ICRC Advisory Service

Implementing IHL in Small States
Overcoming Obstacles

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Presentation Overview

- 1. ICRC Mission and IHL
- 2. ICRC Advisory Service
- 3. Database on IHL National Implementation
- 4. National Committees on IHL
- 5. New Developments
- 6. Practical suggestions for Small States
1. ICRC Overview

Mission Statement:

- The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance.

- It directs and coordinates the international relief activities conducted by the Movement in situations of conflict. It also endeavors to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement.
2. ICRC Advisory Service
Role and Objectives

Role:

➤ To advise governments on all national measures necessary to ensure full implementation of their obligations under IHL

Objectives:

➤ Ratification of IHL treaties (T)
➤ National implementation of obligations under these treaties (L)
➤ Promote this work through National Committees on IHL (C)
ICRC Advisory Service Structure

The ICRC established the Advisory Service on International Humanitarian Law (IHL) in 1996 on the request of States, notably at the:

- 26th International Conference of the Red Cross and Red Crescent (December 1995)

Part of the Legal Department of ICRC, consists of:

- Legal Advisers
- Documentation Centre and Database
Advisory Service Publications

- Fact Sheets (covering over 30 issues)
- Ratification kits (for the principal treaties)
- Guidelines and Model Laws
- Biennial Reports
- Reports of Experts' Meetings
- Manual on National IHL Implementation (to come)
Advisory Service Activities - Technical Assistance

- Studies of national law (compatibility studies)
- Country Fact Sheets
- Legal advice regarding implementation requirements
- Drafting assistance
- Translation of IHL treaties and documentation
Advisory Service Activities
Information Exchange

- Documentation on national implementation measures
- Database on national implementation measures (including publication on website)
- Collaboration with treaty bodies and similar institutions on implementation (eg ICC, UNESCO, UN DDA, GICHD, OPCW, OHCHR)
Advisory Service
Treaty Promotion – principal treaties

- 1949 Geneva Conventions and Three Additional Protocols
- 1976 Environmental Modification Convention
- 2000 Child Soldiers Protocol, CRC
- 1993 Chemical Weapons Convention – CWC
- 1997 Anti-personnel Landmines Convention
- 1998 ICC Statute
Model Laws

- Ottawa AP Legislation
- Geneva Conventions
- Emblem Legislation
- Commonwealth ICC Legislation
- BWC / 1925 Protocol legislation
- Chemical Weapons (OPCW)
- To come: CCW, HCP, ENMOD, Child Soldiers
3. Database on IHL implementation

- www.icrc.org
- Then to National IHL Database on left-hand side
NOTE

This database provides documentation and commentaries concerning the implementation of international humanitarian law at the national level. The number of States included will steadily increase over time. The content is drawn from information available to the ICRC Advisory Service on International Humanitarian Law. It illustrates possible approaches to incorporating IHL in national legislation but does not seek to provide a comprehensive picture of the situation.

English is used throughout the database (apart from official texts in French and Spanish, which appear in the original language). Any comments on the database are welcome and should be sent to:
International Committee of the red Cross
Advisory Service on IHL
19, av. de la Paix
CH-1202 Geneva
Switzerland
e-mail:
advisoryservice.gva@icrc.org

IMPLEMENTING LAWS & REGULATIONS

by State
by keyword

NATIONAL CASE LAW

by State
by keyword

NOTA

Esta base de datos contiene textos y comentarios relativos a la aplicación del derecho internacional humanitario a nivel nacional. El número de Estados que abarca aumentará progresivamente. El contenido se basa en las informaciones de que dispone el Servicio de Asesoramiento en Derecho Internacional Humanitario del CICR. Ilustra distintos aspectos y posibilidades de la incorporación de ese derecho en las legislaciones nacionales, sin pretender ser exhaustiva en la materia.

El idioma empleado es el inglés (con excepción de los textos oficiales en español y francés, que figuran en versión original). Agradecemos toda observación sobre esta base de datos, que rogamos envíen a:
Comité Internacional de la Cruz Roja
Servicio de Asesoramiento en DHH
19, av. de la Paix
CH-1202 Ginebra
Suiza
e-mail:
advisoryservice.gva@icrc.org
New Zealand

Nicaragua

Nigeria

Norway

Constitution of the Kingdom of Norway, 1014 (extracts)
General Penal Code, 1902 (extracts)
Criminal Procedure Act, 1981 (extracts)
Act No. 38 of 24 June 1994 relating to the incorporation into Norwegian law of the UN Security Council Regulation on the establishment of international tribunals for crimes committed in the former Yugoslavia and Rwanda
Act No. 65 of 15 June 2001 relating to the implementation of the Statute of the International Criminal Court of 17 July 1998 (the Rome Statute) in Norwegian law
Military Penal Code, 1902 (extracts)
Act No. 10 of 6 May 1994 relating to the implementation of the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction

Introduction

Sect. 1 [Prohibited acts]
Sect. 2 [Privileges and immunities]
Sect. 3 [Inspections of locations]
Sect. 4 [Application of the Act to Svalbard, Jan Mayen, etc.]
Sect. 5 [Penalties]
Sect. 6 [Entry into force]

Regulations relating to the implementation of the Convention

Act No. 54 of 17 July 1996 relating to the implementation of the Convention on the prohibition of the use, stockpiling production and transfer of anti-personnel mines and on their destruction

Directive on assessments under international law of weapons and means and methods of warfare

Oman

Panama

Peru

Philippines (the)

Poland

Republic of Korea (the)
4. National Committees on IHL

- 82 Countries now have National Committees
- Made up of representatives from government ministries (eg defence, justice, foreign affairs, education, internal affairs, humanitarian orgs., media)
- Should include qualified legal personnel
- RC/RC national societies are typically members
- Other appropriate persons, eg from the academic community can be members as well
- Flexible structures
Functions of an IHL National Committee

- Evaluating existing national law in the light of existing obligations under the Conventions
- Makes recommendations to improve regulation and legislation
- Dissemination activities
- Relations with armed forces
- Providing interpretation
- Emblem review
New Developments

- Not Covered Here
  - Third Protocol to the Geneva Conventions, and new model legislation
  - ICC and their first trial
  - Certain Conventional Weapons Convention and the Entry into Force of Protocol V
  - Biological Weapons Convention law and 6th Review Conference

- 1. Cluster Munitions
- 2. Direct Participation in Hostilities guidelines
- 3. Renewal of UNSCR 1540
Cluster Munitions

- Oslo process
- Wellington, NZ one of the venues
- Target is a new instrument by end 2008
Direct Participation in Hostilities

- On-going work for the past 5 years
- Trying to give guidance, clarification for the meaning of "direct participation in hostilities" (DPH)
- If you undertake DPH, you are targettable
- If not, you are not a target
- Not intended to be a new treaty
- Still being discussed internally
- Notions include – (1) act's consequences must adversely affect opposing military, (2) direct causal link needed between act and consequences, (3) act must be designed to bring consequences
In 2004, UN SCR 1540 required States to report on measures taken to punish and prevent non-State actors who developed, produced, transferred etc, biological, chemical and nuclear weapons.

In late April 2006, the UN Security Council adopted resolution 1673, which extended the work of the Committee for two years.

Adopted a report which gives an overview of the measures taken by the reporting States so far, including the adoption of penal legislation relating to these weapons.

Useful for those involved in the development of Biological or Chemical weapons implementing legislation.
Commonwealth IHL Red Cross / Red Crescent Meeting

- August 2007, Wellington, NZ
- National Societies and government representatives from Commonwealth States to attend, follow-up from London 2003 and Nairobi 2005
- Focus will be on preparation for the 30th RC / RC Conference, including pledges made and to make
6. Small States, overcoming obstacles

- Smaller States often have fewer resources
- Number of reporting and implementation obligations is high
- Special imperative to not re-invent the wheel each time!
- Can rely on other States, IGOs, NGOs for assistance
Practical suggestions on various IHL treaties

- 1949 Geneva Conventions – Grave breaches etc
  - Use model law: Kiribati, Tonga, Palau, RMI, FSM
- 1977 Protocols – grave breaches, etc
  - Use model law: FSM, Samoa, Solomon Islands, Tonga, Vanuatu
Practical suggestions – IHL treaties

- Ottawa – use the model law, with reference to a few other jurisdictions (Possible states are Kiribati, Nauru, Cook Islands, Samoa, Solomon Islands)
- Biological weapons – use the ICRC / Vertic model law (Fiji, Solomon Islands, Tonga, Vanuatu)
IHL treaties, implementation

- Chemical weapons – use the OPCW kit, they will assist you in this
- ICC – Fiji, Nauru, Samoa
- National IHL Committees (not a legal obligation, but we recommend it), all but NZ and Australia
- CCW and Environmental Modification Techniques, Cultural Property, Child Soldiers – models are coming
The End

www.icrc.org