



**5<sup>th</sup> COMMONWEALTH RED CROSS AND RED CRESCENT  
CONFERENCE ON INTERNATIONAL HUMANITARIAN LAW ((IHL)  
*Celebrating the Geneva Conventions and building respect for IHL:  
A Commonwealth Perspective***

**10-14 June 2019**

**Kigali Convention Centre**

**Kimihurura, Kigali, Rwanda**

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Commonwealth Parliamentary Association (CPA)**

## **Panel Topic: Addressing serious violations of IHL: National Measures**

### **How to effectively implement national criminal sanctions – the role of Parliamentarians**

- Thanks to the organisers for an excellent programme and invitation to speak.
- CPA is a community of Commonwealth Parliaments, Parliamentarians and their staff committed to deepening democratic governance through promotion of Commonwealth values such as democracy, rule of law, human rights, international peace and security, good governance.
- All these values are relevant to this conference today. The Implementation of IHL promotes and upholds a rules-based international system in which the proper implementation of and compliance with, IHL is an important part of that system
- Therefore, the implementation of IHL goes directly to promoting the rule of law and good governance, and contributes to international peace and security

## **Why Parliamentarians?**

- The 1949 Geneva Conventions form the bedrock of international humanitarian law (IHL).
- The Executive is primarily responsible for IHL matters. This includes becoming party to treaties, proposing related implementing legislation and giving effect to such laws.
- Nevertheless, the Legislature has an important supplementary role in many of these measures.
- The domestic implementation of certain provisions of the Geneva Conventions and their 1977 First Additional Protocol is a legal obligation accepted by states.
- The Executive and Parliaments and Parliamentarians must work together to help ensure that IHL is properly implemented to give effect to their state's international obligations.

## **What can Parliamentarians do?**

### ***Become party to IHL Treaties and Related Instruments***

- Parliamentarians play an important role in whether a state becomes a party to international treaties
- They can use parliamentary procedures to ask their government why the State has not yet signed and ratified or acceded to a treaty?

- If the state has signed but not ratified, parliamentarians can initiate legislation to submit a bill on the matter;
- They can lobby government to become a party to international instruments.
- They can try to ensure that when the state does become a party, it does so without reservations or declarations that are contrary to the 'object and purpose' of the instrument. There is also a role for reviewing and narrowing or removing previous reservations in previous international instruments;

### ***Adopting Implementing Legislation***

- In many Commonwealth countries which follow the 'dualist' notion of receiving international law, it is necessary for Parliament to adopt national legislation to bring the treaty into force or to bring domestic law into line with the international obligations;
- This is an area where Parliamentarians have a huge opportunity to improve the legislation and a responsibility to ensure the Treaty is faithfully incorporated into national law and that national laws are compliant. There may be minor or significant changes to existing domestic law and parliamentarians have a role to play in scrutiny committees to ensure compliance.
- In practice Parliamentarians must ensure that national judicial authorities have the required legislative basis to investigate, prosecute and punish perpetrators while ensuring adequate penalties and judicial guarantees are respected. In Commonwealth countries, such matters are

frequently covered in Geneva Conventions Acts and/or in International Criminal Court Acts.

- Although the responsibility for adopting appropriate legislation and regulations where required lies with the Executive Branch and the different ministries concerned, Parliamentarians can request information from their governments on the status of adoption and implementation. Parliamentarians can also help to ensure that such legislation is kept up-to-date.

## **Practical Measures to Ensure Implementation**

### **Approval of Financial Resources**

- Parliamentarians may be asked to approve financial resources for a national action plan which might include costs for training the armed forces and security bodies or educating the wider public in schools and colleges etc. The courts also require resources to play their part and to help ensure that the rule of law is upheld in all circumstances.
- States should spread knowledge of IHL as widely as possible and this will cost money – dissemination must start in peacetime so that the principles are embedded – **Parliamentarians can ask Ministries what has been done to comply with the dissemination obligations.**

### **Protection of the Emblems**

- The Geneva Conventions and their Protocols require states to protect and regulate the use of the distinctive emblems

by adopting specific laws to that effect and states must pass specific legislation punishing the misuse of the emblems.

- Article 54 of the First Geneva Convention provides that *“[t]he High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53.”*
- The abuses or misuses covered by Article 53 include unauthorised use of the distinctive emblems, that is, the red cross emblem and the red crescent emblem; unauthorised use of the designations or names “Red Cross” and “Red Crescent,” and unauthorised use of imitations of these emblems and designations (that is, similar designs).
- The same protections apply to the red crystal emblem, established in 2005 Additional Protocol III to the Geneva Conventions.
- Similar safeguards also apply to the arms of Switzerland, a white cross on a red background, given the confusion which may arise between the Swiss emblem and the red cross emblem.

### ***Encouraging National Implementation***

- Parliamentarians can request the establishment of a National IHL Committee to advise the government on disseminating and implementing IHL.
- In the UK, the National Committee on International Humanitarian Law is an interdepartmental body with a mandate to consider implementation of IHL instruments and encourage dissemination. As in many countries, the

National Red Cross Society is a member of the UK National IHL Committee. This is by virtue of its special auxiliary and IHL roles.

- IHL Committees can also take useful initiatives. A good example is the undertaking of a study on the country's implementation of IHL at national level. Another useful action is to establish contacts with other National IHL Committees and share good practice and experiences. This can include sharing of legislative and other measures to address serious violations of IHL.

## **SUMMARY**

- As the representative centre of any democracy, Parliament and Parliamentarians can play an essential role in advocating and legislating for IHL. Parliamentarians can support efforts to ensure IHL is faithfully implemented given their role as political leaders and representatives of the people.
- They can establish All Parliamentary Party Groups to encourage strategies toward implementation. A very important and often unnoticed role Parliamentarians can play is to uphold the neutral character of IHL. Parliamentarians can do this by working across parties and by approaching IHL issues on an all-Party basis. This will help to avoid politicising IHL and is in contrast to other areas of law.
- Support national laws that implement international instruments.
- Also support the setting up of national IHL committees.

- Encourage the appointment of a focal point in ministries for national programmes to help build capacity and mainstream IHL.
- Use parliamentary speaking privileges to highlight IHL at home or abroad.
- Also help to promote the state's acceptance of the competence of the International Humanitarian Fact-Finding Commission. This Commission is established under Article 90 of 1977 Additional Protocol I and acts in a confidential way. With the consent of the parties, it is also able to act in situations of non-international armed conflicts.
- Use Parliamentary oversight bodies such as Select Committees to hold government accountable for IHL which might not be a priority and seek relevant briefings from experts to provoke constructive debate.
- Utilise social media tools to raise awareness of IHL and resources that are available.
- The CPA recognises the significant role of Parliamentarians in working with the Executive and others to promote IHL and to ensure its effective implementation. This requires Parliamentarians and their staff to be well-informed. Consequently, we are working with the British Red Cross to develop a handbook on IHL for Parliamentarians from Commonwealth countries. We hope that this will be available later this year.

## **RESOURCES**

- **IPU Handbook on IHL for Parliamentarians**
- **CPA Handbook on IHL for Commonwealth Parliamentarians**
- **ICRC Advisory Services**