



# PROMOTING RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

A HANDBOOK FOR MALAYSIAN PARLIAMENTARIANS



ICRC

# PROMOTING RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

This handbook was prepared by the Malaysian Red Crescent Society and the International Committee of the Red Cross (ICRC), Regional Delegation of Kuala Lumpur.

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

Cover photo:

Courtesy visit by the ICRC President (1964-1969) Samuel Gonard to the Malaysian Prime Minister, Tunku Abdul Rahman Putra Al-Haj. Kuala Lumpur, January 1967 © ICRC

'While we would rather see disputes resolved peacefully and amicably, the least we can do if conflict breaks out is to ensure that innocent men, women, and children do not suffer unnecessarily. Malaysia also believes that respect for and adherence to International Humanitarian Law as codified in the four Geneva Conventions and Additional Protocols, and under customary international law can only be achieved if these well-entrenched International Humanitarian Law principles and practices are strenuously upheld by the global community.'

*Statement by the Honourable Senator Paul Kong Sing Chu, Member of Parliament and Representative of Malaysia on agenda item 80 entitled "Status Of Protocols Additional To The Geneva Convention Of 1949 And Relating To The Protection Of Victims Of Armed Conflicts" at the Sixth Committee Of the 67th Session of the United Nations General Assembly New York, 22 October 2012.*

The "First Asian Seminar on Humanitarian Law" organised by the Malaysian Red Crescent and the ICRC was held in Kuala Lumpur from 14 to 24 November 1978. From left to right: YAA Tun Dato' Seri Abdul Hamid bin Haji Omar, Vice Chairman MRCS, YM Tunku Tan Sri Mohamed bin Tunku Besar Burhanuddin, National Chairman MRCS, Alexandre Hay, President of ICRC (1976-1987), and YM Tengku Tan Sri Dato' Seri Ahmad Rithauddeen, Minister of Foreign Affairs.



The ICRC, the International Federation of Red Cross and Red Crescent Societies (IFRC), 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 a human being. It promotes mutual understanding, friendship, cooperation, and lasting peace amongst all people.

**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 the 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 to act in accordance with the principles of the Movement at all times.

**Voluntary service:** It is a voluntary relief movement not prompted in any manner by a 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 BY SPEAKER OF THE HOUSE OF REPRESENTATIVES, PARLIAMENT OF MALAYSIA

It is my greatest honour and privilege to introduce the Promoting Respect for International Humanitarian Law: A Handbook for Malaysian Parliamentarians.

The Legislature has long been considered as one of the most important institutions in any democratic nation. In order to recall the attention of IHL, Parliament has an integral role to help ensure that IHL obligations and principles are effectively implemented.

Fifty-seven years ago, on 24 August 1962, less than five years into its independence, Malaysia ratified the Geneva Conventions of 1949 that form the core of IHL treaties today. As per Malaysia's dualist legal system, upon ratification of the International treaty, Members of Parliament debated and passed Act 512 or the Geneva Conventions Act in 1962.

True to its commitment to uphold IHL, Malaysia had since ratified and implemented a variety of different IHL treaties, including the Anti-Personnel Mines Ban Convention 1997. This particular treaty is aimed at eliminating anti-personnel landmines around the world. Parliament implemented the Convention through the Anti-Personnel Mines Convention Implementation Act 2000 (Act 603).

Today, IHL's relevance to Malaysia cannot be sufficiently emphasised. Its wide scope – covering areas from the protection of civilians and cultural property in times of armed conflict to the regulation of the sale and transfer of arms as well as the prohibition of the use of nuclear weapons among others, underscores its true importance to Malaysia. As a result, Parliamentarians are inevitably called upon to debate on matters that intersect or relate to IHL.

This Handbook highlights upon the relevance of IHL in Malaysia; elaborating on the pivotal role played by Parliamentarians and providing detailed explanations on key points regarding IHL. Undeniably, this handbook would also equip the parliamentary staff and Members of Parliament with the requisite knowledge on the subject and operation of the IHL.

I am confident that this Handbook's comprehensive yet concise nature will serve as an excellent starting point for Parliamentarians who are less familiar with IHL as well as a good reference to those who are already proficient in it.

Finally, I would like to express utmost gratitude and thanks to the ICRC and MRCS for their continuous support to Parliament and its members. In the future, we look forward to engaging in conducive and learned debates on IHL in Parliament, Thank you.



**Tan Sri Azhar Azizan Harun**  
**Speaker of the House of Representatives**  
**Parliament of Malaysia**

# FOREWORD BY NATIONAL CHAIRPERSON, MALAYSIAN RED CRESCENT SOCIETY

The Red Cross and Red Crescent Movement was born out of a desire to ensure the safety of armed forces medical personnel and the formation of relief societies to help sick and wounded soldiers in the field. This was further expanded to help both combatants and non-combatants in times of conflict. The four Geneva Conventions, are part of a body of law known as International Humanitarian Law or the Law of Armed Conflict as well as the Law of War. The First Geneva Conventions of 1949 established National Societies while the First Resolution of the 1863 Geneva Conference gave rise to the concept that National Societies are auxiliaries to public authorities in the humanitarian field.

The Red Cross began here in April 1948 as a Branch of the British Red Cross Society. The Malaysian Red Crescent Society is created by the Malaysian Red Crescent Society (Incorporation) Act 1965 (as amended 1 January 2006) and the Malaysian Red Cross Society (Change of Name) Act 1975 (as amended 1 January 2006). Under section 5 of the Malaysian Red Cross (Incorporation) Act 1965, its purpose shall be (a) in time of peace or war, to carry on and assist in work for the improvement of health, the prevention of disease and the mitigation of suffering throughout the world, (b) in time of war, to furnish voluntary aid to the sick and wounded both of armies and non-belligerents, to prisoners of war and to civilian sufferers from the effects of war, in accordance with the spirit and covenants of the Geneva Conventions for the amelioration of the conditions of the wounded and sick in armed forces in the field, signed at Geneva on 12 August 1949 and (c) to perform all the duties devolved upon a national society by each nation which has acceded to the said Conventions.

It is part of Malaysian Red Crescent Society's mandate to mitigate the humanitarian impacts of war. It is for this reason that I am delighted to introduce the very first Promoting Respect for International Humanitarian Law: A Handbook for Malaysian Parliamentarians. The aim of this Handbook is to share the various ways in which Malaysian Parliamentarians can contribute to the promotion and ensure respect of International Humanitarian Law in Malaysia.


For international humanitarian law treaties to apply to Malaysia, under the dualist system of international law practiced by Commonwealth countries, Parliament must

enact enabling national laws mirroring the international treaty to enable such treaties to be enforced in Malaysia. In the late 1970's, over 250,000 Vietnamese boat people came to Malaysia fleeing the violence of the Vietnamese War and its aftermath. The Malaysian Red Crescent Society was given the main responsibility of providing humanitarian assistance to the Vietnamese boat people, running camps in Pulau Bidong and in Sungai Besi. In addition the Malaysian Red Crescent Society provided training to help them resettle in third countries, family reunification and providing for all aspects of their care and well being. This was conducted along with the International Committee of the Red Cross and other members of the Red Cross and Red Crescent Movement, Malaysian Government Agencies, United Nations Agencies and third country agencies.

In recognition of MRC's outstanding work in helping the Vietnamese boat people, the Malaysian Red Crescent Society was awarded the prestigious Nansen Medal in 1977. The Malaysian Red Crescent Society is the only Red Cross Red Crescent National Society have received this medal thus far.

The Malaysian Red Crescent Society works closely with the Malaysian Armed Forces, the Royal Malaysian Police, Wisma Putra and other Government Agencies in disseminating and implementing various aspects of International Humanitarian Law, which are very important for Malaysian Peacekeepers and Observers serving with the United Nations Peacekeeping Missions. International Humanitarian Law continues to be important also in addressing the concerns of those in Malaysia fleeing conflicts such as the Bosnian people and more recently the Rohingya and Syrian people.

The Malaysian Red Crescent Society and the Red Cross Red Crescent Movement, looks forward to working closely with the Malaysian Parliament on all aspects of International Humanitarian Law and the humanitarian field. We trust this Handbook will be a useful tool for Parliamentarians.



**Dato' Seri DiRaja Tan Sri Tunku Puteri Intan Safinaz Binti Almarhum Sultan Abdul Halim Mu'adzam Shah,**

**DKH, DKYR, SHMS, SSDK, PSM, PAT, JP, Hon.Ph.D(UUM), Hon.Ph.D(KUIN), Hon. Ph.D(UPNM)**

**TUNKU TEMENGGONG KEDAH**

**National Chairperson**

**Malaysian Red Crescent Society**

# FOREWORD BY HEAD OF REGIONAL DELEGATION, ICRC KUALA LUMPUR

Malaysia has a long-standing history and role within the International Red Cross and Red Crescent Movement. Like many countries in Southeast Asia, the first ICRC delegates were deployed to the country during the Second World War — in line with the Geneva Conventions. They were authorised to visit prisoners of war (POWs) and civilian internees and ensure the conditions in which they were being held were humane and that the dignity of the detainees was respected.

Malaysia has seen that suffering resulting from armed conflict affects both forces involved in the hostilities and the civilian population that easily becomes the target, victim, and object of attacks. However, this should not be the case as the 1949 Geneva Conventions categorically provide for the protection of victims and combatants of armed conflicts. State practice, including domestic and international jurisprudence, have since emphasised that compliance with international humanitarian law is essential in preventing the effects of armed conflict on human beings.

Knowledge of international humanitarian law when combined with a protective legal framework guarantees the protection of those fighting or exposed to the fighting. Without accession to international humanitarian law treaties and their implementation through domestic legislation, the protection of vulnerable populations remain inadequate. In this regard, the role of Parliamentarians in transmitting awareness about this important body of law cannot be underestimated. Parliament alone has the capacity to ensure these rules are embedded in the policies of relevant institutions, including the armed and security forces. Parliament can mandate the dissemination and promotion of international humanitarian law, ensuring that it is in place and known to all in times of peace.

This handbook is the result of the valued relationship between the ICRC as the guardian and promoter of international humanitarian law and the Malaysian Red Crescent Society as a promoter of international humanitarian law in Malaysia. It aims to assist Members of Parliament to understand the general principles of international humanitarian law and consider their implementation in Malaysia in order to ensure respect for this important body of law.

Thus, this handbook can be used by Parliamentarians to enhance their understanding about the basic principles of international humanitarian law in order to influence the implementation and development of this law. Additionally, this handbook guides Members of Parliament on measures necessary to ensure that Malaysia respects and ensures respect for international humanitarian law.

In support of Malaysia's goal to achieve developed nation status, the Malaysian Red Crescent Society and the ICRC are working with the government agencies, including the Ministry of Defence, Ministry of Home Affairs, Ministry of Foreign Affairs, Prime Minister's Department, Attorney General's Chambers, Ministry of Health, and Ministry of Women, Family, and Community Development to strengthen the awareness and the development of humanitarian values and principles within a society and the armed forces.

## **Biljana Milosevic**

Head of Regional Delegation  
ICRC Kuala Lumpur

Senior naval officers from the region at the Regional Law of Armed Conflict at Sea Workshop that discussed the application of law of armed conflict, or also known as international humanitarian law, in the maritime context. The 5-day workshop was co-organised by the ICRC, Royal Malaysian Navy, and National Defence University of Malaysia (NDUM).



IHL, also known as Law of Armed Conflict or Law of War, protects persons, including those who are not or no longer participating in armed conflict.

## 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 the ICRC is proud to work with the Malaysian Red Crescent Society in producing this handbook. We hope to enhance your understanding of the nature and importance of international humanitarian law 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 while the wounded were lacking medical attention. Dunant organised local people to bind the soldiers' wounds and to feed and comfort them. Upon 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 committing 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 ICRC. 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 laws and are universally recognised as symbols that offer protection.

The highest deliberative body of the Movement, the International Conference of the Red Cross and Red Crescent Movement includes not only the ICRC, the International Federation of the Red Cross and Red Crescent Societies (IFRC), and the National Societies but also States such as Malaysia who are a party of the Geneva



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Conventions. Resolutions from this conference have identified the ICRC as the “guardians and promoters” of IHL and require National Societies such as the Malaysian Red Crescent Society to disseminate and educate the general public and other specific audiences about the significance of IHL.

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## To develop a wider community understanding of the “laws of war”.

# WHY IHL AND PARLIAMENTARIANS?

While the Executive branch of government has primary responsibility for Malaysia's IHL obligations, the national, state, and local parliamentarians also have a critical role to play in enacting legislation that ensures IHL is implemented throughout Malaysia – for government, public officials, and civil society.

Parliamentarians can review Executive ratifications or accessions to IHL treaties, support the development of new IHL instruments, and allocate adequate resources for IHL dissemination. Parliamentarians represent the broader community and are in a unique capacity to raise matters of concern and educate the public on important international legal principles.

### 1. Legal recognition

The strength of individual National Societies is dependent upon their government creating proper legal regulations, recognising their existence, and confirming the Society's capacity to follow the Fundamental Principles and undertake its activities as auxiliary to public authorities in the humanitarian field. In Malaysia, the Malaysian Red Crescent (Incorporation) Act 1965, the Malaysian Red Crescent Society (Change of Name) Act 1975, the Geneva Conventions Act 1962, and the Trade Marks Regulations 1997 provide this capacity for Malaysian Red Crescent Society to be part of the Movement and to act as a strong and capable National Society.

### 2. Emblem usage

The emblem is a protective and indicative symbol in times of conflict and other situations of violence. There is a need for up-to-date domestic legislation to be promulgated during peacetime to regulate the correct use of the red cross, red crescent, or red crystal emblems. Such legislation assists in preventing excessive or improper use of the

emblem and helps to preserve its unique meaning and status. Ensuring the regulation on the correct use of the emblems is another important task for parliamentarians. The Geneva Conventions Act 1962 supports the correct use of the emblem and this needs to be widely known, recognised, and respected within Malaysia.

### 3. Harness expertise and understand the capacity to respond to emergencies and disasters

National Societies, as auxiliaries to their governments able to assist governments through participation on panels, boards, or in an advisory capacity on matters within their areas of expertise (such as emergency disaster response, disaster law, or dealing with the impacts of migration). The ICRC and the Malaysian Red Crescent Society remain available to offer our services in this capacity. Supporting discussions or sharing knowledge with Parliamentary Committees on matters such as IHL, provision of humanitarian assistance during times of conflict, natural disaster, or community resilience are areas where the ICRC and the Malaysian Red Crescent Society may be able to assist in their respective areas of expertise.

### 4. Support an IHL committee

Parliamentarians can be involved in Parliamentary debate or committee deliberations on the ratification or acceptance of IHL treaties. Furthermore, if required, they can be involved in the subsequent creation of domestic laws relating to IHL. Many countries have a national IHL committee on which members of government departments such as Foreign Affairs, Defence, and Attorney-General's Chambers are represented to encourage dialogue among State authorities in consultation with the National Society and the ICRC on ways to ensure respect for IHL. Such committees allow an exchange of information and expertise and assist in understanding and implementing IHL obligations. Malaysia's National IHL Committee (Jawatankuasa Undang-undang Kemanusiaan Antarabangsa Malaysia - JUKAM) was created in 2007 and is chaired by the Honourable Minister of Foreign Affairs. In addition, the Malaysian Red Crescent Society has its own internal IHL Committee that meets quarterly to promote the implementation of Malaysia's IHL obligations.

### 5. Build a Red Cross/Red Crescent Parliamentary Friends group

Some National Societies have fostered the establishment of 'parliamentary friends' groups. These inter-party groups of parliamentarians are ambassadors for the work and activities of the National Society. This group can assist Malaysia in reaching vulnerable people with effective humanitarian action. Parliamentarians have unique capacities to raise matters of concern and educate the public on a range of humanitarian principles that are at the heart of the Movement.



## 6. Understand and implement the resolutions and pledges from the International Conferences

Every four years, the Movement holds an International Conference comprising the National Societies, the IFRC, the ICRC, and the States Party to the Geneva Conventions. The aim of the International Conference is to bring together governments and all components of the Movement in order to discuss and agree on key humanitarian priorities for the four years ahead. The International Conference priorities are passed as resolutions and usually have unanimous support from all members of the Conference. While resolutions are not legally binding on the States, they represent a significant and formal written commitment to humanitarian action by Conference participants.

In addition to formal resolutions, individual governments, National Societies, the IFRC, and the ICRC can make pledges. Pledges are a statement of commitment to key humanitarian objectives and can be made by an individual party or jointly. Pledges by the Malaysian government and Malaysian Red Crescent Society in the past have included commitments towards the dissemination of IHL, protection of health care, strengthening of disaster response in the Asia Pacific region, cooperation on climate change adaptation, and work in the area of migration support. It is important for parliamentarians to appreciate the substance of specific pledges and the content of resolutions, particularly where they relate to their areas of expertise or interest.

As key decision-makers and community leaders, members of Parliament are encouraged to be responsive to requests for meetings and discussions on humanitarian issues when requested by the Movement. As auxiliaries to their public authorities, National Societies may build relationships of trust and openness with their parliamentarians and bring humanitarian concerns to the attention of parliamentarians. In this respect, the Malaysian Red Crescent Society can benefit from constructive relationships with members of Parliament across Malaysia and with the representatives of all spheres of government.

The Malaysian Red Crescent Society invites all parliamentarians to take an active interest in the Movement and the activities of its National Society and to give close and careful consideration to all instances of policy development, debate, and legislation, which may have humanitarian implications.

Further information on the Malaysian Red Crescent Society can be found at [www.redcrescent.org.my](http://www.redcrescent.org.my).

Malaysian Red Crescent officials showing the actual MRCS registration card for refugees to Ms Kim Thuy (right), a former refugee-turned-award-winning-author who fled Saigon during the Vietnam War together with her family. She was in Malaysia for a period of approximately six months in 1979 before settling in Canada.



The ICRC delegate for Police and Security Forces discusses with senior officials from the training division of the Royal Malaysian Police headquarters on joint activities. The ICRC works closely with the police forces to enhance and improve policing and promote the level of professionalism within law enforcement officials.



## QUESTIONS AND ANSWERS REGARDING IHL

# WHAT IS INTERNATIONAL HUMANITARIAN LAW?

The international humanitarian law (IHL) is a set of rules that seeks 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.

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.

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 persons, and 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, and 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).

IHL limits the type of weapons and military tactics that can be used during armed conflict. It is prohibited to use weapons or methods of warfare that do not distinguish between those taking part in the fighting (combatants) and those that are not (civilians as well as civilian property). IHL does not allow the use of weapons that cause superfluous injury or unnecessary suffering, as well as prohibits tactics that 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 that is above all practical and strikes a careful balance between humanitarian concerns and military requirements.

IHL is found in international treaties/conventions and in customary law (rules that develop over time due to consistent State practice, which are accompanied by the belief that the practice is legally binding). 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 that 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 found.

In an IHL role-play competition, participants aided an 'injured civilian'. In this miniature version of the international Jean Pictet competition, students battled it out in seven rounds of role-playing that tested their IHL knowledge, and more importantly, how to apply IHL practically.



# 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 are developed separately and contained in different treaties.

IHL applies exclusively in 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 that 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 is 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,

## What is an 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 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, there is an increasing understanding of the need for people to be protected in all situations of conflict.

IHL contains rules that 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 red crystal emblems. 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 and the rights to assembly, to vote, and to strike. The duty to implement IHL and human rights lies first and foremost with the States and both areas of law require governments to make international legal principles domestically relevant.

## WHAT ABOUT IHL AND “PREVENTING AND COUNTERING VIOLENT EXTREMISM”?

IHL does not provide a definition of violent extremism or “terrorism” but prohibits acts committed during an armed conflict that would be commonly considered acts of terror. Under the Geneva Conventions and their Additional Protocols, IHL strictly prohibits acts committed during armed conflict that aim to spread terror among the civilian population. Acts that 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.

In implementing policies and programmes to 'prevent radicalisation', 'deradicalise', or 'counter violent extremism', the fundamental principles and safeguards of IHL continue to apply. Respect for these safeguards and principles can guard against perverse consequences not only for the detainees but for the general detained population and society as a whole. The ultimate aim is to protect the public from acts of a violent nature. Inhumane conditions of detention and treatment not only contradict State obligations but are counterproductive to efforts to prevent 'radicalisation' and violent extremism. Safeguards and principles to observe include humane treatment of detainees and respect for the rule of law, individual risk and needs assessment of detainees, legal restrictions as necessary and appropriate, trained and supervised detention staff, legal detention, preparations for release and aftercare, and good order and security in detention for all detainees.

# 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 that do not discriminate between civilians and combatants or that are of a nature to inflict suffering greater than that required to take combatants “out of action”. The use of weapons that 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 that prohibit or restrict the use of certain weapons, such as biological, chemical, blinding laser or incendiary devices, or dum-dum bullets (ammunition that 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) that came into force on 1 August 2010.

At an Exploring Humanitarian Law workshop organised by a school, students presented the rules of humanitarian law that they drafted.



# WHO AND WHAT DO THE 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 while they remain engaged in their purely humanitarian or medical activities. Protected persons include military medical personnel who are authorised to be protected during armed conflict, chaplains who are attached to military forces, and humanitarian workers, including Red Cross and Red Crescent and ICRC volunteers and staff. Medical personnel, units, and transports – military or civilian – pursuing their exclusively humanitarian tasks may not be attacked or harmed in any way and must be spared during armed conflict. Thus, on the basis of the obligation to respect and protect, attacks deliberately directed against them, indiscriminate attacks that affect them and attacks expected to cause excessive harm to medical personnel, units, and transports in relation to the direct and concrete military advantage anticipated are prohibited.

The protective use of the emblems is the visible sign of protection conferred by IHL on certain categories of persons in armed conflicts, while the indicative use is intended to show that persons or objects are linked to the Movement. When used as a protective device, the emblem must be identifiable from as far away as possible and may be as large as necessary to ensure recognition. By contrast, when used as an indicative device, the emblem should be small in size and cannot be displayed on armlets or on the roofs of buildings. The emblem itself does not confer protection; it is the applicable IHL rules that confer protection on the wounded and sick and on health-care personnel and facilities and medical transports. The distinction between protective and indicative use is necessary to avoid any confusion as to who is entitled to use the emblem as a protective device in armed conflicts.

Thus, National Societies such as the Malaysian Red Crescent 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 the 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 Malaysia, the emblems of the Red Cross and the Red Crescent are recognised in the Malaysian Red Crescent Society (Incorporation) Act 1965, the Malaysian Red Cross Society (Change of Name) Act 1975, the Geneva Conventions Act 1962, and the Trade Marks Regulations 1997.

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.

The Malaysian Red Crescent Society's name will remain the same and will continue to use the red crescent emblem. Similarly, the medical services of the Malaysian armed forces are authorised to use the red crescent emblem on their arms to demonstrate their purely medical work and their need for protection. Governments and National Societies are obliged to promote awareness and respect for all three emblems. To date, Malaysia is not a party to the Additional Protocols of 1977 and Additional Protocol III of 2005, however, it is well understood that protecting all of the emblems is a vital part of respecting IHL.

## WHAT HAPPENS WHEN IHL IS VIOLATED?

State Parties 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 the IHL constitute as war crimes and individuals at any level of society can be held as individually and criminally responsible.

The primary responsibility for the investigation of serious violations of IHL and 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 that wilfully cause great suffering or injury to body or health must be punished as these are considered grave breaches of the Geneva Conventions, which are the most serious war crimes. 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. There are other war crimes under the Geneva Conventions and their Additional Protocols that must be prosecuted by all States applicable in both international and non-international armed conflicts.

Besides domestic prosecutions, the international community has established a number of international tribunals that 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 are committed in an international or non-international armed conflict. The ICC only operates when a State is genuinely unable or unwilling to prosecute those who are accused of crimes and are within their own jurisdiction. Increasingly common, various countries are creating mechanisms to prosecute those accused of war crimes, which are part of the domestic jurisdiction but also incorporate international support.

## WHAT IS THE RELEVANCE OF IHL TO MALAYSIA?

Since the end of the Second World War, Malaysia has not been directly affected by international or internal armed conflict and has been spared natural disasters of the magnitude affecting several neighbouring countries. However, given the country's location at the heart of a populous, volatile, and disaster-prone region, successive governments have recognised the need to ensure the country is prepared to respond to the impact of humanitarian emergencies both at home and beyond its own borders and to uphold and promote respect for the principles of IHL. Malaysia's expanding role in international affairs and multilateralism and its membership of key regional bodies such as the Association of Southeast Asian Nations (ASEAN) has rendered the nation a key partner for the ICRC in promoting respect for humanitarian work and international law.

Although not directly affected by the armed conflict on its own soil since the end of the Second World War, Malaysia has consistently demonstrated a firm commitment to the Geneva Conventions of 1949 and to the promotion and application of IHL and numerous treaties. In support of the government's long-term goals that place a strong emphasis on the moral, ethical, and humanitarian aspects of public life, the ICRC and the Malaysian Red Crescent Society work together to promote a better understanding of humanitarian principles and IHL.

According to the dissemination provisions of the four Geneva Conventions, States are to disseminate the text of the Conventions 'as widely as possible in their respective countries' with translation where necessary, including in non-international armed conflict to all Parties of conflict both States and non-State armed groups. Knowledge of the law is a precondition for compliance and spreading knowledge of the law generates respect. However, knowledge alone is insufficient. Dissemination aims to make the spirit of the Geneva Conventions understood by all people and to have their content internalised rather than simply publicised.

The study of international humanitarian law (IHL) by the military is essential as they are responsible for applying most of its provisions and may be placed in situations where they may benefit from the protection of international humanitarian law. Thus, knowledge of the provisions of international humanitarian law protecting them may help to prevent violations of their rights. States not only teach international

humanitarian law as a subject of theoretical knowledge but include it in regular practical training and exercises to ensure that compliance with the rules of IHL becomes a reflex.

Partnerships with universities are vital in their efforts to foster respect for IHL. By encouraging universities to offer courses in IHL and by assisting professors who teach this subject, the dissemination of IHL reaches the next generation of leaders. Students learning the rules applicable in times of armed conflict will promote and apply them in their respective professions in the future.

Proper dissemination of the rules and principles of the conventions and integration of international humanitarian law into military doctrine requires political commitment. This needs the 'buy-in' of military commanders and government authorities, in particular, Members of Parliament and the judiciary as well as law enforcement officers. The Geneva Conventions contain obligations towards the State and those acting on their behalf, as well as provisions addressing non-State groups or persons.

Making the entire population aware of IHL contributes to an environment conducive to respect for the law in which the principles and rules underlying and forming IHL are accepted, supported, and defended; should the need arise, can be applied to address humanitarian issues specific to each context.

(Left to right) HE Ambassador Jean-François Paroz, Commissioner of the 31st International Conference of the Red Cross and Red Crescent; Christine Beerli, Vice-President of the ICRC; Deputy Minister of Foreign Affairs, Datuk Richard Riot Anak Jaem at the Third Commonwealth Red Cross and Red Crescent IHL Conference.





# WHAT IS THE RELATIONSHIP BETWEEN IHL AND THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT?

## The Malaysian Red Crescent Society

The Malaysian Red Crescent Society (MRCS) had its beginnings in 1948 as the branches of the British Red Cross Society in Sabah and Sarawak (then British North Borneo). In the 1950s, the British Red Cross Society further established branches in the other parts of Malaysia starting in Penang in 1950, and later in the other states.

Upon Malaya's independence in 1957, the branches in Peninsular Malaysia were organised as the Federation of Malaya Red Cross Society and were later statutorily incorporated by the Federation of Malaya Red Cross Society (Incorporation) Act 1962. MRCS received official recognition as an independent National Society from the ICRC on 4 July 1963 and was admitted accordingly as a member of the International League (now called the International Federation) of Red Cross and Red Crescent Societies on 24th August 1963.

When Malaysia was formed in September 1963, an Act to incorporate the Federation of Malaya Red Cross Society and the branches of the Red Cross Society in Sabah and Sarawak under the name of the Malaysian Red Cross Society was passed by Parliament vide the Malaysian Red Cross Society (Incorporation) Act 1965. In 1975, the Malaysian Parliament passed the Malaysian Red Cross Society (Change of Name) Act, which received Royal Assent on 21 August 1975 and subsequently gazetted on 4 September 1975.

Legislations relating to the Malaysian Red Crescent Society are based on the Geneva Conventions to which Malaysia is a signatory as well as on the Statutes and the Fundamental Principles of the International Red Cross and Red Crescent Movement. The Malaysian Red Crescent Society (Incorporation) Act 1965 underlines that the Malaysian Red Crescent Society possesses legal status. 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. There are three main functions entrusted upon the Malaysian Red Crescent

in accordance with the Malaysian Red Crescent Society's Act. Firstly, to assist in the work of improving health, prevention of diseases, and the mitigation of suffering throughout the world. Secondly, to provide aid to the sick and wounded in times of armed conflict. Lastly, to perform all duties decided upon it by Malaysia in accordance with the Geneva Conventions. The Malaysian Red Crescent Society, as an auxiliary to the public authority, has a distinctive relationship with all levels of government within Malaysia and may mobilise and organise civilian populations to work with the authorities in a neutral and impartial manner to alleviate human suffering.

The Malaysian Red Crescent Society activities include the following:

- First Aid Training
- Ambulance Services
- Health and Community Services
- Gender and Diversity
- Psycho-Social Support
- Road Safety Awareness
- Restoring Family Links
- Disaster Management
- Promotion and dissemination of IHL
- Youth Development

At a Red Cross Red Crescent youth camp organised by the Malaysian Red Crescent Society, participants discussed the IHL violations identified from a role-play they participated in a previous session. National Red Cross and Red Crescent Societies play an instrumental role in promoting humanitarian law.



The Malaysian Red Crescent Society is not a non-governmental organisation (NGO) for two distinct reasons. First, its auxiliary role means that it is a unique partner for national, state, 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 the Malaysian Red Crescent Society disseminates IHL and in their 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 Malaysian Red Crescent Society.

Second, the Malaysian Red Crescent Society is not an NGO because of the legal status of the emblems used by the Movement. The emblems are not "logos"; rather, they are legally regulated under international and domestic laws, and can only be used in very specific circumstances. These emblems are universally recognised as symbols that 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. The ICRC monitors IHL issues around the world and uses its technical expertise in IHL to work with States to clarify, develop, and strengthen the law. 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 a side 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.

The ICRC and the Malaysian Red Crescent Society assist detained migrants to fill up the Red Cross Message, helping them to maintain contacts with families. Red Cross Messages are part of the humanitarian services under Restoring Family Links (RFL) provided by the ICRC and the national Red Cross and Red Crescent societies worldwide to locate people, exchange messages, reunite families, and clarify the fate of missing persons.



## The ICRC in Malaysia

The ICRC's Regional Delegation in Kuala Lumpur has worked with Malaysia since 1972 and established its current office in 2001. The Delegation oversees activities in Malaysia, Singapore, and Brunei Darussalam, working to promote IHL and universal humanitarian principles with the Red Cross and Red Crescent Societies in these countries. Currently, the Delegation employs some 45 Malaysian and international staff. Since 2012, the ICRC has established a branch office in Kota Kinabalu, Sabah with the assistance of the Malaysian Red Crescent Society, Sabah Chapter.

## Working in support of the Ministry of Home Affairs and the Ministry of Health

While the work the ICRC does in Malaysia in relation to detention does not involve the application of IHL, the ICRC offers its services and expertise to governments in areas where this may be of use. In this regard, the ICRC's experience of visiting places of detention for over 100 years is offered to the Malaysian government and other governments in South East Asia that are faced with the challenges presented by migration.

In Malaysia, the ICRC has been in a dialogue with Malaysian authorities on issues related to persons detained and other vulnerable groups since 2009. ICRC began visits to Immigration Detention Centres (IDC) in Malaysia in 2010 and to prisons in 2011. The ICRC supports the Immigration Department, the Department of Prisons, and the Federal Special Task Force in Sabah in their efforts to ensure conditions and treatment of persons detained in Malaysia meet national and international standards.

A typical visit involves Malaysian and expatriate delegates visiting all areas of an IDC/Prison and conducting one-to-one interviews with the detainees. A confidential bilateral report is produced by the ICRC for the Commandant or Director of the IDC, Temporary Detention Centre (TDC), or Prison. In 2018, the ICRC visited over 25,418 detainees, including migrants and common law detainees held at 8 IDCs, 1 TDC, and 10 prisons, including 1 juvenile centre.

The Malaysian Red Crescent Society works with the ICRC and related authorities to restore contact between those detained, their families, and other vulnerable communities. This is done by exchanging messages with families, assisting to trace people if necessary as well as reuniting families where appropriate. In 2018, the ICRC and MRCS helped separated family members—mostly detained migrants to reconnect with their families through the restoring family links network—with over 300 Red Cross Messages, 3,300 phone calls, and 190 oral messages.

An ICRC delegate speaking to two detainees in a visit to prison. The ICRC visits detainees in over 90 countries and territories around the world, aiming to secure humane treatment and conditions of detention for all detainees and to maintain contacts between detainees and their relatives.



### Working in support of IHL Dissemination

In line with its mission to protect and assist those affected by conflict or other situations of violence, the ICRC works with the Ministry of Foreign Affairs, the National IHL Committee (JUKAM), and the Attorney-General's Chambers to promote IHL. Additionally, the ICRC engages with the Ministry of Home Affairs and MINDEF in promoting IHL with the Malaysian Armed Forces, the Royal Malaysian Police, and the Immigration and Prison Department through specialised workshops. The ICRC also engages students and academics in IHL through events, such as the Annual Malaysian IHL Moot Court and National IHL Role Play Competitions. Examples of ICRC's work in Malaysia on IHL include:

- Hosted by the Government of Malaysia, the Third Commonwealth Red Cross and Red Crescent International Humanitarian Law Conference was held in June 2011 and was jointly organised by the ICRC and the Malaysian Red Crescent Society with the support of the United Kingdom Foreign and Commonwealth Office and the British Red Cross.
- In October 2012, the Government of Malaysia and the ICRC hosted the Sixth Senior Workshop on International Rules Governing Military Operations (SWIRMO) in Kuala Lumpur. Hosted for the first time in Asia, Senior Military Officers from 70 countries attended the workshop.
- In April 2013, the ICRC organised the Asia and the Middle East Consultation on Strengthening the Legal Protection for Victims of Armed Conflict.
- In April 2015, the ICRC organised a Regional Conference on Strengthening IHL for East and Southeast Asia. Dato' Ho May Yong, Deputy Secretary-General of the Ministry of Foreign Affairs opened the conference and His Excellency Professor Dr Rahmat Mohamad, Secretary-General, Asian-African Legal Consultative Organisation (AALCO) delivered a keynote address.
- In August 2017, Dato' Sri Mohd Johari, Deputy Minister of Defence launched the Regional Centre for Military and International Humanitarian Law (CoMIHL). The centre is run by the National Defence University Malaysia (NDUM) in cooperation with the ICRC. CoMIHL is located at the NDUM campus. Since 2017, CoMIHL and the ICRC organised a number of courses, such as the Law of Armed Conflict at Sea for Military Lawyers, Law of Armed Conflict at Sea for Operators, and the Senior Military Lawyers Round table. The courses are attended by military officers from different countries within the region.

- Universiti Kebangsaan Malaysia, Universiti Islam Antarabangsa, and the ICRC organise IHL moot court and role play competitions for students on an annual basis.

Representing Malaysia, a law student participated in the Regional International Humanitarian Law Moot Court Competition held in Hong Kong. Moot court competitions on IHL eminently contribute to generating interest in IHL and humanitarian issues amongst students and teachers.



(Left to right) Biljana Milosevic, Head of Regional Delegation ICRC Kuala Lumpur; YTM Dato' Seri DiRaja Tan Sri Tunku Puteri Intan Safinaz binti Almarhum Sultan Abdul Halim Mu'adzam Shah Tunku Temenggong Kedah, MRCS National Chairperson; and Tan Sri Azhar Azizan Harun, Speaker of the House of Representatives, Parliament of Malaysia, during the ICRC-MRCS' courtesy visit to the Speaker.



## WHAT CAN PARLIAMENTARIANS DO?

There is 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.

To date, Malaysia is a party to the following IHL treaties:

- 1925 Geneva Protocol on Asphyxiating or Poisonous Gases, and of Bacteriological Methods of Warfare
- 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its First Protocol
- 1948 Convention on the Prevention and Punishment of Genocide
- 1949 Geneva Conventions

### 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 that 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 that 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.

- 1972 Biological Weapons Convention
- 1989 Convention on the Rights of the Child
- 1993 Chemical Weapons Convention
- 1997 Anti-Personnel Mines Ban Convention
- 2000 Optional Protocol on the Involvement of Children in Armed Conflict
- 2017 Treaty on the Prohibition of Nuclear Weapons

When a State becomes a 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 draw the attention of the Cabinet to IHL treaties that Malaysia is not a party; they can urge the government to sign the IHL treaty.

## CREATING IMPLEMENTING LEGISLATION

When a State becomes a party to a treaty, it is implemented through domestic 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. In most circumstances, States can only punish their own citizens or the perpetrators of crimes committed on their own territory. Nonetheless, the international community has decided that some crimes are so serious that an exception is made to this principle. Certain treaties such as the Geneva Conventions oblige the States to search and prosecute war criminals regardless of their nationality or where the crime is committed. Alternatively, the State may extradite them to another State that 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.

Members of Parliament play a central role in the passing of legislation pertaining to IHL. This includes the scrutinisation and debate of a bill before it is passed as an Act of Parliament.

# PROTECTING THE EMBLEMS OF THE RED CROSS AND RED CRESCENT MOVEMENT

The red cross, red crescent, and red crystal are symbols recognised by international humanitarian law to signal specific protection of distinct categories of medical personnel, units, and transports (protective use), as well as to show that persons or objects are linked to the Red Cross and Red Crescent Movement (indicative use). Their use is governed by the Geneva Conventions of 1949, Additional Protocol I and II of 1977, Additional Protocol III of 2005, and by the relevant domestic legislation of the State concerned. The provisions define the individuals and services entitled to use the emblems and the purposes for which they may be employed. The use of the emblems is regulated at all times — during peacetime and during times of armed conflict. Any use of the emblems not prescribed by IHL is considered improper.

Parliamentarians play an important role in promoting respect for the emblems by ensuring their countries have legislation prohibiting misuse and prescribing action in instances of misuse (e.g. if a medical clinic in their constituency advertises its services by displaying a red crescent). In discussions with their voters and as community leaders, parliamentarians have the opportunities to promote information about the emblems and can find positive solutions to resolve situations of misuse. The Malaysian Red Crescent Society uses the red crescent emblem as permitted under the Malaysian Red Crescent Society (Incorporation) Act 1965, the Malaysian Red Crescent Society (Change of Name) Act 1975, the Geneva Conventions Act 1962, and the Trade Marks Regulations 1997. The Red Crescent emblem is also used by the medical services of the Malaysian Armed Forces, as provided for in the Geneva Conventions.

## SPREADING KNOWLEDGE OF IHL

IHL treaties require States to take measures in order to spread the knowledge of IHL. It is vital for members of the armed forces to incorporate the rules into military behaviour and to make them aware of their legal obligation.

To ensure that the State complies with IHL, it is also important that the wider community understands and supports the limitations on the use of military power that IHL imposes. The public also should be aware of the protective status of the emblems and the prohibition of misuse.

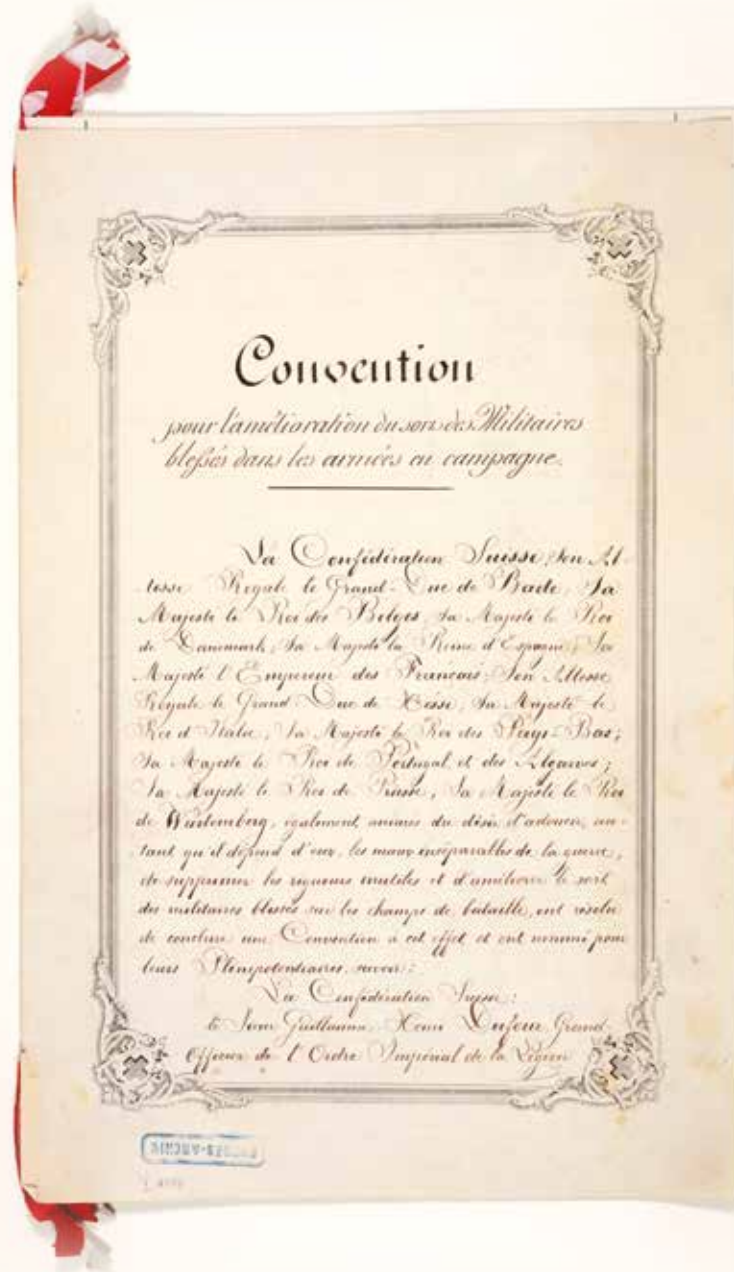
The State is responsible for ensuring that its military forces are trained in IHL and that the parliamentarians can monitor whether this is effective or vice versa. Due to their position, parliamentarians may have the authority and the opportunity to promote informed discussion of IHL topics in the community. For example, the Malaysian Red Crescent Society works with parliamentarians to participate in promotional or dissemination events as community leaders as they are well-placed to provide legitimacy to important IHL-related messages.

States such as Malaysia, 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 involve reminding the State involved in its obligations under IHL and demonstrating that the violations it is responsible for are not to be tolerated. Public pressure on the Legislature 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 the Parliament's concerns. Members of Parliament are often in situations where they can champion the cause of IHL not just nationally but also internationally.

Dissemination of international humanitarian law to police and armed forces.



The first page of the Geneva Convention of 22 August 1864. This Convention was the first international instrument adopted to protect the victims of war, namely wounded and sick members of the armed forces.



## 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.*

### 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 that 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*

- 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 that 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.*
- Arms Trade Treaty  
2 April 2013  
*Regulates international transfers of conventional arms, ammunition, and parts and components, to reduce human suffering and subjects arms transfer decisions to humanitarian concerns by forbidding transfers when there is a risk that war crimes or serious violations of international human rights law will be committed. While not an IHL treaty as such, a key principle underpinning the Treaty explicitly recognises the duty of the States to respect and ensure respect for international humanitarian law.*
- Treaty on the Prohibition of Nuclear Weapons  
7 July 2017  
*The first globally applicable multilateral agreement to comprehensively prohibit nuclear weapons and addresses the humanitarian consequences of nuclear weapon use and testing.*

#### **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 the 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 environmental 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 Kampala in 2010 although the Court's jurisdiction over this crime will not commence until 2017).*

ICRC works together with MRCS to provide first aid training for villagers, in particular, those in the areas with limited access to health care.



Live streaming of Dato' Seri Hishamuddin Tun Hussein, Minister of Foreign Affairs, signing Malaysia's instrument for ratification of the Treaty on the Prohibition of Nuclear Weapons at the signing ceremony in Wisma Putra.



## WHICH TREATIES HAS MALAYSIA RATIFIED AND WHAT LEGISLATION IS IN PLACE?

This section aims to highlight treaties relating to which Malaysia has ratified, signed, and those that Malaysia has yet to be a party. The treaties fall within two important areas of IHL; the prosecution of war criminals and the prohibitions or limitations of the use of certain weapons.

### War crimes

Malaysia has ratified the four Geneva Conventions of 1949 and has considered ratification of the first two Additional Protocols of 1977 for a period of time. Malaysia has not ratified the Third Protocol additional to the Geneva Conventions, relating to the Adoption of an Additional Distinctive Emblem. Malaysia enacted the Geneva Convention Act 1965 to incorporate the four Geneva Conventions into domestic law.

In addition, Malaysia is a State Party to the Convention on the Rights of the Child (CRC), and ratified the Optional Protocol to the CRC on the Rights of the Child on the Involvement of Children in Armed Conflict in April 2012.

### Weapons

In relation to treaties dealing with the restriction or prohibition of certain weapons, Malaysia has ratified:

- the Convention on the Prohibition of the Development, Production, and Stockpiling of **Bacteriological (Biological) and Toxin Weapons**, which was signed in 1972 and ratified in 1991;
- the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of **Chemical Weapons** and on their Destruction, which was signed in 1993 and ratified in 2000;
- the Convention on the Use, Production, Stockpiling, and Transfer of **Anti-Personnel Mines** and on their Destruction in 1999; and
- the Treaty on the Prohibition of **Nuclear Weapons** in 2020.

Malaysia has implemented these treaties into domestic legislation such as the Chemical Weapons Convention Act 2005 and the Anti-Personnel Mines Convention Implementation Act 2000. Malaysia signed the Arms Trade Treaty in September 2013.

## Glossary

ASEAN	Association of South-East Asian Nations
Emblem	Red Cross, Red Crescent, and Red Crystal emblems
Fundamental Principles	Guiding principles of the International Red Cross and Red Crescent Movement (see page 4)
Humanitarian agencies	United Nations
ICRC	International Committee of the Red Cross
ICC	International Criminal Court
IFRC	International Federation of the Red Cross and Red Crescent Societies
IHL	International Humanitarian Law
MRCS	Malaysian Red Crescent Society
National Societies	192 National Red Cross and Red Crescent Societies, such as the Malaysian Red Crescent Society
NGO	Non-governmental organisation
RCRC Movement	The International Red Cross and Red Crescent Movement
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, or red crystal

## Further Information

International Committee of the Red Cross:	<a href="http://www.icrc.org">www.icrc.org</a>
ICRC IHL resources and tools:	<a href="http://www.icrc.org/en/war-and-law">www.icrc.org/en/war-and-law</a>
International Federation of the Red Cross and Red Crescent Societies	<a href="http://www.ifrc.org">www.ifrc.org</a>
International Conference of the Movement:	<a href="http://www.rcrcconference.org">www.rcrcconference.org</a>
ICRC Kuala Lumpur:	<a href="http://www.icrc.org/en/where-we-work/asiapacific/malaysia">www.icrc.org/en/where-we-work/asiapacific/malaysia</a>
Malaysian Red Crescent Society:	<a href="http://www.redcrescent.org.my">www.redcrescent.org.my</a>

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