

# Belgium's Interministerial Commission for Humanitarian Law: Playing a key role in the implementation and promotion of IHL\*

**Frédéric Casier and Alix Janssens\*\***

Frédéric Casier is a legal advisor in international humanitarian law at the headquarters of the Belgian Red Cross French-speaking community. He has represented this organization on the Belgian Interministerial Commission for Humanitarian Law since 2005.

Alix Janssens studied law at the Université Catholique de Louvain and earned an LL.M in Public International Law at the University of Amsterdam before carrying out an internship at the Belgian Interministerial Commission for Humanitarian Law.

## Abstract

*The Belgian Interministerial Commission for Humanitarian Law was created in 1987 for the purpose of identifying and coordinating national measures for implementing*

\* The Belgian Interdepartmental Commission for Humanitarian Law was the subject of an article published in the *Review* several years after the Commission was created: Marc Offermans, “The Belgian Interdepartmental Commission for Humanitarian Law”, *International Review of the Red Cross*, Vol. 31, No. 281, April 1991, pp. 154–166.

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*the Geneva Conventions of 1949 and their Additional Protocols of 1977, which Belgium had just ratified. In the first part of this article, the authors describe the Commission's background, composition, missions and structure. They then explain how, through its work, the Commission helps incorporate the rules of international humanitarian law into domestic law, disseminate these rules and promote compliance with them. In the final part of the article, the authors highlight the key factors underpinning the Commission's success in achieving its missions.*

**Keywords:** national committee, international humanitarian law, implementation, dissemination, promotion, development, national measures, Belgium.

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## Introduction

Belgium has always taken an active role in the implementation and further development of international humanitarian law (IHL). It ratified the four Geneva Conventions of 12 August 1949 on 3 September 1952,<sup>1</sup> followed by their two Additional Protocols of 8 June 1977 on 20 May 1986,<sup>2</sup> and has systematically supported their development and adoption. It also rapidly addressed the issue of prosecuting grave breaches of the Geneva Conventions. In 1952, for example, it created a permanent commission to examine, upon the government's request, questions of criminal law that arise in international relations.<sup>3</sup> More recently, the Belgian "Interdepartmental Commission for Humanitarian Law" was established

- 1 See the International Committee of the Red Cross (ICRC) treaty database, available at: [www.icrc.org/ihl](http://www.icrc.org/ihl) (all internet references were accessed in January 2015); and the law of 3 September 1952 approving the following international laws: (a) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, plus Annexes, signed in Geneva on 12 August 1949; (b) the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, plus Annex, signed in Geneva on 12 August 1949; (c) the Convention Relative to the Treatment of Prisoners of War, plus Annexes, signed in Geneva on 12 August 1949; and (d) the Convention Relative to the Protection of Civilian Persons in Time of War, plus Annexes, signed in Geneva on 12 August 1949. *Belgian Official Gazette*, 26 September 1952, p. 6822.
- 2 See the ICRC treaty database, above note 1, and the law of 16 April 1986 approving the following international laws: (a) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (AP I); (b) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (AP II), both adopted in Geneva on 8 June 1977. *Moniteur belge*, 7 November 1986, p. 15196.
- 3 Royal Decree of 31 October 1952 creating a Permanent Commission to examine questions of criminal law in international relations, *Belgian Official Gazette*, 30 January 1953. This commission filed an opinion concerning the legislation needed to prosecute grave breaches of the Geneva Conventions together with a draft model law for this purpose that was submitted in 1956 to a committee of experts meeting under the auspices of the ICRC. However, owing to significant differences between national legal systems, this draft model law was subsequently abandoned. The Commission then analyzed the question from the angle of Belgian law, and the minister of justice filed a draft law with the Chamber of Representatives in 1963 (see *Parliamentary Documents*, Chamber, 577 (1962–1963)-1). This text served as the basis for the preparation of the law of 16 June 1993 on prosecuting grave breaches of the Geneva Conventions and the Additional Protocols (see below).

following the country's ratification of the Additional Protocols. Later renamed the Interministerial Commission for Humanitarian Law (ICHL or the Commission), its main mission was to identify and coordinate national measures to implement these new international legal instruments.<sup>4</sup> It is worth recalling that States Parties are required to respect and to ensure respect for the Geneva Conventions and the Additional Protocols in all circumstances.<sup>5</sup> For this purpose, national measures must be put into place in times of peace.

The ICHL was one of the first national committees set up to address the implementation of IHL. The International Committee of the Red Cross (ICRC) broadly encouraged other States and National Red Cross and Red Crescent Societies (National Societies) to follow Belgium's lead in undertaking this initiative in 1987. In 1988, the ICRC encouraged governments and their National Societies to work together "within the framework of an interministerial committee enlarged to include representatives of the National Societies" for the purpose of adopting national measures to implement the Geneva Conventions and their Additional Protocols.<sup>6</sup> Subsequently, Resolution I of the 26th International Conference of the Red Cross and Red Crescent, held in 1995, endorsed the recommendations of the Intergovernmental Group of Experts for the Protection of War Victims, including the creation of national committees on IHL.<sup>7</sup>

The ICHL has made a name for itself over the years. The purpose of this article is to show how the Commission became indispensable in the Belgian government's efforts to implement IHL. The article begins with a description of the Commission, including its founding, mission, composition and operating structure, together with changes that have taken place over time. It goes on to show how the various components of the Commission's work contribute to the process of incorporating the rules of IHL into national law, disseminating them and promoting compliance with them. Finally, it highlights the key factors underpinning the Commission's success in achieving its missions.

## Creation of the Commission and subsequent changes

After ratifying the Additional Protocols in 1986, Belgium quickly recognized the utility of creating a committee for IHL in order to coordinate national implementation measures in this field. The Commission was soon formed, but it was necessary to expand its size and scope of work several times to keep pace with the various

4 Visit the ICHL website, available at: [www.cidh-ichr.be](http://www.cidh-ichr.be).

5 See Article 1 common to the four Geneva Conventions of 12 August 1949 and Article 1(1) of AP I.

6 See "Letter to the States Party to the Geneva Conventions" and "Letter to the National Red Cross and Red Crescent Societies", dated 28 April 1988 and sent by the ICRC president. *International Review of the Red Cross*, Vol. 28, No. 263, 1988, pp. 122–124.

7 Resolution I, "International Humanitarian Law: From Law to Action. Report on the Follow-Up to the International Conference for the Protection of War Victims", adopted at the 26th International Conference of the Red Cross, Geneva, 7 December 1995, para. 4; report of the meeting of the Intergovernmental Group of Experts for the Protection of War Victims, Geneva, 23–27 January 1995, Recommendations, Point V.

institutional reforms taking place in the country and the significant advances in IHL in recent years. When its mandate was again expanded in 2000, the necessary operating structure had to be put into place to ensure that it could fulfil its missions. For this, the Belgian authorities were on their own: the Geneva Conventions and their Additional Protocols do not explicitly provide for national committees on humanitarian law, and there were very few others in existence in the late 1980s.

## Creation of the Commission: the National Society as the driving force

When Belgium ratified the Additional Protocols of 1977, the Belgian Red Cross analyzed these texts in detail. It recommended identifying, with the involvement of the government entities directly concerned, the measures that needed to be put into place in peacetime to ensure that the Protocols were effectively implemented. It was thus that Belgium's National Society organized a symposium on 27–28 November 1986 to study the question of implementing the two Additional Protocols.<sup>8</sup> This symposium came shortly after the Additional Protocols had entered into force in Belgium on 20 November 1986. Alexandre Hay, president of the ICRC at the time, was correct in saying that it was not enough to simply ratify the Protocols, but that appropriate measures had to be taken to ensure compliance with these treaties in the event that an armed conflict were to involve a State Party.<sup>9</sup> In his speech opening the symposium, the president of the Belgian Red Cross, His Majesty King Albert II (Prince of Liège at the time), focused on a major challenge that lay ahead: coordinating among the ministerial departments involved to ensure that these measures were adopted and properly followed up. To this end, he asserted the need for permanent committees to oversee and monitor measures aimed at implementing the Additional Protocols.<sup>10</sup>

This suggestion was acted on with the decision of the Council of Ministers of 20 February 1987 creating the Interdepartmental Commission for Humanitarian Law, which has since become the Interministerial Commission for Humanitarian Law.

## Evolving missions and composition

At the outset, the ICHL was tasked with examining the Additional Protocols and, where needed, the Geneva Conventions themselves;<sup>11</sup> identifying measures that

8 Belgian Red Cross, "Implementation of the Additional Protocols to the Geneva Conventions of 12 August 1949: Under the Co-presidency of Vaast Leysen and Jacques Delruelle, National Vice-Presidents of the Belgian Red Cross", Symposium, 27–28 November 1986, Brussels, *Military Law and the Law of War Review*, Vol. 27, No. 2, 1988, pp. 195–366.

9 *Ibid.*, pp. 205–209.

10 *Ibid.*, pp. 203–204.

11 As noted above, the ICHL was created following the 1986 symposium on the implementation of the Additional Protocols of 1977. Because this symposium was organized at the same time that Belgium was ratifying these Protocols, the ICHL's coordination mission focused particularly on measures to implement these laws without explicitly excluding the Geneva Conventions of 1949. But since the Additional Protocols supplement the Geneva Conventions, the ICHL would, at the same time, address implementation of them as well (it was made clear at the symposium that a number of provisions of the Conventions, including those relating to the prosecution of grave breaches, had not yet been incorporated into Belgian law).

should be taken at the national level for the purpose of implementing these laws; submitting proposals to the competent authorities on adopting these measures; and monitoring and coordinating the measures that would eventually be taken.<sup>12</sup>

In view of the various reforms undertaken by the Belgian government, further developments in IHL and the growing number of peacekeeping operations in which Belgium was participating on the request of the United Nations, the ICHL's missions – which had been growing in scope – were formally modified.<sup>13</sup> On 23 December 1994, the Council of Ministers expanded the ICHL's mandate. In addition to the tasks it had been attributed in 1987, the ICHL would act as a permanent advisory body to the federal government, providing studies, reports, opinions and proposals to help it implement and develop IHL. The Commission was given no decision-making or executive authority; its role would be to spur the political and administrative authorities to action.<sup>14</sup> Several years later, the Commission's existence and role were officially and publicly recognized by the Royal Decree of 6 December 2000 reorganizing the Interdepartmental Commission for Humanitarian Law,<sup>15</sup> which reaffirmed the 1994 revision of the ICHL's mandate. According to the royal decree, the ICHL's mission is thus to propose to the federal government national measures necessary for the implementation of the rules of IHL, to follow up on and coordinate these measures, and to prepare opinions and proposals concerning the application and further development of this body of law.<sup>16</sup>

It bears mentioning that for several years the ICHL has acted as the national advisory committee on the protection of cultural property under the terms of Resolution II of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 14 May 1954. Cultural property is civilian by definition, which means it is automatically protected in the event of armed conflict. Because cultural property is intimately connected with the identity of a people, its protection is also, and specifically, reaffirmed by Articles 53 and 16 of Additional Protocols I and II to the Geneva

12 Marc Offermans, "The Belgian Interdepartmental Commission for Humanitarian Law", *International Review of the Red Cross*, Vol. 31, No. 281, 1991, p. 154.

13 Guido Van Gerven, Chairman of the ICHL, *Introduction to the ICHL's Working Documents*, 14 June 2005, p. 3.

14 M. Offermans, above note 12, p. 154. For more detailed information on how the ICHL spurs government action, see the discussion of the Commission's mandate in the second part of this article.

15 Royal Decree of 6 December 2000 reorganizing the Interdepartmental Commission for Humanitarian Law, *Belgian Official Gazette*, 12 December 2000, p. 41449.

16 Under the terms of Article 2 of the Royal Decree of 6 December 2000:

The mission of the Interministerial Commission for Humanitarian Law ... is to:

1. identify and examine the national enforcement measures necessary for the implementation of the rules of international humanitarian law, inform the federal ministers concerned of them and submit proposals to them in this regard;
2. monitor and coordinate the national enforcement measures addressed in point 1;
3. as a permanent advisory body, assist the federal government, on its own initiative or on the request of the latter, with studies, reports, opinions and proposals concerning the application and development of international humanitarian law;
4. ensure the work of the Interdepartmental Commission for Humanitarian Law is carried on and its archives preserved.

Conventions, respectively. Given its role as an expert in IHL, the ICHL incorporated the protection of cultural property into its priorities, and in 1997 it created an internal working group in charge of studying national implementation measures in this regard. One of the Commission's first actions in this area was to organize, in 2000, an information session on the protection of cultural property during armed conflict which was attended by the federal departments, the federal entities (the Communities and Regions) and the Belgian Red Cross. The ICHL took the opportunity to reassert its view that its core remit included studying national measures to implement legal instruments concerning the protection of cultural property in the event of armed conflict.<sup>17</sup> The Commission's commitment to this issue gradually deepened during the preparations for and follow-up to the 28th International Conference of the Red Cross and the Red Crescent in 2003. The "Protecting Human Dignity" declaration emanating from this conference stated that the cultural heritage of peoples must be protected and called on "all parties to an armed conflict to take all feasible measures to prevent pillage of cultural property and places of worship and acts of hostility against such property not used for military purposes."<sup>18</sup> In responding to this appeal, the Cairo Declaration on the protection of cultural property, which was adopted by consensus during a regional conference held in 2004, invited "national commissions for humanitarian law to devote the necessary effort for the protection of cultural property and to adopt the national measures for the implementation of the 1954 Convention and its two Protocols at the national level as being an integral part of international humanitarian law".<sup>19</sup> In this way, the ICHL's mission gained muscle over the years. At first, it consisted mainly of preparing a list of national measures that should be taken to protect cultural property and ensuring follow-up to the ratification of the Second Protocol to the Hague Convention of 26 March 1999. However, soon after the Second Protocol was ratified by Belgium and entered into force on 13 January 2011, the ICHL decided to expand the size of its working group on the protection of cultural property and the scope of that working group's mission. The aim was twofold: to ensure that the obligations under the Hague Convention and its two Protocols were implemented at the national level, and to provide input, on behalf of Belgium, to international meetings having to do with the promotion and implementation of these conventions.

17 Marc Offermans, "The Interdepartmental Commission on Humanitarian Law (ICHL) and the Testing of National Implementation Measures on the Protection of Cultural Property in Armed Conflict", in *The Protection of Cultural Property in Times of Armed Conflict: Report of the Informational Meeting of 27 April 2000*, 2001, available at: [http://cidh-ichr.be/fr/activites%20de%20la%20CIDH#rapports\\_activites](http://cidh-ichr.be/fr/activites%20de%20la%20CIDH#rapports_activites).

18 "Protecting Human Dignity" declaration contained in the Annex to Resolution I, "Adoption of the Declaration and Agenda for Humanitarian Action", 28th International Conference of the Red Cross and Red Crescent, Geneva, 2–6 December 2003, *International Review of the Red Cross*, Vol. 85, No. 852, 2003, pp. 888 ff.

19 Cairo Declaration on the Protection of Cultural Property, adopted during a regional conference held on 14–16 February 2004 under the aegis of the Egyptian national IHL committee, in partnership with the ICRC, the Egyptian Red Crescent Society and UNESCO, para. 4, available at: [www.icrc.org/en/document/cairo-declaration-protection-cultural-property](http://www.icrc.org/en/document/cairo-declaration-protection-cultural-property).

The current composition of the ICHL was set forth in the Royal Decree of 6 December 2000 and is largely in line with the decisions taken by the Council of Ministers in 1987 and 1994. The Commission has the following permanent members: a representative of the prime minister and representatives of the ministers of foreign affairs, justice, defence, the interior, public health and development cooperation.<sup>20</sup> It also has a number of invited members: representatives of the Communities and Regions, and of the Belgian Red Cross.<sup>21</sup> It may, upon request by a minister represented on the Commission, appoint permanent experts to assist in its work.<sup>22</sup> The Commission appoints a vice chairperson and a secretary from among its members or the permanent experts to a renewable three-year term.<sup>23</sup> To ensure it has all the information it needs to carry out its work, the Commission can invite representatives from other government entities that are not represented and bring in other outside individuals whose input is deemed useful.<sup>24</sup>

The National Society's status within the Commission is unique in two ways. First, the Belgian Red Cross was invited to participate in the Commission's work starting with its first meeting on 12 May 1987. Initially, this was in response to Resolution V adopted by the 25th International Conference of the Red Cross and Red Crescent in 1986 concerning national measures to implement IHL, which "invites National Societies to assist and co-operate with their own governments in fulfilling their obligation" relative to the adoption of implementation measures.<sup>25</sup> The involvement of the National Societies derives mainly from their role, as auxiliaries to the public authorities, of supporting their government in disseminating IHL and ensuring respect for this body of law.<sup>26</sup> This practice was formalized by the Royal Decree of 2000.

Second, although the Belgian Red Cross is invited to take part in the Commission's work, and therefore in its meetings, it is not a permanent member

20 Royal Decree of 6 December 2000 reorganizing the Interdepartmental Commission for Humanitarian Law, *Belgian Official Gazette*, 12 December 2000, p. 41449, Art. 4(1)(1).

21 *Ibid.*, Art. 4(2).

22 *Ibid.*, Art. 6.

23 *Ibid.*, Art. 4(1)(2); Internal Regulations of the ICHL, adopted on 14 September 2001, Art. 3.

24 Royal Decree of 6 December 2000 reorganizing the Interdepartmental Commission for Humanitarian Law, *Belgian Official Gazette*, 12 December 2000, p. 41449, Art. 7.

25 Resolution V, "National Measures to Implement International Humanitarian Law", adopted by the 25th International Conference of the Red Cross and Red Crescent, Geneva, October 1986, *International Review of the Red Cross*, Vol. 28, No. 263, 1988, p. 127. See also General-Major René Bats, introduction to the proceedings of the symposium on "Implementation of the Protocols Additional to the Geneva Conventions of 12 August 1949", Brussels, 27 and 28 November 1986, *Military Law and the Law of War Review*, Vol. 27, No. 2, 1988, p. 197.

26 Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross and Red Crescent, Geneva, 8 November 1986, and amended in 1995 and 2006, Art. 3(2)(3). The mission of disseminating IHL is included in the statutes of the Belgian Red Cross, revised on 13 October 2003, Art. 4; approved by the decree of the government of the French Community on 4 December 2003, which approved the statutes of the Belgian Red Cross, *Belgian Official Gazette*, 22 April 2004, p. 23953; by the decree of the Flemish government on 2 April 2004, which approved the modified statutes of the Belgian Red Cross, *Belgian Official Gazette*, 1 July 2004, p. 53385; and by the decree of the German-speaking Community on 4 June 2004, which approved the new statutes of the Belgian Red Cross, *Belgian Official Gazette*, 20 August 2004, p. 62408.

and is not directly involved in decision-making. The National Society is thus invited as an expert in IHL to give an opinion on implementation-related issues at a strictly technical level. Under this arrangement, the National Society remains faithful to the principles of independence and neutrality, while the represented government entities assume full responsibility for the decisions adopted.

### Clearly defined operating structure and working procedures

When the Commission was reorganized in 1994, it was placed under the authority of the minister of foreign affairs,<sup>27</sup> whose remit includes ensuring respect for Belgium's obligations under both treaty-based and customary IHL.<sup>28</sup> Since then, the minister has been responsible for appointing the Commission chairperson.<sup>29</sup> The minister also approves the Commission's internal regulations<sup>30</sup> and provides it with administrative staff, offices and material resources.<sup>31</sup>

The Commission's operating structure is laid out in its Internal Regulations<sup>32</sup> and Working Procedures,<sup>33</sup> the latest versions of which were approved on 14 September 2001. A working procedure on updating the working documents that spell out the implementation measures which should be taken was adopted in 2006. The Commission holds a plenary meeting at least four times per year. A number of working groups,<sup>34</sup> comprising both members and experts, meet during the interim and can address urgent issues whenever necessary. These working groups are formed to carry out the Commission's mission as a permanent advisory body to the federal government. Their respective tasks can be modified as needed. The Internal Regulations do not define an end date for the working groups, which continue to operate as long as they help the Commission to carry out its mandate. The working groups currently focus on the following issues: bringing federal legislation in line with IHL, the dissemination of IHL (largely focused on training), the protection of cultural property in the event of armed conflict, the creation of a national information bureau, preparing and following up

27 Previously, by virtue of the decision of the Council of Ministers in 1987 creating the ICHL, the Commission was chaired by the chairman of the Commission for National Defence Problems (CPND), a body under the direct authority of the prime minister. The CPND's mission was to support the Ministerial Defence Committee, which was created by the Royal Decree of 3 August 1950. This law was abrogated by the Royal Decree of 24 April 2014, *Belgian Official Gazette*, 13 May 2014, p. 38600.

28 G. Van Gerven, above note 13, p. 3.

29 Royal Decree of 6 December 2000 reorganizing the Interdepartmental Commission for Humanitarian Law, *Belgian Official Gazette*, 12 December 2000, p. 41449, Art. 4(1)(1).

30 *Ibid.*, Art. 8.

31 *Ibid.*, Art. 9.

32 *Ibid.*, Art. 8, according to which, "[a]t the first meeting following the entry into force of this decree, the Commission defines internal regulations".

33 Pursuant to Article 15 of the ICHL's Internal Regulations, adopted on 14 September 2001: "The ICHL defines its working procedures for its mission of identifying and examining national enforcement measures needed for the implementation of the rules of international humanitarian law and for following up on and coordinating these national enforcement measures."

34 ICHL Internal Regulations, 14 September 2001, Art. 5; ICHL Working Procedures, 14 September 2001, Point I(C).



on decisions of International Conferences of the Red Cross and Red Crescent, and public outreach (this includes organizing colloquiums and workshops).<sup>35</sup>

The Commission can issue opinions upon the request of the federal government or on its own initiative.<sup>36</sup> It makes decisions by consensus among the permanent members (i.e., the representatives of the ministers whose work is somehow related to the implementation of IHL) who are in attendance, following consultations with the other Commission members who are in attendance (i.e., invited members, permanent experts and outside individuals who have been brought in).<sup>37</sup>

## Fulfilling its mandate through a variety of activities

Alongside the ICHL's evolving mandate, the volume of its work has significantly increased in recent years. Its main tasks include identifying implementation measures that should be adopted in view of existing domestic law, proposing texts for draft laws on the implementation of IHL as an advisory body to the federal government, and organizing academic events to promote and contribute to the development of IHL.

### Identifying national implementation measures

In 1997, the ICHL completed the first mission it had been given, which was to identify aspects of Belgian law that needed to be adapted and to prepare, for the ministers concerned, a list of enforcement measures that were needed to effectively implement the Geneva Conventions and their Additional Protocols at the national level.

For this purpose, the working groups analyzed forty-three essential obligations under treaty-based and customary IHL. These were drawn from an indicative list of national implementation measures prepared by the ICRC in 1986 in the run-up to the 25th International Conference of the Red Cross and Red Crescent,<sup>38</sup> international doctrine and the preparatory documents for the various diplomatic conferences.<sup>39</sup> For each obligation, a working document was prepared that described the legal basis for the provisions to be implemented, the national measures to be adopted, the ministerial departments concerned and the

35 An overview of the current working groups is available at: [www.cidh.be/fr/Composition%20et%20structure](http://www.cidh.be/fr/Composition%20et%20structure). There are currently six *ad hoc* working groups: Legislation, Protection of Cultural Property, Public Outreach, International Conferences, Promoting IHL, and National Information Bureau.

36 Royal Decree of 6 December 2000 reorganizing the Interdepartmental Commission for Humanitarian Law, *Belgian Official Gazette*, 12 December 2000, p. 41449, Art. 2(3).

37 ICHL Internal Regulations, 14 September 2001, Art. 16.

38 "Respect for International Humanitarian Law: National Measures to Implement the Geneva Conventions and their Additional Protocols in Peacetime", *International Review of the Red Cross*, Vol. 28, No. 263, 1988, pp. 130–140.

39 G. Van Gerven, above note 13, p. 3.

lead department.<sup>40</sup> The working document also addressed the budgetary implications and the status of the issue (i.e., work done and ongoing work), and it proposed decisions. Once the working document was approved by the Commission meeting in a plenary session, the proposals were then submitted to the respective authorities.<sup>41</sup> A number of key themes were among those studied: the appointment and training of qualified staff, legal advisers in the armed forces, prosecuting grave breaches, judicial cooperation and extradition, the protection of cultural property and civil defence.

All the ICHL's working documents were assembled and published in a collection in 1997, as the Commission marked its 10th anniversary. The working documents represent a regularly updated action plan for the ministerial departments regarding the national measures that should be implemented.<sup>42</sup> When last updated, in 2005, the documents were published in a new collection.<sup>43</sup> This collection was distributed to the departments concerned and was also provided to the ICRC, which then passed it along to other national committees around the world in an effort to encourage the sharing of best practices.

Thanks to its work developing the list of necessary national implementation measures, the Commission has helped spawn a number of important measures since its creation in 1987. These include:<sup>44</sup> the preparation and regular updating of a list of qualified staff made up of experts from the ministerial departments, the National Society and universities; the posting within the armed forces of advisers specializing in the law of armed conflict; incorporating the teaching of IHL into military instruction programmes; recognition of the authority of the International Humanitarian Fact-Finding Commission provided for in Article 90 of Additional Protocol I of 1977; incorporating grave breaches of IHL into Belgium's criminal code (i.e., the insertion of Title I *bis* "Grave Breaches of International Humanitarian Law" into Book II of this code); and the adoption of detailed legislation in the area of judicial cooperation with international criminal courts.

## Serving as advisory body to the federal government

As the advisory body to the federal government in the area of IHL, the ICHL commonly submits opinions on its own initiative or upon request by the government. These opinions are generally prepared by the working groups and then eventually reviewed and approved by the Commission meeting in a plenary session. At that point the opinions are sent to the minister of foreign affairs and other ministers concerned for the necessary follow-up.<sup>45</sup>

40 "It is responsible for preparing proposals for implementation measures of a legal or practical nature that should be taken at the national level", ICHL Working Procedures, 14 September 2001, Point I(B).

41 ICHL Working Procedures, 14 September 2001, Point I(E).

42 On 14 March 2006, the ICHL adopted a working procedure for updating these working documents.

43 ICHL, *Collected Working Documents*, June 2005. These updated documents and the Commission's archives of working documents are available at: [www.cidh.be/fr/inventaire\\_doc](http://www.cidh.be/fr/inventaire_doc).

44 *Ibid.*, Document 01, "National Measures to Implement the Geneva Conventions and the Additional Protocols."

45 More information is available at: [www.cidh.be](http://www.cidh.be).

The Commission is thus the entity that prepares the text of draft laws in the area of IHL and submits them to the government. For example, it was the Commission's work and proposals that led to the law of 16 June 1993 on prosecuting grave breaches of the Geneva Conventions and Additional Protocols<sup>46</sup> (modified on 10 February 1999 and 23 April 2003), which was abrogated and replaced by the law of 5 August 2003 on grave breaches of IHL.<sup>47</sup> More recently, the Commission prepared the text for two draft laws assenting to amendments to the Statute of the International Criminal Court – the amendment to Article 8 on war crimes, and amendments on the crime of aggression – agreed at the Review Conference of the Rome Statute in Kampala on 10 and 11 June 2010. These texts led to the adoption of two laws of assent in November 2013.<sup>48</sup>

The Commission also responds to follow-up surveys seeking to ascertain what actions the government has taken in view of its pledges and the resolutions resulting from International Conferences of the Red Cross and Red Crescent.<sup>49</sup> It prepares its answers in collaboration with all the departments concerned and submits them to the ICRC and the International Federation of Red Cross and Red Crescent Societies (IFRC), which produce the surveys. In June 2011, for example, the ICHL responded on behalf of Belgium to the follow-up survey on the 30th International Conference of the Red Cross and Red Crescent (2007). Its report was incorporated into the follow-up reports prepared by the ICRC and the IFRC for the 31st International Conference of the Red Cross and Red Crescent (2011).<sup>50</sup> The ICHL also responded to the follow-up survey (mid-term review) to the 31st Conference.<sup>51</sup>

It is again in its role as an advisory body that the ICHL prepares reports on the implementation of international legal instruments by Belgium and submits these reports to the appropriate international entities. We will mention two examples: Belgium's follow-up report on the biennial resolutions of the General Assembly of the United Nations addressing the "Status of the Protocols Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of Armed

46 Law of 16 June 1993 on prosecuting grave breaches of international humanitarian law, *Belgian Official Gazette*, 5 August 1993, p. 17751.

47 Draft amendments abrogating the law of 16 June 1993 on prosecuting grave breaches of international humanitarian law and transferring its provisions to the Criminal Code and the Code of Criminal Procedure. These texts led to the law of 5 August 2003 on grave breaches of international humanitarian law, *Belgian Official Gazette*, 7 August 2003, p. 40506.

48 Law of 22 November 2013 assenting to the amendment to Article 8 of the Rome Statute of the International Criminal Court, adopted in Kampala on 10 June 2010 during the Review Conference of the Rome Statute, *Belgian Official Gazette*, 3 March 2014, p. 17672; Law of 22 November 2013 assenting to the amendments to the Rome Statute of the International Criminal Court on the crime of aggression, adopted in Kampala on 11 June 2010 during the Review Conference of the Rome Statute, *Belgian Official Gazette*, 3 March 2014, p. 17674.

49 More information is available at: [www.cidh.be](http://www.cidh.be). The resolutions of the 31st International Conference of the Red Cross and Red Crescent held in 2011 and the pledges made by Belgium on this occasion are available at: [www.rcrcconference.org](http://www.rcrcconference.org).

50 The various follow-up reports to the 30th International Conference of the Red Cross and Red Crescent are available at: [www.icrc.org/applic/p130e.nsf/va\\_navPage/POAI?openDocument&count=-1](http://www.icrc.org/applic/p130e.nsf/va_navPage/POAI?openDocument&count=-1).

51 "Survey (Mid-Term Review) on the Outcome of the 31st International Conference of the Red Cross and Red Crescent (2011)", available at: <http://rcrcconference.standcom.org/en/midtermreview.html>.

Conflict”, and the report submitted to the Committee on the Rights of the Child concerning the implementation of the Optional Protocol of 2000 to the Convention on the Rights of the Child on the involvement of children in armed conflict.<sup>52</sup> Another illustration is the four-year reports concerning the implementation by Belgium of the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999, which are submitted to UNESCO.<sup>53</sup>

## Organizing and participating in academic events

ICHL delegations regularly take part in a broad range of events having to do with IHL as well as in regional or universal meetings of national committees on IHL.<sup>54</sup> The ICHL also organized, in conjunction with the Ministry of Foreign Affairs, the ICRC and the Belgian Red Cross, the first European meeting of commissions and other national bodies for the implementation of IHL from various European countries in 1999. Particular focus was placed on the importance of creating a national-level body tasked with overseeing the implementation of IHL.<sup>55</sup>

The Commission also organizes academic seminars, colloquiums and expert workshops, generally in conjunction with the ICRC or the Belgian Red Cross and other organizations concerned with the selected topics. These events are designed to promote and further develop IHL. They bring together a large number of participants from around the world, including experts in diverse disciplines, staff from embassies located in Brussels and representatives of international organizations.

Examples of such events are many: in June 2012 the ICHL organized a colloquium on the amendments made in 2010 to the Statute of the International Criminal Court;<sup>56</sup> in 2013, together with UNESCO, it organized an international colloquium on the implementation of the Second Protocol (of 1999) to the Hague

52 See, for example, the report of the Committee on the Rights of the Child, UN Doc. CRC/C/OPAC/BEL/1, 15 August 2005.

53 Report prepared by the ICHL on the implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954) and its two Protocols of 1954 and 1999, for the 2004–2008 period, 2008; and Report on the national implementation of the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols (1954 and 1999), for the 2009–2012 period, 2012. Documents available at: [www.unesco.org/new/fr/culture/themes/armed-conflict-and-heritage/](http://www.unesco.org/new/fr/culture/themes/armed-conflict-and-heritage/).

54 European Regional Meetings of National Committees on International Humanitarian Law (Budapest, 2–3 February 2001; Athens, 25–28 January 2006) and Universal Meetings of National Committees on International Humanitarian Law (Geneva, 25–27 March 2002; Geneva, 27–29 March 2007; Geneva, 27–29 October 2010). At each of these meetings, an ICHL representative either made a presentation or ran a workshop. The Commission took advantage of these opportunities to share its experience in the implementation of IHL.

55 European Meeting of National Committees on the implementation of international humanitarian law, Brussels, 19–20 April 1999. See the meeting report in ICHL, above note 43, Document 01, “National Measures to Implement the Geneva Conventions and the Additional Protocols”, Annex A.

56 Colloquium entitled “From Rome to Kampala: The First Two Amendments to the Rome Statute”, held in Brussels on 5 June 2012. The colloquium proceedings were subsequently published: Gérard Dive, Benjamin Goes and Damien Vandermeersch (ed.), *From Rome to Kampala: The First 2 Amendments to the Rome Statute*, Bruylant, Brussels, November 2012.

Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict;<sup>57</sup> and in early 2014, as part of the ICRC's Health Care in Danger project,<sup>58</sup> it joined with the ICRC to organize the expert workshop in Brussels focusing on domestic regulatory frameworks for implementing international rules on safeguarding health care in armed conflict and other emergencies.<sup>59</sup>

## The main success factors of the Commission

Several factors have undeniably contributed to the ICHL's effectiveness and to the quality of its work. These include the highly diverse composition of the Commission and the expertise of its members, its working-group approach, its right of initiative, and the wide range of international academic events that it organizes.

### Expertise born of diversity

First, the ICHL has been able to develop its expertise over time thanks to the broad participation of all the representatives of the ministerial departments affected in one way or another by the implementation of IHL and to the close working relationship between its permanent members and the National Society.

### *Ministerial departments well represented*

The ICHL is present and has an impact at the various institutional levels in Belgium because of its composition: it brings together representatives of various federal ministers responsible for implementing international humanitarian law, representatives of the governments of the federated entities (Regions and Communities) and representatives of the Belgian Red Cross. Thanks to its membership, the Commission also benefits from the expertise and knowledge of the main actors involved in the application of IHL in Belgium.

The expanding involvement of the ministerial departments in the ICHL's work has led to a real sense of ownership by the country's authorities. The Belgian Red Cross may have come up with the idea of setting up the ICHL in 1987 and helped it along for a few years by providing office space and office staff,<sup>60</sup> but the national authorities wasted no time in assuming their responsibilities in the Commission's functioning and the management of its work.

57 Colloquium held in Brussels on 12–13 December 2013.

58 More information on the Health Care in Danger project is available at: [www.icrc.org/eng/what-we-do/safeguarding-health-care/solution/2013-04-26-hcid-health-care-in-danger-project.htm](http://www.icrc.org/eng/what-we-do/safeguarding-health-care/solution/2013-04-26-hcid-health-care-in-danger-project.htm).

59 Expert workshop on "Domestic Normative Frameworks for the Protection of Health Care", held in Brussels on 29–31 January 2014. The workshop report was published in January 2015 and is available at: [www.icrc.org/eng/assets/files/publications/icrc-002-4215.pdf](http://www.icrc.org/eng/assets/files/publications/icrc-002-4215.pdf). See also ICRC, "Protecting Health Services Requires Good National Laws", 31 January 2014, available at: [www.cicr.org/eng/resources/documents/news-release/2014/01-31-health-care-in-danger-brussels.htm](http://www.cicr.org/eng/resources/documents/news-release/2014/01-31-health-care-in-danger-brussels.htm).

60 For more on this, see M. Offermans, above note 12, p. 156.

## *Active participation of the National Society*

Today, the National Society's main role in support of the ICHL's work lies in providing expertise. It intervenes at several levels.

The National Society helps develop legislation aimed at implementing IHL. As part of the Commission's "Legislation" Working Group, which is chaired by the representative of the minister of justice, it is involved in writing the texts for draft bills. For example, the National Society helped prepare the draft law of assent to Additional Protocol III to the Geneva Conventions, adopted in 2005, which created an additional distinctive emblem called the "red crystal"; this law of assent paved the way for this treaty's ratification by Belgium. It was also involved in writing the law of 22 November 2013 that modified the law of 4 July 1956 protecting Red Cross names, signs and emblems in order to include the red crystal.<sup>61</sup>

The Belgian Red Cross supports the ICHL in its mission to promote IHL in Belgium. In 2007, for example, the National Society coordinated with the Chancellery of the Prime Minister to prepare a pamphlet explaining the legal regimes that protect cultural property in Belgium, including the Hague Convention of 1954 and its Protocols.<sup>62</sup> This pamphlet was published and distributed to the Belgian authorities. More broadly, the National Society also has a hand in preparing and organizing colloquiums involving the ICHL.

The ICHL counts on the support of the Belgian Red Cross in its task of overseeing the preparations for and follow-up to the International Conferences of the Red Cross and Red Crescent on behalf of the Belgian authorities. In this respect, the National Society chairs the Commission's "International Conferences of the Red Cross and Red Crescent" Working Group. The working group's mission includes following up on the pledges and resolutions adopted by Belgium at the previous International Conference and overseeing the report that Belgium is required to submit to the conference organizers. The working group also draws up proposals for new pledges for the following four years that the Belgian authorities will present during the subsequent International Conference. The pledges proposed by the working group and approved by the Belgian authorities in advance of the 31st International Conference include the following: supporting the international Arms Trade Treaty (including compliance with IHL), as well as ratifying this treaty and adopting national implementation measures;<sup>63</sup> ratifying

61 Law of 4 July 1956 on protecting Red Cross names, signs and emblems, *Belgian Official Gazette*, 11 July 1956, p. 4616; modified by the law of 22 November 2013, *Belgian Official Gazette*, 20 December 2013, p. 101271.

62 ICHL, *The Protection of Cultural Property in Belgium: Applicable Law*, Federal Public Service Foreign Affairs, Brussels, 2007.

63 The Arms Trade Treaty was adopted by the United Nations General Assembly through Resolution 67/234 B of 2 April 2013. Belgium ratified it on 3 June 2014. The text of the treaty and the status of ratifications are available at: <http://disarmament.un.org/treaties/t/att>. Since 2011, Belgium has adopted national measures aimed at taking into account the requirements of IHL in the context of arms transfers: Decree of the Flemish Region of 15 June 2012 concerning the importation, exportation, transit and transfer of defence-related products, other equipment for military use, equipment for maintaining order, civilian firearms, spare parts and ammunition, *Belgian Official Gazette*, 4 July 2012, p. 36557; Decree of the Walloon Region of 21 June 2012 concerning the importation, exportation, transit and transfer of

the amendments to the Statute of the International Criminal Court – the amendment to Article 8 concerning war crimes and amendments concerning the crime of aggression – adopted at the Review Conference of the Rome Statute in 2010 in Kampala;<sup>64</sup> and ratifying Additional Protocol III to the Geneva Conventions, adopted in 2005, and consequently adapting domestic legislation.<sup>65</sup> Pledges to be made jointly with the National Society were also proposed by the working group during preparations for the 31st International Conference, such as considering an agreement between the Ministry of Defence and the Belgian Red Cross aimed at enhancing cooperation in the area of training, particularly in the realm of IHL.<sup>66</sup>

The working group also represents an ideal opportunity for the National Society to keep the authorities informed of decisions made at Movement meetings that the Belgian authorities cannot attend. These include meetings of the Council of Delegates, where preparations for future International Conferences are often discussed.<sup>67</sup> Being aware of potential agenda items allows the Belgian authorities to begin preparing for the following International Conference as early as possible.

Finally, the Commission is a unique platform for the National Society and the national authorities to discuss and debate questions concerning the development of IHL which are addressed at the international level. One example of this is the follow-up to Resolution I on strengthening legal protection for victims of armed conflict adopted in 2011 at the 31st International Conference of the Red Cross and Red Crescent.<sup>68</sup> The representatives of the Belgian authorities who attend the international consultation meetings systematically share the outcome with the National Society and are open to any proposals that the latter makes.

## Working groups: The linchpin to the Commission's success

The second success factor has to do with the ICHL's actual operating structure, which is based on working groups. At first, the Commission only held monthly

civilian arms and defence-related products, *Belgian Official Gazette*, 5 July 2012, p. 36653; Ordinance of the Brussels-Capital Region of 20 June 2013 concerning the importation, exportation, transit and transfer of defence-related products, other equipment that may have a military use, equipment for maintaining order, civilian firearms, and their spare parts, accessories and ammunition, *Belgian Official Gazette*, 21 June 2013, p. 40076.

64 Belgium ratified these amendments on 26 November 2013. The status of ratifications of these amendments is available at: [www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/PR968.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/PR968.aspx). Two laws of assent were prepared by the ICHL before the ratification instrument was filed. See above note 48 for reference information on these two laws.

65 See the aforementioned information on the ICHL's work in this regard, and above note 61, for references to national legislation.

66 This agreement was signed on 23 November 2012.

67 According to Article 14(5) of the Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross and Red Crescent, Geneva, 8 November 1986 and amended in 1995 and 2006, “[t]he Council [of Delegates] may refer any matter to the International Conference”.

68 Resolution 1 on “Strengthening Legal Protection for Victims of Armed Conflict”, adopted by the 31st International Conference of the Red Cross and Red Crescent, Geneva, 1 December 2011.

plenary meetings. Because the meetings were long and each agenda item sometimes concerned only a small number of attendees, this approach translated into slow and cumbersome work. The Commission has since reorganized and now operates through six *ad hoc* working groups, each one responsible for what is deemed a priority policy area.<sup>69</sup> The working groups, which generally meet four or five times per year from September through June, examine the issues in depth and come up with proposals. The Commission subsequently modifies or approves these proposals during its plenary sessions, which are now held only four times per year.<sup>70</sup>

This procedure allows for more in-depth analyses because the working groups comprise only those people directly concerned with the topics addressed there and because they can more easily surround themselves with experts in certain sectors of IHL. For example, the working group tasked with the protection of cultural property in the event of armed conflict is unique in that it also oversees the Belgian delegation and its positions at international meetings that discuss the Hague Convention and its Protocols. It can do this thanks to the inclusion in the working group of experts in the protection of cultural heritage. This procedure also allows the ICHL to cover and study a broader terrain and to react more quickly and flexibly to developments in current affairs that the working groups follow very closely. The working-group approach has proven to be more efficient than the approach of addressing individual topics in monthly, plenary meetings – a fact which is, incidentally, reflected in the sheer volume of work that has been accomplished since the Commission's reorganization – and results in shorter plenary meetings in which more people participate and more decisions are made.<sup>71</sup>

## An effective advisory body to the federal government

Thirdly, as the permanent advisory body to the federal government, the ICHL has a right of initiative which it invokes more and more frequently. Its aim is to help the government by providing studies, reports, opinions and proposals concerning the application and further development of IHL. The Commission's success in using this right of initiative to encourage the federal government to act when it comes to implementing IHL is borne out by the many legislative proposals seen in recent years.

## Gaining renown thanks to its dissemination-related activities

The ICHL organizes a wide range of international academic events for the purpose of spreading awareness of IHL and encouraging its further development. While the

69 For more information on how long a working group exists and the topics currently covered, see the section on the Commission's operating structure and working procedures in the first part of this article.

70 G. Van Gerven, above note 13, pp. 4, 8.

71 *Ibid.*, p. 8.



seminars and workshops lead to greater knowledge of this body of law among relevant sectors of society, they also acquaint more and more people with the Commission itself.<sup>72</sup>

Each year the ICHL must also submit a report on the work accomplished during the previous year to the ministers represented on the Commission.<sup>73</sup> These reports, if forwarded by the minister of foreign affairs to the legislative assemblies upon the Commission's suggestion, can go some way towards expanding the Commission's visibility and highlighting the resources that it brings to bear in terms of expertise.

On several occasions, the ICRC and national committees for the implementation of IHL or other foreign entities with a similar mission to that of the ICHL have requested documents on the Commission's activities or resulting from its work.<sup>74</sup> The Royal Decree reorganizing the ICHL gives the Commission the authority to accede to these requests if this is deemed useful.<sup>75</sup> The Commission determines which documents to pass along through a consultation held among its members.

## Conclusion

Initially created to implement the provisions of the four Geneva Conventions and their Additional Protocols, the ICHL has seen both its role and renown grow over the years. It now represents a valuable tool for the Belgian government in its quest to keep pace with ongoing developments in the field of IHL.

The Commission has successfully fulfilled its missions owing to a number of factors: the knowledge and expertise of its members, who all play a key role in the implementation of IHL in Belgium; the Commission's internal operating structure, with specific priority policy areas assigned to working groups; its right of initiative as an advisory body to the government; and the variety of initiatives it undertakes to disseminate IHL.

While the Commission plays an essential role in the implementation of IHL in Belgium, it also responds to a growing number of requests from the ICRC's Advisory Services to help it support other States in this same area.

In all these ways, the ICHL is uniquely positioned to foster compliance with the obligations set forth under international humanitarian law.

<sup>72</sup> *Ibid.*, p. 7.

<sup>73</sup> Royal Decree of 6 December 2000 reorganizing the Interdepartmental Commission for Humanitarian Law, *Belgian Official Gazette*, 12 December 2000, p. 41449, Art. 3(1).

<sup>74</sup> *Ibid.*, Report to the King.

<sup>75</sup> *Ibid.*, Art. 3(2).