Protocols give elements of the Movement specific tasks which they are legally entitled to do during times of armed conflict. The emblems used by the Movement (the red cross, red crescent and red crystal) are legally regulated under international and domestic law and are universally recognised as symbols which offer protection.
The highest deliberative body of the Movement, the International
Conference of the Red Cross and Red Crescent, includes not only
the ICRC, the Federation and the National Societies but also
States such as Samoa who are party to the Geneva Conventions.
Resolutions from this conference have identified the ICRC as the
“guardians and promoters” of IHL and require National Societies,
such as Samoa Red Cross Society, to inform and educate the public
and particular audiences about the significance of IHL.

We have prepared this handbook as part of the role of Samoa
Red Cross Society in disseminating IHL and we trust it will assist
in developing wider community understanding of IHL as well as
raising awareness among public officials. We are grateful to AusAID
for financial support and the assistance of Australian Red Cross
and ICRC in the preparation of the handbook.

Why IHL and parliamentarians?

While the executive arm of government has primary responsibility
for Samoa’s IHL obligations, Parliament also has a critical role to play
in enacting legislation that ensures IHL is legally binding in Samoa –
for government, public officials and civil society.

Parliamentarians can review Executive ratifications or accessions to IHL
treaties (indeed some parliamentarians are part of the Executive, that
is, the Cabinet), support the development of new IHL instruments and
allocate adequate resources for IHL. You play a crucial role as opinion
leaders within the broader community and have unique capacities
to raise matters of concern and educate the public on important
international legal principles.

A valued relationship

Samoa Red Cross Society greatly values the assistance we receive from
Members of Parliament of all political parties for our humanitarian work.

We commend the Handbook for parliamentarians as a significant
contribution towards achieving the goal expressed in its title:
promoting respect for IHL, and adding legitimacy to the message
“even wars have limits”.

Ms Namulauulu Tautala Mauala
Secretary General
Samoa Red Cross Society

Mr Matataualiitia Afa Lesa
National President
Samoa Red Cross Society
Satitoa, Samoa. Samoa Red Cross Society distributes supplies to one of the areas worst affected by the 2009 tsunami. Photo: IFRC/Rob Few
Promoting respect for international humanitarian law
Questions and answers about IHL
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Sri Lanka. The ICRC evacuated around 14,000 wounded and sick from northern Sri Lanka between February and May 2009. Photo: ICRC/Z.Burduli

Right page: Samoa. The 2009 tsunami caused widespread destruction. Photo: IFRC/Rob Few
What is international humanitarian law?

International humanitarian law (IHL) is a set of rules which seek to limit the effects of armed conflict on people and objects. Also known as the law of war or law of armed conflict, IHL protects certain categories of people and restricts the methods and means of warfare.

IHL protects people who are not or no longer taking part in the fighting, such as civilians, the wounded, the sick, prisoners of war, detainees, and shipwrecked, medical and religious military personnel. These categories of people are entitled to respect for their lives and parties to a conflict must provide them with assistance and treat them humanely at all times without discrimination. For example, civilians must not be made the object of an attack; the wounded and sick must be collected and cared for; and prisoners and detainees must be treated humanely and benefit from judicial guarantees.

IHL protects objects such as hospitals, ambulances and significant pieces of cultural property, including places of worship, works of art and historic monuments. Under IHL it is also prohibited to destroy infrastructure necessary for the survival of the civilian population (such as drinking water supplies) and works containing dangerous forces (such as nuclear power stations).

The key messages of IHL are:

Do not attack people who do not or no longer take part in armed conflict.

Do not use weapons that make no distinction between civilians and combatants, or cause unnecessary suffering and damage.
IHL limits the type of weapons and military tactics which can be used during armed conflict. It is prohibited to use weapons or methods of warfare which do not distinguish between those taking part in the fighting (combatants) and those who are not (civilians as well as civilian property). IHL does not allow the use of weapons which cause superfluous injury or unnecessary suffering, as well as prohibiting tactics which cause severe or long-term damage to the environment.

IHL applies only during times of armed conflict, both international (between two or more States) and non-international (internal to the territory of one State). Once a conflict has begun IHL applies equally to all sides regardless of the reasons for the conflict or who started the fighting. IHL is an area of law which is above all practical and strikes a careful balance between humanitarian concerns and military requirements.

IHL is found in international treaties/conventions as well as in customary law (rules which develop over time due to consistent State practice accompanied by the belief that the practice is legally required). The major elements of IHL are contained in the four Geneva Conventions of 1949 as well as the three Additional Protocols; however there are many other relevant treaties which deal with matters such as the regulation of specific weapons and the prosecution of war criminals. In the later section of the handbook a list of the major relevant treaties and a short summary is provided (on page 37).
What is the relationship between IHL and human rights?

IHL and international human rights law both strive to protect the lives and dignity of individuals.

Despite these two legal systems being complementary, they are also distinct in that they have developed separately and are contained in different treaties.

IHL applies exclusively to times of armed conflict, both international and non-international, and is intended to respond to humanitarian problems that arise during warfare. International human rights law applies at all times and sets standards for States’ treatment of individual and collective rights and freedoms. Human rights are inherent entitlements which belong to every person as a consequence of being human. However, some human rights may be suspended by governments in situations of public emergencies, such as an armed conflict. Unlike human rights law, no element of IHL can be suspended as this area of law was created for a specific emergency, namely armed conflict.

Both IHL and international human rights law aim to protect human life, prohibit torture or cruel treatment, prescribe basic judicial guarantees, prohibit discrimination and regulate aspects of the right to food and health. In addition, IHL contains rules which deal with issues not found in human rights law such as the conduct of hostilities, combatant and prisoner of war status and the protection of the red cross, red crescent.

What is armed conflict?

IHL is used to reduce suffering during times of armed conflict. Armed conflict is a legal term and there are two major types – international armed conflict (traditionally called “war”) and non-international armed conflict (often called “internal armed conflict” or “civil war”). International armed conflict occurs when fighting breaks out between two or more States. Non-international armed conflict is a situation when acts of violence occur regularly between the State military and other organised armed groups or between non-state armed groups. For example, a single riot or event of violent political disturbance would not amount to armed conflict. IHL has a different set of rules depending upon the type of armed conflict being fought. The regime regulating international armed conflict is more detailed than that dealing with non-international armed conflict. However increasingly there is an understanding of the need for people to be protected in all situations of conflict.
Promoting respect for international humanitarian law

Questions and answers about IHL

Kabul, Afghanistan. Mohammed practices walking with his prosthesis in the ICRC limb-fitting and physical rehabilitation centre after losing his leg to a makeshift bomb. Photo: ICRC/K. Holt
and red crystal emblems. Similarly, international human rights law deals with aspects of life in peacetime that are not regulated by IHL, such as the freedom of the press, the rights to assemble, to vote and to strike. The duty to implement IHL and human rights lies first and foremost with States and both areas of law require governments to make international legal principles domestically relevant.

**What about IHL and “terrorism”?**

IHL does not provide a definition of “terrorism” but prohibits most acts committed during armed conflict which would be commonly considered acts of terror. Under the Geneva Conventions and their Additional Protocols, IHL strictly prohibits acts committed during armed conflict which aim to spread terror among the civilian population. A range of acts which could be considered terrorist attacks (such as indiscriminate attacks, attacks on civilians and civilian objects, attacks on places of worship and the taking of hostages) are expressly prohibited in specific provisions found in IHL. Indeed, the general requirement to distinguish between civilians and combatants, and the prohibition of attacks on civilians or indiscriminate attacks, lies at the very heart of IHL.

Terrorist acts may occur during armed conflict or in times of peace. As IHL only applies in situations of armed conflict, it does not regulate terrorist acts committed in peacetime or the manner in which States respond (human rights standards do apply). However, if the fight against terrorist acts takes the form of an armed conflict then IHL applies to the conduct of hostilities.

**How does IHL regulate certain weapons?**

IHL enshrines the principle that there are legal limitations on the use of weapons and tactics by those involved in armed conflict. Combatants are prohibited from using weapons which do not discriminate between civilians and combatants or which are of a nature to inflict suffering greater than that required to take combatants “out of action”. The use of weapons which cause widespread, long-term and severe damage to the natural environment is also prohibited.

Some particular categories of weapons have been deemed so heinous that the international community has agreed to prohibit them. Over the years specific treaties have been created which prohibit or restrict the use of certain weapons, such as biological, chemical, blinding laser or incendiary devices or dum-dum bullets (ammunition which explodes or flattens easily in the human body). The basic principles found in the Geneva Conventions and their Additional Protocols were central to the worldwide campaigns to ban anti-personnel mines and prohibit the use of inaccurate and unreliable cluster munitions. The former campaign resulted in the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Ottawa Convention), while the latter culminated in 2008 in the Convention on Cluster Munitions (Oslo Convention) which came into force on 1 August 2010. The principles also underlie the new international agreement adopted to prevent and remedy the effects of explosive remnants of war, which entered into force on 12 November 2006.
Who and what do emblems protect?

The neutral emblems of the red cross, red crescent and red crystal are international symbols of protection in situations of armed conflict. The emblems identify persons or facilities engaged in the provision of medical aid or humanitarian assistance, and they mean “don't shoot!” in any language.

This means that those who wear or work under the emblems are to be protected at all times. Protected persons include medical personnel, medical equipment such as hospitals and ambulances, chaplains attached to military forces, and humanitarian workers including Red Cross and Red Crescent delegates.

As well as the protective purpose of the emblems, National Societies such as Samoa Red Cross Society can use the emblem in peacetime to indicate that a person or object is linked to the Movement, and works in accordance with the Movement’s Fundamental Principles.

Protection of and respect for the red cross, red crescent and red crystal emblems are vital components of IHL. Any misuse of the emblems weakens their protective effects and undermines the efficacy of humanitarian assistance provided to victims.

The Geneva Conventions oblige States to adopt national legislation governing the use of the emblems, including specifically prohibiting perfidious use of the emblem, which is a war crime. In Samoa the red cross emblem is protected by the Samoa Red Cross Act (1993). The red cross emblem cannot be used without the express authorisation of Samoa Red Cross Society. To use the red cross emblem without such permission is an offence. If the red cross emblem is used in Samoa without such permission it is an offence under the Samoa Red Cross Act and the fine is 100 penalty points.

Originally, despite the red cross and red crescent emblems being exclusively universal and humanitarian symbols, they have been wrongly perceived as having religious, cultural and political considerations. This has affected respect for the emblems and has diminished the protection they offer to victims and humanitarian aid providers operating in conflict.

The solution, endorsed by governments and the Movement, was the creation of a third emblem, known as the “Third Protocol emblem” or the “red crystal”.

In 2005 States party to the Geneva Conventions adopted Additional Protocol III to the Conventions, establishing the red crystal as a third emblem of protection. This third humanitarian emblem enhances protection in cases where neither the red cross nor the red crescent emblems are respected as neutral.
Samoa Red Cross Society’s name will remain the same and we will continue to use the red cross emblem. Governments and national societies are obliged to promote awareness and respect for all three emblems.

To date, Samoa is not a party to Additional Protocol III, however it is well understood that protecting all the emblems is a vital part of respecting IHL.

Satitoa, Samoa. A Samoa Red Cross Society delegate distributes supplies by truck to one of the areas worst affected by the Samoan tsunami. Photo: IFRC/Rob Few
What happens when IHL is violated?

States party to IHL treaties are legally bound to comply with the rules and must do everything in their power to respect and ensure respect for IHL. Serious violations of IHL constitute war crimes and individuals at all levels of society can be held individually criminally responsible.

The primary responsibility for the prosecution of those accused of war crimes rests with States, regardless of where the crimes were committed. Certain specific acts found in the Geneva Conventions and Additional Protocol I, such as wilful killing, torture or inhuman treatment, rape and other acts which wilfully cause great suffering or injury to body or health, must be punished. IHL also requires States to search for persons accused of grave breaches and bring them before their own courts or hand them over for trial in another State. It is concurrently important for States to require military commanders to prevent the commission of war crimes and to take measures against those under their control who commit grave breaches.

As well as domestic prosecutions, the international community has established a number of international tribunals which aim to supplement national courts. The United Nations has established two ad hoc tribunals that deal specifically with crimes committed in the former Yugoslavia and Rwanda. The Rome Statute of the International Criminal Court (ICC) was opened for signature on 17 July 1998 and entered into force in 2002. The ICC is the first permanent international judicial body established to have jurisdiction over serious international crimes, including war crimes, regardless of whether they were committed in an international or non-international armed conflict. The ICC will only operate when a State is genuinely unable or unwilling to prosecute those who are accused of crimes and are within their own jurisdiction. Increasingly, various countries are also creating mechanisms to prosecute those accused of war crimes which are part of the domestic jurisdiction but also incorporate international support (see page 37 for more detail about major IHL treaties).
Monrovia, Liberia. The main prison. Photo: ICRC/Boris Heger

Left page: Near Srebrenica, Bosnia and Herzegovina. A Bosnian Muslim woman prays at the memorial wall. More than 12 years after the war ended, some 16,000 people are still unaccounted for. Photo: AFP/Elvis Barukcic
Samoa was among the first States to become a party to the ICC Statute. It has passed legislation which deals with this subject matter: the *International Criminal Court Act (no. 26 of 2007)*. The Act allows Samoa to prosecute those accused of crimes against humanity, war crimes, genocide and provides for cooperation by Samoa with the ICC.

**What is the relevance of IHL to Samoa?**

Whilst Samoa has not seen armed conflict since World War II, from time to time it does experience internal tensions resulting in the need for an understanding and application of IHL principles. Furthermore, as a good international citizen the application of IHL is an important obligation. Samoa already enjoys a reputation as a good international citizen; this is exemplified by Tuiloma Neroni Slade being one of the first judges to be elected to the ICC in 2003, having previously served as the Vice President at the Rome Conference in 1998. Ensuring Samoa meets its IHL obligations reinforces this reputation.

In Samoa it is important that the rules of IHL are known and obeyed by all. In particular, police, judges, lawyers and policy makers within government require knowledge of IHL. When the opportunity arises for regional and international deployments, citizens from Samoa will need to comprehend and apply the basic principles found in IHL, such as the correct treatment of the civilian population and the processing of detainees.

Since July 2003, in response to tensions in the Solomon Islands, Samoa has provided police officers to the Regional Assistance Mission to Solomon Islands (RAMSI). Samoan citizens are also members of private military security companies that have become increasingly involved in conflicts in Iraq and Afghanistan. Provision of information and training to groups such as police and private contractors by Samoa Red Cross Society will be crucial not only for humanitarian reasons, but to ensure law enforcement officers are fully aware of their responsibilities under IHL. This is becoming increasingly important due to the proliferation of international courts and tribunals tasked with prosecuting war criminals.

Furthermore, the humanitarian sector, including civil society and non-government organisations (NGOs), provides assistance to those in need in Samoa. IHL contains a raft of laws relating to the rights and obligations of the provision of impartial humanitarian assistance. It can prove to be a valuable tool for their work.

For the general Samoan community, knowledge about issues such as the legally correct use of the red cross emblem, as well as the unique role Red Cross and Red Crescent Societies play during times of armed conflict and internal tensions is important.
Weather Coast, Solomon Islands. A team from Solomon Islands Red Cross and the ICRC on its way to assess the humanitarian situation and distribute family kits to displaced persons. Photo: ICRC/Andrea Heath
Promoting respect for international humanitarian law
Questions and answers about IHL

Tikrit, Iraq. An Iraqi woman holds her child and a US soldier watches them moments after US Army soldiers entered their house. Photo: AFP/Roberto Schmid
For IHL to be useful in times of war it must be acted upon and understood during times of peace. When conflict does appear likely it is often too late to implement protective rules. There are a number of prevention measures which must be initiated during times of peace to ensure compliance is possible when IHL is needed.

Finally, as the international community becomes more focused on international mechanisms to prosecute those accused of war crimes, the need for a comprehensive domestic legal framework to deal with these matters within Samoa increases. As a country that aims for internal harmony and respect, demonstrating a capacity and will to prosecute accused war criminals is part of Samoa’s long and short-term interests. For all these reasons IHL has a strong relevance to Samoa.

**What is the relationship between IHL and the International Red Cross and Red Crescent Movement?**

From its very creation in 1863, the International Red Cross and Red Crescent Movement (the Movement) has had a strong connection to IHL. The creation of the Movement and the birth of modern IHL were the results of the vision of the same person – Henry Dunant.

As well as the historical relationship, the most important treaties in the area of IHL, the Geneva Conventions and their Additional Protocols, contain numerous provisions which give elements of the Movement specific tasks which they are legally entitled to do during times of armed conflict. For example, under IHL the ICRC has the right to visit prisoners of war and Red Cross and Red Crescent National Societies must be allowed to carry out humanitarian activities. This legal connection between an international humanitarian organisation and a specific area of international law is unique and provides the Movement with a legal mandate to assist victims during times of armed conflict.
The highest deliberative body of the Movement, the International Conference of the Red Cross and Red Crescent, includes not only the three elements of the Movement (the ICRC, the Federation and the National Societies) but also States who are party to the Geneva Conventions, including Samoa. Resolutions and statements from this important conference have identified the ICRC as the “guardians and promoters” of IHL and furthermore require National Societies, such as Samoa Red Cross Society, to disseminate and educate the public and particular target audiences about the significance of IHL.

In 1984 Samoa Red Cross Society was recognised by the ICRC and admitted to the Federation as an independent Red Cross Society. Samoa Red Cross Society was established in 1952 as a branch of the New Zealand Red Cross. It was re-established in 1981 and its constitution was adopted in 1983. The Constitution is based on the Geneva Conventions to which Samoa is a signatory, and on the Fundamental Principles of the Movement. In 1983 Samoa Red Cross Society was officially recognised by the government of Samoa through the signing of a memorandum of understanding, as a voluntary relief society auxiliary to the

Samoa Islands, 30 September 2009. Volunteer Eddie Leota right, tracks goods received from other national societies for distribution following the 8.3 magnitude earthquake and tsunami.

Photo: IFRC/Rosemarie North
public authorities, and as the only Red Cross Society operating in Samoa. This means that Samoa Red Cross Society has a distinctive relationship with the Samoan Government by mobilising and organising civilian populations to work with the authorities in a neutral and impartial manner to alleviate human suffering in humanitarian emergencies and situations of particular vulnerability.

Samoa Red Cross Society is not an NGO for two distinct reasons. Firstly, its auxiliary role means that it is a unique partner for national and local public authorities and must work in a consistent manner aligned with the Movement’s Fundamental Principles. This particular role is very important when Samoa Red Cross Society disseminates IHL and in work during emergencies and national disasters. Newly created guidelines on international disaster response law (IDRL) specifically mention the critical role of National Societies such as Samoa Red Cross Society.

Secondly, Samoa Red Cross Society is not an NGO because of the legal status of the emblems used by the Movement (the red cross, red crescent and red crystal). The emblems are not “logos”, rather they are legally regulated under international and domestic law, and can only be used in very specific circumstances. For example, in Samoa the Samoa Red Cross Act (1993) restricts the use of the emblem. These emblems are universally recognised as symbols which offer protection.

Due to its special international legal status the Movement also has a specific way of working, in that it does not take sides in hostilities or engage in controversies. In many situations the ICRC works in a confidential manner dealing with authorities rather than making concerns public in the first instance. Similarly National Societies in their involvement in humanitarian advocacy focus their work upon respect for all and assistance without discrimination rather than any engagement in domestic politics.
Promoting respect for international humanitarian law
What can Parliamentarians do?
what can parliamentarians do?
There are a range of actions parliamentarians can undertake to promote respect for IHL. These include ensuring that their State is a party to IHL treaties; adopting legislation to effectively implement IHL obligations domestically; protecting the emblems; and supporting the dissemination of IHL in the community.

**Ensuring the State is a party to IHL treaties**

By becoming a party to IHL treaties, a State not only legally binds itself to the provisions, but symbolically strengthens the principles contained in this area of international law. The fact that every State in the world is a party to the Geneva Conventions of 1949 demonstrates that these treaties have the support of the entire international community, giving them great authority.

When a State becomes party to an international treaty, it has to inform the legal depository of the treaty. The role of parliamentarians throughout the whole process is important. Members of parliament can bring to the attention of the executive IHL treaties of which the State is not a party; they can urge the Executive to sign the IHL treaty within or outside the parliament and can inform their electorate about the matters involved in the treaty in an effort to advance the cause of ratification or accession.

The power to enter into treaties is an executive power, but parliamentarians such as the Minister for Foreign Affairs can propose consideration of an international treaty by the Executive.

**Creating implementing legislation**

When a State becomes a party to a treaty it is commonly necessary to create legislation to ensure it binds those to whom it applies and that breaches of the obligations within the treaty can be enforced by domestic courts.

One of the most important elements of IHL to be incorporated into domestic law is the capacity to prosecute individuals who violate IHL. It is first and foremost up to national courts to punish war criminals. Most of the time States can only punish their own citizens or the perpetrators of crimes committed on their own territory. However, the international community has determined that some crimes are so serious that an exception has been made to this principle. Certain treaties, such as the Geneva Conventions, oblige States to search for and prosecute war criminals no matter what their nationality or where they committed their crimes. Alternatively the State may extradite them to another State which has made an extradition request. This principle is referred to as “universal jurisdiction”.

Other IHL treaties require action such as legislation banning the use or development of certain weapons.
Parliamentarians are crucial in the process of creating implementing legislation for IHL treaties by proposing the drafting of such legislation to the Attorney General. The Attorney General will then task his or her office to draft implementing legislation for IHL treaties. Initially, if government is slow in the creation of such legislation, parliamentarians on all sides can ask the government to explain why there are delays and encourage the process to continue.

When legislation is introduced by the government or otherwise, parliamentarians can actively participate in the deliberations and educate their constituency on the importance of the issues involved.

**Protecting the emblems**

There are three distinct and equally important emblems for assisting victims during times of armed conflict: the red cross, the red crescent and the red crystal. In a highly globalised environment, misuse of the emblems can impact upon their legitimacy and undermine their effectiveness in providing humanitarian assistance to victims. Accordingly, the Geneva Conventions oblige States to prevent any misuse of the emblems, not just during armed conflict.

Parliamentarians play an important role in promoting respect for the emblems by ensuring their countries have legislation prohibiting misuse and taking action when instances of misuse come to their attention e.g. if a medical surgery in their constituency advertises its services by displaying a red cross. In discussions with their constituents and as leaders within the community, parliamentarians may have opportunities to promote information about the emblems and even be involved in finding positive solutions to resolve situations of misuse.

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**How do States become party to a treaty?**

There are two possible ways to become a party to a treaty: signing and then ratifying a treaty or acceding to it.

**Signature and ratification**

Treaties are usually open for signature for a limited period after they have been drafted and often this is until they enter into force. A State which signs a treaty has an obligation not to behave in any way that is contrary to the object and purpose of the treaty. However to be fully committed a State must ratify the treaty it has signed. When a State ratifies a treaty it can issue reservations to certain elements of the treaty on the condition that these reservations are not “contrary to the purpose and objective” of the treaty and do not “undermine its substance”.

**Accession**

A State can accede to a treaty when the treaty is no longer open for signature. The procedure is exactly the same and has the same effects as ratification – the only difference being the later time-frame of the process.
In Samoa, the Samoa Red Cross Act (1993) ensures respect for the red cross. It is a criminal offence to use this symbol without the permission of the Samoa Red Cross Society. The red cross emblem can also be used by the Samoa Red Cross Society to indicate its activities and, under certain circumstances, its fundraising activities.

**Spreading knowledge of IHL**

IHL treaties require States to take measures to spread the knowledge of IHL. Such education is obviously vital for members of the armed forces so that they incorporate the rules into military behaviour and are aware of their legal obligation to comply. To ensure that the State complies rigorously with IHL, it is also important that the wider community understands and supports the limitations on the use of military power which IHL imposes. As well, the public needs to be aware of the protective status of the emblems and the prohibition of misuse.

The State is responsible for ensuring that its military forces are trained in IHL and parliamentarians can monitor whether this is undertaken effectively. Because of their position, parliamentarians may have the authority and the opportunity to promote informed discussion of IHL topics in the community. For example, Samoa Red Cross Society may ask parliamentarians for promotional assistance and involvement in dissemination events because, as leaders within the community, they are well placed to provide legitimacy to important IHL related messages.

**Other important tasks and facts to know**

**Universal respect**

States such as Samoa which are party to the Geneva Conventions are required not only to respect but “ensure respect for” IHL. This means that when the rules of IHL are breached pressure should be exerted to bring about a cessation of such violations. This duty can involve reminding the State involved of its obligations under IHL and demonstrating that the violations it is responsible for are not to be tolerated. Public pressure on the Executive to take political action is important, and so too is the urging of Members of Parliament. Parliamentarians may be in a position to advocate for specific inquiries to be established or propose declarations or statements expressing Parliament’s concerns. Members of Parliament are often in situations where they can champion the cause of IHL not just nationally but internationally.

**National IHL committee**

Many countries have a national IHL committee which consists of members of relevant departments within government, as well as the National Society, ICRC representatives and academic experts on IHL. Committees aim to promote education and debate of IHL as well as knowledge of the Movement’s Fundamental Principles and the correct use of the emblem. Samoa has considered seriously the establishment of an IHL Committee with representatives from the Ministry of Foreign Affairs, Ministry of Health, Attorney-General’s Office and other Government Ministries as well as the Samoa Red Cross Society.
An IHL committee aims to ensure the fulfilment of a government’s international obligations under IHL by assisting and encouraging the development of government policy on IHL and indeed to encourage international respect for and implementation of IHL. It is important that Members of Parliament are aware of such a mechanism and the benefits and expertise an IHL committee brings to a government’s capacity to implement IHL obligations.

Shabunda, South Kivu, the Democratic Republic of Congo. Former child soldiers are reunited with their families with the help of ICRC. Photo: ICRC/Amnon Gutman
What are the major IHL treaties?
what are the major IHL treaties?
Treaties on the protection of victims of war

Convention for the amelioration of the condition of the wounded and sick in armed forces in the field (First Geneva Convention)
Geneva, 12 August 1949
Protects wounded and sick combatants, the personnel attending them, the buildings in which they are sheltered and the equipment used for their benefit. Also regulates the use of the Red Cross and Red Crescent emblems.

Convention for the amelioration of the condition of wounded, sick and shipwrecked members of the armed forces at sea (Second Geneva Convention)
Geneva, 12 August 1949
Extends protection to shipwrecked combatants and regulates the conditions under which they can be assisted.

Convention relative to the treatment of prisoners of war (Third Geneva Convention)
Geneva, 12 August 1949
Protects members of the armed forces that have been taken prisoner. Sets forth the rules governing their treatment and establishes the rights and obligations of the detaining power.
Convention relative to the protection of civilian persons in time of war (Fourth Geneva Convention)

Geneva, 12 August 1949

Establishes the rules governing the protection of the civilian population, in particular the treatment of civilians in occupied territory, those deprived of their liberty, and occupation in general.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)

8 June 1977

Broadens the protection extended to civilians and limits the means and methods of warfare.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II)

8 June 1977

Contains the fundamental guarantees for persons not taking part in hostilities during a non-international armed conflict, sets forth rules relating to the protection of civilians and objects and installations essential for their survival.

Optional Protocol to the Convention on the rights of the child on the involvement of children in armed conflict

25 May 2000

Requires States Parties to take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an additional distinctive emblem (Protocol III)

8 December 2005

Establishes a new emblem, commonly referred to as the red crystal, alongside the red cross and red crescent as a protective emblem.
Treaties restricting the use of, or prohibiting certain weapons

Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction

10 April 1972

Prohibits State Parties to develop, produce, stockpile or otherwise acquire or retain:

1. microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;

2. Weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

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


Establishes the framework for the protocols prohibiting the use of certain weapons. There are currently five protocols under this Convention:
Protocol I: Protocol on non-detectable fragments
Geneva, 10 October 1980
Prohibits the use of weapons that injure by fragments that cannot be detected by X-rays.

Protocol II: Protocol on prohibitions or restrictions on the use of mines, booby-traps and other devices
Prohibits the use of mines, booby-traps and other devices against the civilian population and restricts their use against military targets. The amended Protocol further extends the prohibition of those devices and extends its scope to internal conflicts.

Protocol III: Protocol on prohibitions or restrictions on the use of incendiary weapons
Geneva, 10 October 1980
Prohibits the use of incendiary weapons against civilians and civilian objects and restricts their use against military targets.

Protocol IV: Protocol on blinding laser weapons
Geneva, 13 October 1995
Prohibits the use of laser weapons that are specifically designed to cause permanent blindness.

Protocol V: Protocol on explosive remnants of war
28 November 2003
Allocates responsibility for explosive remnants of war and facilitates the marking and clearance, removal or destruction of explosive remnants of war such as unexploded artillery shells, mortar shells, hand grenades, cluster munitions, bombs and similar weapons which are often found after the end of active hostilities.

Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction
Paris, 13 January 1993
Bans chemical weapons.

Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction (Ottawa treaty)
Ottawa, 3–4 December 1997
Bans anti-personnel mines (landmines).

Convention on Cluster Munitions (Oslo Convention)
Oslo, 3 December 2008
Bans the use of inaccurate and unreliable cluster munitions.
Promoting respect for international humanitarian law
What are the major IHL treaties?

**Treaties on the protection of certain objects**

**Convention for the protection of cultural property in the event of armed conflict**
*The Hague, 14 May 1954*
Protects monuments of architecture, art or history, and other cultural property.

**Protocol for the protection of cultural property in the event of armed conflict**
*The Hague, 14 May 1954*
Provides for the prevention of the export of cultural property from occupied territory, and for the safeguarding and return of such property.

**Second Protocol for the protection of cultural property in the event of armed conflict**
*The Hague, 26 March 1999*
Enhances the protection of cultural property, strengthens the repression of violation and applies also to internal conflicts.

**Convention on the prohibition of military or any other hostile use of environmental modification techniques**
*Geneva, 10 December 1976*
Prohibits the military or any other hostile use, as a weapon of war, of environment or geophysical modification techniques having widespread, lasting or severe effects.

**Treaty enforcement mechanisms**

**Statute of the International Criminal Court**
*Rome, 17 July 1998*
Establishes a permanent international criminal court with jurisdiction for the crime of genocide, war crimes, crimes against humanity and for the crime of aggression once it has been defined.
Kigali, Rwanda. Dancila Nyirabazungu, 50, stands in front of skeletal remains of victims of Rwanda’s 1994 genocide, preserved where they were killed at Ntarama’s Roman Catholic Church. Photo: AP/Karel Prinsloo
Promoting respect for international humanitarian law
Which treaties has the Solomon Islands ratified and what legislation is in place?
what treaties has Samoa ratified and what legislation is in place?
This section aims to highlight two important areas of IHL, the prosecution of war criminals and the prohibitions or limitations of the use of certain weapons.

**War crimes**

As noted previously, Samoa has ratified the Geneva Conventions of 1949 and the two Additional Protocols of 1977. Samoa has not yet fully implemented the Geneva Conventions and Additional Protocols into its domestic legislation.

As previously mentioned, the Samoa Red Cross Act (1993) partially implements the Geneva Conventions by protecting the red cross emblem.

Samoa is a party to the Rome Statute of the International Criminal Court (1998).

Domestic legislation which deals with the prosecution of those accused of war crimes, include the International Criminal Court Act (No. 26 of 2007). This provides that Samoa can prosecute anyone for crimes against humanity, genocide and war crimes, and will assist the ICC’s work and investigations. Samoa has therefore implemented the provisions of the Geneva Conventions which deal with the grave breaches through the incorporation of the ICC’s war crimes jurisdiction.

**Weapons**

In relation to treaties dealing with the restriction or prohibition of certain weapons, Samoa has ratified the Geneva Gas Protocol (1925), the Convention on the Rights of the Child (1989), the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (1993), and the Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction (Ottawa Convention, 1997). Samoa has also ratified the Cluster Munitions Convention (2008), and has implementing legislation.

Samoa’s Ambassador, Tuala Falani Chan Tung, signs the Convention on Cluster Munitions on 3 December 2008. Photo: Catchlight.no/Gunnar Mjaugedal
Promoting respect for international humanitarian law

Notes
Glossary/acronyms

IHL
International Humanitarian Law

ICRC
International Committee of the Red Cross

The Federation
International Federation of the Red Cross and Red Crescent Societies

The Movement
The International Red Cross and Red Crescent Movement

National Societies
188 National Red Cross and Red Crescent Societies, such as Samoa Red Cross Society

Fundamental Principles
Guiding principles of the International Red Cross and Red Crescent Movement (see page 4)

ICC
International Criminal Court

NGO
Non-governmental organisation

RAMSI
Regional Assistance Mission to Solomon Islands

GRA
Guadalcanal Revolutionary Army

Emblem
Red cross, red crescent or third protocol emblem (red crystal)

Humanitarian sector
Includes United Nations agencies, such as UNICEF and UNHCR, NGOs and the Red Cross and Red Crescent Movement

1949 Geneva Conventions
The four universally accepted international treaties containing laws for the protection of certain individuals during times of armed conflict

1977 Additional Protocols
Two international treaties expanding the terms of the 1949 Geneva Conventions

2005 Additional Protocol
International treaty creating the third protective emblem of the Movement, the third protocol emblem or red crystal

Further Information on the internet

International Committee of the Red Cross
www.icrc.org

International Federation of the Red Cross and Red Crescent Societies
www.ifrc.org

International Red Cross and Red Crescent Movement
www.redcross.int

Standing Commission
www.rcstandcom.info

Red Cross/Red Crescent Museum
www.micr.org

International Criminal Court
www.icc-cpi.int
Gereida, Sudan. A family in the internally displaced persons camp builds a makeshift shelter. Fearing further attacks and threats, some 130,000 people from surrounding villages have sought refuge in Gereida. Photo: ICRC/Boris Heger
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