

New Zealand International Humanitarian Law Committee 2015 -2021

Report to the New Zealand Minister of Foreign Affairs January 2022

From the time of the first Geneva Convention, adopted in 1864, states have been obliged to make known the body of the law of war, later known as the law of armed conflict, and now generally as international humanitarian law (IHL). The obligation at the outset was limited to their armed forces and later extended to their education programmes and more broadly to the public. Under the Statutes of the International Red Cross and Red Crescent Movement, National Red Cross and Red Crescent Societies are bound to assist their governments in that endeavour.

The New Zealand International Humanitarian Law Committee (NZ IHL Committee) was established by Ministers in 1980, following the adoption of the two 1977 Additional Protocols to the 1949 Geneva Conventions for the protection of war victims, the first of which gave added emphasis to that obligation to disseminate this critical body of law. That obligation is also to be found in several disarmament and arms control treaties, dealing for instance with cluster munitions, land mines and the arms trade. In 2015, the International Committee of the Red Cross (ICRC) and Swiss government tried to get agreement to improve international implementation efforts at the International Conference of the Red Cross and Red Crescent Movement (consisting now of the 192 national societies and the 196 state parties to the 1949 Conventions). When the Conference failed to reach a consensus, another resolution was put to the next International Conference in 2019. This second resolution, which was adopted, emphasised the domestic implementation of the law - 'bringing IHL home.' Further to New Zealand's voluntary pledge made at the 2019 conference, and its commitment to the International Conference resolution, the Ministry of Foreign Affairs and Trade will begin a process in 2022 to develop a report on New Zealand's compliance with IHL obligations. The NZ IHL Committee will engage with this reporting process as it is developed, and in assisting the dissemination of the results. It will also continue to use the 2019 resolutions as a basis for its work.

Mandate and membership

The NZ IHL Committee's mandate is:

- (a) to advise the Minister of Foreign Affairs on the ways in which the New Zealand Government may best meet its responsibilities for the dissemination of IHL under the 1949 Geneva Conventions and Additional Protocols, and other relevant instruments;
- (b) to encourage and coordinate the planning and implementation of dissemination programmes by other interested bodies, in particular New Zealand Red Cross, and to offer advice on such programmes where appropriate;
- (c) to encourage the dissemination of humanitarian law not only through the New Zealand Government and Red Cross, but also through channels such as the universities, the medical profession, the churches and the public at large;
- (d) to review from time to time the content and adequacy of dissemination and report accordingly to the Minister of Foreign Affairs;

(e) where appropriate, to consider and comment on the advisability of New Zealand becoming party to other IHL treaties and the measures needed to achieve that objective.

The NZ IHL Committee normally meets three times a year, in March, July and October. Over the period covered by this report its membership has consisted of representatives of the Ministry of Foreign Affairs and Trade, New Zealand Defence Force, Police, the Human Rights Commission, Oxfam, academic experts from the University of Auckland, the University of Otago and Victoria University of Wellington, the Judge Advocate-General, a District Court Judge (who is also a Court Martial Judge), and members of New Zealand Red Cross. New members include former senior diplomats with experience in arms control and disarmament. The NZ IHL Committee is chaired by Sir Kenneth Keith. The ICRC regional legal advisor based in Canberra attends as an observer. New Zealand Red Cross undertakes secretarial functions.

Relevant Treaty and Legislative Developments 2015 – 2021

The NZ IHL Committee welcomed the leadership of New Zealand Government, represented by Ambassador Dell Higgie, in helping bring to a conclusion the negotiations on the Treaty on the Prohibition of Nuclear Weapons, which entered into force 22 January 2021.

The NZ IHL Committee welcomed the ratification by New Zealand of seven war crime amendments to the Statute of the International Criminal Court, on 14 October 2020. Those amendments are given effect in New Zealand law from 14 October 2021 through the International Crimes and International Criminal Court Amendment Act 2020. Those amendments make criminal and bring within the jurisdiction of the Court and New Zealand courts the use in non-international armed conflicts of poison or poisonous weapons, asphyxiating, poisonous or other gases and analogous liquids, materials or devices; of expanding bullets; of microbial or other biological agents or toxins; of fragments that are undetectable by x-rays; of blinding laser weapons; and starvation. A recent meeting of National IHL Committees of Commonwealth Countries commended New Zealand for its leadership as the first state to ratify the starvation amendment.

New Zealand is a party to all but one of the 33 treaties and related protocols governing IHL considered by the ICRC Legal Advisory Service to be priorities in the region. The exception is the International Convention for the Protection of All Persons from Enforced Disappearance 2006.

In response to a recommendation from the United Nations Human Rights Council, the New Zealand Government has agreed to work on that matter. The NZ IHL Committee will give it further consideration.

NZ IHL Committee Activities 2015-2021

I. Monitoring Developments in IHL

The NZ IHL Committee follows and discusses developments and new topics in IHL as they arise, including New Zealand's efforts on these important humanitarian issues. The professional roles of its members ensure that the NZ IHL Committee follows and, as appropriate, engages in relevant debates and developments overseas and at home.

They include:

- The humanitarian impact of nuclear weapons;
- Updated commentaries to the Geneva Conventions;
- The protection of the natural environment;
- The protection of cultural property;
- Women, peace and security, including the National Action Plan on the subject;
- Islam and IHL;
- Explosive weapons in populated areas;
- Strengthening compliance with IHL (ICRC and Swiss-led project);
- Cyber operations in armed conflicts;
- Autonomous Weapons Systems.

2. Supporting IHL Dissemination

The NZ IHL Committee supports IHL dissemination activities, particularly those of New Zealand Red Cross, by monitoring and providing expertise. One highlight of these activities marked the 70th anniversary of the Geneva Conventions in August 2019. Prime Minister Jacinda Ardern graciously hosted a reception in Parliament for young people, parliamentarians, humanitarian workers, government officials, diplomats, Red Cross members and members of the legal profession, to raise the profile of New Zealand's role in the implementation and development of IHL, and its continuing importance.

Ongoing activities include:

- Engagement with universities to support their international law programmes or related studies such as international relations, peace and security and journalism. Victoria University of Wellington and the University of Auckland offer undergraduate and postgraduate courses in IHL. Auckland University of Technology offers an undergraduate course in IHL.
- Members of the NZ IHL Committee support the annual IHL Moot Court Competition, in which law students argue a fictional war crimes case in front of distinguished members of the bench and legal profession. In March 2021, the winning team from Victoria University of Wellington also won the regional competition, hosted by the ICRC and Hong Kong Red Cross and argued online.
- New Zealand Red Cross is working with the ICRC to support a New Zealand team to enter the IHL Jean Pictet International Competition for the first time in 2022. This competition makes use of extended role play to explore IHL in the context of complex humanitarian emergencies.
- Members of the Committee and the wider academic community, over the period of this report, wrote or lectured about such matters as the limits on the use by states of armed force, the history of the causes of war and the law of war, the principles underlying IHL and its detail, intervention in foreign wars, foreign fighters, the 'global war on terror,' transnational terrorism and the related use of emergency powers, disarmament, nuclear weapons, chemical weapons, ensuring better respect for IHL, the obligation of third states to ensure respect, international criminal law and transitional justice.

- Support to IHL outreach to youth, for example in 2019, the NZ IHL Committee supported the outreach to identify emerging humanitarian leaders in New Zealand and around the Pacific. These young leaders engaged in a 3-day workshop on emerging humanitarian challenges, including IHL. This experience included meeting the Prime Minister, at the event noted above.
- New Zealand Red Cross have maintained an active internship programme on IHL and related topics since 2019. The interns develop leadership skills for the dissemination of IHL through social media and the development of other resources.
- Public lectures from international experts on IHL, including the updated ICRC Commentaries to the Geneva Conventions, migration, and the interaction of Islam with IHL.
- We were also pleased to host a visit from Peter Maurer, President of the ICRC, which included dissemination through the media, through established and online formats.
- Support to key academic, advocacy or public awareness campaigns and events, such as those organized by universities, New Zealand Red Cross, community groups or the United Nations Association of New Zealand. NZ IHL Committee members contribute with specialist presentations and guest lectures, for example, through an annual half day IHL Seminar that engages established and emerging practitioners of IHL as presenters. Topics in recent years have included: the interface of human rights and humanitarian law; United Nations Security Council Resolution 1325 (2000) on Women Peace and Security; challenges facing IHL compliance and implementation; and means and methods of warfare.
- The use of social media as a tool for the dissemination of IHL has included an innovative approach through 'Facebook Live' panels reaching tens of thousands of viewers with perspectives on emerging humanitarian challenges in the global pandemic context as they relate to law and policy. Recent topics have included the humanitarian impact of nuclear weapons in the Pacific, gendered impacts in conflict, and the ethical challenges of autonomous weapons systems.
- We offer resources online through the New Zealand Red Cross Website, from introductory material to material targeted to specific needs. This includes materials to assist journalists in understanding the importance of IHL for reporting from and/or about conflicts.

3. Contributing to New Zealand's global thinking and role

The NZ IHL Committee is regularly updated on international meetings and conferences relevant to IHL and New Zealand—academic, political, humanitarian—and is active in advocating for IHL issues to be included in appropriate fora. The NZ IHL Committee meetings provide the opportunity for fruitful dialogue between its members on matters of mutual interest. These include:

- Preparation for the 4-yearly International Conference of the Red Cross and Red Crescent Movement and the monitoring of progress on the joint pledges made by New Zealand Red Cross and New Zealand Government, during the 2019 International Conference.
- The Annual Conference of the Australian & New Zealand Society of International Law. This Conference, hosted remotely in 2021, included three sessions on IHL, one on the law protecting

the environment in armed conflict, cosponsored by the New Zealand and Australian Red Cross Societies.

- There are meetings of IHL Committees to share information on current activities and practice, particularly among Committees in the same region or those who share similar political or legal systems. For example, the Meeting of National IHL Committees of Commonwealth Countries is held every four years and was most recently hosted remotely in April 2021.

The Committee meetings are also a useful forum for discussion of cases of potential misuse of the Red Cross emblem in violation of section 8 of the Geneva Conventions Act 1958. This is a life and death matter, as persistent misuse of protected emblems (the red cross, the red crescent and red crystal) risks diluting the lawful protective function of the emblems for medical services and humanitarian workers in armed conflict.

Due to its related nature, the Committee at times also considers issues related to International Disaster Management Laws.

4. Contemporary challenges in IHL

The global pandemic has affected everyone and, in addition, has created complex challenges in places of conflict. The changing nature of warfare and peacekeeping means that IHL faces many contemporary challenges with which it must grapple—including issues of compliance, the impacts of protracted conflict, particularly in urban environments, new technologies, questions about the interplay of human rights and IHL, and the impact of terrorism and counterterrorism. The enforcement of international criminal law also faces its own challenges. For two years during this reporting period, New Zealand continued to engage in many of these issues in its role as a non-permanent member of the Security Council.

The IHL Committee tries to keep abreast of these contemporary challenges and their implications for dissemination activities. It recognizes that IHL is constantly evolving as it responds to changes in the nature and conduct of armed conflict. Developments and debates, such as the ICRC-Swiss project to explore with states further IHL compliance mechanisms and work being undertaken on the issue of explosive weapons used in densely populated areas are both important and inevitable. At the same time, the Committee continues to believe that the basic principles of IHL—properly interpreted and implemented—remain as valid and relevant today as when they were first elaborated.

Given the concerning lack of compliance with IHL in some instances, the Committee would welcome further engagement with the Minister of Foreign Affairs on the question of what the New Zealand Government, with partners and in multilateral frameworks, can do to encourage better compliance with IHL.