

REPORTS AND DOCUMENTS

What's new in law and case law around the world?

Biannual update on national implementation of international humanitarian law* July–December 2017

The biannual update on national legislation and case law is a tool to promote the exchange of information on national measures for the implementation of international humanitarian law (IHL).

In addition to a compilation of domestic laws and case law, the biannual update includes other relevant information related to ratification and accession of IHL treaties and other related instruments, and to developments regarding national committees or similar entities on IHL.

ICRC Advisory Service

The ICRC's Advisory Service on International Humanitarian Law aims to provide a systematic and proactive response to efforts to enhance the national implementation of international humanitarian law. Working worldwide, through a network of legal advisers, to supplement and support governments' own resources, its four priorities are: (i) to encourage and support adherence to IHL-related treaties; (ii) to assist States by providing them with specialized legal advice and the technical expertise required to incorporate IHL into their domestic legal frameworks;¹ (iii) to collect and facilitate the exchange of information on national implementation measures and case law;² and (iv) to support the work of committees on IHL and other entities established to facilitate the IHL implementation process.

* This selection of national legislation and case law has been prepared by Kevin Karlen, Legal Attaché at the ICRC Advisory Service on International Humanitarian Law.

Update on the ratification and accession of IHL and other related international instruments

Universal participation in IHL treaties and other related instruments is a first vital step toward the respect for life and human dignity in situations of armed conflict. In the period under review, nineteen IHL treaties or other relevant instruments (or amendments to them) were ratified or acceded to by eleven States, amounting to a total of twenty-nine ratifications.³ A notable novelty were the first instruments of ratification deposited for the Treaty on the Prohibition of Nuclear Weapons of 7 July 2017. Three States have ratified the treaty in the second half of 2017. It will only enter into force ninety days after the 50th instrument of ratification, acceptance, approval or accession has been deposited. It is also interesting to note that Afghanistan has acceded to eight treaties or protocols during the period in question.

Other international treaties ratified or acceded to during the period under review are also of relevance for improved protection under IHL, such as the 1954 Hague Convention and its two Protocols for the Protection of Cultural Property.

The following table outlines the total number of ratifications of and accessions to IHL treaties and other relevant international instruments, as of the end of December 2017.

Ratifications and accessions, July–December 2017

| Conventions | States | Ratification/ accession date | Number of parties |
|--|-------------------------------|---------------------------------|----------------------|
| 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict | Central African Republic | 21 September 2017 | 167 |
| 1954 Hague Convention for the Protection of Cultural Property | United Kingdom Afghanistan | 12 September 2017 | 131 |

- 1 In order to assist States, the ICRC Advisory Service proposes a multiplicity of tools, including thematic fact sheets, ratification kits, model laws and checklists, as well as reports from expert meetings, all available at: www.icrc.org/en/war-and-law/ihl-domestic-law (all internet references were accessed in October 2019).
- 2 For information on national implementation measures and case law, please visit the ICRC National Implementation Database, available at: www.icrc.org/ihl-nat.
- 3 To view the full list of IHL-related treaties, please visit the ICRC Treaties, States Parties and Commentaries database, available at: www.icrc.org/ihl.

| | | | |
|--|----------------|-------------------|-----|
| | | 26 October 2017 | |
| 1954 Hague Protocol for the Protection of Cultural Property | United Kingdom | 12 September 2017 | 107 |
| 1999 Second Hague Protocol for the Protection of Cultural Property | United Kingdom | 12 September 2017 | 75 |
| | Botswana | 23 August 2017 | |
| 2006 Convention for the Protection of All Persons from Enforced Disappearance | Malawi | 14 July 2017 | 58 |
| | Benin | 2 November 2017 | |
| 1976 Convention on the Prohibition of Military or any Hostile use of Environmental Modification Techniques | Palestine | 29 December 2017 | 78 |
| 2010 Amendment to the Rome Statute of the International Criminal Court, amended Article 8 | Panama | 6 December 2017 | 36 |
| | Palestine | 29 December 2017 | |
| 1972 Biological Weapons Convention | Samoa | 21 September 2017 | 179 |
| 2008 Convention on Cluster Munitions | Benin | 10 July 2017 | 102 |
| 2013 Arms Trade Treaty | Kazakhstan | 8 December 2017 | 94 |
| | Palestine | 29 December 2017 | |
| 1980 Convention prohibiting Certain Conventional Weapons | Afghanistan | 9 August 2017 | 125 |
| 2001 Amendment to Article 1 of the Convention on Certain Conventional Weapons | Afghanistan | 9 August 2017 | 86 |
| | Benin | 21 September 2017 | |
| 1980 Protocol I to the Convention on Certain | Afghanistan | 09 August 2017 | 118 |

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| Conventions | States | Ratification/ accession date | Number of parties |
|--|--------------------------------|--|----------------------|
| Conventional Weapons on Non-Detectable Fragments 1996 Amended Protocol II to the Convention on Certain Conventional Weapons on Prohibitions or Restrictions on the Use of Mines, Booby- Traps and Other Devices | Afghanistan | 9 August 2017 | 104 |
| 1980 Protocol III to the Convention on Certain Conventional Weapons on Prohibitions or Restrictions on the Use of Incendiary Weapons | Afghanistan | 9 August 2017 | 115 |
| 1995 Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention on Certain Conventional Weapons) | Afghanistan | 9 August 2017 | 108 |
| 2003 Protocol on Explosive Remnants of War (Protocol V to the Convention on Certain Conventional Weapons) | Afghanistan Palestine | 9 August 2017 29 December 2017 | 95 |
| 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction | Sri Lanka Palestine | 13 December 2017 29 December 2017 | 164 |
| 2017 Treaty on the Prohibition of Nuclear Weapons | Guyana Holy See Thailand | 20 September 2017 20 September 2017 20 September 2017 | 3 |

National implementation of international humanitarian law

The laws and case law presented below were either adopted by States or delivered by domestic courts in the second half of 2017. They cover a variety of topics linked to IHL, such as the criminal repression of war crimes, the protection of missing persons and their families, and the establishment of national committees or similar bodies on IHL.

This compilation is not meant to be exhaustive; it represents a selection of relevant developments relating to IHL implementation and related issues based on information collected by the ICRC. The full texts of these laws and case law can be found in the ICRC's Database on National Implementation of IHL.⁴

A. Legislation

The following section presents, in alphabetical order by country, the domestic legislation adopted during the period under review (July–December 2017). Countries covered are Bolivia, Burkina Faso, Chile, Lebanon, Mexico, Nigeria, Palestine and Peru.

Bolivia

*Administrative Resolution No. 0266/2017, Manual for Police Operations of Maintenance and Restoration of Public Order*⁵

The *Manual for Police Operations of Maintenance and Restoration of Public Order* (*Manual para operaciones policiales de mantenimiento y restablecimiento del orden público*) establishes rules, procedures and techniques to ensure that the use of force is exercised gradually by the Bolivian Police, in compliance with international standards on the use of force by law enforcement officials.

For instance, the Manual requires police officers to undergo thorough physical, tactical and technical training, along with psychological and theoretical preparation, to carry out their activities in accordance with international standards on the use of force.⁶ It also highlights the obligation of law enforcement officials to adjust the use of force to the level of aggression or resistance exercised by the alleged offender.⁷ It outlines a procedure to be followed that applies the concept of “escalation of force”, providing five different levels of force that can be reached by police officers depending on the corresponding levels of aggression or resistance exercised by the alleged offender.

4 See the ICRC National Implementation Database, available at: www.icrc.org/ihl-nat.

5 Available at: <https://tinyurl.com/y2tjv7gt>.

6 Administrative Resolution No. 0266/2017, above note 5, Part 1, Chap. 3, Section III.1.3.1.

7 *Ibid.*, Part 2, Chap. 1, Section 1.2.

The Manual states that the use of force shall be directed to accomplish a legitimate aim and that the means and methods used towards that aim shall comply with the standing regulations.⁸ Furthermore, it highlights the obligation to respect the principle of necessity, according to which the use of force shall always be a measure of last resort for a police officer, to be used only when other persuasive techniques have shown to be ineffective.⁹ It also recalls the principle of proportionality, requiring that a careful balance be struck between the severity of the threat posed by the alleged offender and the degree of force used to achieve the desired legitimate aim.¹⁰

Finally, the Manual establishes control, supervision and “lessons learned” as integral stages of the execution of operations of maintenance of public order, allowing police officers to identify and share lessons based on the causes of success or failure of an operation.

In Part 2, Chapter 4, Section IV.5.1, “control” is defined as the process guaranteeing that the execution of operations is in line with their planning. Part 2, Chapter 4, Section IV.5.2 defines “supervision” as the mechanism ensuring that police officers are following the regulatory procedures established in the Manual, as well as other legal provisions, to their full extent.

Burkina Faso

*Law Amending Law No. 24/94/ADP of 24 May 1994 concerning the Code of Military Justice*¹¹

This law amends the former Code of Military Justice. Of particular interest is the second chapter of the second part (Titre 2), which establishes the jurisdiction of the military courts in time of war (Articles 45 and 46). The second book (Livre II) is about the applicable military criminal procedure. The third book (Livre III) establishes the different sentences and military infractions.

Chile

*Law No. 21.021 on Reparation and Assistance in Rehabilitation to Victims of Mine Explosion and Other Explosive Remnants of War, 2017*¹²

After obtaining approval from Chile’s National Congress, on 25 July 2017 the president of Chile promulgated Law No. 21.021 on Reparation and Assistance in Rehabilitation to Victims of Mine Explosion and Other Explosive Remnants of War (Ley No. 21.021 que Proporciona Reparación y Asistencia en Rehabilitación

8 *Ibid.*, Part 2, Chap. 2, Section II.2.1.

9 *Ibid.*, Part 2, Chap. 2, Section II.2.2.

10 *Ibid.*, Part 2, Chap. 2, Section II.2.3.

11 Available at: <https://tinyurl.com/yxdxurkb>.

12 Available at: <https://tinyurl.com/y2meucwl>.

a las Víctimas de Explosión de Minas u Otros Artefactos Explosivos Militares Abandonados o sin Estallar).

Article 2 of Law No. 21.021 provides a definition of “victims”, “explosive remnants” and “mines”. The definitions are drawn from the Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (Protocol V) and the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II).

In addition, Article 5 of Law No. 21.021 establishes the economic and medical benefits that this law grants to such victims, and the subsequent sections provide the procedure for its implementation. Finally, Article 11 appoints the Ministry of National Defence as the entity in charge of establishing the beneficiaries and maintaining a Beneficiary Registry.

Lebanon

*Law No. 65 on the Punishment of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2017*¹³

This law amends the already existing Article 401 of the Penal Code, which criminalizes “violent practices” aimed at extracting confessions, and punishes those responsible with penalties ranging from three months to three years in prison. It does so by providing a definition of torture and adding provisions on orders of torture, the statute of limitations (*al-taqadum*), evidence, procedures of investigations, and the date of the Law’s entry into effect.

Mexico

*2017 General Law on the Enforced Disappearance of Persons, Disappearances Committed by Individuals and the National Search System for Persons, 16 November 2017*¹⁴

On 17 November 2017, the General Law on Missing Persons was published in the *Federal Official Gazette*. It addresses enforced disappearances and disappearances committed by individuals and establishes the creation of a National Search System for Missing Persons (NSSMP). Within the NSSMP, different authorities and institutions – from the federal and state levels – involved in the search for missing persons must coordinate to improve search task forces, and to share and process high-quality information regarding unidentified dead bodies and the possible whereabouts of remains.

¹³ Available at: <https://tinyurl.com/y3buhwtr>.

¹⁴ Available at: <https://tinyurl.com/y2zx4qvk>.

Additionally, the General Law on Missing Persons creates a National Search Commission. The Commission will coordinate the search at the federal level, administer the National Registry of Missing Persons and work jointly with the local search commissions, which every state should create according to the Law. The Law further provides for the creation of a National Registry of Unidentified Dead Bodies operated by the Prosecutor's Office.

Regarding data management, the Law also establishes a system, named the Sistema Único de Información Tecnológica e Informática, which enables a proper and immediate exchange of information between different authorities. Also, the Law seeks to guarantee the protection of the rights of missing persons and their relatives and regulates the Special Declaration of Absence for Missing Persons.

Nigeria

*Act to Make Provisions for the Compulsory Treatment and Care of Victims of Gunshots and for Other Matters Connected Therewith*¹⁵

On 11 July 2017, the Treatment and Care for Victims of Gunshots Act was passed by the Nigerian Senate. The Act ensures that such victims receive immediate and adequate treatment in public or private hospitals, as well as assistance from security agencies.

Section 1 establishes the right of every person with gunshot wounds to be treated immediately and adequately. Section 2(1) provides for the duty of every person, including security agents, to assist persons with gunshot wounds. In addition, Section 2(2)(b) prohibits the infliction on such persons by any person or authority of any form of inhumane or degrading treatment or torture.

Section 3(1) of the Act provides for the duty of a receiving hospital to notify the police, and Section 10 provides for an obligation to notify family members. Section 3(2) establishes the obligation of the police to investigate the circumstances under which the person was shot.

Finally, various sections of the Act prescribe the penalties for offences related to the duties mentioned above. Penalties can also be imposed on a corporate body under Section 13, while Section 14 provides for an obligation to make restitution to the victim.

Palestine

*Decree No. 8 of 2017 on the Establishment of a Task Force on Crimes within the Jurisdiction of the International Criminal Court*¹⁶

15 Available at: <https://tinyurl.com/y4qk3h>.

16 Available at: <https://tinyurl.com/y4puh2ep>.

In the frame of Palestine's accession to the Rome Statute and the acceptance of the International Criminal Court's (ICC) jurisdiction, Palestine has established internal mechanisms to advance ICC proceedings and preliminary examinations at the Office of the Prosecutor. Decree No. 8 of 2017, adopted on 30 December 2017, establishes a task force on crimes within the jurisdiction of the ICC, as an internal mechanism covering both the West Bank and the Gaza Strip.

The national task force is to collect evidence of violations and document crimes allegedly committed by the Israeli authorities in the frame of occupation of the Palestinian territories, and which would fall under the jurisdiction of the ICC. It shall report periodically to the Palestinian Ministry of Foreign Affairs on the progress of the task force and any relevant information that could be required for the proceedings at the ICC. The task force will be working closely with a Permanent National Committee established in 2015, which is in charge of follow-up with the ICC on related matters.

Peru

*Directive No. 001-2017-JUS/VMDHAJ-DGBPD Establishing Rules for the Process of Searching for Missing Persons*¹⁷

This directive intends to develop the measures provided by in the National Plan on the Search for Peru's Missing Persons (1980–2000) of 2016, including through the establishment of a search process for missing persons. The process comprises three stages:

- “Humanitarian investigation”, related to the compilation and registration of information by the concerned department.
- “Joint intervention”, establishing a mandatory collaboration between the Ministry of Justice and Human Rights and the National Prosecutor's Office on an integrated report with information provided by forensic experts (Art. 6.3).
- “Closure of the search process”, producing a final report that will be provided to the family members with the resulting information.

Restitutions of human remains will be undertaken ensuring respect for human dignity, religious beliefs, and cultural and community practices (Art. 6.4.4).

Finally, psychological and logistical assistance is to be provided and attuned to the needs of families of the missing and their communities throughout the process and in the native language of those receiving it (Art. 6.1.1).

B. National committees or similar entities on IHL

For IHL rules and principles effectively to afford protection in armed conflict, they need to be recognized, known, implemented and complied with, when and where

¹⁷ Available at: <https://tinyurl.com/y635jaz8>.

they apply. While compliance with IHL is the primary responsibility of parties to an armed conflict – both States and non-State entities, including armed groups involved in a non-international armed conflict – the responsibility for ensuring its full implementation primarily rests with States. This responsibility is emphasized in Article 1 common to the four Geneva Conventions and Article 1(1) of Additional Protocol I of 8 June 1977, which provide that High Contracting Parties are bound to “respect and to ensure respect” for their provisions “in all circumstances”.¹⁸

Accordingly, States must take action domestically to incorporate IHL into laws, regulations and policy directives, ensure that armed forces and other national stakeholders understand and respect the rules, and establish mechanisms that will ensure respect for the law and appropriate handling of violations when they occur. Given the broad range of issues associated with this responsibility, coordination between different government agencies and sectors, the armed forces and civil society is essential.

To facilitate this process, it can be useful to create a dedicated working or expert group, or similar body – often called a national IHL committee or commission. The work and contribution of such a committee can be relevant in a variety of circumstances, whether a country is at peace, emerging from conflict, still affected by historical conflict or involved in one or more current armed conflicts. Many successful national structures are proof that if they function efficiently and have the required capacities, they can be of considerable help to States in implementing their commitments under IHL and achieving policy objectives in this area.¹⁹

Oman

*Ministerial Decision No. 330/2017 Establishing the Omani National International Humanitarian Law Committee*²⁰

On 10 October 2017, the Ministry of Foreign Affairs of Oman issued Ministerial Decision No. 330/2017 establishing the Omani National International Humanitarian Law Committee. The Committee shall spearhead Oman’s initiatives in IHL and shall be headed by a representative of the Ministry of Foreign Affairs, who will be appointed to the post of director-general of the Committee. Per Article 4 of the Ministerial Decision, the main objective of the Committee is to implement IHL at a national level.

18 For more information, see Knut Dörmann and Jose Serralvo, “Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations”, *International Review of the Red Cross*, Vol. 96, No. 895–896, 2015, available at: www.icrc.org/en/download/file/17480/irrc-895_896-dormann-serralvo.pdf.

19 For a full list of the national IHL committees around the world, please see the dedicated ICRC web page, available at: www.icrc.org/en/document/table-national-committees-and-other-national-bodies-international-humanitarian-law.

20 Available at: <https://tinyurl.com/y68ghpk9>.

Members of the Committee shall be representatives of the Ministries of Defence, Justice, Legal Affairs, Education, Higher Education, Labour, and Heritage and Culture, as well as of the Royal Oman Police, the Public Authority for Civil Defence and Ambulance, Sultan Qaboos University and the Omani Authority for Charitable Organizations.

The Ministerial Decision also identifies the mandate of the Committee and establishes administrative and financial regulations related to its organization.

C. Case law

Bangladesh

*The Chief Prosecutor v. 1. Abu Saleh Md. Abdul Aziz Miah alias Ghoramara Aziz [absconded], 2. Md. Ruhul Amin alias Monju [absconded], 3. Md. Abdul Latif, 4. Abu Muslim Mohammad Ali [absconded], 5. Md. Najmul Huda [absconded] and 6. Md. Abdur Rahim Miah [absconded], 22 November 2017*²¹

This decision has been passed by the International Crimes Tribunal, a first-instance forum, and is subject to appeal in the Appellate Division of the Supreme Court of Bangladesh.

The Tribunal has the authority and jurisdiction to prosecute persons responsible for offences enumerated in Section 3(2) of the International Crimes (Tribunals) Act of 1973²² committed in violation of IHL in the territory of Bangladesh in 1971, during the war of liberation.

The Tribunal, in this case, decided that the offences for which the accused persons stood trial were “system crimes” and not isolated crimes as they were committed in the context of “armed conflict”.

Hence, the Tribunal found the accused guilty of all the charges of abduction, confinement, torture, murder and other inhumane acts as crimes against humanity. The accused were convicted and condemned to sentences of imprisonment for life until natural death.

21 Available at: <https://tinyurl.com/yyu4mvol>.

22 Available at: <https://tinyurl.com/y3jc7t3c>.