



**NEW ZEALAND**  
**FOREIGN AFFAIRS & TRADE**  
Manatū Aorere

# **New Zealand's Report on the Domestic Implementation of International Humanitarian Law**

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# Foreword by Minister of Foreign Affairs and Trade

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**RT HON WINSTON PETERS**



As we face a more fractious world, New Zealand believes that the role of international humanitarian law is more important than ever before.

It is fitting that this report, which outlines New Zealand's domestic implementation of international humanitarian law, is published in the same year as we commemorate the 75<sup>th</sup> Anniversary of the adoption of the four Geneva Conventions of 1949. The Geneva Conventions are a cornerstone of international law and international humanitarian law. They represent one of the international community's most important accomplishments.

As current conflicts demonstrate, the full implementation of international humanitarian law is of the utmost importance. All states must commit to upholding and implementing their international humanitarian law obligations. This involves promoting cooperation across government, and with the military, civil society, and academia, in order to ensure that the law applies to everyone, everywhere.

It is our hope that documenting New Zealand's experience in the implementation of international humanitarian law will reinforce respect for the body of law globally.

*7 August 2024*

# Executive Summary

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The Geneva Conventions of 1949 form the bedrock of international humanitarian law (IHL). As every state is a party to the Geneva Conventions, every state is also legally obliged to comply with the shared rules. New Zealand is a long-standing, consistent and strong supporter of these shared rules and the international rules-based system that implements them.

New Zealand recognises that a commitment to compliance with IHL is most evident when the rules are properly implemented in the domestic legal systems of the signatory states. New Zealand has a strong record of domestic implementation and dissemination of IHL, which has long been part of New Zealand's political, military, and legal discourse. Recognising that there are no general mandatory reporting systems on national implementation in the field of IHL, in 2019 New Zealand pledged to contribute a Report on Domestic Implementation of International Humanitarian Law. This report is a direct result of that commitment.

This report was produced by New Zealand's Ministry of Foreign Affairs and Trade, in collaboration with the New Zealand National Committee on International Humanitarian Law, New Zealand Government Agencies, and New Zealand Red Cross.

The report is divided into four sections: (I) Domestic Implementation of International Humanitarian Law; (II) Domestic Dissemination of International Humanitarian Law; (III) Protections Under International Humanitarian Law; and (IV) Means and Methods of Warfare. The report seeks to provide a record of New Zealand's implementation of IHL in an accessible way to anyone with an interest in IHL matters – including the general public, non-governmental organisations, IHL practitioners, government officials, parliamentarians, academics, and journalists. Accordingly, it is hoped that the report will help improve understanding of IHL and encourage dialogue on the topic both within New Zealand and overseas.

The report is not intended to be an exhaustive account of domestic implementation in New Zealand. Rather, the report aims to gather in one document key aspects of New Zealand's implementation to increase the understanding of what it means to give effect to IHL domestically within the context of New Zealand's domestic legal system.

# Introduction

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## DEFINITION

1. International Humanitarian law (IHL), also called *jus in bello* and the “laws of armed conflict” - the term used by the New Zealand Defence Force - is a framework of rules that regulate conduct during armed conflict. It seeks to protect certain categories of people and property and restrict or prohibit certain means and methods of warfare. IHL does not regulate when or why a state may legally use force, which is governed on the international level by the United Nations Charter and customary international law.
2. Most rules of IHL apply only to armed conflict. This is a term that applies to international armed conflicts (between two or more states) and non-international armed conflicts (between a state and non-state armed group, or between two or more non-state armed groups).
3. IHL comprises rules that are derived from both treaty law and customary international law.<sup>1</sup> The core IHL treaties are the four 1949 Geneva Conventions which cover the wounded and sick on land, the wounded, sick and shipwrecked at sea, prisoners of war and civilians under enemy control.<sup>2</sup> These four Geneva Conventions have been universally adopted by the international community. They are part of a historical body of IHL which is now regarded as customary law.<sup>3</sup>
4. The four Geneva Conventions have been supplemented by three Additional Protocols: Additional Protocol I and II in 1977; and Additional Protocol III in 2005. Additional Protocol I addresses international armed conflicts; Additional Protocol II addresses non-international armed conflicts. The four Geneva Conventions and Additional Protocols I and II collectively form the pillars of IHL.<sup>4</sup> The Conventions are supplemented by other IHL treaties which place restraints on warfare by protecting certain categories of people and property and regulating the means and methods of warfare. For a comprehensive list of the treaties to which New Zealand is a party please refer to [Annex One: Applicable IHL Treaties and Implementing Legislation](#).
5. The duty to implement IHL lies first and foremost with states. Common Article 1 of the four Geneva Conventions requires the High Contracting Parties to “respect and to ensure respect for the present Convention in all circumstances”. IHL applies equally to all parties to an armed conflict, including non-state actors, armed groups, and private citizens.

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<sup>1</sup> For an overview, see the ICRC’s website: (i) [the IHL treaty database](#) and (ii) [the ICRC’s study on customary IHL](#).

<sup>2</sup> Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 1435 UNTS 188; 75 UNTS, 31 (adopted on 12 August 1949, entered into force on 21 October 1950); Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1435 UNTS 188; 75 UNTS, 85 (adopted on 12 August 1949, entered into force on 21 October 1950); Convention (III) relative to the Treatment of Prisoners of War 1435 UNTS 188; 75 UNTS, 135 (adopted on 12 August 1949, entered into force on 21 October 1950); Convention (IV) relative to the Protection of Civilian Persons in the Time of War 1435 UNTS 188; 75 UNTS, 287 (adopted on 12 August 1949, entered into force on 21 October 1950).

<sup>3</sup> The first Geneva Convention was signed by 16 countries in 1864 and was extended in 1906 and 1929. 1864 marked the beginning of a process of building a body of law that is still evolving today. The Hague Conventions, which are mainly aimed at regulating the conduct of warfare, were adopted in 1899 and 1907.

<sup>4</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1125 UNTS 3 (entered into force on 7 December 1978); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 1125 UNTS 609 (entered into force on 7 December 1978). The Third Additional Protocol was adopted in 2005 specifying an additional emblem (the Red Crystal) that may be used by organisations of the Red Cross Red Crescent Movement and military forces in line with the usual rules (see, e.g. Protocol III, art 2(4) of in addition to the Red Cross and the Red Crescent. While New Zealand is a party to the Third Protocol, we have not adopted the Red Crystal.

## NEW ZEALAND'S ENGAGEMENT IN ARMED CONFLICT

6. New Zealand has interacted with armed conflict and peace keeping overseas throughout the 20<sup>th</sup> century and continues to do so. New Zealanders<sup>5</sup> have served in the Second South African (Boer) War, the two World Wars, the Malayan Emergency, the Korean War, the Viet Nam War, the First Gulf War, and the war in Afghanistan post-2001 (New Zealand's longest war). New Zealand has also been involved in peacekeeping missions, including Bosnia Herzegovina, throughout the Middle East and Africa and in Cambodia, Bougainville, East Timor, Afghanistan and South Sudan.
7. New Zealand contributes to international humanitarian efforts by helping protect people who are not able to live safely in their home country. Over 1,000 people come to New Zealand every year as refugees. New Zealand is one of around 37 countries that take part in the United Nations High Commissioner for Refugees (UNHCR) regular refugee resettlement programme. Each year, the Ministers of Immigration and Foreign Affairs allocate 200 places for refugees from large-scale international crisis situations. For example, in 2022/23, New Zealand resettled 200 Syrian refugees (including Kurdish minorities) located in Iraq, Jordan, and Lebanon through this sub-category.<sup>6</sup>

### NEW ZEALAND HISTORICAL CASE STUDY: GATE PĀ

8. In January 1864 several hundred British troops landed at Tauranga. Local rangatira (chiefs) issued a series of challenges to the British troops which set out that fighting should be conducted in an honourable manner. Henare Wiremu Taratoa set out the rules that would be respected in any clash in a letter to the British commanding officer, including that wounded soldiers and those who surrendered would be spared. Māori closely followed these rules when fighting at Gate Pā/Pukehinahina on 29 April 1864. Although the British suffered a heavy defeat, wounded soldiers and civilians were cared for.<sup>7</sup>
9. Some of Taratoa's rules of warfare<sup>8</sup> bear a similarity with the First Geneva Convention signed months later in Switzerland. This demonstrates the placing of value on restraints to means and methods of warfare in New Zealand which are now separately articulated in modern IHL principles. It is important to note that while acts of mercy and humanity were displayed in this instance, those actions were not yet universally applied.

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<sup>5</sup> Including personnel of New Zealand's Naval Forces, Army and Airforce as well as civilians and police.

<sup>6</sup> [New Zealand Refugee Quota Programme | Immigration New Zealand.](#)

<sup>7</sup> There are various reports of brave acts undertaken by Māori towards British soldiers wounded and dying inside trenches at Gate Pā who risked death in order to take water to them. For example, Hēni Te Kiri Karamū, at risk to her own life, gave water to Colonel H. J. P. Booth and several other wounded men. Dr Vincent O'Malley 'Voices from the New Zealand Wars | He Reo nō ngā Pakanga o Aotearoa' Bridget Williams Books, 2021 pp. 231-232.

<sup>8</sup> To the Colonel, Friend, Salutations to you. The end of that. Friend, do you give heed to our laws for regulating the fight.

RULE 1. If wounded or captured whole, and butt of the musket or hilt of the sword be turned to me, he will be saved.

RULE 2. If any Pakeha (a Māori word commonly used to refer to a European), being a soldier by name, shall be travelling unarmed and meets me, he will be captured, and handed over to the direction of the law.

RULE 3. The soldier who flees, being carried away by his fears, and goes to the house of the priest with his gun (even though carrying arms) will be saved. I will not go there.

RULE 4. The unarmed Pakehas, women and children, will be spared. The end. These are binding laws for Tauranga. Terea Puimanuka, Wi Kotiro, Pine Amopu, Kereti Pateriki, March 28, 1864 Potiriwhi, District of Tauranga.







# **I. DOMESTIC IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW**

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## MAJOR INTERNATIONAL HUMANITARIAN LAW TREATIES

10. New Zealand became bound by early humanitarian treaties such as the St Petersburg Declaration, the 1864, 1906, and 1929 Geneva Conventions and the 1907 Hague Conventions through the United Kingdom's adherence to them. Since becoming an independent state New Zealand has been a ready adherent with a robust record of ratification of the major IHL and IHL related treaties including, *inter alia*, the four Geneva Conventions and their three Additional Protocols, the Rome Statute of the International Criminal Court, the Hague Cultural Property Convention and Protocols and all treaties prohibiting or restricting the use of certain weapons.<sup>9</sup>
11. New Zealand has ensured that, where necessary, major IHL and IHL related treaties have domestic effect by enacting legislation.<sup>10</sup>
12. New Zealand is able to prosecute serious violations of IHL through the Geneva Conventions Act, the International Crimes and International Criminal Court Act and the Crimes of Torture Act.<sup>11</sup> Under the Geneva Conventions Act grave breaches of the four Geneva Conventions and Geneva Additional Protocol I are subject to universal jurisdiction.<sup>12</sup>
13. The International Crimes and International Criminal Court Act gives New Zealand Courts jurisdiction over international crimes including crimes against humanity, war crimes and genocide irrespective of the nationality of the offender or where the offence is committed.<sup>13</sup> The International Crimes and International Criminal Court Act confers criminal jurisdiction from 1 October 2000.<sup>14</sup>
14. The Crimes of Torture Act provides a comprehensive framework to prevent torture and ill treatment in places of detention, including for a UN body to inspect places of detention in New Zealand. New Zealand already has extremely competent and well-resourced domestic monitoring bodies such as the Ombudsmen who play a key role in ensuring that torture remains unacceptable in New Zealand.
15. For a comprehensive list of domestic legislation please refer to [Annex One: Applicable IHL Treaties and Implementing Legislation](#).

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<sup>9</sup> For example, 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 1980; Protocol on Non-Detectable Fragments (Protocol I); Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II); Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III); Protocol on Blinding Laser Weapons (Protocol IV); Protocol on Explosive Remnants of War (Protocol V); Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1993; Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction 1972; Convention on Cluster Munitions 2008; and the Treaty on the Prohibition of Nuclear Weapons 2017. See also Marnie Lloyd, "Law that Happens "Out There": Aotearoa New Zealand's Interaction with International Humanitarian Law and International Criminal Law" in *International Law - A to Z of New Zealand Law* (online ed, Thomson Reuters) at [36.9.2].

<sup>10</sup> Examples include, *inter alia*, the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act 1987; the Chemical Weapons (Prohibition) Act 1996; the Anti-Personnel Mines Prohibition Act 1998; the Cluster Munitions Prohibition Act 2009; the Brokering (Weapons and Related Items) Controls Act 2018; the Customs and Excise Act 2018; the Cultural Property (Protection in Armed Conflict) Act 2012; Crimes of Torture Act 1989; and the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980.

<sup>11</sup> Geneva Conventions Act 1958; International Crimes and International Criminal Court Act 2000 [International Crimes Act]; Crimes of Torture Act, above n 11.

<sup>12</sup> Grave breaches of the Geneva Conventions are replicated in the International Crimes and International Criminal Court Act 2000. Grave breaches of Additional Protocol I are not. No New Zealand Court has exercised universal jurisdiction to date; See *Wakim v Ya'alon* DC Auckland CIV-2006-004, 27 November 2006.

<sup>13</sup> International Crimes Act, above n 12, s 6(1) and s 8.

<sup>14</sup> International Crimes Act, above n 12, s 2.

## MILITARY COURT SYSTEM

16. Similar to other Commonwealth countries, New Zealand has a civilian criminal justice system and military justice system. Prosecution for breaches of IHL can occur under either system.
17. The Armed Forces Discipline Act provides for prosecution of New Zealand Defence personnel regardless of where the act is committed.<sup>15</sup> Serious offences, such as breaches of IHL, if committed by persons subject to the Armed Forces Discipline Act, will be tried in the Court Martial.<sup>16</sup> New Zealand's domestic court system, or international courts or tribunals, may exercise jurisdiction if the military courts do not do so.<sup>17</sup> There is a right of appeal to the Court Martial Appeal Court, and then (by leave) to the Court of Appeal or Supreme Court.<sup>18</sup>

## EXTRADITION

18. The Extradition Act ensures that genocide, crimes against humanity, war crimes and other related offences including torture<sup>19</sup> are "extradition offences". The Act enables persons suspected of having committed an international crime, but who are not charged or tried with an international crime in New Zealand, to be extradited to another state, or to an international court with jurisdiction.<sup>20</sup> Different extradition procedures apply depending on whether New Zealand has an extradition treaty with that state; that state is a Commonwealth or designated country, or any other country under the Act.<sup>21</sup>
19. New Zealand has obligations as a State Party to the Rome Statute of the International Criminal Court to arrest and surrender persons subject to an arrest warrant for, or convicted of, war crimes, crimes against humanity, or genocide to the International Criminal Court.<sup>22</sup> This section also extends to other similar requests from the International Criminal Court, including provisional arrest in urgent cases, remand and bail.

## COMMAND RESPONSIBILITY

20. Military commanders and civilian superiors exercising similar powers may be held criminally responsible for offences committed by persons under their effective command and control.<sup>23</sup> The commander's duty to ensure compliance with IHL cannot be abrogated.<sup>24</sup> NZDF commanders are required to:

20.1. Ensure they are familiar with the rules of IHL;

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<sup>15</sup> New Zealand Defence Force *Manual of Armed Forces Law. Volume 4: Law of Armed Conflict* (DM 69, 7 August 2017), vol 4, at [17.3.13]; [17.3.15]; [17.4.1].

<sup>16</sup> In limited circumstances civilians are also subject to the Court Martial's jurisdiction. The categories are set out in the Armed Forces Discipline Act 1971, pt 1; ss 6–22; sch 1.

<sup>17</sup> New Zealand Defence Force "Manual of Armed Forces Law. Volume 4: Law of Armed Conflict", above n 16, at [2.2.7]; the Armed Forces Discipline Act 1971; the Court Martial Act 2007; the Court Martial Appeals Act 1953; the Armed Forces Discipline Rules of Procedure 2008; the Armed Forces Discipline Regulations 2008; the Court Martial Appeal Court Rules 2008.

<sup>18</sup> Less serious offences are dealt with by disciplinary officers in summary trials; see Christopher Corns "Criminal Trials and Appeals: A Comparison between the New Zealand Military justice System and the Civilian Justice System" (2019) 50(3) Victoria University of Wellington Law Review 479.

<sup>19</sup> The crime of torture is deemed included in extradition treaties in force with any state that is a party to the Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment. This enables New Zealand to meet the "try or extradite" obligations under the Convention, see *R v Bow Street Magistrate; Ex parte Pinochet Ugarte (No 3)* [2000] 1 AC 147; [1999] 2 ALL ER 97 at [110].

<sup>19</sup> Extradition Act 1999, s 4.

<sup>20</sup> Extradition Act 1999, s 4.

<sup>21</sup> Extradition Act 1999, s 101A.

<sup>22</sup> The International Crimes Act, above n 12, pt 4.

<sup>23</sup> Rome Statute of the International Criminal Court 1998. Art 28 applies with necessary modifications to proceedings for an offence under International Crimes Act, above n 12, at s 9, s 10 or s 11 (concerning genocide, crimes against humanity, and war crimes); see also International Crimes Act, above n 12, at s 12(1)(a)(vi).

<sup>24</sup> New Zealand Defence Force *Manual of Armed Forces Law. Volume 4: Law of Armed Conflict*, above n 16, at [17.4.5].

- 20.2. Seek legal advice in respect of issues that are legally complex or have serious legal consequences;<sup>25</sup>
- 20.3. Report violations of IHL, including in relation to civilians<sup>26</sup>;
- 20.4. Refer alleged violations of IHL to a competent authority (whether civilian or military) to be investigated.<sup>27</sup>

### Operation Burnham Inquiry

21. Operation Burnham was undertaken in Afghanistan by New Zealand Special Air Service (NZSAS) troops and other nations' forces operating as part of the International Security Assistance Force in 2010. In 2017 a number of serious allegations were brought against NZDF personnel. In April 2018 the New Zealand Government announced that an inquiry into Operation Burnham and related matters, including Operation Nova and Operation Yamaha<sup>28</sup> would be held.
22. The Inquiry sought to establish the facts in connection with the allegations, examine the treatment by NZDF of reports of civilian casualties following the operation, and assess the conduct of NZDF forces.
23. The inquiry found that that during Operation Burnham and Operation Nova, New Zealand's personnel operated with proper authorisation and conformed to the rules of engagement and IHL. The report also concluded that there was a series of organisational and administrative failings that saw incorrect information provided to New Zealand Ministers and the New Zealand public.
24. The inquiry found that during Operation Yamaha one member of the NZDF struck a prisoner after the prisoner was arrested by Afghan police. The inquiry considers the way in which the prisoner was treated was inappropriate and did not reflect New Zealand values.
25. As a result, a number of changes to structures and systems were made as recommended by the Inquiry including:<sup>29</sup>
  - 25.1. the appointment of an expert review group to ensure that NZDF's organisational structure and record-keeping and retrieval processes were in accordance with international best practice;
  - 25.2. the establishment, by legislation, of an office of the Independent Inspector-General of Defence, located outside the NZDF organisational structure;
  - 25.3. the promulgation of Defence Force Order 35 which set out how allegations of civilian casualties should be dealt with, both in-theatre and at NZDF Headquarters;
  - 25.4. the development and publication of the New Zealand Policy Framework for the humane treatment of detainees in offshore deployments in 2022.<sup>30</sup>

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<sup>25</sup> The New Zealand Defence Force has written orders in place requiring compliance with International Humanitarian Law and contravention of those written orders is an offence which may be prosecuted; Armed Forces Discipline Act 1971, pt 3.

<sup>26</sup> Including through Defence Force Order 35.

<sup>27</sup> New Zealand Defence Force *Manual of Armed Forces Law. Volume 4: Law of Armed Conflict*, above n 16, at [17.4.5].

<sup>28</sup> Operation Burnham, Operation Nova and Operation Yamaha were four deliberate detention operations conducted by the International Security Assistance Force in order to detain a target identified as having planned or conducted attacks against the New Zealand Provincial Reconstruction Team (NZPRT) in Bamyán province.

<sup>29</sup> [Chapter 1b - Summary of findings and recommendations | Inquiry into Operation Burnham](#)

<sup>30</sup> [New Zealand Policy Framework for the humane treatment of detainees in offshore deployments | New Zealand Ministry of Foreign Affairs and Trade \(mfat.govt.nz\)](#)





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## **II. DOMESTIC DISSEMINATION OF INTERNATIONAL HUMANITARIAN LAW**

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26. When New Zealand became a party to the 1949 Geneva Conventions and their 1977 Additional Protocols, New Zealand committed to disseminate the provisions of those instruments in both peacetime and periods of armed conflict to the armed forces and to the general population.<sup>31</sup> A number of other IHL instruments also contain an obligation of this nature.<sup>32</sup>
27. Set out below are the specific dissemination and training practices carried out in New Zealand. Although it is primarily the responsibility of the states to make the law known, other organisations, such as New Zealand Red Cross and the International Committee of the Red Cross (ICRC) have their own mandates to assist in this task and are encouraged to take initiatives to that effect.

## Government Departments

### NEW ZEALAND DEFENCE FORCE

28. NZDF ensures that all of its personnel, at all levels and irrespective of how they join the NZDF, are provided with training in IHL.<sup>33</sup>
29. All members of the NZDF receive training on a basic package of IHL.<sup>34</sup> Certified completion of the IHL training package is a pre-requisite for deployment on NZDF operations. The intent of IHL training is to improve understanding of IHL within the organisation and its application to NZDF operations, and to reduce the risk of non-compliance. New Zealand Police receive the same training programme before deployment to combat zones with the NZDF.<sup>35</sup> The training is available to Pacific partners.
30. The obligation to raise awareness and disseminate information is contained in numerous treaties and recognised customary international law that apply during both peacetime and wartime.<sup>36</sup> Comprehension and the application of IHL is monitored and reinforced, as appropriate, throughout the course of deployments.
31. NZDF's publications include the Manual of Armed Forces Law which is presented in four volumes.<sup>37</sup> Volume 4, The Manual of Armed Forces Law: Law of Armed Conflict (the "Law of Armed Conflict Manual"), is the publication directly relevant to New Zealand's obligations under IHL.<sup>38</sup>
32. The text of the Law of Armed Conflict Manual is authoritative to the extent that it is consistent with New Zealand's treaty obligations, customary international law, Acts of Parliament, statutory

<sup>31</sup> Convention (I), art 47; Convention (II), art 48; Convention (III), art 127; Convention (IV), art 144.

<sup>32</sup> Including, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984); Geneva Additional Protocol I; the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (14 May 1954). It is also generally recognised as a rule of Customary International Law. See Jean-Marie Henckaerts and Louise Doswald-Beck *Customary International Humanitarian Law Volume I: Rules* (ICRC and Cambridge University Press, 2005) at rule 142 and 143. [Rules - Customary IHL - ICRC](#).

<sup>33</sup> In accordance with the general obligation to disseminate the texts of the 1949 Geneva Conventions and specific obligations contained in Common Articles 47, 48, 127, and 144, and Additional Protocol I, art 83.

<sup>34</sup> The basic package includes instruction on the rules of IHL including purpose, intent, and scope of the body of law. The expanded package includes key IHL terms and concepts, IHL principles, and the NZDF Code of Conduct Card. Advanced IHL training is provided to students on the NZDF's Advanced Command and Staff Course, and if required, for specific deployments (e.g. training pertaining to direct participation in hostilities and organised armed groups). The training addresses non-international as well as international armed conflict.

<sup>35</sup> Activities across Police's international development programmes include providing mentoring and advice to counterpart female police officers and women's advisory networks, targeting gender issues through the development of policies and practices for partner police services, and providing training and improving investigation practices including for gender-based crime to ensure better outcomes for women and children.

<sup>36</sup> Including the Geneva Conventions Common art 47, 48, 127, and 144; Protocol I, art 83, Protocol II, art 19.

<sup>37</sup> New Zealand Defence Force *Manual of Armed Forces Law: Commander's Handbook on Military Law* (DM 69, 2<sup>nd</sup> ed, 2020) vol 1; *Manual of Armed Forces Law: Court Martial Handbook* (DM 69, 2<sup>nd</sup> ed, ) vol 2; *Manual of Armed Forces Law: Legislation* (DM 69, 2<sup>nd</sup> ed) vol 3; *Manual of Armed Forces Law: Law of Armed Conflict*, above n 16.

<sup>38</sup> New Zealand Defence Force *Manual of Armed Forces Law: Law of Armed Conflict*, above n 16, at [1.1.3] and [1.1.4].



instruments and relevant judicial decisions.<sup>39</sup> The Law of Armed Conflict Manual is written in clear, simple language and includes legal references. Most chapters of the Law of Armed Conflict Manual refer readers to relevant rules in the NZDF Code of Conduct.

33. The Law of Armed Conflict Manual is a Defence Force Order made under the Defence Act and it is enforceable by virtue of the Armed Forces Discipline Act.<sup>40</sup> Defence Force Orders generally bind all members of the Armed Forces and have the status of secondary legislation. They are used for a wide range of purposes relating to the administration of the Armed Forces and for prescribing rules for NZDF.
34. NZDF, New Zealand's Ministry of Defence and Ministry of Foreign Affairs and Trade share responsibility for international strategic engagement in relation to deployment of New Zealand personnel. NZDF is subject to regulations that prohibit or otherwise restrict the activities of the Armed Forces and NZDF civilian employees, including international law incorporated domestically, and offence provisions that apply generally to New Zealand citizens, such as those found in the Crimes Act.

## **DEFENCE LEGAL SERVICES**

35. In accordance with its obligations under article 82 of Additional Protocol I, the NZDF maintains a specialised unit of military lawyers, the Defence Legal Services unit. Defence Legal Services consists of legally qualified barristers and solicitors who are members of the Armed Forces from across the three Services and advise on every aspect of military operations. Legal advisers routinely deploy alongside operational units.<sup>41</sup> They are present at strategic and operational levels. Military legal advisers meet with and work alongside international lawyers from other departments and provide specialist advice on questions of IHL.
36. Defence Legal Services delivers its own operational training courses as well as facilitating attendance for its legal advisers on operational law training courses in Australia, the United Kingdom, and Canada, facilitating cooperation and interoperability with likeminded partners. To complement academic training, legal advisers participate in military exercises around the globe which further increases interoperability, including with Indo-Pacific and Pacific neighbours.

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<sup>39</sup> New Zealand Defence Force *Manual of Armed Forces Law: Law of Armed Conflict* ], above n 16, at [1.1.3].

<sup>40</sup> Defence Act 1990, s27.

<sup>41</sup> Operational legal advisers are co-located with operational commanders, including those at the unit and sub-unit level.

## MINISTRY OF FOREIGN AFFAIRS AND TRADE

37. The Ministry of Foreign Affairs and Trade's (MFAT) Legal Division is the government's provider of specialist legal advice on all international legal issues covering *inter alia* peace and security issues. MFAT has the largest concentration of specialist international legal advisers within government and works with a number of other departments that have international law experience within their particular fields.
38. The Legal Division is led by a Divisional Manager with the title of International Legal Adviser. The General International Law Unit deals with matters related to IHL, alongside peace and security, disarmament and arms control, human rights, international criminal law, and the treaty making process.
39. MFAT advises the Government on compliance with its obligations under IHL (as opposed to operational advice on IHL provided by NZDF), holds New Zealand's relationship with the International Court of Justice, International Criminal Court and International Red Cross and Red Crescent Movement, and engages with other states and on the multilateral stage on issues related to IHL. MFAT holds *ex-officio* membership of the New Zealand National Committee on International Humanitarian Law.
40. MFAT's Partnerships, Humanitarian and Multilateral Division manages New Zealand's humanitarian programme with the objective of relieving suffering caused by disasters and armed conflict outside of New Zealand. New Zealand's humanitarian action is guided by our Humanitarian Action Policy (2019).<sup>42</sup> The policy is built on the principle that action should be taken to prevent and alleviate human suffering, which is rooted in the rights and protections enshrined in IHL, international human rights law and refugee law. New Zealand adopts a partnership approach to humanitarian action. This includes a 'whole of Government' approach for Pacific disaster responses and working closely with the United Nations, the International Red Cross and Red Crescent Movement, non-government organisations, the private sector, and other donors. The Pacific is the primary focus of New Zealand's humanitarian and disaster management efforts.
41. MFAT's International Security and Disarmament Division advises ministers on arms control and disarmament policy. The division implements and advocates for disarmament policy through our posts, especially in Geneva, Vienna, The Hague, and New York, as well as at home. It also ensures New Zealand's obligations under international treaties and arms control regimes are met. MFAT also coordinates the Public Advisory Committee on Disarmament and Arms Control (PACDAC) which advises the government on disarmament issues.<sup>43</sup>

## CROWN LAW

42. The Attorney-General and Solicitor-General represent the Crown's interests in the Courts. The Attorney-General is the Government's senior Law Officer of the Crown and a member of Cabinet. The Attorney-General advises the Government on the administration of the law.
43. Subject only to the Attorney-General, the Solicitor-General is the Government's Chief Legal Adviser and advocate in the Courts. The Solicitor-General advises the Government on constitutional issues and appears as Senior Counsel for Government interests in litigation.<sup>44</sup>

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<sup>42</sup> New Zealand Ministry of Foreign Affairs and Trade "Humanitarian Action" [Humanitarian action | New Zealand Ministry of Foreign Affairs and Trade \(mfat.govt.nz\)](#)

<sup>43</sup> New Zealand Ministry of Foreign Affairs and Trade "Disarmament" [Disarmament | New Zealand Ministry of Foreign Affairs and Trade \(mfat.govt.nz\)](#)

<sup>44</sup> Including in relation to Mutual Legal Assistance, extradition and cases involving IHL.

## Institutions

### NEW ZEALAND RED CROSS

44. New Zealand Red Cross has been providing humanitarian assistance<sup>45</sup> in New Zealand and around the world since its establishment in 1915. The Organisation was formally recognised by the New Zealand Government in 1932 making it one of 191 National Red Cross Societies.
45. New Zealand Red Cross disseminates basic awareness of the Geneva Conventions and their Additional Protocols through a range of activities every year, from the formal secondary and tertiary education sectors to informal public groups and social media platforms. For example, through the organisation of:
  - 45.1. An IHL Moot Competition every year open to the six law schools in New Zealand;
  - 45.2. An IHL Volunteer programme to provide opportunities for talented university students and early career lawyers to engage in humanitarian law issues;
  - 45.3. Guest lectures on IHL and related topics to universities, and public events, to lifelong learning organisations like the University of the Third Age;
  - 45.4. Support and educational resources for secondary schools to engage with IHL topics;
  - 45.5. New approaches to raise awareness of IHL related topics on social media platforms.
46. New Zealand Red Cross experiments with new ways to do outreach to young humanitarian leaders, both in New Zealand and the Pacific, occasionally involving New Zealand parliamentarians on IHL issues. For example, in 2019, New Zealand Red Cross ran a competition to identify emerging leaders around New Zealand and in the Pacific.<sup>46</sup>
47. New Zealand Red Cross provides legal advice to the Government (upon request) on topics that relate to international humanitarian law including its detention policy, reducing sexual and gender-based violence, women peace and security issues, arms control and disarmament. New Zealand Red Cross also provides support to the Secretariat for the New Zealand National Committee on International Humanitarian Law and facilitates communication between the Committee's members.

### NEW ZEALAND NATIONAL COMMITTEE ON INTERNATIONAL HUMANITARIAN LAW

48. In 1980 the Minister of Foreign Affairs, with the concurrence of the Ministers of Justice, Defence and Education and following consultation with the New Zealand Red Cross Society established the New Zealand National Committee for the Implementation of International Humanitarian Law, a ministerial advisory committee with the purpose of disseminating, promoting, and implementing IHL at the national level as well as advising, on request, member entities on any question or issue related to IHL domestically or globally.

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<sup>45</sup> The New Zealand Red Cross's humanitarian assistance includes emergency relief support - both domestically and internationally, disaster risk management, first aid courses and education, community programmes, resettlement support for former refugees and assistance to restore family links when family members are separated during conflicts and disasters.

<sup>46</sup> Individuals were invited to attend a three-day workshop on emerging humanitarian issues in Wellington. During the workshop, New Zealand Red Cross organised a parliamentary event, hosted by then Prime Minister Jacinda Ardern, to mark the 70th anniversary of the Geneva Conventions in 2019.

49. The Committee has a broad mandate relating to the encouragement and co-ordination of the programmes of relevant New Zealand bodies and agencies for disseminating international humanitarian law.<sup>47</sup>
50. The Committee meets at minimum two times a year. Permanent membership is comprised of representatives from the New Zealand Government and experts of New Zealand's academic community and from NZRC.<sup>48</sup> Additional members may be temporarily co-opted to assist with specialist areas relating to IHL such as judges or established members of civil society such as NGO representatives. The Committee may co-opt, observers to attend sessions, often this includes representatives of the ICRC.

## EDUCATION PROVIDERS

51. IHL is not a mandatory prescribed topic for schools in New Zealand. Instead, schools design a local curriculum to enable students to identify content and context meaningful to them and their communities. New Zealand's histories curriculum provides opportunities for students to learn about New Zealand's experience with humanitarian principles in the context of specific New Zealand wars. Gate Pā (Pukehinahina) is an example (see page 8).
52. Tertiary education institutions provide opportunities for undergraduate and post-graduate students to study IHL, offering courses to learn about IHL or related issues such as international criminal law, refugee law and humanitarian action. Postgraduate students, including PhD candidates, also work on research projects related to IHL. Students are supported in their involvement in student competitions related to IHL, in particular the National and Asia-Pacific regional IHL moot organised by the Red Cross Red Crescent Movement, the Nuremburg moot court and (depending on the topic each year) the international Jessup moot competition.
53. Dissemination of IHL also occurs through the scholarship of academics, and where relevant their students. This occurs through their research (e.g. publications, speaking engagements) and their engagement with government, civil society and industry, including with media.

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<sup>47</sup> The Committee's mandate is:

- 1.1. To advise the Minister of Foreign Affairs and Trade on the ways in which the New Zealand Government may best meet its responsibilities for the dissemination of IHL under the 1949 Geneva Conventions; Additional Protocols, and other relevant instruments;
- 1.2. To encourage and coordinate the planning and implementation of dissemination programmes by other interested bodies, in particular New Zealand Red Cross, and to offer advice on such programmes where appropriate;
- 1.3. To encourage the dissemination of IHL not only through the Government and the New Zealand Red Cross, but also through channels such as the schools and universities, the medical profession, the legal profession, faith-based organisations, and the public at large;
- 1.4. To review from time to time the content and adequacy of dissemination and report accordingly to the Minister of Foreign Affairs and Trade;
- 1.5. Where appropriate, to consider and comment on the advisability of New Zealand becoming party to other IHL treaties and the measures needed to achieve that objective.

<sup>48</sup> From the New Zealand Government the committee's permanent membership comprises: Ministry of Foreign Affairs and Trade, Ministry of Defence, Ministry of Justice, New Zealand Police, the Human Rights Commission, Ministry of Education. Experts from the New Zealand academic community including scholars co-opted by the committee from the University of Auckland, Victoria University of Wellington, University of Canterbury, University of Otago, Auckland University of Technology, Massey University.





### **III. PROTECTIONS UNDER INTERNATIONAL HUMANITARIAN LAW**

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## The Principle of Distinction

54. IHL clearly defines the persons and objects that must be protected in times of armed conflict. IHL prohibits intentionally launching attacks or reprisals against protected persons and objects which enjoy protection against attacks because of their civilian status. This is known as the principle of distinction. It allows only attacks on people and objects that constitute a military objective. This is a central notion under IHL.
55. In international armed conflict, all persons who are neither members of the armed forces of a party to the conflict nor participants in a *levée en masse* are civilians. In non-international armed conflict, all civilians who are not taking a direct part in hostilities are protected. They are entitled to protection against attack unless and for such time as they take a direct part in hostilities.<sup>49</sup>

## Specific Issues and Regimes

### PROTECTIONS FOR MEDICAL AND RELIGIOUS PERSONNEL AND JOURNALISTS

56. Under IHL, medical personnel, units, and transports exclusively assigned to medical duties must be respected and protected due to their role in treating the wounded and sick.<sup>50</sup> NZDF recognises, and IHL provides, that medical and religious personnel attached to their forces have non-combatant status. This status is only lost for so long as such personnel take a direct part in hostilities.
57. Although not prisoners of war, medical and religious personnel are entitled to all the protections afforded to prisoners of war when captured or apprehended.<sup>51</sup> Medical personnel enjoy additional protection against questioning and cannot be questioned about their patients.<sup>52</sup>
58. Despite the possible dangers, New Zealand medical personnel have offered their services to those affected by armed conflict around the world. More than 600 New Zealand nurses served overseas during the First World War. New Zealand had two hospital vessels during the First World War, the *Maheno* and the *Marama*, which were tasked with rescue and care for wounded soldiers.<sup>53</sup>
59. Journalists, including the specific category of war correspondents (journalists accredited to the armed forces of a party to armed conflict), play a dangerous and vital role in reporting on war. Nevertheless, protections granted to journalists under IHL do not substantially alter the status, rights, or obligations journalists otherwise enjoy as civilians.<sup>54</sup> However, war correspondents are entitled to prisoner of war status if captured.<sup>55</sup>

### PROTECTIONS FOR CAPTURED PERSONS

60. New Zealand has an obligation to take necessary precautions to treat captured persons (both combatants and civilians) humanely and in accordance with specific protections provided by their

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<sup>49</sup> Diakonia International Humanitarian Law Centre “THE PRINCIPLE OF DISTINCTION” at [The principle of distinction - Diakonia International Humanitarian Law Centre](#).

<sup>50</sup> Convention (IV), above n 2, at art 20; Protocol I, above n 4, at art 15 and 16.

<sup>51</sup> New Zealand Defence Force *Manual of Armed Forces Law: Law of Armed Conflict*, above n 16, at [11.5.11].

<sup>52</sup> At [11.5.9].

<sup>53</sup> Marnie Lloyd, Marnie, Kevin Riordan and Vincent O’Malley *Wars, Laws & Humanity – New Zealand’s Engagement with IHL* (NZ Red Cross, 2015). Open Access Te Herenga Waka-Victoria University of Wellington. Report. <https://doi.org/10.25455/wgtn.16834444.v1>. NZDF recognises, and IHL provides, that medical and religious personnel attached to their forces (such as the above) have non-combatant status.

<sup>54</sup> New Zealand Defence Force *Manual of Armed Forces Law: Law of Armed Conflict*, above n 16, at [14.7.1]; and Protocol I, above n 4, art 79.

<sup>55</sup> Convention (I) above n 2, at art 13(4); Convention (III), above n 2, art 4(4).

status.<sup>56</sup> The Geneva Conventions Act directly replicates the obligations contained in the four Geneva Conventions of 1949 and Additional Protocols by replicating those documents in Schedules in the Act.

61. The NZDF's Law of Armed Conflict Manual sets out the appropriate treatment of persons deprived of their freedom, prisoners of war, retained personnel, internees, and detainees.<sup>57</sup> During international armed conflict, the determination of a person's status occurs upon capture or apprehension.<sup>58</sup> If the legal status of the person deprived of liberty is unclear, that person is given the protections of a prisoner of war until a tribunal determines their status.<sup>59</sup>
62. New Zealand's Detention Policy Framework sets out minimum standards that government personnel are expected to apply when deployed offshore to ensure the proper and humane treatment of detained people. The framework applies where New Zealand is a detaining authority or where New Zealand personnel are 'directly and substantially' involved in a Detention Operation. The framework sets out protective safeguards and policy requirements underpinned by key legal obligations, including IHL and international human rights law. It outlines procedures and risk mitigation measures for relevant agencies to follow before, after, and during deployment of their personnel overseas.<sup>60</sup>

## PROTECTIVE EMBLEMS

63. To ensure that the wounded, sick and shipwrecked can be cared for during war, medical personnel, facilities, units and transports – whether military or civilian – also need to be protected from the fighting and allowed to get on with their life-saving work.
64. New Zealand recognises the Red Cross, Red Crescent, and Red Crystal as “distinctive emblems” – most commonly displayed on badges, signs and flags signalling protection under IHL.<sup>61</sup> It is a war crime to direct attacks against objects or personnel using the Red Cross, Red Crescent or Red Crystal (as the distinctive emblems of the Geneva Conventions) in accordance with international law or to make improper use of the distinctive emblems resulting in death or serious injury. Distinctive or protective emblems must be displayed on flags, vehicles and equipment by those personnel authorised to do so and entitled to their protection under IHL.<sup>62</sup> Failure to use the emblem does not, of itself, render an object liable to attack.<sup>63</sup> NZDF medical and religious personnel are required to display the Red Cross on their left arm while on duty, unless this would unreasonably endanger themselves or their patients.
65. Domestic law provides mechanisms for the prevention of abuse of Red Cross and other emblems.<sup>64</sup> Any person who contravenes the protections provided in the Geneva Conventions Act 1958 is guilty of an offence and liable on conviction to a fine not exceeding \$10,000.<sup>65</sup> Defence

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<sup>56</sup> Geneva Conventions Act, above n 12.

<sup>57</sup> New Zealand Defence Force “Persons Deprived of their Liberty, Prisoners of War, Retained Personnel, Internees and Detainees” in *Manual of Armed Forces Law: Law of Armed Conflict*, above n 16, at [12].

<sup>58</sup> For example, the capture of a uniformed member of the enemy armed forces will automatically be entitled to prisoner of war status or retained personnel status.

<sup>59</sup> Convention (III), above n 2, art 5. Relevant circumstances include: the nature of the capture or apprehension; the nature of the person's involvement in hostilities; and whether the person was carrying weapons, or wearing uniform or a distinctive emblem.

<sup>60</sup> Ministry of Foreign Affairs and Trade “New Zealand Policy Framework for the Humane Treatment of Detainees in Offshore Deployments” (Ministry Statement, 6 December 2022).

<sup>61</sup> National Red Cross and Red Crescent Societies are also allowed to use the emblems to identify themselves as part of the International Red Cross and Red Crescent Movement; this is known as the ‘indicative use’.

<sup>62</sup> Defence Force *Manual of Armed Forces Law: Law of Armed Conflict*, above n 16, at [11.8.2].

<sup>63</sup> At [11.8.3].

<sup>64</sup> This includes the emblems and names of organisations such as Médecins Sans Frontières, Oxfam, Amnesty International, Save the Children and other well-known symbols like the Red Star of David.

<sup>65</sup> Geneva Conventions Act, above n 12, s8.



Legal Services are responsible for reviewing applications to use symbols or logos that might be mistaken as distinctive emblems.

66. New Zealand Red Cross also upholds the emblem rules and procedures through adopting its own internal regulations on the use of the emblem.<sup>66</sup> New Zealand Red Cross plays a role in raising awareness of appropriate use of the emblem. New Zealand Red Cross raises awareness of the appropriate use of the emblem by educating and seeking the cooperation of organisations which may be in violation of the law. New Zealand Red Cross also maintains communication with Defence Legal Services and New Zealand Police about long standing and persistent misuse issues.<sup>67</sup>

## PROTECTIONS FOR WOMEN AND GIRLS

67. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and sexual violence are war crimes under the Rome Statute.<sup>68</sup> The NZDF's Law of Armed Conflict Manual expressly prohibits sexual violence and sexual exploitation. Members of the NZDF are to ensure that civilians are not subjected to rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence.<sup>69</sup>
68. New Zealand Defence Force provides Women, Peace and Security (WPS) training to all personnel. This training covers the background to United Nations Security Council Resolution 1325; and the New Zealand National Action Plan on Women, Peace and Security 2015 – 2019.<sup>70</sup> Despite its expiration, the approach and actions set out in the National Action Plan continue to be implemented.

## PROTECTIONS FOR CULTURAL PROPERTY

69. There is an obligation to respect and avoid foreseeable damage to cultural property, which includes important cultural heritage as well as the buildings in which it is held. The Hague Convention on the Protection of Cultural Property imposes legally binding obligations on states to respect and avoid foreseeable damage to cultural property. Cultural property that is not a military objective, whatever its value, is never to be the target of deliberate attack.<sup>71</sup> New Zealand implements this obligation in domestic legislation through the Cultural Property (Protection in Armed Conflict) Act 2012. This Act makes acts against cultural property, such as vandalism or attacks during times of armed conflict, an offence. It also makes the removal of cultural property from occupied territory and dealing in such property a criminal offence.

## PROTECTIONS FOR SCHOOLS

70. In 2015, New Zealand endorsed the Safe Schools Declaration which provides a commitment to the protection of students, teachers, and schools during times of armed conflict.<sup>72</sup> Part of this commitment is implementation of the guidelines for protecting schools and universities from

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<sup>66</sup> For more information please visit: [The Red Cross emblems | New Zealand Red Cross](#).

<sup>67</sup> Members of the public are encouraged to email the New Zealand Red Cross at [emblem@redcross.org.nz](mailto:emblem@redcross.org.nz).

<sup>68</sup> Rome Statute, above n 24, at s 8(2) (b) (xxii) 1–6.

<sup>69</sup> New Zealand Defence Force *Manual of Armed Forces Law: Law of Armed Conflict* (DM69, 2<sup>nd</sup> ed, 2017), vol 4, at [13.3.11].

<sup>70</sup> New Zealand National Action Plan for the Implementation of United Nations Security Council Resolutions, including 1325, on Women, Peace & Security 2015–2019, access at [Women, Peace and Security | New Zealand Ministry of Foreign Affairs and Trade \(mfat.govt.nz\)](#)

<sup>71</sup> New Zealand Defence Force in *Manual of Armed Forces Law Manual of Armed Forces Law: Law of Armed Conflict*, above n 16, at [14.8.9].

<sup>72</sup> Ministry Statement Delivered by H.E. Mr. Justin Fepulea'i, 20 July 2022 to United Nations Security Council: Open Debate on Children and Armed Conflict.

military use during armed conflict.<sup>73</sup> New Zealand recognises the right to education as protected in the International Covenant on Social, Cultural and Economic Rights 1948.<sup>74</sup>

## PROTECTIONS FOR THE ENVIRONMENT

71. New Zealand is obliged under IHL not to use methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.<sup>75</sup> New Zealand is also a party to the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques that prohibits the hostile use of environment-altering techniques that have “widespread, long-lasting, or severe effects”. On 1 March 2024 New Zealand supported the adoption of Resolution 6/12 “Environmental assistance and recovery in areas affected by armed conflict” in the United Nations Environment Assembly.<sup>76</sup> While non-binding in nature, the resolution contributes to building international norms in this area.
72. NZDF commanders are to, wherever feasible, avoid conducting combat operations in areas containing rare or fragile ecosystems, or habitats of depleted, endangered, or threatened species, or other forms of wildlife. In accordance with the Law of Armed Conflict Manual NZDF personnel are not to attack any part of the natural environment that is not a military objective or required by military necessity.<sup>77</sup>

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<sup>73</sup> Norwegian Ministry of Foreign Affairs “Declaration on Safe Schools Protecting Education from Attack” (Conference Report of the Oslo Conference on Safe Schools, 29 May 2015).

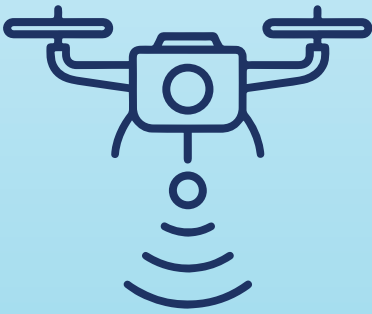
<sup>74</sup> *International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights*, GA Res 2200A, (1966), art 13.

<sup>75</sup> Protocol I, above n 4, art 35(3) and 55.

<sup>76</sup> Resolution 6/12 “Environmental assistance and recovery in areas affected by armed conflict”, adopted by the United Nations Environment Assembly on 1 March 2024. United Nations Environment Assembly of the United Nations Environment Programme, Sixth session, Nairobi, 26 February–1 March 2024. [Link here](#).

<sup>77</sup> New Zealand Defence Force *Manual of Armed Forces Law: Law of Armed*, above n 16, at chapter 14.





## **IV. MEANS AND METHODS OF WARFARE**

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73. New Zealand is a party to all major international weapons treaties and has been an active participant in the drafting processes leading to several international weapons treaties such as the Anti-Personnel Mine Ban Convention, the Cluster Munitions Convention and the Treaty on the Prohibition of Nuclear Weapons. It is also a party to the Arms Trade Treaty. For a comprehensive review of weapons prohibited in New Zealand see *Annex One: Applicable IHL Treaties and Implementing Legislation*.<sup>78</sup>
74. New Zealand's engagement on disarmament, arms control and non-proliferation is guided by its public-facing Disarmament and Arms Control Strategy 2024-2026. Defending IHL, promoting the protection of civilians, and promoting nuclear disarmament are key priorities in the Strategy.<sup>79</sup>

## Conventional Weapons Treaties

### Convention on Certain Conventional Weapons

75. New Zealand is party to all Protocols under the United Nations Convention on Certain Conventional Weapons (CCW).<sup>80</sup> Weapons prohibited by the CCW, such as non-detectable fragments and laser blinding weapons, are now enumerated in the Rome Statute<sup>81</sup> and are criminalised in New Zealand through the International Crimes and International Criminal Court Act. New Zealand also implements the CCW and its Protocols through NZDF's Law of Armed Conflict Manual which converts New Zealand's domestic and international legal obligations into military orders.

### Cluster Munitions Convention

76. New Zealand is and has been a strong proponent of international efforts to prohibit cluster munitions since the start of negotiations in 2007. New Zealand was one of the 'core group' countries and played a key role in facilitating the Oslo Process, which included hosting one of the international conferences in Wellington. The process led to the adoption of the Convention on Cluster Munitions (CCM).
77. From 2011 to 2023 New Zealand served as the CCM's Coordinator for National Implementation Measures, supporting efforts to assist states with domestic implementation of the Convention. New Zealand produced model legislation prohibiting the possession, trade and facilitation of trade (acting as a transit for transportation) of cluster munitions. New Zealand does not hold stocks of, possess or use cluster munitions.

### Anti-Personnel Mine Ban Treaty Convention

78. New Zealand is a strong supporter of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (also known as the Mine Ban Treaty, Anti-Personnel Mine Ban Convention or Ottawa Convention). New Zealand does not produce or trade in anti-personnel mines. While maintaining compliance with the Convention, NZDF uses a small number of inert mines for training personnel.
79. New Zealand supports programmes that promote anti-personnel mine and unexploded ordnance clearance, risk education and victim assistance. New Zealand currently supports programmes in

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<sup>78</sup> For a more general and comprehensive list of all IHL weapons treaties, see Annex One: Applicable IHL Treaties and Implementing Legislation.

<sup>79</sup> New Zealand Ministry of Foreign Affairs and Trade "Disarmament", above n 44.

<sup>80</sup> Above n 4.

<sup>81</sup> Rome Statute, above n 24, at art 8(2)(e)(xvi), art 8(2)(e) (xvii), art 8(2)(e) (xviii)8(2)(e)(xvi), art 8(2)(e) (xvii), art 8(2)(e) (xviii).

Colombia, Lao PDR, Cambodia, Iraq and Ukraine. NZDF personnel have taken part in anti-personnel mine clearing activity in Afghanistan, Iraq, Kosovo, Laos, Lebanon, Cambodia and Mozambique. In addition, New Zealand provides support to the United Nations Mine Action Service and the ASEAN Regional Mine Action Centre.

### **Arms Trade Treaty**

80. The Arms Trade Treaty (ATT) entered into force in December 2014. During the negotiations, New Zealand, together with Mexico, Nigeria, Norway and Trinidad and Tobago, worked closely with civil society to advocate for a robust treaty. New Zealand served as Chair of the ATT's Voluntary Trust Fund from 2019 to 2022 and drafted model legislation to support implementation of the ATT.

### **Universalisation of Conventional Weapons Treaties**

81. In February 2018 MFAT hosted a conference for Pacific Countries to discuss conventional weapons treaties, including the Cluster Munitions Convention, Anti-Personnel Mine Ban Convention and Arms Trade Treaty. The meeting covered the principles of the 2004 Auckland Declaration<sup>82</sup> and summarised the challenges for adherence to and implementation of the three Conventions.

82. Shortly afterwards, as part of a Pacific implementation project, a New Zealand expert visited eight Pacific countries offering practical, targeted advice on drafting domestic legislation and administrative procedures. The project helped contribute to a total of 14 ratifications, accessions, and obligatory reports of the three Conventions as well as treaty actions on other security-related treaties such as the Treaty on the Prohibition of Nuclear Weapons.

## **Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas (EWIPA)**

83. The Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons Use in Populated Areas (EWIPA) was adopted in November 2022, and has now been endorsed by 86 states including New Zealand. Recognising that contemporary warfare often takes place in cities and towns, instead of battlefields away from populated centres endangering civilian populations, EWIPA is a political undertaking to enhance the protection of civilians by strengthening cooperation and information sharing. New Zealand is a strong supporter of EWIPA and continues to encourage other states to endorse the Declaration.

## **Chemical Weapons Convention**

84. The Chemical Weapons Convention (CWC) bans the production, stockpiling and use of chemical weapons and calls for the destruction of all existing chemical weapons. The convention, which came into force in 1997, has almost universal membership. There are 193 states party to the CWC; Israel has signed but is yet to ratify, and three others have yet to sign (North Korea, Egypt and South Sudan). Nevertheless, the CWC has been very successful in that 100% of declared stockpiles of chemical weapons have now been destroyed.

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<sup>82</sup> The Auckland Declaration, 6 April 2004, Pacific Islands Forum Special Leaders' Retreat.

85. Under the CWC all members must: destroy their chemical weapons; declare any sites that have the potential to be used to make chemical weapons; set up systems to verify that chemical production facilities are not being used to produce chemical weapons; allow inspections of chemical facilities; help others in the event chemicals weapons are used or threatened to be used. New Zealand gives effect to the CWC through the Chemical Weapons (Prohibition) Act 1996.
86. The CWC is managed and monitored by the Organisation for the Prohibition of Chemical Weapons (OPCW) based in the Hague. New Zealand engages actively in the work of the OPCW, particularly around preserving the international norm against chemical weapons use and supporting full CWC implementation, including in the Pacific. New Zealand strongly advocates for the CWC and encourages remaining countries to join.
87. New Zealand also belongs to the Australia Group, an informal grouping of countries created in 1985 that work together to ensure their exports don't contribute to the proliferation of chemical or biological weapons. Export controls, such as controlled goods lists and permit procedures, are coordinated between the 42 member countries to help ensure that material that could be used to produce weapons of mass destruction does not get into the wrong hands.

## **Treaty on the Prohibition of Nuclear Weapons**

88. The Treaty on the Prohibition of Nuclear Weapons (TPNW) is the first international treaty to establish a global prohibition on nuclear weapons. The Treaty prohibits the use and threat of use of nuclear weapons, as well as their development, testing, production, manufacture, acquisition, possession, stockpiling, transfer, and receipt. It also prohibits the provision of assistance, encouragement or inducement to engage in activities prohibited under the TPNW, and prohibits States Parties from allowing any stationing, installation or deployment of nuclear weapons on their territory. The TPNW requires Parties to prevent and suppress any of these activities from taking place by persons or on territory under their jurisdiction or control. The Treaty also contains provisions relating to victim assistance and environmental remediation in response to the impacts of nuclear weapons use, including testing.
89. The Treaty's preamble considers that any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of IHL.
90. New Zealand is a firm supporter of the TPNW and was among the first states to sign the Treaty. New Zealand implements its TPNW obligations through domestic laws and policy, primarily the New Zealand Nuclear Free Zone, Disarmament, and Arms Control Act. Within the Treaty body, New Zealand is a co-chair of the TPNW Informal Working Group on disarmament verification issues.

## **Procedures For Assessing New Weapons**

91. New Zealand is required to assess the legality of new weapons or means or methods of warfare.<sup>83</sup> As part of the assessment, New Zealand must determine whether employment would, in some or all circumstances, violate the rules of Additional Protocol I or other rules of international law. NZDF actively engages in information sharing initiatives with the Australian Defence Force to encourage good practice on weapons review.

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<sup>83</sup> Protocol I, above n 10, art 36.

92. NZDF must ensure that weapons and munitions developed, acquired or brought into service in New Zealand comply with IHL. The review must identify NZDF's obligations under Additional Protocol I and other relevant treaties and customary international law and consider the practice and legal assessments of other states. The results of all reviews are to be provided to the Chief of Defence Force as the ultimate decision maker in the process.<sup>84</sup>

## New Zealand's Export Controls regime

93. Exports of military, dual use and catch-all goods which may harm New Zealand's security or national interests or contribute to human rights abuse are controlled, as is the trade of certain chemicals.<sup>85</sup> New Zealand's Export Controls regime fulfils New Zealand's domestic and international obligations, commitments and policies in relation to controlling the export of these goods, as well as giving effect to our commitment to being a responsible exporter of such goods.

94. An assessment of an export requires New Zealand to consider, *inter alia*, consistency disarmament, arms control and non-proliferation obligations, commitments and policies including:<sup>86</sup>

94.1. New Zealand Nuclear Free Zone, Disarmament and Arms Control Act

94.2. Chemical Weapons (Prohibition) Act

94.3. Anti-Personnel Mines Prohibition Act

94.4. Cluster Munitions Prohibition Act

94.5. Arms Act

94.6. Arms Trade Treaty

94.7. Convention on Certain Conventional Weapons and its Protocols

94.8. The Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the use of Explosive Weapons in Populated Areas and other non Legally Binding Commitments.

94.9. Relevant policies will also be taken into account to ensure that the export would be consistent with Aotearoa New Zealand's broader approach to these issues.

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<sup>84</sup> New Zealand Defence Force *Manual of Armed Forces Law: Law of Armed Conflict*, above n 16, at [7.4.1].

<sup>85</sup> New Zealand Ministry of Foreign Affairs and Trade "Export Controls" [Export Controls | New Zealand Ministry of Foreign Affairs and Trade \(mfat.govt.nz\)](https://www.mfat.govt.nz/en/Export-Controls/).

<sup>86</sup> New Zealand Ministry of Foreign Affairs and Trade "Export Controls Assessment Criterion 1" [Assessment Criterion 1 | New Zealand Ministry of Foreign Affairs and Trade \(mfat.govt.nz\)](https://www.mfat.govt.nz/en/Export-Controls-Assessment-Criterion-1/).





# Annex One: Applicable IHL Treaties and Implementing Legislation.

Treaty	Signed	Ratified/Acceded	Domestic Implementing Legislation
<b>Core International Humanitarian Law treaties</b>			
<b>Convention on the Prevention and Punishment of the Crime of Genocide, 1948.</b>	25 November 1949	28 December 1978	International Crimes and International Criminal Court Act 2000
<b>Geneva Conventions I - IV, 1949</b>	11 February 1950	2 November 1959 (Geneva Convention I) and 2 May 1959 (Geneva Conventions II-IV)	Geneva Conventions Act, 1958
<b>Additional Protocol I of 1977</b>	27 November 1978	8 February 1988	Geneva Conventions Amendment Act 1987
<b>Additional Protocol II of 1977</b>	27 November 1978	8 February 1988	Geneva Conventions Amendment Act 1987
<b>Additional Protocol III of 2005</b>	16 June 2006	23 October 2013	Geneva Conventions (Third Protocol - Red Crystal Emblem) Amendment Act 2012
<b>Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954</b>	20 December 1954	24 July 2008	Cultural Property (Protection in Armed Conflict) Act 2012

<b>Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict, 1954</b>		17 October 2013	Cultural Property (Protection in Armed Conflict) Act 2012
<b>Second Hague Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1999</b>		23 October 2013	Cultural Property (Protection in Armed Conflict) Act 2012
<b>United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment</b>	26 June 1987	10 December 1989	Crimes of Torture Act 1989  (Crimes of Torture Amendment Act 2006)
<b>Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</b>	22 June 2006	14 March 2007	Crimes of Torture Act 1989  (Crimes of Torture Amendment Act 2006)
<b>International Convention for the Protection of all Persons from Enforced Disappearance</b>	20 December 2006		
<b>Rome Statue of the International Criminal Court, 1998</b>	7 October 1998	7 September 2000	International Crimes and International Criminal Court Act 2000
<b>Protected persons</b>			
<b>Convention on the Rights of the Child and its Optional Protocols</b>	20 November 1989	6 April 1993	
<b>Convention On The Safety Of United Nations And Associated Personnel and Optional Protocol To The Convention On The Safety Of United Nations And Associated Personnel</b>	9 December 1994	16 January 1999	Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980
<b>Protocol Relating to the Status of Refugees.</b>	31 January 1967	06 August 1973	Immigration Act 2009

## Methods and means of warfare: biological weapons, chemical weapons, conventional weapons and mercenaries

<b>Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972</b>	10 April 1972	13 January 1973	Customs and Excise Act 2018
<b>Convention on the Prohibition of Military or any Hostile use of Environmental Modification Techniques, 1976</b>		7 September 1984	Customs and Excise Act 2018
<b>Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed Excessively Injurious or to Have Indiscriminate Effects (Convention on Certain Conventional Weapons), 1980.</b>	10 April 1981	18 October 1993	Customs and Excise Act 2018
<b>Protocol I, II, III, IV, V to the 1980 Convention on Certain Conventional Weapons, 1980</b>	10 April 1981	1993 - 2007	Customs and Excise Act 2018 Anti-Personnel Mines Prohibition Act 1998
<b>International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989</b>		22 September 2004	Mercenary Activities (Prohibition) Act 2004
<b>Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993</b>	14 January 1993	15 August 1996	Chemical Weapons (Prohibition) Act 1996 Customs and Excise Act 2018

<b>Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997</b>	3 December 1997	27 January 1999	Anti-Personnel Mines Prohibition Act 1998
<b>Convention on Cluster Munitions, 2008</b>	3 December 2008	22 December 2009	Cluster Munitions Prohibition Act 2009 Customs and Excise Act 2018
<b>Arms Trade Treaty, 2013</b>	3 June 2013	2 September 2014	The Brokering (Weapons and Related Items) Controls Act 2018 Customs and Excise Act 2018
<b>Nuclear Weapons</b>			
<b>Treaty banning nuclear weapons test in the atmosphere, in outer space and underwater 1963 (PTBT)</b>	8 August 1963	10 October 1963	New Zealand Nuclear-Free Zone Disarmament and Arms Control Act 1987
<b>The Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies (the Outer Space Treaty)<sup>87</sup></b>	27 January 1967	1968	
<b>The Nuclear Non-Proliferation Treaty 1968</b>	1 July 1968	5 March 1970	New Zealand Nuclear-Free Zone Disarmament and Arms Control Act 1987

<sup>87</sup> The treaty specifically prohibits nuclear weapons in space.

<b>Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-bed and the Ocean floor and in the Subsoil Thereof 1971 (UNTC / Seabed Treaty)</b>	11 February 1971	24 February 1972	New Zealand Nuclear-Free Zone Disarmament and Arms Control Act 1987
<b>South Pacific Nuclear Free Zone Treaty 1985 (SPNZF / Treaty of Rarotonga)</b>	6 August 1985	11 December 1986	New Zealand Nuclear-Free Zone Disarmament and Arms Control Act 1987
<b>Comprehensive Nuclear Test Ban Treaty 1996</b>	27 September 1996	19 March 1999	Nuclear Test Ban Act 1999
<b>Treaty on the Prohibition of Nuclear Weapons, 2017</b>	20 September 2017	31 July 2018	The New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987  New Zealand <u>submitted a declaration</u> to the UN secretary general on 18 January 2021



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