



The International Committee of the Red Cross (ICRC) presents its compliments to the Legal Counsel of the United Nations, and has the honour to refer to the letter (ref. LA/COD/2/2) dated 2 March 2018, regarding General Assembly Resolution 71/144 of 13 December 2016, entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts".

The ICRC is pleased to provide its contribution, enclosed herewith, to the report of the Secretary-General as requested in operative paragraph 11 of the above-mentioned Resolution. An electronic version of the ICRC's contribution has also been sent.

The International Committee of the Red Cross avails itself of this opportunity to convey to the Legal Counsel of the United Nations the renewed assurance of its high consideration.

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Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

Contribution by the International Committee of the Red Cross (ICRC)

May 2018

Measures taken by the ICRC to reaffirm, clarify and strengthen international humanitarian law (IHL)

1. On the occasion of the 40th anniversary of the Additional Protocols of 1977, the ICRC took several steps to promote the universalization and implementation of these instruments. Its initiatives included the publication of a policy paper on the impact and practical relevance of the Additional Protocols,¹ raising the question of accession in its dialogue with States, and highlighting the relevance of these instruments through national and regional events. Among other steps taken, the ICRC wrote to States not yet party to the Additional Protocols encouraging them to adhere to these instruments.
2. The ICRC continued its project to update the Commentaries on the Geneva Conventions of 1949 and their Additional Protocols of 1977 with the publication of the **Updated Commentary on the Second Geneva Convention** in May 2017 and promotional events in a variety of regions.² The aim of this project is to give practitioners and scholars of humanitarian law an understanding of the law as it is interpreted today, so that it can be applied effectively in contemporary armed conflicts.
3. The ICRC, and the International Red Cross and Red Crescent Movement more broadly, welcomed the adoption of the **Treaty on the Prohibition of Nuclear Weapons** on 7 July 2017. The ICRC was active in the lead-up to and during the two negotiating sessions, sharing its views on the issues with negotiating States.

The ICRC also worked closely with National Red Cross and Red Crescent Societies to support their dialogue with their governments. In April 2017, the ICRC and the Japanese Red Cross Society hosted a high-level Red Cross and Red Crescent Movement conference on the prohibition and elimination of nuclear weapons in Nagasaki, adopting the “Nagasaki Appeal”, which called on all States “to take a decisive step towards a world without nuclear weapons”.

In November 2017, the Red Cross and Red Crescent Movement adopted a 4-year action plan on nuclear weapons. The plan seeks to raise awareness of the catastrophic humanitarian consequences and IHL implications of nuclear weapons, promote adherence to the Treaty on the Prohibition of Nuclear Weapons, promote other relevant treaties and instruments, notably the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the Comprehensive Nuclear-Test-Ban Treaty, and urge States to take additional tangible measures to reduce the risks of use of nuclear weapons.

4. The ICRC continued its efforts to promote the universalization and implementation of the treaties governing **landmines, cluster munitions and explosive remnants of war (ERW)**. This included

¹ ICRC, “40th Anniversary of the 1977 Additional Protocols to the 1949 Geneva Conventions”, Policy Paper, 2017, available at: <https://www.icrc.org/en/document/the-additional-protocols-at-40>.

² ICRC, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 2nd edition, 2017, available at: <https://ihl-databases.icrc.org/ihl/full/GCII-commentary>. The print edition is available from Cambridge University Press and was published in December 2017.

working with National Red Cross and Red Crescent Societies to help foster adherence and implementation in the countries in which they work. The ICRC organized a range of events – particularly national and regional IHL seminars – throughout the world, where mines, cluster munitions and ERW were among the topics discussed. This included seminars in Africa, Asia and Latin America.

The ICRC participated, in most instances at the level of president or vice-president, in the annual meetings of States Parties to the Anti-personnel Mine Ban Convention (APMBC) and the Convention on Cluster Munitions (CCM). ICRC experts also attended Meetings of States Parties to the Convention on Certain Conventional Weapons and its Protocols.

5. On **autonomous weapon systems** the ICRC has continued to contribute to deliberations at the Convention on Certain Conventional Weapons (CCW) Group of Governmental Experts in 2017 and 2018, urging States to set limits on autonomy in weapon systems by determining the type and degree of human control required to ensure compliance with IHL and compatibility with the principles of humanity and the dictates of the public conscience. The ICRC has reminded States of their obligation to determine whether the employment of new weapons, means or methods of warfare, including autonomous weapon systems, would be prohibited by IHL and other international law in any foreseeable circumstances of their use (as required by article 36 of Additional Protocol I). The ICRC also convened a meeting of independent experts in 2017 to explore the ethical issues raised by autonomous weapon systems.
6. In response to the high human and social costs of the widespread availability and misuse of conventional arms, the ICRC has continued its efforts to integrate consideration of respect for IHL into national decision-making on **transfers of arms and ammunition**. The ICRC promoted adherence to and faithful implementation of the international and regional instruments regulating the transfer of arms, including the 2013 Arms Trade Treaty (ATT) and the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. These instruments complement existing limits on arms transfers stemming from the obligation under article 1 common to the four Geneva Conventions of 1949 to ensure respect for IHL.
7. The ICRC continued its efforts to enhance the protection of civilians against the devastating effects caused by the use of **explosive weapons with a wide impact area in densely populated areas**. In particular, the ICRC: conducted an analysis of the humanitarian, technical, legal and policy aspects of the issue, as well as further awareness-raising of the humanitarian impact; engaged in confidential dialogue with States and parties to armed conflict on good practices for mitigating the risks posed to civilians by the use of such weapons in populated areas; and continued to lend support to diplomatic efforts aimed at addressing this problem.
8. The ICRC congratulates Niger, Oman, Palestine and Papua New Guinea on the establishment of **national committees on IHL**. By the ICRC's reckoning, there are now 111 national IHL committees or similar bodies. The ICRC contributed to the establishment and work of such bodies by convening its Fourth Universal Meeting of National Committees and Similar Bodies on International Humanitarian Law in 2016, which focused on enhancing protection in armed conflict through domestic law and policy.³

³ An overview report of the meeting is available at: <https://www.icrc.org/en/document/enhancing-protection-armed-conflict-throughdomestic-law-and-policy-overview-report>.

Status of adherence to Additional Protocols of 1977 and other IHL instruments

9. At the time of writing, 174 States are party to Additional Protocol I and 168 States are party to Additional Protocol II. In the period under review, Palestine made a declaration pursuant to Article 90 of Additional Protocol I accepting the competence of the International Humanitarian Fact-Finding Commission.
10. The number of States party to other key instruments of IHL has continued to grow. The ICRC notes the following accessions since our last contribution:
 - (a) Burkina Faso to Additional Protocol III of 2005;
 - (b) Brunei Darussalam, the Central African Republic, Guinea, Pakistan and Samoa to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 2000;
 - (c) Benin, the Central African Republic, the Czech Republic, Malawi, Seychelles, Sri Lanka and Switzerland to the International Convention for the Protection of all Persons from Enforced Disappearance of 2006;
 - (d) Afghanistan, Togo, Turkmenistan and the United Kingdom of Great Britain and Northern Ireland to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and its two Protocols, Botswana to its First Protocol, and Burkina Faso, France, Liechtenstein, Norway, Portugal and Sweden to its Second Protocol; and
 - (e) Benin, Cabo Verde, Chile, Cyprus, Georgia, Guatemala, Honduras, Kazakhstan, Madagascar, Monaco, Palestine, the Republic of Korea and Zambia to the Arms Trade Treaty of 2013.
11. The ICRC welcomes all such efforts since its last contribution. The ICRC has promoted and will continue to promote adherence to and implementation of the 1949 Geneva Conventions, their Additional Protocols and other IHL instruments.

Update on Resolution 2 of the 32nd International Conference of the Red Cross and Red Crescent

12. Resolution 2 on "Strengthening Compliance with International Humanitarian Law" adopted at the 32nd International Conference of the Red Cross and Red Crescent in December 2015 recommended the continuation of a State-driven intergovernmental process to find agreement on the 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. The ICRC and Switzerland serve as co-facilitators of the intergovernmental process, and in that capacity have organized four Formal Meetings of States to date, as well as numerous additional preparatory meetings aimed at enabling delegations to exchange views on the substantive elements of Resolution 2 and on the best ways to fulfil the mandate given by the International Conference. Further meetings are planned for the remainder of this year and in 2019, with a view to submitting an outcome to the 33rd International Conference that will be held in late 2019.

Legal advice and technical assistance for the national implementation of IHL

13. The ICRC, through its Advisory Service on IHL, continued to provide national authorities with legal advice on and technical assistance with adopting the legislative, regulatory and practical measures needed to ensure full implementation of IHL in domestic law and practice.
14. The ICRC also continued to develop specialized tools (such as databases, reports, and technical documents) which have been made available to States and the general public.

15. The ICRC has continued to build its public database on national implementation of IHL.⁴ The database contains information on national legislation and case law from 195 countries. It serves as a research tool for sharing information on implementation measures and facilitating the fulfilment of States' obligations under IHL. Since the ICRC's last contribution, over 100 entries have been added to the national implementation database, including in respect of the adoption of 65 national laws from 36 States.
16. The ICRC greatly appreciated the inclusion, in the preamble to UN General Assembly Resolution 71/144 adopted on 13 December 2016, of wording that "*welcom[ed the ICRC's] efforts to update regularly its customary international humanitarian law database*". It has been continuing these efforts since 2016. In close co-operation with the British Red Cross Society, its long-standing partner in the update of the practice part of the Customary IHL Database, between June 2016 and March 2018 the ICRC was able to make available new practice from 19 States in the online Customary IHL Database.⁵
17. In 2016, the ICRC published a comprehensive introduction to IHL with a view to promoting and strengthening knowledge of IHL among academics, weapon-bearers, humanitarian workers and media professionals.⁶
18. Together with the Inter-Parliamentary Union (IPU), the ICRC published an updated handbook for parliamentarians on IHL.⁷ The publication is designed to familiarize parliamentarians with the general principles of the Geneva Conventions and their Additional Protocols. It provides step-by-step information on measures that States party to the Geneva Conventions must take so as to fulfil the obligations they have accepted to "respect and ensure respect" for IHL.
19. The ICRC provided legal assistance to numerous countries to help them develop the national laws required by the APMBC and CCM; this assistance included model legislation that it had previously developed. The ICRC also published new brochures on cluster munitions and ERW, in order to further understanding of the requirements of these treaties.
20. To assist States or concerned organizations to make respect for IHL and human rights law a key consideration in arms transfer decisions, the ICRC published an updated version of its Practical Guide titled 'Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria'.⁸ The ICRC also published its recommendations regarding the implementation of those provisions of the ATT most relevant to achieving its humanitarian purpose in 'Understanding the Arms Trade Treaty from a Humanitarian Perspective'.⁹
21. The ICRC has developed thematic factsheets on nuclear weapons, persons with disabilities and amnesties, as well as updating existing factsheets concerning internally displaced persons and the implementation of IHL in domestic law.¹⁰

⁴ The national implementation database is available at: <https://ihl-databases.icrc.org/ihl-nat>.

⁵ The ICRC Customary IHL Database is available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>.

⁶ Nils Melzer, *International Humanitarian Law: A Comprehensive Introduction*, ICRC, Geneva, 2016, available at: <https://www.icrc.org/en/document/qa-international-humanitarian-law-comprehensive-introduction>.

⁷ IPU and ICRC, "International Humanitarian Law", Handbook for Parliamentarians No. 25, 2016, available at: <https://www.icrc.org/en/document/crc-and-parliaments-fruitful-collaboration-inter-parliamentary-union>.

⁸ ICRC, 2016, available at: <https://www.icrc.org/en/publication/0916-arms-transfer-decisions-applying-international-humanitarian-law-criteria>.

⁹ ICRC, 2016, available at <https://www.icrc.org/en/publication/4252-understanding-arms-trade-treaty-humanitarian-perspective>.

¹⁰ These documents are available at: <https://www.icrc.org/en/war-and-law/ihl-domestic-law/documentation>.