

Implementing international treaties



- ✓ respect of international commitments:
"pacta sunt servanda"
- ✓ execution in **good faith** of international obligations
- ✓ "respect and ensure respect"

" The High Contracting Parties undertake to respect and **to ensure respect** for the present Convention in all circumstances"

(Common Article 1, GC)

- ➡ By its own nationals
- ➡ By other States parties



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- ▶ To respect and ensure respect of IHL is the primary responsibility of States.
- ▶ A commitment to securing the essential guarantees laid down for the victims of armed conflict
- ▶ A wide range of legislative, regulatory and administrative measures must be adopted



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- ▶ prevention
- ▶ control
- ▶ repression

- ▶ all measures that must be taken to ensure that the rules of IHL are fully respected



- ▶ Specific laws to be adopted
- ▶ Specific measures/procedures/structures to be put in place
- ▶ Review of compatibility/conformity with existing laws and regulations
- ▶ Integration with existing legal framework / ensuring application abroad
- ▶ Integration/coordination with other treaty obligations
- ▶ Wide margin of discretion/appreciation of State authorities on the ways and means to ensure compliance and prevent violations



Knowing the rules ...

- + Instruction of the armed and security forces
- + Dissemination within civilian population, including teaching in learning institutions, schools, colleges, ...



Incorporating the rules on ...

- + conduct of hostilities
- + treatment of prisoners and detainees
- + other rules of IHL ...



In ...

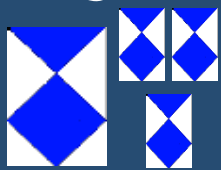
- + military manuals & regulations
- + disciplinary codes
- + operational law



Identification of protected persons and objects



→ + medical personnel, units and transports



→ + cultural property



→ + civil defence organizations and personnel



→ + works and installations containing dangerous forces



Legal Review of New Weapons

In the study, development, acquisition or adoption of a new weapon, means or method of warfare ...

↳ obligation to determine whether its employment would, in some or all circumstances, be prohibited by international humanitarian law



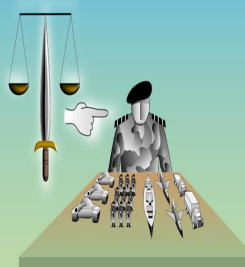
Duties of Commanders

Commanders must ...

- ↳ take measures as are necessary to prevent breaches of IHL and,
- ↳ where appropriate, initiate disciplinary or penal action against violators, and
- ↳ report to competent authorities breaches of IHL.



RESPONSIBILITY OF EVERY COMMANDER



- Enforcement of Law of War

ICRC/01

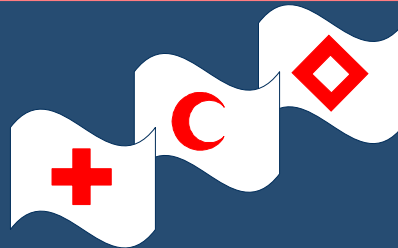
Advisers to military commanders

... **at all times** ... ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level ...

- ▶ on the application of the Conventions and Protocol
- ▶ on the appropriate instruction to be given to the armed forces



Recognized emblems



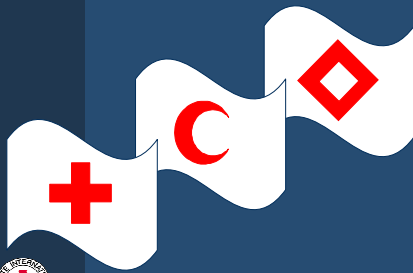
- **Red cross** ... since 1864
- **Red crescent** ... since 1876, recognized since 1929
- **Red crystal** ... since 14 January 2007 (AP III)

– **Red lion and sun** ...
(recognized in 1929, not in use since 1980)



✚ Protection of medical personnel, medical units and transports

✚ Identification of Red Cross/Red Crescent staff, medical units and transports



ICRC

Obligation to take measures necessary for the prevention and repression, at all times, of abuses of the emblem.

(Art. 54, CG I)

Additional Protocol III

✚ Entered into force 14 January 2007

✚ Signature & ratifications

⇒ 84 signatures / 38 ratifications (01.03.2009)

⇒ States Parties include:

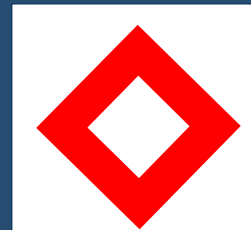
» United States

» Israel

» in East & South East Asia:

> Singapore

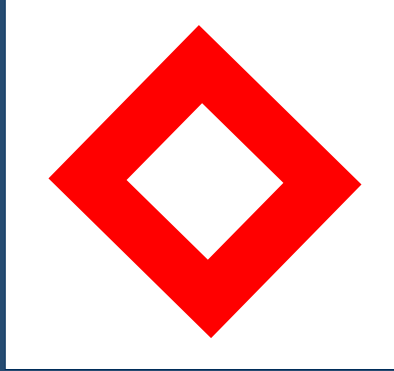
> The Philippines



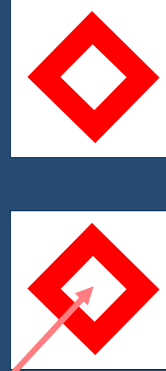
ICRC

The red crystal emblem

Protective use



Indicative use

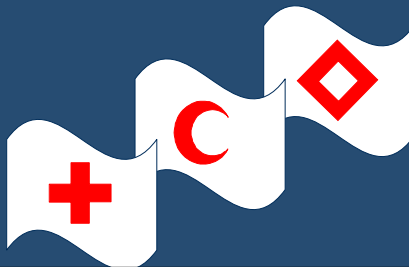


- ✓ May incorporate one or two existing emblems or emblem used before III AP;
- ✓ To be used within its territory



🇺🇹 National laws on the protection of the emblem in E & SE Asia

- ▶ 11/16 have some legislation that protect the emblem
 - ▶ 4/11 are not fully adequate
 - ▶ defects ...
 - ▶ does not protect all emblems
 - ▶ do not specify procedure to use the emblem
 - ▶ inadequate penalties for misuse



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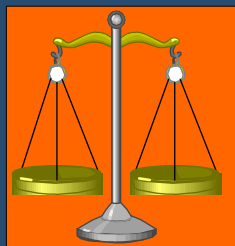
- ▶ **Individuals are criminally responsible** for serious violations of international humanitarian law that they commit or order to be committed.
- ▶ **States have the duty to prosecute and punish** persons responsible for serious violations of international humanitarian law.





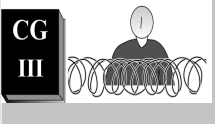


ICRC

Repression of grave breaches

- An obligation to enact any **legislation** necessary to provide **effective penal sanctions** for persons committing, or ordering to be committed, any of the grave breaches of the [Conventions and Protocol]





ICRC

Grave Breaches – GC

- wilful killing
- torture or inhuman treatment
- wilfully causing great suffering or serious injury to body or health
-
- extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly
-
- compelling a POW or a protected person to serve in the forces of a hostile Power
- wilfully depriving a POW or a protected person of the rights of fair and regular trial
-
- unlawful deportation or transfer or unlawful confinement of a protected person
- taking of hostages

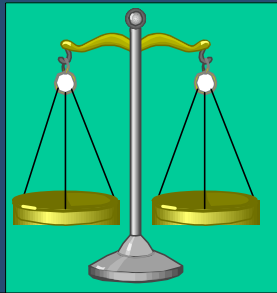



Grave Breaches – AP I

- attacking the civilian population or individual civilians
- launching an indiscriminate attack affecting the civilian population or civilian objects
- attacking non-defended localities and demilitarized zones
- attacking a person *hors de combat*
- perfidious use of the distinctive emblem
- deportation or transfer of population within or outside occupied territory
- unjustifiable delay in the repatriation of prisoners of war or civilians
- ...

Suppression of other breaches

- An obligation to take measures necessary for the suppression of all acts contrary to the provisions of the [Conventions and Protocol] other than the grave breaches ... "



- Criminal sanctions for grave breaches of the GC's and AP I
 - ◆ *Duty to prosecute or extradite*
- Criminal or other sanctions for other violations of IHL
 - ◆ *Duty to suppress*
- Universal jurisdiction over perpetrators of grave breaches
- Responsibility of superiors
- Ensuring judicial/procedural guaranties



Repression of IHL violations in domestic law (E & SE Asia)

+ Offences against IHL

- grave breaches (GCs) – 4 States/16 (full)
- grave breaches (GCs) – 2 States/16 (partial)
- in process – (4 States) ←
- grave breaches (GCs + AP I) – 1 States/10 (full)
- grave breaches (GCs + AP I) – 1 States/10 (partial)
- in process – (4 States) ←
- war crimes (IAC + NIAC) – 1 States/16 (full)
- in process – (4)
- none – 9 States/16

+ Universal Jurisdiction

- At least for grave breaches (IAC) – 6 States/16



Thank you!



East and Southeast Asia	Fundamental Treaties										Use of weapons											
	Geneva Conventions (I-IV) (1949)	Additional Protocol I (1977)	Additional Protocol II (1977)	Additional Protocol III (2005)	The Hague Cultural Property Convention (1954)	Second Protocol (1999)	Rome Statute of the ICC (1998)	CRC - CAC (2000)	Geneva Gas Protocol (1925)	Biological Weapons Convention (1972)	Conventional Weapons Convention (1980)	Amendment of Article 1 (2001)	Protocol I on non-detectable fragments (1980)	Protocol II on landmines and booby traps (1980)	Protocol II on landmines and booby traps (amnd) (1996)	Protocol III on incendiary weapons (1980)	Protocol IV on blinding laser weapons (1995)	Protocol V on explosive remnants of war (2003)	Chemical Weapons Convention (1993)	Ottawa Antipersonnel Landmines Treaty (1997)	Cluster Munitions Convention (2008)	
<i>(signatories)</i>																						
Brunei Darussalam	1991	1991	1991							1991									1997	2006		
Cambodia	1958	1998	1998		1962	(s)	2002	2004	1983	1983	1997								2005	1999		
China	1956	1983	1983		2000			2008	1952	1984	1982	2003	1982	1982	1998	1982	1998		1997			
Indonesia	1958				1967	(s)		(s)	1971	1992									1998	2007	(s)	
Japan	1953	2004	2004		2007	2007	2007	2004	1970	1982	1982	2003	1982	1982	1997	1982	1997		1995	1998	(s)	
Korea (Dem.People's Rep.)	1957	1988							1989	1987												
Korea (Republic of)	1966	1982	1982	(s)			2002	2004	1989	1987	2001	2003	2001		2001			2008	1997			
Lao (People's Dem.)	1956	1980	1980					2006	1989	1973	1983		1983	1983		1983			1997		(s)	
Malaysia	1962				1960				1970	1991									2000	1999		
Mongolia	1958	1995	1995		1964		2002	2004	1968	1972	1982		1982	1982		1982	1999		1995			
Myanmar	1992				1956														(s)			
Philippines	1952	(s)	1986	2006			(s)	2003	1973	1973	1986		1996	1996	1997	1996	1997		1996	2000	(s)	
Singapore	1973			2008				2008		1975									1997			
Thailand	1954				1958		(s)	2006	1931	1975									2002	1998		
Timor-Leste	2003	2005	2005	(s)			2002	2004		2002									2003	2003		
Viet Nam	1957	1981						2001	1980	1980	(s)								1998			
Total																						
World	(195)	194	168	164	38	122	51	108	126	135	164	108	65	105	92	92	100	92	52	186	156	4