

## **BRINGING TREATIES HOME: THE DOMESTIC INCORPORATION OF INTERNATIONAL HUMANITARIAN LAW**

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### **What is IHL?**

International humanitarian law (IHL), or the law of armed conflict, is a branch of public international law applicable in times of armed conflicts. These armed conflicts may be either international or non-international in nature, and different rules apply in these two contexts. The purpose of IHL is twofold – to protect those who are not, or who are no longer, taking part in hostilities, and secondly to limit the effects of war by placing limitations on the methods and means of war.

Today's IHL is found both in treaties and customary international law, sources found in Article 38 of the Statute of the International Court of Justice.<sup>1</sup> Modern IHL began with the First Geneva Convention of 1864, and now comprises some 100 international conventions as well as custom.<sup>2</sup>

This article concentrates on 28 IHL Treaties, Protocols and Declarations<sup>3</sup>. It reviews each international instrument, includes whether Bangladesh is a Party or has signed the instrument and then discusses potential action Bangladesh could take with respect to the instrument. This paper draws heavily from the publications of the ICRC, including fact sheets regarding measures necessary to implement IHL in the domestic legal order of States party to each instrument.<sup>4</sup>

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<sup>1</sup> The Statute of the International Court of Justice may be found at <http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0>.

<sup>2</sup> For a list of these treaties, see <http://www.icrc.org/ihl>, and for more information about customary international humanitarian law, see <http://www.icrc.org/eng/customary-law>.

<sup>3</sup> For a list of ratifications by treaty, see <http://www.icrc.org/ihl>.

<sup>4</sup> [http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/advisory\\_service\\_ihl?OpenDocument](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/advisory_service_ihl?OpenDocument) for an overview of available resources.

### **What implementation steps are required?**

Most IHL Treaties require, explicitly, steps be undertaken upon the entry into force of the instrument for a country. This may include such steps as (1) an official translation into the national language(s) of the country (2) the incorporation of violations of the treaty as criminal offences in each country (3) the training of the armed forces and the incorporation of the rules into national military regulations (4) the protection of symbols, such as the red crescent, in domestic law (5) the destruction of certain weapons, such as exist in the anti-personnel landmine Convention, (6) the provision of trial rights, such as in the Geneva Convention for war criminals (7) the aligning of the criminal procedure system, such as with the International Criminal court, and (8) ensuring compensation for victims of violations of the instrument, such as in Additional Protocol I to the 1949 Geneva Conventions.

In sum, the term implementation covers all measures that must be taken to ensure that the rules of international humanitarian law are fully respected. However, it is not sufficient merely to apply these rules once fighting has begun. There are also measures that must be taken in both wartime *and* peacetime. These measures are necessary to ensure that:

both civilians and the military personnel are familiar with the rules of humanitarian law;

the structures, administrative arrangements and personnel required for compliance with the law are in place;

violations of humanitarian law are prevented, and punished when they do occur.

Such measures are essential to ensure that the law is truly respected.<sup>5</sup>

For each treaty, or treaty set, the steps normally taken by States to ensure proper domestic implementation of the instrument will be provided, and some of the steps already taken will also be mentioned.

In Bangladesh, as Professor Borhan Uddin Khan has written,

it is evident that the Constitution is silent on the status of international law upon the domestic legal regime, even though it does make reference to human rights and respect for international law. Accordingly, under the general principles of international law and the

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<sup>5</sup> See <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JNXN>.

municipal legal regime, international treaties can become part of the domestic law only if they are specifically incorporated into the law of the land. In other words, they are not self-operating in Bangladesh, i.e. treaty obligations concluded by Bangladesh cannot ipso facto be put into effect unless an enabling legislation is enacted<sup>6</sup>... Further, the Constitution does not contain any specific provision, which obliges the state to enforce or implement international treaties and conventions including implementation and enforcement of IHL.<sup>7</sup>

Thus, for many of the measures listed above, it is necessary for Bangladesh to enact legislation enabling the obligations to be applied by courts and other bodies of Bangladesh.

### **Treaty-by-Treaty**

#### **1949 Geneva Conventions and their Three Additional Protocols, together with the 1954 Cultural Property Convention and its Two Protocols.**

The 1949 Geneva Conventions and their Three Additional Protocols form the core of IHL instruments. These instruments include the most important rules regarding the protection of those not, or no longer, taking part in hostilities, including civilians not directly participating in hostilities, and prisoners of war.

The first Geneva Convention of 1864 dealt exclusively with care for wounded soldiers; the law was later adapted to cover warfare at sea and prisoners of war.

In 1949 the Conventions were revised and expanded, with the First Geneva Convention covering wounded soldiers on the battlefield, while the Second Geneva Convention dealt with the wounded, and shipwrecked at sea, the Third covering prisoners of war and the Fourth dealing with civilians. In 1977, two Additional Protocols were added, with the First Additional Protocol covering international armed conflicts and the Second Additional Protocol dealing with non-international armed conflict. In 2005, the Third Additional Protocol, relating to an Additional Emblem known as the red crystal, was adopted.

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<sup>6</sup> See H. Rashid., *International Law*, Dhaka, 1998, p. 23.

<sup>7</sup> Borhan Uddin Khan, "International Humanitarian Law Bangladesh's Attitude and Practice" in V.S. Mani (ed.) *Handbook of International Humanitarian Law in South Asia*, (Oxford University Press, 2007) p. 59.