



YOUTH



Promoting respect for international humanitarian law

A handbook for parliamentarians in Vanuatu

Vanuatu Red Cross Society





Cover Photo: Vanuatu Red Cross Society Youth Volunteer distributing health information stickers during a handwashing awareness activity at the Children's Day event, 24 July 2013 Photo: VRCS

Vanuatu Red Cross volunteers in the Emergency Response Team delivering relief in the aftermath of Cyclone Vania, 12-24 January 2011 Photo: VRCS



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

This handbook was prepared for Vanuatu Red Cross Society with the assistance of Australian Red Cross as well as representatives of the International Committee of the Red Cross, Regional Delegation in the Pacific.

The handbook drew significantly on *Promoting respect for international humanitarian law – A handbook for Parliamentarians*, which was prepared and published by Australian Red Cross in 2008, as well as *Promoting respect for international law – Handbook for Parliamentarians*, prepared and published in 1999 by the International Committee of the Red Cross and the Inter-Parliamentary Union.

Vanuatu 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; 189 Red Cross and Red Crescent National Societies (such as Vanuatu 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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foreword



*Baku, Azerbaijan. 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 Vanuatu 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 that commits 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 integrally 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.

To develop wider community understanding of the "laws of war".

The highest deliberative body of the Movement, the International Conference of the Red Cross and Red Crescent Movement, includes not only the ICRC, the Federation and the National Societies but also States such as Vanuatu which 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 Vanuatu Red Cross Society, to disseminate and educate the public and particular audiences about the significance of IHL.

We have prepared this handbook as part of the role of Vanuatu 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 the Australian Government 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 the government has a primary responsibility for Vanuatu’s IHL obligations, the parliament also has a critical role to play in enacting legislation that ensures IHL is legally binding.

Parliamentarians can review ratifications or accessions to IHL treaties, support the development of new IHL instruments and allocate adequate resources for IHL dissemination. 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

Vanuatu Red Cross Society greatly values the assistance received from members of parliament of all political parties and independents both in the regional provincial governments and the national parliament, together with members of the National Council of Chiefs, 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”.



Mr Ati George Sokomanu
President
Vanuatu Red Cross Society



Mrs Jacqueline de Gaillande
CEO
Vanuatu Red Cross Society



Vanuatu Red Cross Society staff and volunteers participating in a water, sanitation and hygiene (WASH) training programme. Photo: Australian Red Cross/S. Davies

**questions and
answers
about IHL**

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Questions and answers about IHL



Sri Lanka. The ICRC evacuated around 14,000 wounded and sick from northern Sri Lanka between February and May 2009. Photo: ICRC/Z. Burduli

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.



Damaged housing caused by Tropical Cyclone Lusi, March 2014. Photo: VRCS

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, 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; 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.



Guadalcanal, Solomon Islands. An ICRC delegate in discussion with members of Guadalcanal Revolutionary Army (GRA), 2003. Photo: ICRC/IR. Sidler

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 which 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 (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 and crystal emblems.

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.



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

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 assembly, 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 time 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), whilst 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 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 the Vanuatu 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 is a vital component 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 Vanuatu the emblems are protected under the *Geneva Conventions Act No 22 of 1982*. Pursuant to the provisions of this Act, the emblem cannot be used without the written authorisation of the Minister responsible for foreign affairs. The penalty for unauthorised misuse is a fine of VT20,000 or imprisonment for a period not exceeding six months (or both).

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.

Vanuatu 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. Vanuatu is yet to become a party to Additional Protocol III however it is well understood that protecting all the emblems is a vital part of respecting IHL.



Vanuatu Red Cross Volunteer in Samna Provincial Branch restocking and sorting supplies before delivery to vulnerable communities affect by Cyclone Lusi, May 2014



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).

On 2 December 2011, Vanuatu acceded to the Rome Statute. In enacting the

Rome Statute of the International Criminal Court (Ratification) Act No 4 of 2011, Vanuatu has affirmed its commitment to the ICC and to investigating and prosecuting Rome Statute offences.



Tripoli, Nahr el Bared Palestinian camp, where the Lebanese army battled Fatah al Islam for almost four months between May and September 2007. Much of the camp was reduced to rubble and the vast majority of its 40,000 inhabitants had to flee. Photo: ICRC/F. Pagetti

Left page: The ICRC visits 14 prisons in Rwanda, including the Kigali Central Prison, which holds over 4,300 detainees, to monitor detainees' living conditions and the manner in which they are treated. Photo: ICRC/IT. Babayev

What is the relevance of IHL to Vanuatu?

Vanuatu has not been involved in an international armed conflict since World War II, when it was used as a strategic base for Allied troops. However, it experienced little direct action with only one Japanese attack upon the island of Santo during that time. There was a brief separatist rebellion in 1980 that began prior to Vanuatu's independence on 30 July, but concluded by late August. In more recent times, Vanuatu has experienced tribal tensions which have resulted in violence and a state of emergency being introduced briefly from 3 to 18 March 2007.

There has been a long understanding within the ni-Vanuatu culture that regulations apply during times of conflict. Traditional customs have developed to accommodate this need. In 2009 the head of the ni-Vanuatu Council of Chiefs recognised the important connections between traditional cultural practices within the Pacific and the increasing codification of modern IHL. In a traditional ceremony the Council of Chiefs officially granted the National Society the right to use the Namele palm leaf symbol (the customary protective symbol) alongside the red cross emblem.

Whilst the term "armed conflict" has a specific and legal meaning, there are a number of instances when a situation may not reach the "threshold" of fighting required for categorisation as an armed conflict. However, the "spirit" of IHL may still apply. For instance, the ICRC has visited persons detained in relation to "the tensions" in Solomon Islands through an arrangement with the Government, and Solomon Islands Red Cross Society has organised family visits for these detainees. Such activities are implemented in accordance with the spirit of IHL rather than as a necessary legal component of IHL.

With such situations of conflict and internal violence, it is important the rules of IHL are known and obeyed by all, including both ni-Vanuatu state and non-state actors within Vanuatu. All individuals deployed internationally and acting in another State 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.



The Namele palm leaf symbol appears below the Vanuatu Red Cross Society emblem at a provincial branch office. Photo: VRCS

Since July 2003, in response to tensions in the Solomon Islands, Vanuatu has deployed police officers from the Vanuatu Police Force to the Participating Police Force section of the Regional Assistance Mission to Solomon Islands (RAMSI). All individuals deployed internationally and acting in another State 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.

Combatants, arms bearers and those forming militia organisations for the purpose of armed conflict, violence or control of a territory are required to understand the rules contained in IHL and to respect the limitations placed on the conduct of hostilities. Legal officers and commanders of police forces need to be trained to provide advice on IHL and guide the conduct of their forces. This area of international law must be considered in decisions relating to the deployment of specific weapons.

Provision of information and training to groups such as police and private contractors by Vanuatu Red Cross Society will be crucial, not only for humanitarian reasons, but to ensure law enforcement officers are fully aware of their responsibility under IHL.

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

For the general ni-Vanuatu community, knowledge about issues such as the legally correct use of the red cross emblem, as well as the unique role Red Cross Societies play during times of armed conflict and tensions is important. 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 preventive 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 Vanuatu increases. As a country that aims for internal harmony and respect, demonstrating a capacity and will to prosecute accused war criminals is part of Vanuatu's long and short-term interests. For all these reasons IHL has a strong relevance to Vanuatu.



*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/A. Heath*

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 Movement, 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 Vanuatu. 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 Vanuatu Red Cross Society, to disseminate and educate the public and particular target audiences about the significance of IHL.

The Vanuatu Red Cross Society was established in 1982 following Vanuatu’s declaration of independence on 30 July 1980. Initially formed as a branch of the British Red Cross Society, the Vanuatu Red Cross Society was incorporated as a National Society in 1982 (through the *Vanuatu Red Cross Society Act No 23 of 1982*) and was formally recognised by the Movement in 1993.

The Society’s status is recognised by the *Vanuatu Red Cross Society Act No 23 of 1982*. The Act sets out the objectives of the Society, to be carried out without any adverse distinction founded on sex, race, nationality, religion or faith, political opinions or any other discriminatory criteria. Vanuatu Red Cross Society is officially recognised by the Government of the Republic of Vanuatu as a voluntary relief society, auxiliary to the public authorities in the humanitarian field, particularly in times of natural disasters and armed conflict. The Society has a distinctive relationship with the Government of the Republic of Vanuatu and may mobilise and organise civilian populations to work with the authorities in a neutral and impartial manner to alleviate human suffering.

The Constitution of the Vanuatu Red Cross Society draws from the Geneva Conventions, to which Vanuatu is a signatory, as well as the Statutes and the Fundamental Principles of the Movement. The Constitution clearly states the role and functions of the leadership and management of the Society.

The Vanuatu Red Cross Society is not a non-governmental organisation (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 Vanuatu 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 the Vanuatu Red Cross Society.

Secondly, the Vanuatu 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 the Geneva Conventions Act No 22 of 1982 the use of the emblem is restricted. These emblems are universally recognised as symbols which offer protection.

Due to its continued engagement in IHL, the Movement – particularly the ICRC – continues to ensure that this area of law remains relevant to contemporary

conflicts. It monitors IHL matters as well as proposing new rules using its high level legal and technical skills. The operational and practical work of the Movement in assisting victims during times of armed conflict adds credibility to the strong legal connection found between the Movement and IHL.

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.



Vanuatu Red Cross Society volunteers renovate and paint one of the Society's disaster preparedness containers, July 2013. Photo: VRCS

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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.

In Vanuatu, a member of parliament can, through the Minister of Foreign Affairs, International Cooperation and External Trade, bring a proposal to ratify or accede to a treaty to the Council of Ministers. Once the Council of Ministers endorses the proposal for ratification, the ratification bill will be tabled before parliament. Once the bill is passed by parliament, the Minister of Foreign Affairs, International Cooperation and External Trade signs the instrument of ratification or accession.

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. Initially, if the government delays the enactment of such legislation, parliamentarians on all sides can request the government to explain why there are delays and encourage the process to continue. When a bill 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.

The Vanuatu Red Cross Society and the medical services of the armed forces operating within Vanuatu use the red cross

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.

emblem consistently with the *Geneva Conventions Act No 22 of 1982*. Under this Act, the red cross emblem cannot be used without the written authorisation of the Minister responsible for foreign affairs. The penalty for unauthorised misuse is a fine of VT20,000 or imprisonment for a period not exceeding six months (or both).

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, Vanuatu 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 Vanuatu 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 include 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/ 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.

An IHL committee aims to ensure the fulfillment 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.

Vanuatu does not currently have an IHL committee. The creation of an IHL committee will be part of the Law and Fundamental Principles dissemination project development of the Vanuatu Red Cross Society for 2015-2018.



A mother and children reunited in Lubango in 2005, after three years stranded in the remote south-west of Angola. Photo: Australian Red Cross/J. Letch

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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

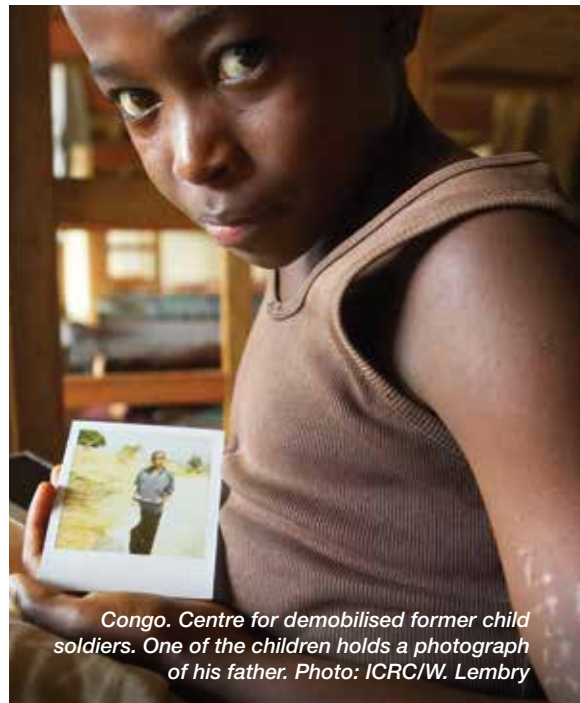
25 May 2000

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 a red crystal, alongside the red cross and red crescent as a protective emblem.



Congo. Centre for demobilised former child soldiers. One of the children holds a photograph of his father. Photo: ICRC/W. Lembray

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

Geneva, 10 October 1980, amended on 21 December 2001

Establishes the framework for the protocols prohibiting the use of certain weapons. There are currently five protocols under this Convention:



Dako, Afghanistan. Children attend a mine risk education session in a village on the frontline of the fighting.
Photo: ICRC/M. Kokić

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

Geneva, 10 October 1980, amended on 3 May 1996

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 Convention)

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 (entered into force in August 2010)

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 violations and extends application 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 (the crime of aggression was defined at a later meeting of States Parties in 2010 although the Court's jurisdiction over this crime will not commence until at least 2017).



*Photos of Genocide victims, Genocide Memorial Center, Kigali, Rwanda
Photo: A. Jones PhD, Global Photo Archive, Flickr*

44 Promoting respect for international humanitarian law

What treaties has Vanuatu ratified and what legislation is in place?

**what
treaties
has Vanuatu
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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, Vanuatu has ratified the Geneva Conventions of 1949 and the two Additional Protocols of 1977 and is yet to become signatory to the 2005 Additional Protocol.

Although Vanuatu has implemented the Geneva Conventions through the enactment of the *Geneva Conventions Act No 22 of 1982*, this Act does not incorporate either the two Additional Protocols of 1977 or the 2005 Additional Protocol.

On 2 December 2011, Vanuatu acceded to the Rome Statute. In enacting the *Rome Statute of the International Criminal Court (Ratification) Act No 4 of 2011*, Vanuatu has affirmed its commitment to the ICC and to investigating and prosecuting Rome Statute offences.

Weapons

Vanuatu has ratified the Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction (1972), the Convention on the Rights of the Child (1989), and the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (1993), Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and on their destruction (Ottawa Convention, 1997). Vanuatu signed the Arms Trade Treaty on 26 July 2013. In Vanuatu there is a fair understanding of the importance of regulating the types of weapons used in conflict and tensions, and the important role IHL plays in reducing suffering.



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	189 National Red Cross and Red Crescent Societies, such as Vanuatu 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
Emblem	Red cross, red crescent or third protocol emblem (red crystal)
Humanitarian agencies	United Nations, NGO and Red Cross/Red Crescent
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 Movement	www.ifrc.org
Standing Commission	www.redcross.int
Red Cross/Red Crescent Museum	www.rcstandcom.info
International Criminal Court	www.micr.org
	http://www.icc-cpi.int



*Chad/Sudan, 2004. Bejingi camp for Sudanese refugees, near Abeche.
Norwegian Red Cross/O. Saltbones*

The Vanuatu Red Cross Society would like to sincerely thank **the Australian Government, Australian Red Cross and International Committee of the Red Cross** for their contribution and support in the preparation of the Handbook for Parliamentarians.

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Published in 2015