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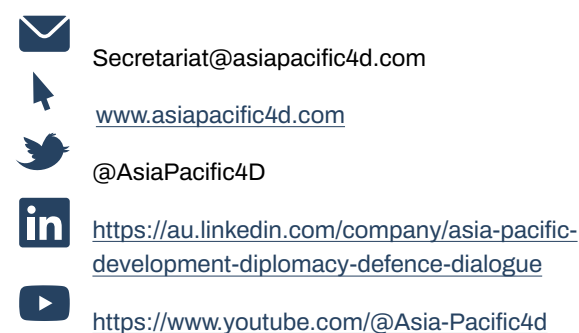
What does it look like for Australia to...

Promote Compliance with International Humanitarian Law and Protection of Civilians

SUPPORTED BY



Australian Government
Australian Civil-Military Centre



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Executive Summary

The world is presently suffering the highest number of conflicts since the Second World War, with one eighth of the world's population exposed to conflict in the twelve months to December 2024. The number of internally displaced people and refugees and humanitarian worker deaths are at record highs; civilian casualties and damage to the infrastructure communities rely on are a significant problem when explosive weapons are used in densely populated areas.

These grim figures underscore that international humanitarian law (IHL) designed to balance military necessity against civilian harm, is under increasing strain. The multilateral architecture meant to uphold these rules and norms is itself riven by geopolitical tensions, further compounding the challenge. UN Secretary-General António Guterres says the world has entered an age of impunity.

This paper surveys Australia's historical involvement in IHL and Protection of Civilians (POC) – as both an early-adopter and active developer – and outlines why and how upholding and strengthening these frameworks is in Australia's national interest. Drawing on consultations with more than 70 humanitarian and international law experts and practitioners, it diagnoses the issues at the heart of contemporary challenges, and outlines areas that Australian policymakers and practitioners can focus on to promote compliance with international humanitarian law and protection of civilians.

International humanitarian law (IHL) is the set of rules that seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not, or are no longer, directly or actively participating in hostilities, and imposes limits on the means and methods of warfare. IHL is also known as “the law of war” or “the law of armed conflict.”¹

Protection of civilians (POC) includes all activities aimed at ensuring full respect for the rights of civilians in accordance with the law, including human rights law, international humanitarian law, international criminal law and international refugee law. It comprises activities, including the use of force, undertaken for the protection for civilians.²

International protection is a term which covers a broad range of activities which have at their centre the rights of people – of individuals, groups and communities – and action to promote these rights, foster their realisation, and redress their breach, all within a framework of law, solidarity and burden and responsibility sharing.

- 1 International Committee of the Red Cross (ICRC), What is IHL?, March 2022: https://www.icrc.org/sites/default/files/document/file_list/what_is_ihl.pdf
- 2 Australian Civil-Military Centre, Australian Guidelines for the Protection of Civilians, Protection of Civilians, December 2015: https://www.acmc.gov.au/sites/default/files/2018-08/Australian_Guidelines_for_the_Protection_of_Civilians.pdf

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“International humanitarian law... provides for the protection of civilians, including the protection and respect of humanitarian personnel who assist and protect the victims of armed conflict, and notably provide the food, water and medical care that civilians in conflict zones need to survive. But respect for international humanitarian law is severely undermined, with consequences for current and future conflicts. Calls for compliance are not being heard.”

Joint statement towards a new declaration for the Protection of Humanitarian Personnel, September 2024³

“International humanitarian law is being defied in all corners of the globe. Accountability mechanisms are not being applied even-handedly despite the number of violations becoming more and more difficult to count. The rules and norms which keep frontline responders and civilians safe are losing effect. No matter how much humanitarian workers put measures in place to protect themselves and civilians, the structures keeping them safe are breaking down.”

Safer World For All, World Humanitarian Day Statement, August 2024⁴

“The humanitarian system is overwhelmed and under pressure to reach more people with fewer resources. Alongside this, there's insufficient attention on, and investment in, the political processes and solutions needed to address the drivers of the violence... Protecting civilians in this context must be a central goal of Australia's approach to foreign policy. The geopolitical landscape is tense and patterns of harm in armed conflict are changing, and therefore the threats to civilians and responders are changing too. Middle powers that want to preserve the rules-based order and protect civilians, like Australia, must evolve to meet these new challenges. Our previous reliance on international peacekeeping operations won't be sufficient.”

Amra Lee, Civilians in conflict need Australia's attention, and they need it now, June 2024⁵

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The Asia-Pacific Development Diplomacy & Defence Dialogue (AP4D) is an initiative that encourages integrated statecraft to maximise Australia's influence in a more difficult and complex world. As a platform for collaboration, AP4D brings together experts from the development, diplomacy and defence policy communities and combines the skills and experience of each to achieve new insights, develop new ideas and promote strategic collaboration around shared interests.

This paper is the culmination of three months of consultations with more than 70 experts from Australia and across the region.

The process commenced with a dialogue event in October 2024 and was led by a working group of humanitarian and international law experts and practitioners. AP4D also gathered perspectives from individual and small group consultations, including with members of the International Council of Voluntary Agencies and Australian Council for International Development Humanitarian Reference Group.

This paper is a synthesis of these contributions.

AP4D is grateful to those who have contributed to the development of this paper.

3 Department of Foreign Affairs and Trade (DFAT), Joint statement with Jordan, Switzerland, Indonesia, Sierra Leone, the United Kingdom, Japan, Brazil and Colombia towards a new declaration for the Protection of Humanitarian Personnel, September 2024: <https://www.foreignminister.gov.au/minister/penny-wong/media-release/joint-statement-towards-new-declaration-protection-humanitarian-personnel>

4 <https://acfid.asn.au/wp-content/uploads/2024/08/SWFA-Statement-18082024-merged-1-1.pdf>

5 Amra Lee, Civilians in conflict need Australia's attention, and they need it now, ANU Policy Brief, June 2024: <https://policybrief.anu.edu.au/civilians-in-conflict-need-australias-attention-and-they-need-it-now/>

What is the scale of the global problem?

The world is presently suffering the highest number of conflicts since the Second World War.⁶ According to the International Committee of the Red Cross (ICRC) there are currently around 120 armed conflicts globally,⁷ while Armed Conflict Location & Event Data estimates that one eighth of the world’s population were exposed to conflict in the twelve months to December 2024, with a 25% increase in political violence incidents during the same period.⁸ Conflicts are also becoming increasingly protracted; once peace is lost it is extremely difficult to regain.⁹

A perfect storm of overlapping crises means that several grim categories sit at all-time highs: more than 75 million people are internally displaced,¹⁰ almost 44 million are refugees,¹¹ and humanitarian workers are being killed in numbers never before recorded.¹² The World Food Programme estimates that almost 350 million people face acute hunger.¹³

More than 33,000 civilians were killed in armed conflicts during 2023,¹⁴ a 72 percent increase on the previous year. The proportion of women and children killed doubled and tripled, respectively.¹⁵ These numbers are likely much higher when taking into account conflict-induced corollaries such as hunger and lack of medical access.¹⁶ There are worrying trends both in the indiscriminate use of ordnance in dense population centres,¹⁷ and in the interpretation of military objectives to dehumanise civilians – targeting both non-combatants and civil infrastructure.¹⁸

Civilian harm goes beyond death and injury; it also includes sexual violence, the ongoing familial pain and suffering from losing loved ones, disappearance, disruptions to livelihood and education among many other aspects.¹⁹ Damage to essential infrastructure and services can result in both immediate and longer-term harm to communities.

United Nations Secretary-General António Guterres has described the current environment as an “age of impunity”,²⁰ and in a May 2024 report described the state of protection of civilians as “resoundingly grim.”²¹ The ICRC has consistently emphasised that the single most important challenge to international humanitarian law (IHL) is the lack of compliance by parties to armed conflict with the law.²²

“The current state of the protection of civilians is grave, requiring urgent and concerted efforts to strengthen compliance by warring parties with the law and ensure accountability for international crimes and other serious violations.”

*UN Secretary-General António Guterres, 2024*²³

For the most part, IHL is well-developed as a body of international law. Legal instruments and political machinery are already in place, such as the UN Security Council, General Assembly and the Human Rights Council, as well as some other mechanisms like the International Humanitarian Fact-Finding Commission.

Consultees identified enforcement of IHL as the key challenge, with a perception that some countries are not viewing their obligations as binding law. The International Criminal Court (ICC) can issue an arrest warrant for violators of IHL but cannot reach inside states to enforce it – as occurred with Russian President Vladimir Putin in 2023.²⁴ And in some situations where mechanisms to enforce IHL exist, some actors have adopted permissive interpretations that weaken its normative and protective force.²⁵ This is particularly pertinent in a post-9/11 era where states have been very quick to use the label of “terrorism” to subvert and circumvent IHL.

Lack of compliance and accountability is not only an issue for victims and survivors; it undermines trust in state institutions, the multilateral system and the international legal order. This intensifies the environment of impunity.

This impunity is further exacerbated by the current configuration of the UN Security Council which gives the five Permanent Members (P5)²⁶ power of veto, despite several of them being either in violation of IHL or holding it in suspicion. This creates considerable cover for other states to violate IHL with no expectation of being held accountable.

This global environment is inhibiting the international community from moving towards what the latest UN Secretary General’s Report of the Protection of Civilians in Armed Conflict advocates as the “full protection of civilians” by not only strengthening compliance and accountability, but augmenting this with “seeking to understand the complexity of civilian harm and identify effective legal,

6 Institute for Economics & Peace, Global Peace Index 2024: Measuring Peace in a Complex World, June 2024: <https://www.economicsandpeace.org/wp-content/uploads/2024/06/GPI-2024-web.pdf>

7 International Committee of the Red Cross (ICRC), International Humanitarian Law and the Challenges of Contemporary Armed Conflicts, September 2024: <https://rcrcconference.org/app/uploads/2024/10/34IC-IHL-Challenges-Report-EN.pdf>

8 Armed Conflict Location & Event Data, Global conflicts double over the past five years, December 2024: <https://acleddata.com/conflict-index/index-july-2024/>

9 Institute for Economics & Peace, Global Peace Index 2024: Measuring Peace in a Complex World, June 2024: <https://www.economicsandpeace.org/wp-content/uploads/2024/06/GPI-2024-web.pdf>

10 Internal Displacement Monitoring Centre, 2024 Global Report on Internal Displacement, April 2024: <https://www.internal-displacement.org/global-report/grid2024/>

11 United Nations High Commissioner for Refugees, Refugee Statistics: <https://www.unrefugees.org/refugee-facts/statistics/>

12 Aid Worker Security Database, Aid Worker Security Report, August 2024: https://humanitarianoutcomes.org/sites/default/files/publications/figures_at_a_glance_2024.pdf

13 World Food Programme, Global Hunger Crisis, 2024: <https://www.wfp.org/global-hunger-crisis>

14 <https://press.un.org/en/2024/sc15702.doc.htm>

15 United Nations Secretary-General, Protection of civilians in armed conflict, May 2024: <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2411029.pdf>

16 Due to a deterioration in rules of engagement, collecting information within conflict zones has become extremely difficult, see: Center for Civilians in Conflict, Civilian Protection Trends: <https://www.civilianprotectiontrends.org/index.html>

17 Human Rights Watch, Gaza: Israeli Strike Killing 106 Civilians an Apparent War Crime, April 2024: <https://www.hrw.org/news/2024/04/04/gaza-israeli-strike-killing-106-civilians-apparent-war-crime>

18 Amnesty International, Ukraine: Russian strikes amounting to war crimes continue to kill and injure children, November 2024: <https://www.amnesty.org/en/latest/news/2024/11/ukraine-russian-strikes-amounting-to-war-crimes-continue-to-kill-and-injure-children/> and ICRC, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Building a Culture of Compliance for IHL to Protect Humanity in Today’s and Future Conflicts, September 2024: <https://www.icrc.org/en/report/2024-icrc-report-ihl-challenges>

19 United Nations Secretary-General, Protection of civilians in armed conflict, May 2024: <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2411029.pdf>

20 <https://press.un.org/en/2024/ga12633.doc.htm>

21 United Nations Secretary-General, Protection of civilians in armed conflict, May 2024: <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2411029.pdf>

22 Cordula Droege, Championing IHL compliance in contemporary armed conflict: the 2024 ICRC Challenges Report, Humanitarian Law & Policy, October 2024: <https://blogs.icrc.org/law-and-policy/2024/10/09/championing-ihl-compliance-in-contemporary-armed-conflict-the-2024-icrc-challenges-report/>

23 United Nations Secretary-General, Protection of civilians in armed conflict, May 2024: <https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2411029.pdf>

24 Internatioanl Criminal Court, Situation Ukraine: ICC judges Issue Arrest Warrants for Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, March 2023, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>

25 “Over decades, expedient interpretations of IHL have undermined its protective force. Some States and armed groups have sought an increasingly expansive view of what is permissible”; Mirjana Spoljaric, A human life is a human life, speech on the 75th anniversary of the Geneva Conventions: <https://www.icrc.org/en/news-release/icrc-president-mirjana-spoljaric-human-life-is-human-life>

26 China, France, Russia, United Kingdom, and United States

policy and operational responses to address it.”²⁷

This report was an important development which stressed that while greater compliance is needed, both policy and operational improvements are required to improve the dire situation of civilians in conflict. The objective is to avoid a blame game over whether an action was in violation of international law – which can be counter-productive towards objectives – and focus instead implementing policy and practice that address “the complexity and cumulative nature of the full range of civilian harm.”²⁸

INTERNATIONAL COMMITTEE OF THE RED CROSS 2024 CHALLENGES REPORT²⁹

“IHL remains a uniquely powerful tool for mitigating the human cost of armed conflict... But if the recent past has proven that IHL is essential, it has also revealed the urgent need to reinforce it. In conflicts around the world, hospitals are left in ruins and ambulances are attacked. Medical personnel are killed while performing their duties. Civilians are intentionally targeted or casually disregarded as collateral damage. Fighters intermingle with civilians. Camps for the displaced are hit by air strikes. And journalists are dying in record numbers. The people and places that IHL is meant to protect are too often in the line of fire...

If parties continue to exert downward pressure on the protective requirements of IHL, and if they are content with simply skirting the limits of compliance, IHL will be turned on its head: it will become a justification for violence rather than a shield for humanity...

Should this trend continue, IHL's legitimacy will not survive in the eyes of governments, non-state armed groups, and, most importantly, of the people it is meant to protect. States must act to put an end to this downward spiral... The world needs a robust and protective law of armed conflict – one that can be relied upon to save life, rather than explain away death.”

27 United Nations Secretary-General, Protection of civilians in armed conflict, May 2024: <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/N2411029.pdf>

28 Ibid

29 ICRC, International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: Building a Culture of Compliance for IHL to Protect Humanity in Today's and Future Conflicts, September 2024: <https://www.icrc.org/en/report/2024-icrc-report-ihl-challenges>

REGIONAL PERSPECTIVES

This is a synthesis of consultations with members of the International Council of Voluntary Agencies from across the Indo-Pacific³⁰

Consultations identified pressing challenges in non-compliance with IHL, the targeting of civilians, indiscriminate violence and the destruction of civilian infrastructure including hospitals, schools and communication systems.

There was a perception that many perpetrators of IHL violations act with impunity due to weak enforcement mechanisms at both the national and international level. At the national level, there may be weak or absent legal frameworks and lack of political will to incorporate IHL into domestic legislation. Consultees considered there to be insufficient international mechanisms to hold violators accountable or enforce reparations for civilian harm. This can be exacerbated with the increasing prominence of non-state actors, including private military actors, who may not be fully aware or willing to comply with IHL norms.

In some instances, consultees considered that the protracted nature of contemporary conflicts has blurred the lines between civilians and combatants over time, eroding respect for IHL protection of civilian norms. Conflicts driven by ethnic, religious or ideological division often target civilians and utilise collective punishment based on identity. As conflicts continue without resolution, displacement crises worsen, leading to chronic vulnerability among affected populations. Consultees identified a compounding of crises, with an inter-connectedness of both global and regional crises.

Another pressing challenge identified by consultees is emerging forms of warfare such as cyber warfare,

which has the potential harm to civilians through targeting infrastructure such as power grids, hospitals and communication systems. The rise of autonomous weapons and artificial intelligence in warfare raised ethical concerns about accountability and distinguishing between civilians and combatants. There was concern that misinformation, disinformation and hate speech challenges can likewise spawn narratives that diminish trust in humanitarian organisations and lead to stigmatisation or targeting of civilian groups.³¹

Access and safety for humanitarian actors was also viewed as a pressing challenge. Consultees reported seeing increasingly restricted access to affected areas as well as targeted attacks on humanitarian workers. Blockades and sanctions limit the ability to deliver supplies, further worsening civilian suffering.

The weaponisation of essentials such as food, water, medicine and internet access were also seen as increasing. Siege tactics and destruction of agriculture systems and water supplies as weapons of war is exacerbating food insecurity and malnutrition among already vulnerable populations.

Consultees emphasised that the systematic use of rape and other forms of sexual and gender-based violence as weapons of war targeting women and girls and other vulnerable groups continue to be a challenge in times of conflict. This is made worse by survivors' lack of access to justice and medical/psychological support.

30 Internatioanl Council of Voluntary Agencies, <https://www.icvanetwork.org/about-icva/>

31 ICRC, Protecting Civilians Against Digital Threats During Armed Conflict: Recommendations to states, belligerents, tech companies, and humanitarian organizations, September 2023: <https://shop.icrc.org/protecting-civilians-against-digital-threats-during-armed-conflict-recommendations-to-states-belligerents-tech-companies-and-humanitarian-organizations-pdf-en.html>

Why is compliance in Australia’s interests?

Australia relies on and benefits from a robust system of international law, rules and norms to maintain stability and advance its interests. In this context, protection of civilians (POC) is an essential element of international humanitarian law (IHL) that enhances the prospect of conflict resolution, assists with reconciliation and advances the cause of enduring peace.

Consultees noted that there is a clear moral imperative for Australia to comply with international humanitarian law, whether or not it has always done so in the past.³² As a signatory to all major IHL treaties and obligations, Australia’s compliance is mandatory, yet it also complements Australia’s aims across its international engagement.

States are required to implement IHL domestically, ensuring their armed forces in particular are compliant, however what will be feasible among nations will differ. Implementation may also be impacted by contextual regional and international dynamics.

The current deadlocked permanent members of the United Nations Security Council are unlikely to consistently call for or enforce measures that can support greater respect for international law, IHL, and international human rights law. It is therefore imperative that middle powers like Australia step up and use their diplomatic influence to build cross regional alliances that can help demonstrate that international law and norms are universally beneficial.

Where conflict does arise, it matters that states and combatants fight in compliance with IHL. This includes adapting to modern forms of warfare, especially with regard to new technologies and methods such as drones, AI and cyber operations that raise novel humanitarian and legal challenges.³³ Modern warfare is also characterised by fragmentation and cross-border spillover that can make accountability and enforcement difficult and fosters impunity.³⁴

Australia’s reputation and credibility is essential if it wishes to hold others to account. The recent public airing of alleged violations of IHL and war crimes committed by Australian special forces in Afghanistan³⁵ impacts upon this credibility.³⁶ Historically, Australia has promoted a rules-based global order. This should be the impetus for Australia to not just do the bare minimum in adhering to IHL, but to be an exemplar in its commitments.

In the context of the protection of civilians, it is imperative that Australia’s soldiers, sailors and aviators model good behaviour. Australia’s own upholding of IHL, if it promotes compliance more broadly, is also about protecting members of the Australian Defence Force (ADF) when they deploy overseas. At a base level, respect for human rights and IHL is in Australia’s national interests because it ultimately protects Australians.

Notwithstanding how others behave, it is important to note that IHL obligations are absolute, regardless of other parties’ conduct. The obligation to respect and ensure respect for IHL does not depend on others’ respect for the law.

It is well recognised within military doctrine that adherence to IHL is central to military effectiveness, particularly in situations of asymmetric war or urban conflict where “hearts and minds” are sought.³⁷ This depends on forces operating, and being seen to be operating by local populations, with respect for IHL.

Australia’s experience in Afghanistan – providing support to a host government dealing with an organised armed insurgency – demonstrates how critical support from the local population can be. It is very difficult to be militarily effective in such circumstances without complying with IHL. Following from this engagement, the ADF developed the Defence Relationship Framework for Operations which establishes a set of principles for how Defence should engage with external organisations during its operations.³⁸

In an environment where conflicts are heavily politicised – like the situations in Gaza or Ukraine – there is a need for Australia to promote the impartial application of IHL, and to maintain a focus on the protection of civilians as a core part of the mission. If conflict is unavoidable, there is a role that IHL plays in trying to limit its consequences.

Further deterioration of compliance with IHL risks creating a vicious cycle, not just with respect to protection of civilians but the degradation of international rules and norms more broadly. If one state disregards IHL without consequence, that opens the door for others to behave likewise – particularly if adherence is perceived as an encumbrance. As this cycle perpetuates – with each violation compounding into a larger erosion of rules of engagement – the upholding of IHL and protection of civilians eventually becomes the exception rather than the rule.

International humanitarian law doesn’t exist in a vacuum; it is interconnected with other key pillars of the international system, so deterioration in one area cannot be hermetically

sealed from another. In that sense, compliance is not just a matter of Australia ‘obeying the law’ – it is a matter of self-interest: of upholding the international system of rules that has underpinned Australia’s security and prosperity.

Ultimately, for Australia’s ability to advance its interests in the international realm it needs a high degree of credibility and trust. As a middle power, it is unable to rely on raw power or economic might for influence. By maintaining a consistent approach to promoting the respect of IHL – regardless of which countries are in violation – Australia can promote its broader regional interests.

“It is strongly in Australia’s interests to seek to prevent the erosion of hard-won international rules and agreed norms of behaviour that promote global security.”

*2017 Foreign Policy White Paper*³⁹

“Continuing to provide humanitarian and development assistance in insecure environments fulfils Australia’s obligation to provide humanitarian assistance that adheres to the principles of humanity, neutrality, impartiality, and independence. It also promotes stability and security and will mitigate the risk of terrorism and growing global displacement crises, which is fundamental to Australia’s national security.”

*Australian Council for International Development, August 2022*⁴⁰

32 A comment was made in consultations that – from a First Nations perspective – it is impossible to overlook colonisation and the state-sanctioned systemic violence that Indigenous Australians have endured. While Australia is now a signatory to key treaties and acts to comply with IHL, this could be supported by post-conflict justice mechanisms at home as well overseas – in countries such as Cambodia, Timor-Leste, the former Yugoslavia, Rwanda, Sierra Leone, Solomon Islands, Bougainville and PNG. This would be positive in showing Australia practicing what it preaches.

33 ICRC, New technologies and warfare: <https://www.icrc.org/en/law-and-policy/new-technologies-and-warfare>

34 Natasha Hall, Breaking Point: Human Rights in a Multipolar World, Center for Strategic & International Studies, November 2023: <https://www.csis.org/analysis/breaking-point-human-rights-multipolar-world>

35 Shannon Torrens, War crimes in Afghanistan: the Brereton Report and the Office of the Special Investigator, June 2022: https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Research/Briefing_Book_Articles/47th_Parliament/BreretonReport

36 Riyaz ul Khaliq, Australia’s credibility, reputation at stake in Afghan war crimes case against ex-soldier, Anadolu Ajansı, June 2023: <https://www.aa.com.tr/en/asia-pacific/australia-s-credibility-reputation-at-stake-in-afghan-war-crimes-case-against-ex-soldier-/2915853>

37 Andrew Bell, Can IHL training influence military conduct in war?, Humanitarian Law & Policy, May 2024: <https://blogs.icrc.org/law-and-policy/2024/05/07/can-ihl-training-influence-military-conduct-in-war/>

38 Defence Relationship Framework for Operations, Australian Department of Defence, <https://acmc.gov.au/defence-relationship-framework-operations>

39 DFAT, 2017 Foreign Policy White Paper, November 2017: <https://www.dfat.gov.au/sites/default/files/2017-foreign-policy-white-paper.pdf>

40 Australian Council for International Development, Policy Brief: Humanitarian Action for Those in Greatest Need, August 2022: <https://acfid.asn.au/wp-content/uploads/2022/08/Election-Policy-Brief-Humanitarian-Action.pdf>

“Australia subscribes to, and holds itself out as adhering to, the Law of Armed Conflict, and International Humanitarian Law. When our enemies fail to so adhere, we hold them to account by such standards. In order to maintain our moral integrity and authority as a nation, which in turn gives us international credibility, strategic influence, and sustains our operational and tactical combat power, we must apply at least the same standards to our own military personnel.”

Brereton Report, November 2020⁴¹

“The Universal Declaration of Human Rights is grounded in a simple fact: human rights apply equally to all people, no matter who you happen to be or where you happen to be born. The principles that underpin the declaration – universality, indivisibility, non-discrimination – are relevant and contemporary. They have a practical value for sustainable economic and social development, for peace and security. And for that reason, they remain central in Australia’s international engagement.”

*Assistant Minister for Foreign Affairs
Tim Watts, February 2024⁴²*

“[B]eing a good international citizen... is not just a matter of responding to a perceived moral imperative... Being and being seen to be a decent country in all these ways, is something that very much redounds to our national interest in a very hardheaded and very practical way. And plays into the other more familiar duo of security and economic interests.”

Professor the Hon Gareth Evans AC, March 2022⁴³

“Our investments will strengthen the multilateral humanitarian system to take collective action, ensuring our support is coordinated and guided by the humanitarian principles of humanity, impartiality, independence, and neutrality, and by International Humanitarian Law. We recognise and respect the ability of the United Nations, the International Red Cross and Red Crescent Movements, and civil society partners to ‘stay and deliver’ in areas affected by conflict, enabling humanitarian assistance to reach people in vulnerable situations.”

Australia’s International Development Policy, August 2023⁴⁴

WHY COMPLIANCE IS IMPORTANT AND IN AUSTRALIA’S INTEREST – HUMANITARIAN PERSPECTIVES

Quotes from consultations held with 13 expert members of the Australian Council for International Development Humanitarian Reference Group.⁴⁵

“It’s about credibility and moral standing. We need to not only support international humanitarian law and protection of civilians but be seen to be advocating for it.”

“Australia needs to play its role and stand up for human rights and justice globally.”

“It’s a question of moral integrity and coherence of approach. What type of country do we want to be known as? It’s important we live up to what we say our national identity is.”

“Having moral integrity on issues of international law doesn’t make you weak. Compassion and strategic diplomacy aren’t mutually exclusive.”

“As political conflicts grow across world and calls for IHL, POC and protection of vulnerable communities increase, there is impetus to join hands with other actors when assistance is needed.”

“We’re talking about adherence to a system that enshrines human rights and justice. This isn’t something to choose whether we’re interested and invested or not – its mandatory, not optional.”

41 Inspector-General of the Australian Defence Force, Afghanistan Inquiry Report, November 2020: <https://www.defence.gov.au/sites/default/files/2021-10/IGADF-Afghanistan-Inquiry-Public-Release-Version.pdf>

42 Assistant Minister for Foreign Affairs Tim Watts, High level statement to the 55th Session of the Human Rights Council, February 2024: <https://ministers.dfat.gov.au/minister/tim-watts/speech/high-level-statement-55th-session-human-rights-council>

43 Lowy Institute, Conversations: Gareth Evans on Good International Citizenship, March 2022: <https://www.loyyinstitute.org/publications/conversations-gareth-evans-good-international-citizenship>

44 DFAT, Australia’s International Development Policy for a Peaceful, Stable and Prosperous Indo-Pacific, August 2023: <https://www.dfat.gov.au/publications/development/australias-international-development-policy>

What has Australia’s involvement been in international humanitarian law and the protection of civilians?

Australia was an early signatory to the Geneva Conventions and their Additional Protocols – signing the conventions in 1949 and ratifying them in 1958.⁴⁶

Australia has a long history of productive engagement with IHL and POC, both at the governmental level as well as via an active humanitarian sector. According to former Australian Ambassador and Permanent Representative to the United Nations and Ambassador for Disarmament in Geneva John Quinn, “considerable Australian governmental and civil society effort continues to be sustained regarding enhancing understanding, compliance with, and implementation of IHL, including how IHL applies to new international developments.”⁴⁷

In September 2024 at the annual Protection of Civilians week at United Nations Office for the Coordination of Humanitarian Affairs (OCHA) in New York, Australia co-sponsored a wide range of events, including on unarmed civilian protection.⁴⁸

Also in September 2024, the formation of a Ministerial Group for the Protection of Humanitarian Personnel demonstrated that Australia sees it as essential that humanitarian personnel in conflict zones can conduct their efforts in a safe and secure environment.⁴⁹ The diverse range of countries forming this grouping is a sign that Australia has the willingness to work outside its traditional partners on issues that it sees as of critical importance.

Australia had significant involvement in strengthening IHL as one of the champion states in multi-year initiatives undertaken by the Government of Switzerland and the ICRC that explored concrete ways to strengthen compliance with IHL.⁵⁰ Australia was involved in the initial consultation phase (2012-15) as well as a second “intergovernmental process” (2016-19) that sought to reach consensus on the establishment of a regular meeting of states party to the Geneva Conventions to focus on IHL compliance. Despite significant efforts the proposal was ultimately not accepted, largely due to political divisions among states – including significant resistance from governments who did not wish to have greater external scrutiny of their own conduct in warfare. Australia was among those states hoping for transformative action and, like the ICRC and the Swiss government, Australian officials were disappointed that geopolitical tensions and the consensus principle prevented many of the more ambitious ideas for new mechanisms and new institutional structures for compliance with IHL from moving forward. On the positive side, this process did provide a platform for exchange on strengthening IHL compliance.⁵¹

Australia has been active in the International Criminal Court’s Assembly of State Parties and has worked to strengthen the court across a broad range of provisions. According to some consultees, the court itself has held up Australia’s investigation into alleged war crimes as something of a model – a genuine effort to investigate whether crimes were committed and, where there is credible evidence that could sustain a criminal conviction and prosecute offenders.

In 2024 Australia released its voluntary report on the implementation of IHL.⁵² While not covering protection of civilians directly, it did look at how IHL is implemented Australia’s domestic laws.

Looking at the role of non-government agencies, Australian civil society organisations can have significant operational involvement in humanitarian response. They have historically also played an important role advocating for compliance with IHL – both in the domestic and international context. Recent campaigns such as Safer World for All⁵³ and the Australian Arms Control Coalition⁵⁴ have a clear basis in promoting respect for IHL and protection of civilians. The Australian Council for International Development Humanitarian Reference Group provides an independent voice for humanitarian agencies in Australia, including contributing to the development of relevant policy documents such as Australia’s Humanitarian Strategy.⁵⁵

While Australia is actively engaged in IHL and POC, consultees expressed the view that it can at times be reluctant to take the lead on issues, preferring to wait for a global standard to be set before offering up a definitive position. Consultees considered this a missed opportunity for Australia to set rather than follow the standard. If Australia wants to see global standards set that are both ethically and morally sound but also meet Australia’s strategic needs, then being part of early discussions to shape them is critical.

Some consultees also expressed caution around the increasing use of standalone declarations and whether they weaken existing IHL by not calling out specific violations and relying on broad declarations of principle instead.

46 Attorney General’s Department, Australia’s Implementation of International Humanitarian Law, Australian Government, <https://www.ag.gov.au/international-relations/international-law/australias-implementation-international-humanitarian-law>

47 John Quinn, Australia and the Law of Armed Conflict and Arms Control, in Conley Tyler, Gyngell & Wakefield (eds) Australia and the Rules-Based International Order (AIIA: 2021) <https://www.internationalaffairs.org.au/wp-content/uploads/2021/10/Australia-and-the-Rules-Based-International-Order.pdf>

48 United Nations Office for the Coordination of Humanitarian Affairs, Protection of Civilians Week 2024 Calendar of Events: https://www.unocha.org/sites/default/files/2024-05/2024%20Event%20Calendar%2010May_2.jpg

49 <https://www.foreignminister.gov.au/minister/penny-wong/media-release/joint-statement-towards-new-declaration-protection-humanitarian-personnel>

50 ICRC, Strengthening compliance with international humanitarian law: The work of the ICRC and the Swiss government (2015-2019), <https://www.icrc.org/en/document/strengthening-compliance-international-humanitarian-law-work-icrc-and-swiss-government-2015>

51 ICRC, Factual Report on the Proceedings of the Intergovernmental Process on Strengthening Respect for IHL, February 2019: https://www.icrc.org/sites/default/files/document/file_list/respect_ihl_6th_formal_meeting_factual_report.pdf

52 Commonwealth of Australia, Report on Australia’s Implementation of International Humanitarian Law at the Domestic Level, October 2024: <https://www.ag.gov.au/sites/default/files/2024-10/australias-voluntary-report-on-implementation-international-humanitarian-law.pdf>

53 <https://saferworld.org.au/>

54 <https://www.savethechildren.org.au/media/media-releases/coalition-on-military-exports>

55 <https://acfid.asn.au/our-focus/humanitarian-action/>

“Australia was an early signatory to the Geneva Conventions and their Additional Protocols and is deeply committed to implementing and upholding its IHL obligations. This includes an obligation to disseminate and promote the principles of the Geneva Conventions and their Additional Protocols.”⁵⁶

Attorney-General's Department

“Protection of civilians in armed conflict is enshrined in international humanitarian law and has therefore been a longstanding feature of Australia’s involvement in international operations... POC is most often applied in situations of armed conflict and other situations of violence, including where peacekeepers are deployed. For Australia, the commitment to POC applies across all ‘international operations and engagements’ in which Australia is involved, whether mandated by the [United Nations Security Council] or not.”

*Australian Civil-Military Centre and Humanitarian Advisory Group, January 2020*⁵⁷

“Australia has been a good international citizen and is committed to a rules-based international order. It has actively contributed to the expansion of international law and has an impressive track record in the creation of new instruments to promote and protect fundamental human rights.”

*Professor Shahram Akbarzadeh and Dr Arif Saba, 2023*⁵⁸

56 Attorney-General's Department, Australia's implementation of International Humanitarian Law, <https://www.ag.gov.au/international-relations/international-law/australias-implementation-international-humanitarian-law>

57 Charles Hunt, Luisa Ryan, Kate Sutton, Beth Eggleston, Jessica Lees, Sally Airs Shevach and Alex Lia, From Principle to Practice: Protecting civilians in violent contexts - A field handbook, Australian Civil-Military Centre / Humanitarian Advisory Group, January 2020; https://www.acmc.gov.au/sites/default/files/2020-04/ACMC_POC_Manual_Final%20.pdf

58 Shahram Akbarzadeh and Arif Saba, On Gaza, Australia Should Show That Respect for International Humanitarian Law is Not Selective, Australian Outlook, October 2023: <https://www.internationalaffairs.org.au/australianoutlook/on-gaza-australia-should-show-that-respect-for-international-humanitarian-law-is-not-selective/>

REGIONAL PERSPECTIVES

This is a synthesis of consultations with members of the International Council of Voluntary Agencies from across the Indo-Pacific.

Consultees believed that Australia has played a significant role historically and continues to engage actively in supporting international humanitarian law and the Protection of Civilians.

Consultees were aware that Australia's historical involvement includes strong advocacy for IHL and human rights through contributions to treaties like the Geneva Conventions and additional protocols. Australia was known as having championed disarmament treaties, such as the Ottawa Treaty on landmines and the Arms Trade Treaty on small arms, and having contributed troops to peacekeeping operations under the United Nations, focusing on protecting civilians and maintaining order during transitions from conflict to peace.

There was awareness that, in its immediate region, Australia has been instrumental in stabilising Pacific Island nations, often providing security and humanitarian assistance during crises. It was suggested that Australia could leverage its diplomatic networks and partnerships in the Pacific region to promote adherence to IHL. Consultees also understood Australia to be well-positioned to lead efforts in capacity-building for smaller nations and support the development of frameworks for civilian protection.

Consultees saw Australia as a significant donor to humanitarian crises worldwide, including recent responses to conflicts, as well as supporting programs that address food security, health, and education in emergencies.

Canberra was considered active in multilateral forums such as the International Committee of the Red Cross to shape policies on civilian protection and compliance with IHL.

The Australian Red Cross was known to work to promote IHL training for military personnel, policymakers and humanitarian actors, and it was recognised by consultees that the ADF incorporates IHL as a core component of their training as well as actively sharing this expertise with other nations.

Consultees noted that Australia provides financial and technical support to organisations working with non-state armed groups to encourage adherence to IHL and reduce civilian harm. They saw Australia as well-positioned to lead efforts in capacity-building for smaller nations and support the development of frameworks for civilian protection.

Recognising climate change as a conflict multiplier, consultees acknowledged that Australia has increased its focus on addressing the humanitarian impacts of climate-related crises, particularly in the Pacific region.

Australia was seen as supporting global initiatives, such as the Women, Peace and Security agenda, to address the disproportionate impact of conflict on women and girls.

Australia was seen as neutral and a trusted interlocutor and as well placed to provide regional leadership in the area of IHL and POC. Australia's reputation as a middle power was seen as an asset for building coalitions for IHL compliance among states and non-state actors.

Case studies

THE AUSTRALIAN COUNCIL FOR INTERNATIONAL DEVELOPMENT (ACFID) HUMANITARIAN REFERENCE GROUP⁵⁹

The ACFID Humanitarian Reference Group (HRG) is the independent voice of humanitarian agencies in Australia. It conducts policy and advocacy work that includes issues of IHL and POC. The HRG is made up of ACFID members with significant operational involvement in humanitarian response, providing a mechanism to share information, strengthen coordination, engage in policy dialogue with DFAT and advocate to strengthen humanitarian response. HRG members work across a range of areas including protracted crises, disaster risk reduction, humanitarian effectiveness, civil-military engagement and protection.

INSPECTOR-GENERAL OF THE AUSTRALIAN DEFENCE FORCE AFGHANISTAN INQUIRY REPORT (BRERETON REPORT)⁶⁰

Led by Major General Paul Brereton, this inquiry was commissioned by the Department of Defence in 2016 after rumours and allegations emerged relating to possible breaches of the Law of Armed Conflict by members of the Special Operations Task Group in Afghanistan over the period 2005 to 2016. The Inquiry was conducted at arm's length from the Australian Defence Force chain-of-command and Government to ensure the independence and integrity of the process. The Inquiry found credible information of 23 incidents of the alleged unlawful killing of 39 individuals. It made 143 recommendations including criminal referrals, policy reviews, and training revisions.

AUSTRALIAN HUMANITARIAN PARTNERSHIP⁶¹

The Australian Humanitarian Partnership (AHP) is a ten-year (2017-2027) partnership between the Department of Foreign Affairs and Trade and Australian non-governmental organisations (NGOs). AHP humanitarian assistance can support IHL and POC activities by leveraging the expertise

and global reach of Australian NGOs to respond to disasters and protracted crises in Australia's region and beyond – including providing emergency shelter, humanitarian supplies, healthcare, and child protection services. The AHP has responded to rapid and protracted crises in the Pacific, South Asia, Southeast Asia, Africa, Europe and the Middle East. Since 2017, AHP partners have reached more than 10.1 million people through 60 responses across 32 countries.

AUSTRALIAN NATIONAL ACTION PLAN ON WOMEN, PEACE AND SECURITY⁶²

The National Action Plan supports coordinated action across government to ensure that the Women, Peace and Security agenda is an inseparable part of efforts in relation to peace, security, humanitarian assistance, disaster relief, development assistance and combat. This can include IHL and POC activities. The Australian Government promotes the human rights of women and girls, and gender equality in fragile and conflict-affected contexts to protect their safety and because it is essential to economic and development gains, stability after crises, preventing conflict, and creating durable peace.

THE INDO-PACIFIC CENTRE FOR MILITARY LAW⁶³

The Department of Defence established the Indo-Pacific Centre for Military Law (IPCML) as a regional centre of excellence in military law. Its mission is to promote respect for the rule of law and compliance with international law in military operations through training, international engagement and related activities with partners from the Indo-Pacific region. IPCML delivers legal training courses and capacity building activities for military officers from the Indo-Pacific region, so they are trained to conduct operations in accordance with the law. The Centre conducts workshops, seminars and other activities designed to operationalise the law, and explore topical military law and international law issues within a regional context. A training course jointly run with the Australian Red Cross provides foundational level knowledge about key bodies of international law that generate rights and obligations during armed conflict.

AUSTRALIA'S NATIONAL INTERNATIONAL HUMANITARIAN LAW COMMITTEE⁶⁴

The Committee is one of 119 National IHL Committees across the globe. The mandate of the Australian National IHL Committee is:

- Promote dialogue and cooperation between Australian Red Cross and the Australian Government on IHL principles, obligations and priorities, and as well as IHL implementation and dissemination in Australia;
- Serve as a forum for appraising members on contemporary IHL developments and discussing their implications in the Australian context;
- Exchange information among members on current dissemination activities being undertaken by Australian Red Cross and Australian Government on IHL;
- Coordinate preparation for International Conferences of the Red Cross and Red Crescent, including the preparation of joint pledges; and
- Coordinate follow-up action from International Conferences of the Red Cross and Red Crescent.

Membership of the Committee in Australia currently comprises senior representatives of the Australian Red Cross (ARC), DFAT, the Department of Defence and the Attorney-General's Department. The International Committee of the Red Cross Mission in Australia has observer status. The Committee meets quarterly and from time to time invites independent experts to be ad hoc members or guest speakers to make interventions on specialist topics. The ARC staffs the Committee Secretariat.

The National Committee is complemented by IHL Advisory Committees in the States and Territories – in which many of Australia's main experts in IHL participate in a voluntary capacity (including representatives from academia, government and the private sector).

59 <https://acfid.asn.au/our-focus/humanitarian-action/>

60 Afghanistan Inquiry, Australian Defence Force, November 2020, <https://www.defence.gov.au/about/reviews-inquiries/afghanistan-inquiry>

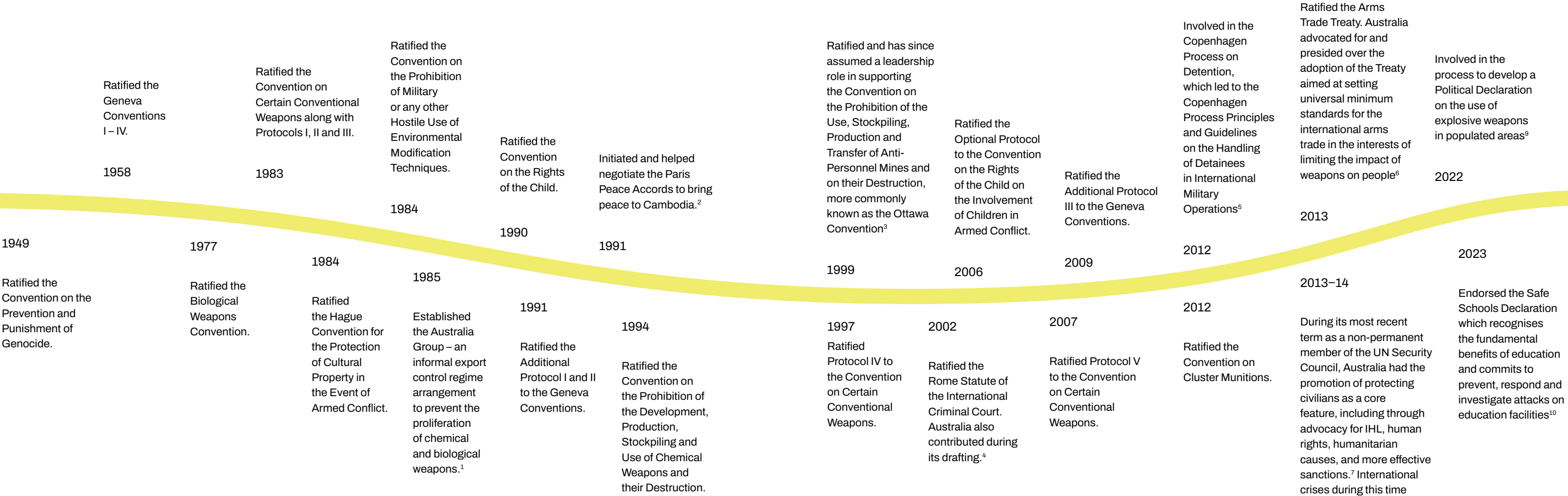
61 <https://www.dfat.gov.au/development/topics/development-issues/building-resilience/humanitarian-preparedness-and-response/australian-humanitarian-partnership>

62 <https://www.dfat.gov.au/sites/default/files/australias-national-action-plan-on-women-peace-and-security-2021-2031.pdf>

63 <https://www.defence.gov.au/defence-activities/programs-initiatives/indo-pacific-centre-military-law>

64 <https://www.ag.gov.au/sites/default/files/2024-10/australias-voluntary-report-on-implementation-international-humanitarian-law.pdf>

AUSTRALIA'S HISTORIC INVOLVEMENT IN IHL-POC INITIATIVES AND TREATIES



1 DFAT, The Australia Group: <https://www.dfat.gov.au/publications/minisite/theaustraliagroupnet/site/en/origins.html>

2 Gareth Evans, 'Cambodia 30 years on: time for Australia to act again', Sydney Morning Herald, October 2021: <https://www.smh.com.au/world/asia/cambodia-30-years-on-time-for-australia-to-act-again-20211013-p58zk7.html>

3 Michael Smith, Perspective, ABC Radio National, May 2006: <https://www.abc.net.au/listen/radionational/archived/perspective/michael-smith/3324314>

4 Attorney-General's Department, Support for the International Criminal Court: <https://www.ag.gov.au/international-relations/international-law/support-international-criminal-court>

5 Bruce Oswald and Thomas Winkler, Copenhagen Process Principles and Guidelines on the Handling of Detainees in International Military Operations, American Society of International Law Insights 16(39), 2012: <https://www.asil.org/insights/volume/16/issue/39/copenhagen-process-principles-and-guidelines-handling-detainees>

6 John Quinn, Australia and the Law of Armed Conflict and Arms Control, in Conley Tyler, Gyngell & Wakefield (eds) Australia and the Rules-Based International Order (AIIA: 2021) <https://www.internationalaffairs.org.au/wp-content/uploads/2021/10/Australia-and-the-Rules-Based-International-Order.pdf>

7 Richard Gowan, Australia in the UN Security Council, Lowy Institute, June 2014: <https://www.loyinstitute.org/publications/australia-un-security-council>

8 DFAT, Australia's term on the United Nations Security Council 2013-14, February 2015: <https://www.dfat.gov.au/about-us/publications/international-relations/Pages/australias-term-on-the-united-nations-security-council-2013-14-achievements>

9 <https://ewipa.org/>

10 Daniela Gavshon, Australia Commits to Protect Schools During Wartime, Human Rights Watch, March 2023: <https://www.hrw.org/news/2023/03/16/australia-commits-protect-schools-during-wartime>

11 <https://interagencystandingcommittee.org/procap-capacity-development>

12 <https://interagencystandingcommittee.org/gender-standby-capacity-project-gencap>

13 <https://www.redr.org.au/home>

LONGSTANDING INITIATIVES

- Funding delivery partners who manage stand-by registers of humanitarian professionals, such as ProCap,¹¹ GenCap¹² and RedR Australia.¹³
- Funding protection officers into UN agencies and humanitarian response through Australia Assists.
- Supporting humanitarian reform efforts and studies to address protection in humanitarian action, such as the Whole of System Review of Protection.
- Including protection as a central thematic priority in successive humanitarian strategies and policies.

Where does Australia have influence and leverage?

Australia has been an active and important contributor to IHL and POC, using its diplomatic tools intelligently to gain influence.⁶⁵ It has built a reputation over time as an effective multilateral negotiator, coalition builder and trusted partner (although its relatively small diplomatic footprint does limit the priorities Australia can pursue simultaneously).⁶⁶

Australia should not underestimate the influence it can wield, particularly during a new geopolitical era where – due to great power challenging of global rules and norms – middle power coalitions will be increasingly important for upholding IHL and POC. Maintaining focused attention is a critical component of protection, which means Australia’s voice, and the collective voice of it and its partners on issues of IHL is important to be maintained, regardless of what other impediments there may currently be.

In this regard, partnerships are critical. If several countries address issues and call out violations in partnership, this strengthens political will and brings alliances and partnerships into play.

Australia can use its different tools of statecraft to give it influence and leverage.

For example, Australia has sought to advance its influence through diplomacy by:

- joining the Peace Building Commission for 2025-2026⁶⁷
- advancing the Women, Peace and Security agenda⁶⁸
- promoting protection under its new humanitarian policy⁶⁹
- exploring new mechanisms like the Civil Society Partnerships Fund and engagement with different faith groups⁷⁰
- using its auxiliary relationship with Australian Red Cross to feed into the International Red Cross and Red Crescent Movement to progress initiatives that increase respect for IHL⁷¹

Should Australia be successful in its bid for a non-permanent seat on the UN Security Council (UNSC) in 2029-2030, it can be a champion for more effective IHL compliance and accountability mechanisms, building on achievements from its 2013-2014 term. These include authoring and leading negotiations on UNSC Resolution 2117 to restrict the illicit flows of small arms – the first resolution of its kind – and playing a key role in negotiating a series of agreements on the need for enhanced humanitarian access and better protection of civilians – in particular UNSC Resolution 2165 which enabled UN agencies to deliver humanitarian assistance across borders without the consent of the Syrian authorities.⁷²

65 Melissa Conley Tyler, Allan Gyngell and Bryce Wakefield (eds), *Australia and the Rules-Based International Order* (Deakin: AIIA) <https://www.internationalaffairs.org.au/wp-content/uploads/2021/10/Australia-and-the-Rules-Based-International-Order.pdf>

66 Lowy Institute, Global Diplomacy Index, <https://globaldiplomacyindex.lowyinstitute.org/>

67 DFAT, UN Peacebuilding: <https://www.dfat.gov.au/international-relations/security/peacekeeping-and-peacebuilding/peace-and-conflict>

68 Commonwealth of Australia, Australian National Action Plan on Women, Peace and Security 2021-2031, April 2021: <https://www.dfat.gov.au/sites/default/files/australias-national-action-plan-on-women-peace-and-security-2021-2031.pdf>

69 DFAT, Australia’s Humanitarian Policy: Making a difference for people in crisis, October 2024: <https://www.dfat.gov.au/sites/default/files/australian-humanitarian-policy.pdf>

70 Heather Wrathall and Jasmine Stephens, Australia takes a big first step to engage civil society in foreign policy, *The Interpreter*, August 2024: <https://www.lowyinstitute.org/the-interpreter/australia-takes-big-first-step-engage-civil-society-foreign-policy>

71 DFAT, Australia on the United Nations Security Council: <https://www.dfat.gov.au/international-relations/international-organisations/un/unsc/Pages/australia-on-the-united-nations-security-council>

72 DFAT, Australia’s term on the United Nations Security Council 2013-14, February 2015: <https://www.dfat.gov.au/about-us/publications/international-relations/Pages/australias-term-on-the-united-nations-security-council-2013-14-achievements>

WHAT TOOLS ARE AVAILABLE?

International humanitarian lawyer Sarah McCosker has outlined the range of measures that can be taken by a state to induce another state to respect IHL.⁷³

Diplomatic protest is arguably the main way in which third states seek to influence the behaviour of belligerent states. This can take the form of political dialogue with confidential and public dimensions that facilitates cooperation and negotiation instead of, or prior to, a more confrontational approach. It can also involve public statements and denunciations of relevant IHL violations.

Diverse kinds of measures may be made in and through **international fora**, such as proposing, drafting and voting on UN Security Council or General Assembly resolutions, as well as other special sessions or events in which more general statements about respect for IHL may be made. Other international human rights bodies or mechanisms, such as the Universal Periodic Review process, are another avenue through which IHL compliance issues can be raised.

Other measures include:

- Education, training and capacity-building, including funding training in third states as part of broader political, security and/or development engagement. The International Council of Voluntary Agencies has a recently updated its Professional Standards for Protection Work.⁷⁴
- Establishment of monitoring and peacekeeping missions with a protection of civilians mandate.

- States can investigate alleged violations of IHL and/or cooperate with or support proposed or existing investigations or fact-finding missions.
- Cooperation and coordination with international bodies such as the UN, the International Committee of the Red Cross, and the International Criminal Court.
- Mainstreaming IHL as a key consideration in crisis management operations. This can involve military and non-military measures to address the full spectrum of crises – before, during and after conflicts.
- In the absence of an intergovernmental forum specifically dedicated to IHL compliance, engaging with the quadrennial International Conference of the Red Cross and Red Crescent, which brings together all states party to the Geneva Conventions along with all components of the Red Cross and Red Crescent Movement.
- Stronger, more coercive or punitive measures may also be taken by States, such as sanctions, or suspension of licences for exporting arms and other materials to the countries involved. Other coercive measures may include expulsion of diplomats, severance of diplomatic relations, the suspension of trade or other agreements, and freezing of capital.
- Sanctions, including diplomatic sanctions, suspension of cooperation with a third country, boycotts of sporting or cultural events, trade sanctions, financial sanctions, visa bans, flight bans, and restrictions on admission.
- Restricting arms exports to parties to armed conflict.

The below diagram outlines best practice steps for non-combatant states to exercise influence on combatant parties to armed conflict and induce them to comply with IHL.



73 Sarah McCosker, ‘Ensuring respect for IHL in the international community: Navigating expectations for humanitarian law diplomacy by third States not party to an armed conflict’ in Massingham and McConnachie (eds), *Ensuring Respect for International Humanitarian Law* (Routledge, 2021), pp. 23-43.

74 ICRC, Professional Standards for Protection Work, August 2024: <https://www.icvanetwork.org/uploads/2024/08/Professional-standards-for-protection-work-2024.pdf>

“Our candidacy for a non-permanent seat on the Security Council for the term 2029-2030 reflects our deep commitment to contributing to international peace and security.”

Minister for Foreign Affairs Penny Wong, September 2024⁷⁵

A NEW AGENDA FOR PEACE⁷⁶

Ahead of the UN Summit of the Future, Secretary-General António Guterres released a policy brief that outlined a vision for multilateral efforts for peace and security, based on international law, for a world in transition. A *New Agenda for Peace* covered a range of contemporary peace and security challenges, proposing “a new multilateralism” to address them, including several recommendations relevant to IHL and POC.

These include:

- Prevention at the global level by addressing strategic risks and geopolitical divisions, including boosting preventive diplomacy in an era of divisions.
- Preventing conflict and violence and sustaining peace, including through shifting the prevention and sustaining peace paradigm within countries, address the underlying drivers of violence and insecurity and reducing the human cost of weapons.
- Strengthening peace operations and addressing peace enforcement.
- Novel approaches to peace and potential domains of conflict, particularly preventing the weaponisation of emerging domains and promote responsible innovation.
- Strengthening international governance by building a stronger collective security machinery.

75 DFAT, National statement to the United Nations General Assembly, September 2024: <https://www.foreignminister.gov.au/minister/penny-wong/speech/national-statement-united-nations-general-assembly-0>

76 United Nations, A New Agenda for Peace, Our Common Agenda Policy Brief 9, July 2023: <https://www.un.org/sites/un2.un.org/files/our-common-agenda-policy-brief-new-agenda-for-peace-en.pdf>

In defence cooperation, Australia has potential influence to promote the POC agenda globally. Playing to its capacity-building strengths, Australia is well-placed to empower other governments and militaries to contribute to countries’ own ability to uphold and support IHL and POC, including through implementing programs on Women, Peace and Security.⁷⁷ IHL and POC can be enhanced by WPS programs that promote recognition of the complex character of civilian populations and the gendered impacts of conflict and its implications for military and governmental decision-makers, as well as humanitarian relief.⁷⁸ On the ground, female engagement teams are more capable of reaching women in a deployed environment, and therefore source information that male defence force personnel could not.

Australia is also influential regionally through military training and exercises with Pacific countries, as well as burgeoning security relationships with its Southeast Asian and South Asian neighbours. Here Australia can be creative with its defence diplomacy, with military-to-military engagement able to build constructive and trusting relationships, as well as pragmatic practice sharing around IHL and POC.

As well as its international advocacy, Australia’s recent operational experiences in Iraq and Afghanistan have involved navigating IHL, POC and rules of engagement in practice. Australia’s regular schedule of bilateral and

multilateral joint exercises are likewise opportunities for operational knowledge exchange with other militaries that have had recent combat experience. Promoting military compliance with IHL and accountability for violations is one way Australia can wield influence.

Australia can use its voluntary report on the implementation of IHL⁷⁹ to engage with other states preparing their own compliance reports. This can lead to enhanced mechanisms to track civilian harm; collate and analyse relevant data; report incidents and trends to those concerned; coordinate with stakeholders who can assist in protecting civilians, and; take measures to prevent the recurrence of harm to civilians, including by adapting or repeating training.

Australia also has leverage and the ability to influence private companies operating in this space.⁸⁰ What a business does or does not do can have important consequences for affected civilian populations, as well as its own employees and assets. Beyond the harm to victims, being complicit in IHL violations can negatively impact a business’ reputation, operations and financial situation, and expose it and its staff to risks of legal liability.⁸¹

77 See for example, AP4D, What does it look like for Australia to be a strategic partner on Women, Peace and Security with the Pacific (Canberra 2023): <https://asiapacific4d.com/idea/partner-on-pacific-wps/> and New Zealand Defence Force, NZDF Pacific Defence Gender Network plays key role in Gender Advisor’s Course, November 2019: <https://nzdefenceforce.medium.com/nzdf-pacific-defence-gender-network-plays-key-role-in-gender-advisors-course-68a5f071aced>

78 ICRC, International Humanitarian Law and a Gender Perspective in the Planning and Conduct of Military Operations, March 2024: <https://shop.icrc.org/international-humanitarian-law-and-a-gender-perspective-in-the-planning-and-conduct-of-military-operations-pdf-en.html>

79 Commonwealth of Australia, Report on Australia’s Implementation of International Humanitarian Law at the Domestic Level, October 2024: <https://www.ag.gov.au/sites/default/files/2024-10/australias-voluntary-report-on-implementation-international-humanitarian-law.pdf>

80 Australian Red Cross, Doing Responsible Business in Armed Conflict, 2006, <https://www.redcross.org.au/globalassets/cms-assets/documents/ihl--no-ihl/doing-responsible-business-in-armed-conflict-final-publication-web.pdf>

81 Matt Pollard, What private businesses need to know about international humanitarian law, Humanitarian Law & Policy, November 2024: <https://blogs.icrc.org/app/uploads/sites/102/2024/11/what-private-businesses-need-to-know-about-international-humanitarian-law.pdf>

“Australia has demonstrated capacity to be a global leader in preventing and responding to conflict-related humanitarian crises. It has played a pivotal role in advancing the responsibility to protect, it consistently emphasises the importance of a rules-based global order and accountability for international crimes, and it has demonstrated success in – and commitment to – conflict prevention, conflict resolution and peacebuilding... Thus, in the Asia Pacific region in particular, Australia has a critical opportunity to bring its key strengths and foreign policy priorities together with its position of regional leadership, so as to more proactively and constructively prevent and respond to conflict-related humanitarian crises.”

Rebecca Barber and Caelin Briggs, *Centre for Humanitarian Leadership*, January 2019⁸²

“[T]his year is on track to be the deadliest year for humanitarian workers on record... We must ensure the tragic deaths, and the deaths of all humanitarian workers across the globe are not in vain and we must work to ensure they are never repeated. That is why Australia is working to regalanise international commitment to the protection of humanitarian workers in Gaza and beyond.”

Minister for Foreign Affairs Penny Wong, *August 2024*⁸³

“At this time of unprecedented stress on the multilateral system, it is particularly important to avoid judging the rules-based IHL and disarmament systems primarily by their ability and speed in developing new treaties. It is arguable that we have now reached a stage where the well-entrenched multilateral instinct of rushing to negotiate new binding multilateral instruments is no longer appropriate.”

John Quinn, *former Ambassador and Permanent Representative to the United Nations in Geneva and Ambassador for Disarmament*, 2021⁸⁴

REGIONAL PERSPECTIVES

This is a synthesis of consultations with members of the International Council of Voluntary Agencies from across the Indo-Pacific

Consultees saw a role for Australia in championing efforts to protect civilians in conflict zones through initiatives at the United Nations Security Council and other international bodies. For example, in contexts like Myanmar, it was suggested that Australia could leverage its diplomatic relationships to advocate for cross-border aid delivery and ensure safe passage for humanitarian actors.

Consultees considered Australia could also provide training for national militaries and security forces in IHL and civilian protection (e.g., through partnerships with Southeast Asian nations), and assist governments in integrating IHL principles into national legislation.

It was suggested that Australia can take a leading role in initiatives that address the intersection of climate change, resource scarcity and conflict in the Pacific. This might include promoting frameworks that integrate IHL with climate adaptation strategies where rising sea levels and resource scarcity exacerbate conflict.

Consultees discussed other areas where Australia is well-placed to contribute to protection of civilians through preventing the reoccurrence of hostilities. These included assisting in disarmament, demobilisation and reintegration programs for former combatants; continued advocacy for humanitarian access, and; increased diplomatic engagement to reduce restrictions on financial flows and movement of aid personnel, particularly in politically sensitive areas.

Other areas of international protection discussed included Australia’s role in supporting displaced populations and combatting human trafficking. It was noted that Australia has the experience and diplomatic capacity to engage with different stakeholders to provide solutions, and is well-placed to engage with regional militaries, bureaucracies and governments to build capacity on international instruments and commitments, including on IHL.

Consultees identified a need to increase public understanding of IHL and Australia’s obligations to foster a culture of compliance, accountability and support for humanitarian action. For example, the Australian government could work more to support the Australian Red Cross, universities and training institutions to build a strong pipeline of professionals well-versed in IHL and civilian protection.

It was noted that Australia could also engage with civil society as partners in promoting and supporting compliance with IHL and POC. Some consultees said that Australia should actively promote IHL as established norms in regional forums, ensuring such principles are embedded in regional policies.

Others suggested that, as a donor country, Australia should prioritise funding initiatives that strengthen civilian protection and accountability mechanisms in conflict zones, as well as supporting more programming involving direct engagement with conflict parties for IHL promotion.

82 Rebecca Barber and Caelin Briggs, *Holding the Australian Government to account: A Checklist for Action*, Centre for Humanitarian Leadership, January 2019: <https://www.centreforhumanitarianleadership.org/the-centre/news/holding-the-australian-government-to-account-a-checklist-for-action/>

83 DFAT, *Remarks at the Australian Red Cross 110th anniversary reception*, August 2024: <https://www.foreignminister.gov.au/minister/penny-wong/speech/remarks-australian-red-cross-110th-anniversary-reception>

84 John Quinn, *Australia and the Law of Armed Conflict and Arms Control*, in Conley Tyler, Gyngell & Wakefield (eds) *Australia and the Rules-Based International Order* (AIIA: 2021) <https://www.internationalaffairs.org.au/wp-content/uploads/2021/10/Australia-and-the-Rules-Based-International-Order.pdf>

A vision for Australia to promote compliance with international humanitarian law and protection of civilians

WHAT DOES IT LOOK LIKE?

Australia takes a bold leadership role on IHL and POC issues, enhancing its moral power by becoming a vocal champion of IHL and POC within the international community.

As a middle power, Australia recognises that its ability to navigate a world where its own hard power is limited is enhanced by a strong set of international laws, rules and norms that are universally accepted. It understands how the power of example – with firm commitment to humanitarian principles – can be influential in shaping the behaviour of other actors both great and small. And that Australia’s statecraft necessitates creative and sophisticated use of tools beyond conventional power.

It looks like Australia, alongside other like-minded countries, proactively addressing IHL and POC issues such as autonomous weapon systems, setting standards that may help slow down rogue actors and creating frameworks that are better able to deal with the unknown.

Australia “walks the talk”, consistently complying with all IHL and POC obligations and maintains its reputation as a global advocate for protection of civilians in conflict. This includes confronting issues that might undermine Australia’s external efforts.⁸⁵

Australian government policy regarding compliance with IHL is clear, transparent and built around a strong set of principles that place POC at their core, striving for impartial international advocacy. Issues relating to IHL and POC are considered as a matter of course in all new policy proposals.

To facilitate this, Australian politicians, bureaucrats and the general public have a solid understanding of IHL and POC, why it is important and what the compliance and enforcement mechanisms are.

Australia recognises that advancing IHL and POC is a broad-based endeavour that needs to incorporate:

- political and diplomatic perspectives (which create policy and institutional structures);
- defence and security perspectives (which are the primary holder of IHL’s practical obligations); and
- humanitarian perspectives (the infrastructure of which requires safety and certainty to conduct its essential role).

Australia builds on the *Australian Guidelines for the Protection of Civilians* published by the Australian Civil-Military Centre in 2015,⁸⁶ implementing a whole-of-government framework across all departments and agencies whose work is relevant to POC. This can also draw on the model of the United Kingdom’s review of its 2010 whole-of-government POC Framework in 2020.⁸⁷

The vision includes Australia drawing on a diverse range of expertise and perspectives, some of whom may not be traditionally involved in such debates. A whole-of-nation⁸⁸ approach to international influence on IHL and POC would provide space for creation and innovation. This also builds greater understanding of the tools of statecraft at Australia’s disposal to advance greater awareness and compliance with IHL and POC.

As a strategic priority, Australia understands that conflict prevention and resolution are the best ways to protect civilians. If a crisis does occur, Australia ensures that the preconditions for readiness and preparedness are in place so it can respond quickly and effectively. This involves developing and refining good processes and systems.

Australia grasps which mechanisms states and other armed groups pay attention to (such as UN, bilateral trade and autonomous sanctions) and understands how these mechanisms can best be utilised. This includes developing real-time accountability and compliance mechanisms that can influence the conduct of both state and non-state actors.

The ideal is for Australia to be outspoken and strident in calling out IHL violations, regardless of who the perpetrators are. Australia cares about IHL and POC universally, recognising the terrible damage a lack of consistency does to the international legal system and international peace and security more broadly. This includes an understanding of the pervasive narrative that has taken hold in the Global South about the West’s double standards and hypocrisy. Australia recognises how this perspective breeds cynicism and a retreat from the idea of mutually beneficial laws, rules and norms and threatens the international rules-based order.

This leadership requires Australia to exercise influence over its warfighting partners and allies to conduct their own operations with restraint, adherence to IHL and POC principles, and working towards humanitarian ends.⁸⁹

Australia recognises that the humanitarian sector currently faces constraints on how it operates. These include under-resourcing and operational challenges.

The specific targeting of humanitarian workers, medical personnel and transports by combatants is a particularly challenging issue. This can be worsened by reputational damage from the misinformation and disinformation.

Alongside this, there is a recognition of the need to protect impartial humanitarian work through meaningful humanitarian exemptions to sanctions and counter-terrorism measures.

Australia follows the lead of the United States in harm reduction guidance, developing policy akin to the Civilian Harm Incident Response Guidance⁹⁰ that monitors civilian harm caused by US weapons transfers. While these guidelines were developed mostly in response to counterinsurgencies, following Russia’s invasion of Ukraine there is now the need for revision to take large-scale warfare into consideration.⁹¹

Alongside this, Australia also pursues legislation similar to the Leahy Law,⁹² which requires the US to vet any individuals or units that work with foreign security forces to ensure they have not committed grave violations of human rights. Australia considers the human rights records of foreign militaries it is contemplating partnerships with. Security agreements are not entered into with countries where human rights violations have occurred unless individuals or units partake in a remediation process.

Australia values and engages with cultural practices that may be distinct from Western conceptions of POC but can nonetheless advance the idea. While universally upholding IHL and POC principles, Australia signals and builds alliances based on respect, humility, and pragmatism towards finding solutions within specific cultural contexts.

85 Consultees mentioned examples such as ending arbitrary detention of asylum seekers, bringing Australian women and children home from conflict zones, and addressing systemic injustices that First Nations people continue to face.

86 Australian Civil-Military Centre, *Australian Guidelines for the Protection of Civilians*, December 2015: https://www.acmc.gov.au/sites/default/files/2018-08/Australian_Guidelines_for_the_Protection_of_Civilians.pdf

87 Government of the United Kingdom, *UK Approach to Protection of Civilians in Armed Conflict*, August 2020: <https://www.gov.uk/government/publications/uk-paper-on-the-approach-to-protection-of-civilians-in-armed-conflict/uk-approach-to-protection-of-civilians-in-armed-conflict>

88 AP4D, *What does it look like for Australia to take a whole-of-nation approach to international policy*, 2024: <https://asiapacific4d.com/idea/whole-of-nation/>

89 ICRC, *Allies, Partners and Proxies: Managing Support Relationships in Armed Conflict to Reduce the Human Cost of War*, March 2021: <https://shop.icrc.org/allies-partners-and-proxies-managing-support-relationships-in-armed-conflict-to-reduce-the-human-cost-of-war-print-en.html>

90 Charles Blaha, *The State Department’s Civilian Harm Incident Response Guidance: How to Make a Good Thing Better*, Just Security, July 2024: <https://www.justsecurity.org/97826/state-departments-civilian-harm-incident-response/>

91 Erin Bilj, *Key Takeaways for Civilian Harm and Response from the Russia-Ukraine War*, Just Security, January 2025, <https://www.justsecurity.org/106576/key-takeaways-civilian-harm-mitigation-russia-ukraine/>

92 United States Department of State, *About the Leahy Law*, January 2021: <https://www.state.gov/key-topics-bureau-of-democracy-human-rights-and-labor/human-rights/leahy-law-fact-sheet/>

Australia values the protection of the environment in conflict zones.⁹³ Recognition is given to the deep interrelated link between ecological and human health, and the severe damage that conflict can inflict on local environments. In this context Australia acknowledges its own involvement with the testing of British nuclear weapons in the Pacific (and on Australian territory).

As an island state within a region of islands and sea-facing states, Australia has a keen awareness of POC in littoral environments. This can include people fleeing conflict by boat, coastal communities effected by crossfire, as well as the impact on shipping and supply chains.⁹⁴

Australia is aware that the use of misinformation, disinformation and propaganda tools are a considerable threat to civilians and humanitarian workers. Government and military information operations seek to prevent or mitigate the implications of their information practices for civilians.⁹⁵

Central to Australia’s efforts to advance IHL and POC is strengthening a multilateral system that has come under increasing strain. Located within Asia, but with deep cultural and security links to Europe and North America, Australia embraces the opportunity to be an interlocutor, building coalitions of trust not solely with traditional partners and like-minded countries, but across cultures and regions. This serves to create a renewed recognition of mutually beneficial rules and constraints and enhance resilience within multilateral institutions. This includes Australia using its term on the UN Peacebuilding Commission from January 2025 as groundwork for its campaign for a seat on the UN Security Council for 2029-2030.

The vision is for Australia to continuously improve its own processes to align with the international IHL framework and use the Australian legal system more actively in relation to perpetrators of IHL violations. It is not selective about which cases are pursued through multilateral mechanisms.

Australia should maintain a keen awareness of the fast-changing geo-strategic and technological environments that shift the methods of warfare and the nature of domains – including urban warfare,⁹⁶ the maritime domain,⁹⁷ and new areas such as cyber⁹⁸ and space.⁹⁹ This will require future-proofing compliance with IHL and POC to meet the challenges of these evolutions.

“For IHL to be useful in times of war it must be understood and respected during times of peace. When conflict appears likely, it is often too late to begin providing instruction and there are a number of preventive measures which must be initiated during times of peace to ensure compliance is possible when IHL is needed.”

Australian Red Cross, 2016¹⁰⁰

“A striking feature of multilateral work is its siloed character. Different tracks of the rules-based global order have different dynamics, but their interconnections are all too often underappreciated and under-exploited. Australia has been active in promoting these inter-connections. By way of example, overarching principles such as IHL can assist in linking action across the UN system, given their strong resonance across the various multilateral tracks such as disarmament, human rights, refugee protection, humanitarian assistance and health.”

John Quinn, former Ambassador and Permanent Representative to the United Nations in Geneva and Ambassador for Disarmament, 2021¹⁰¹

“Civilian populations are pivotal in addressing their own protection needs. Engagement with the civilian population, and promoting the participation of women in conflict prevention, conflict resolution and peacebuilding, is integral to the success of protection efforts. To be effective, protection of civilians (POC) requires the coordination of this range of actors, including across military, police and civilian components.... POC is integral to Australia’s contribution to international peace and security.”

Australian Guidelines for the Protection of Civilians, 2015¹⁰²

93 International Review of the Red Cross, Protecting the Environment in Armed Conflict, December 2023: <https://international-review.icrc.org/reviews/irrc-no-924-environment>

94 Prashant Kahlon, War on the coastline: mitigating civilian harm in the littorals, Humanitarian Law & Policy, May 2023: <https://blogs.icrc.org/law-and-policy/2023/05/17/war-coastline-mitigating-civilian-harm-littorals/>

95 Tilman Rodenhäuser and Samit D'Cunha, Foghorns of war: IHL and information operations during armed conflict, Humanitarian Law & Policy, October 2023: <https://blogs.icrc.org/law-and-policy/2023/10/12/foghorns-of-war-ihl-and-information-operations-during-armed-conflict/>

96 ICRC, War in Cities: Preventing and Addressing the Humanitarian Consequences for Civilians, May 2023: <https://shop.icrc.org/war-in-cities-preventing-and-addressing-the-humanitarian-consequences-for-civilians-print-en-1.html>

97 Prashant Kahlon, War on the coastline: mitigating civilian harm in the littorals, Humanitarian Law & Policy, May 2023: <https://blogs.icrc.org/law-and-policy/2023/05/17/war-coastline-mitigating-civilian-harm-littorals/>

98 ICRC, International humanitarian law and policy on cyber and information operations: <https://www.icrc.org/en/law-and-policy/cyber-and-information-operations>

99 ICRC, International humanitarian law and policy on military operations in space: <https://www.icrc.org/en/law-and-policy/military-operations-space>

100 Australian Red Cross, Promoting respect for international humanitarian law A handbook for parliamentarians, 2016: https://www.redcross.org.au/globalassets/cms-assets/documents/ihl--no-ihl/australian-handbook_2.pdf

101 John Quinn, Australia and the Law of Armed Conflict and Arms Control, in Conley Tyler, Gyngell & Wakefield (eds) Australia and the Rules-Based International Order (AIIA: 2021) <https://www.internationalaffairs.org.au/wp-content/uploads/2021/10/Australia-and-the-Rules-Based-International-Order.pdf>

102 Australian Civil-Military Centre, Australian Guidelines for the Protection of Civilians, December 2015: https://www.acmc.gov.au/sites/default/files/2018-08/Australian_Guidelines_for_the_Protection_of_Civilians.pdf

Focus areas

“As global humanitarian need continues to rise, and the challenges of humanitarian action become more complex, the Australian Government must urgently scale up its ambition, resourcing and commitment to international humanitarian action. Scaling up Australia’s humanitarian effort should not be the sole responsibility of DFAT’s Humanitarian Division, although they play a critical role. Australia’s humanitarian commitment must be Whole-of-Government and driven by a clear, sustained and ambitious commitment to be a principled, global, humanitarian actor.”

Australian Council for International Development
Humanitarian Reference Group, February 2020¹⁰³

“[A] State’s ability to react effectively to potential or actual IHL violations requires considerable investment of thought, time and resources in developing government capacities and institutions accordingly. This is not a task for government legal experts alone; it requires multi-disciplinary inputs and thoughtful coordination across several different areas of government.”

Sarah McCosker, 2021¹⁰⁴

Consultations suggested the following focus areas to achieve this vision:

REGULAR REVIEW

Australia should conduct regular reviews of how it promotes compliance with international humanitarian law and protection of civilians using all tools of statecraft. This includes reviewing international processes linked to the pursuit of greater accountability to assess how they might be better utilised and strengthened. This could include building on recent studies like those commissioned by the UN Secretary-General or presented to the UN member bodies which have identified flaws and possible improvements. Australia should regularly update guidelines for the government on promoting compliance with IHL.

AUSTRALIAN DEFENCE FORCE AND POLICE TRAINING

As the primary obligation holders on the ground, it is critical that Australian Defence Force personnel and Australian Federal Police officers have the requisite up-to-date training on IHL and POC for any potential operation they may be asked to perform. Exemplary conduct is essential, so training should always be an area of focus and routinely assessed so that it meets best practice.

CAPACITY BUILDING

Is important to ensure that populations, both domestically and those Australia is seeking to support abroad, understand the fundamental principles of IHL and POC. Capacity building and awareness raising on the basics of IHL is a crucial to the success of IHL efforts both from the perspective of civilian targets of violence and policymakers. Australian Red Cross handbooks for government officials¹⁰⁵ and humanitarian and health professionals¹⁰⁶ are valuable tools that can be used to promote a greater understanding of IHL and POC fundamentals. Australia can also use funding mechanisms to enhance the capacity of humanitarian organisations like Geneva Call which work with armed groups and de facto authorities to enhance their understanding of, and compliance with, international humanitarian norms and principles.¹⁰⁷

REGIONAL PARTNERSHIPS

Australia should ensure that training and capacity building around IHL and POC within Pacific police forces is embedded within schemes such as the Pacific Response Group and Pacific Policing Initiative (PPI). Being a champion of IHL and POC in the region means Australia needs to focus on how to engage on these issues in ways that are relevant to the people of the Pacific Islands. The recent opening of two PPI training and development facilities in Queensland presents an opportunity for Australia to build on previous work, for example training regional police forces for peacekeeping operations in the Asia–Pacific.

103 Australian Council for International Development and Humanitarian Reference Group, Fit for the Future: Priorities for Australia’s Humanitarian Action, February 2020: https://acfid.asn.au/wp-content/uploads/2022/03/ACFID_HRG-Policy_Fit-for-the-Future_Web.pdf

104 Sarah McCosker, ‘Ensuring respect for IHL in the international community: Navigating expectations for humanitarian law diplomacy by third States not party to an armed conflict’ in Massingham and McConnachie (eds), Ensuring Respect for International Humanitarian Law (Routledge, 2021), pp. 23-43.

105 Australian Red Cross, The International Humanitarian Law Handbook for Australian Government Officials, September 2022: <https://www.redcross.org.au/globalassets/cms-assets/documents/ihl-no-ihl/ihl-handbook-for-aust-govt-officials-2021.pdf>

106 Australian Red Cross, International Humanitarian Law Handbook for Humanitarians and Health Professionals: <https://www.redcross.org.au/globalassets/cms/ihl/ihl-handbook-for-humanitarians-and-health-professionals.pdf>

107 Geneva Call, 2024-2027 Strategic Plan: <https://www.genevacall.org/wp-content/uploads/2023/12/Geneva-Calls-2024-2027-Strategic-Plan.pdf>

SUPPORTING INVESTIGATIONS INTO VIOLATIONS

Investigations into alleged harm to civilians are an important tool to prevent recurrence even if they do not lead to criminal accountability. They can generate greater knowledge and training around IHL and induce behavioural change. To contribute to an environment of deterrence,¹⁰⁸ Australia should be a strong supporter of investigations or alleged violations regardless of who committed them. This includes enhancing its capabilities to maintain a watching brief.

DOMESTIC LEGISLATION

Consultations showed that it is currently incredibly difficult for Australian humanitarian organisations to meet the strict requirements of compliance when allocating program funds in conflict-affected areas. Australia's domestic legislation around counter-terrorism and sanctions remain one of the biggest impediments to humanitarian access – and are some of the strictest when compared to like-minded countries such as Canada and the United Kingdom. These laws often criminalise humanitarian acts when attempting to protect civilians within regions controlled by proscribed actors.

Aligning Australia's domestic legislation with Canada and the UK would involve clear and consistent humanitarian exemptions across all counter-terrorism laws and sanctions regimes in line with the scope of UN Security Council Resolution 2664 (2020),¹⁰⁹ and the humanitarian principles of humanity, neutrality, impartiality, and independence as set out in GA Resolution 46/182.¹¹⁰

REAL-TIME DATA

Australia should focus on how to demonstrate leadership on harnessing instruments outside of traditional legal processes. This could include looking at surveillance data, satellite imagery, real time data sharing via social media platforms, the reports of aid agencies on their own logistics, and independent monitoring by other organisations in the humanitarian space.

This data can be triangulated with official mechanisms to identity bottlenecks or potential violations in the entry of aid into a contested territory, and Australia could claim a leadership role in applying immediate pressure and demanding accountability when aid shipments are not moving through in a timely way. An example of this is the UK-based not-for-profit Article 36, which advocates for more effective legal policy and operational responses to preventing civilian harm. Its analysis stresses the need to think about real time accountability, the ability to assert political pressure and real time humanitarian access mechanism through tracking various actors.¹¹¹

This type of approach could complement Australia's promotion of the declaration for the Protection of Humanitarian Personnel by focusing on granular issues that would have an impact on the lives of aid workers and civilians on the ground. Data on impeding the entry of humanitarian assistance and medical supplies and attacks on medical facilities could likewise feed into accountability mechanisms – real time information capture can lead to a timely investigation and rapid operational response.

DIRECT FUNDING

A focus area for Australia is to consider how mechanisms for more direct funding for partners and local actors can be supported, as there are situations where Australia's limited resources would be more efficiently delivered through partner organisations rather than multilaterally. Providing direct funding through Australian entities involves fewer layers of bureaucracy and lessens the time between funds being distributed and the money having an impact on the ground.

It is important to note that this direct funding approach should not replace multilateral humanitarian funding altogether, which remains important for securing meaningful, principled humanitarian response in a manner consistent with IHL, such as multi-year and unearmarked contributions.

PROTECTION OF CULTURAL PROPERTY

There should be a focus on protection of cultural property as required by IHL. Australian Defence training must continue to improve knowledge on protection of cultural property in conflict, in line with like-minded countries such as the United States (e.g. the Monuments Men and Women Foundation¹¹²) and the United Kingdom. Consideration is given to including archaeologists, anthropologists and historians in Defence Force reserves, as the United Kingdom does.

Australia could consider an art crimes division within the Australian Federal Police that backs up the requirements within The Hague Convention in terms of not importing items from war zones, or the illicit trafficking of cultural property. Australian custom officers would require training in this area.

108 Noam Lubell, Jelena Pejic and Claire Simmons, Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice, International Committee of the Red Cross (ICRC)/Geneva Academy of International Humanitarian Law and Human Rights, 2019: https://www.icrc.org/sites/default/files/document/file_list/guidelines_on_investigating_violations_of_ihl_final.pdf

109 <https://press.un.org/en/2022/sc15134.doc.htm>

110 https://www.unocha.org/sites/unocha/files/dms/Documents/120402_OOM-46182_eng.pdf

111 <https://article36.org/>

112 https://www.monumentsmenandwomenfnd.org/?srsltid=AfmBOoo1Y5sD4MmKo8QLEfY3GW-_bIAyC5KZwG4s8ChqChJNi5PnwZxL

ARMS REGULATIONS

Australia can take a leadership role in relation to the Arms Trade Treaty, use of autonomous weapons, nuclear weapons (in relation to the Nuclear Non-Proliferation Treaty), and explosive weapons in populated areas.¹¹³

This should extend to Australia playing a key role in advancing the law and its interpretation through multilateral processes concerning the evolution of lethal technologies, like autonomous weapons. There is a recognition that IHL needs to keep pace with innovations in the creation and usage of new weapons and their applications.

Australia has an obligation to ensure that arms transfer decisions include a consideration of whether the recipient is likely to respect IHL.¹¹⁴ To facilitate this, Australia should advance a licensing framework around the export and import of weapons so that countries that do not abide by UN resolutions are automatically denied the sale of weapons. While conflict is happening, the framework could also revoke weapons licences.

PUBLIC ENGAGEMENT

Finally, Australia should focus on public understanding of IHL and POC legal obligations in order to support Australia’s role in advocating for strict IHL compliance. This should include what the mechanisms are, why they are important, what they can achieve and what the limitations are.

For example, there can often be public surprise when charges are brought against Australia soldiers for actions in conflict zones. Many Australians may not understand why a defence force would charge its own people. It is important to build public awareness that there exist international laws, rules of engagement and standards of behaviour, and that defence force personnel are expected to uphold them.

Similarly, in an era of increasing conflict and heightened international tensions, the public may be unaware of the frameworks that do exist. Public communication needs to emphasise practical mechanisms, how Australia utilises them, and what the realistic outcomes might be. Uninformed or misinformed public opinion can adversely impact the political will to consistently apply IHL standards.

There is a duty to explain the legal basis for certain operations. There can be an inherent conservatism in terms of transparency, particularly in the IHL or broader security law space. Thought should be given to where Australia could be more transparent in putting its position on the proper interpretation of certain rules of international humanitarian law on the public record, with a view to shaping debates.

113 Mary Wareham, Civilian deaths from killer drones are this generation’s ‘Oppenheimer moment’, Sydney Morning Herald, June 2024: <https://www.smh.com.au/technology/civilian-deaths-from-killer-drones-are-this-generation-s-oppenheimer-moment-20240527-p5jh1l.html>; Stephanie Koorey, Should Australia be LAWsless?, The Strategist, June 2021: <https://www.aspistrategist.org.au/should-australia-be-lawsless/>

114 ICRC, Arms Transfer Decisions: Applying international humanitarian law criteria, May 2007: https://www.icrc.org/sites/default/files/external/doc/en/assets/files/other/icrc_002_0916.pdf

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