

A Guide to Establishing a National Committee on International Humanitarian Law within Pakistan

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National Committee on International Humanitarian Law

The proceeding guide seeks to address the utility of and mechanisms for establishing a committee to implement International Humanitarian Law within Pakistan. The first part of this document will develop, in broad strokes, the general purpose, function and composition of such a committee, along with an overview of committees developed by other states.

The second part of this guide will explore the various methods by which such a committee may be created within Pakistan. Employing examples of existing institutions of a similar nature, this second section will also provide concrete recommendations as to how exactly such a committee may be constituted and in association with which existing institutions.

AN INTRODUCTION TO COMMITTEES ON INTERNATIONAL HUMANITARIAN LAW

There are more than 100 national committees constituted throughout the globe for the purpose of implementing international humanitarian law (IHL) at a domestic level. A significant number of states in Europe, Africa and South America have made such efforts to establish these committees, while states in Asia, by-and-large, have not participated as fully. The following is a discussion on the various aspects of a committee constituted to implement IHL.

The Purpose and Functions of a National Committee on IHL

To oversee the domestic application of Customary International Law, the Geneva Conventions of 1949 and, for those states that

have ratified them, the Additional Protocols of 1977, a working group, preferably inter-ministerial, may be established.¹ Often referred to as “committees” or “national humanitarian law committees,” these working groups, based within the executive, seek to advise and assist the respective government in understanding and implementing various aspects of IHL.²

The domestic implementation of international law requirements is not a simple task. There are countless provisions, regulations and resolutions to adopt. Moreover, this body of laws grows and changes day-by-day. Thus, the International Committee of the Red Cross (ICRC) recommends the creation of such a committee as an effective tool in “ensuring the effective application of IHL.”³ As traditional notions of warfare continue to

evolve, the accompanying laws in principles that regulate that warfare must evolve as well. Again, for such a reason, a national committee on IHL would serve a significant role in assisting a state in not only remaining compliant with said law, but also navigating its complications and developments deftly.

States are also compelled to disseminate knowledge of IHL, pursuant to their various obligations. The responsibility to uphold the Conventions and customary laws requires coordination from numerous government entities and other relevant bodies.⁴ This is difficult to achieve without the existence of such a committee.■

The Functions of a National Committee on IHL

For properly implementing IHL in a domestic law framework, the following functions were identified as the recommended primary functions of a national committee on IHL:

- To evaluate existing national law in the light of the obligations created by the Conventions, the Protocols (to the extent they reflect customary international law), and other instruments of IHL.⁵
- To be in a position to make recommendations for further

implementation, to monitor the law and ensure it is applied. This may involve proposing new legislation or amendments to existing law, coordinating the adoption and content of administrative regulations, or providing guidance on the interpretation and application of humanitarian rules.⁶

- To play a role in promoting activities to spread knowledge of IHL. The committee should have the authority to conduct studies, propose activities, and assist in making IHL more widely known. The committee would ideally be involved in instructing the armed forces in this domain, teaching it at various levels of the public education system and promoting the basic principles of IHL among the general population.⁷

There are various states that included additional functions within the mandates of their respective committees in an effort to better uphold its identified purpose.⁸

<i>Australia</i>
<ul style="list-style-type: none"> • To encourage international respect for IHL and increased participation in IHL instruments, particularly in the Asia Pacific region • To contribute to the development of IHL principles by the ICRC and other interested parties.

<i>Belarus</i>
<ul style="list-style-type: none"> • To draw up advisory opinions on the Republic's position on problems of humanitarian law, draft treaties, and national implementation legislation
<i>Cape Verde</i>
<ul style="list-style-type: none"> • To draw up and present initial and periodic reports on the implementation of international human rights and humanitarian law instruments
<i>China</i>
<ul style="list-style-type: none"> • To develop thematic research in the field of IHL
<i>Dominican Republic</i>
<ul style="list-style-type: none"> • To promote the inclusion of this body of law in official teaching programmes.
<i>Greece</i>
<ul style="list-style-type: none"> • To liaise with academic circles and agencies involved in matters pertaining to international humanitarian law, with similar authorities and agencies in other countries, and with the ICRC and other international bodies
<i>Panama</i>
<ul style="list-style-type: none"> • To represent Panama in international conferences and meetings dealing with topics relating to international humanitarian law
<i>Poland</i>
<ul style="list-style-type: none"> • To maintain ties with other committees in Poland and abroad concerned with international humanitarian law
<i>Seychelles</i>
<ul style="list-style-type: none"> • To take part in the drafting of reports to be submitted to United Nations treaty monitoring bodies

The Composition of a National Committee on IHL

As war powers are often situated with the executive, it is a natural conclusion that a national committee on IHL be based within the executive as well. These committees are often based in several ministries or departments and may even permeate lower levels of government, along with relevant

academic and private sector institutions. What is required is a wide range of expertise from both the public and private sector.⁹ Representation from the public sector may include members of Defense, Foreign Affairs, Law, Internal Affairs, Justice, Finance, Education and Human Rights Ministries.¹⁰ It is also recommended that in the establishment of these committees, there should also be representation from the legislative and judicial branches of government, along with the armed forces.¹¹ There is also scope for consultation with the private sector, which includes experts in law, international affairs and such related matters.¹² To this end, it is encouraged that experts in IHL, especially law university professors, become involved.¹³

The majority of committees are formulated in a manner that includes some grouping of these ministries and include representation from academics or domestic Red Cross or Red Crescent Societies.¹⁴ The committees are often housed within departments relating to Foreign Affairs, Justice and/or Defense.¹⁵

Several states have adapted structures that do not echo the existing norms described above. France's committee on IHL, for example, is headed by a legal professional and housed

within the Prime Minister's Office.¹⁶ Germany and Greece have university professors as the heads of their respective IHL committees.¹⁷ Guatemala and Honduras include within its committee membership representation from their domestic bar councils.¹⁸ Many states incorporate their domestic Red Cross and Red Crescent societies within their IHL committees as well.¹⁹

The Legal Basis for a National Committee on IHL

The majority of states that have created IHL committees have done so through processes based entirely within the executive branch of government.²⁰ Only five states appear to have formally codified the establishment of these committees and one state, Lithuania, did so through amendment.²¹

For the most part, Presidential or Executive Decrees were issued to formalize national committees on IHL (forty-four states).²² Similarly, Cabinet Decisions and decisions from singular ministries established the legal basis for the creation of committees in twenty-four states.²³ In the remaining states, some form of executive power, agreements, memorandums, letters, resolutions or memorandums of understanding were issued regarding these IHL committees.²⁴

Both Austria and Lesotho used ad hoc mechanisms as the legal basis for their committees and Lesotho also employed a memorandum of understanding (MoU) to bring relevant parties together for this purpose.²⁵ Malawi also used a MoU between its ministry of Foreign Affairs, Defense, Justice and Interior, along with its judiciary, Human Rights Commission and the national Red Cross Society to establish its national IHL committee.²⁶

Not all of the processes used to create these committees are overtly administrative. In Gambia, for example, a letter was sent from the Office of the President to the Department of State for Justice to establish their Inter-ministerial Committee on International Humanitarian Law, headed, again, by their Department of State for Justice.²⁷

COMMITTEES ON INTERNATIONAL HUMANITARIAN LAW ESTABLISHED IN RELATED STATES

The following table was reproduced in part from an ICRC publication titled *National Committee and Other National Bodies on International Humanitarian Law* to illustrate the framework employed by states that may be considered similar to Pakistan.²⁸

Bangladesh	<p><u>Name of Committee:</u> National Committee for International Humanitarian Law</p> <p><u>Establishment:</u> Established in 2014 as an agreement between the Ministry of Foreign Affairs and the Office of the Prime Minister.</p> <p><u>Composition:</u> The Committee for IHL includes representatives from: Cabinet Secretariat, Prime Minister’s Office, Defense, Home Affairs, Law, Justice and Parliamentary Affairs (Law and Justice Division and Legislative and Parliamentary Affairs Division), Cultural Affairs, Education, Health and Family Welfare, Women and Children Affairs and the Armed Forces. The Committee is chaired by the Ministry of Foreign Affairs and the Bangladesh Red Crescent Society. Its Secretariat includes a Director-General and representation from the United Nations and Human Rights wing, along with the Ministry of Foreign Affairs.</p> <p><u>Mandate:</u></p> <ul style="list-style-type: none"> - To disseminate and promote IHL - To evaluate domestic law with respect to IHL and to prepare recommendations to national authorities in this regard
China	<p><u>Name of Committee:</u> National Committee on International Humanitarian Law</p> <p><u>Establishment:</u> Established in 2007 through a decision of the Government</p> <p><u>Composition:</u> The National Committee includes representation from: Foreign Affairs, Defense, Justice, Education, Administration of Cultural Heritage, People’s Liberation Army and the Chinese Red Cross, which also operates as the Chair and Secretariat.</p> <p><u>Mandate:</u></p> <ul style="list-style-type: none"> - To promote IHL and its implementation, and to spread knowledge of this body of law - To promote international cooperation in connection with the dissemination and implementation of IHL - To conduct research in specific areas of IHL
Iran	<p><u>Name of Committee:</u> Iranian National Committee on Humanitarian Law</p> <p><u>Establishment:</u> Established in 1999 as a Decree of the Cabinet of Ministers</p> <p><u>Composition:</u> The Iranian National Committee includes representation from:</p>

	<p>Foreign Affairs, Defense, Justice, Interior, Health and the Armed Forces. The Red Crescent Society of the Islamic Republic of Iran manages the Committee.</p> <p><u>Mandate:</u></p> <ul style="list-style-type: none"> - To develop and present for approval suitable measures for implementing IHL at the national level - To monitor compliance with IHL at the national level - To teach and promote the principles of IHL among the armed forces and the general public and in educational institutions - To represent the government on issues related to IHL at national and international forums - To coordinate the exchange of information with regional and international organizations - To deal with IHL-related issues in connection with refugees, prisoners of war and other victims of war
<p>Saudi Arabia</p>	<p><u>Name of Committee:</u> National Commission on International Humanitarian Law</p> <p><u>Establishment:</u> Established in 2007 through a Decree of the Council of Ministers.</p> <p><u>Composition:</u> The National Commission on Defence and Aviation, Interior, Foreign Affairs, Justice, Higher Education, Culture and Information, Economy and Planning, Education, Human Rights Committee within the Consultative Council and the Saudi Red Crescent Authority, which also operates as the chairing body and the Secretariat.</p> <p><u>Mandate:</u></p> <ul style="list-style-type: none"> - To raise awareness of IHL
<p>Sri Lanka</p>	<p><u>Name of Committee:</u> National Committee on International Humanitarian Law</p> <p><u>Establishment:</u> Established in 2009 through a memorandum issued by the Cabinet of Ministers.</p> <p><u>Composition:</u> The National Committee includes representation from: External Affairs, Defense, Justice, Culture, Health, Education, Attorney-General's Department, the Armed Forces and the police. The Ministry of External Affairs operates as both the Chair and the Secretariat.</p> <p><u>Mandate:</u></p> <ul style="list-style-type: none"> - To evaluate existing domestic laws in light of Sri Lanka's obligations under the Geneva Conventions of 1949 and their Additional Protocols, and under other IHL instruments - To promote accession to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict - To play a key role in promoting and disseminating IHL by carrying out studies, proposing activities, training the armed forces, providing

	<p>instruction through the public educational system and raising awareness of IHL amongst the general population</p> <ul style="list-style-type: none"> - To make recommendations on and monitor the implementation of laws - To propose new legislation and amendments to existing laws
<p>United Kingdom</p>	<p><u>Name of Committee:</u> Interdepartmental Committee on International Humanitarian Law</p> <p><u>Establishment:</u> Established in 1999 by a decision of the Foreign and Commonwealth Office</p> <p><u>Composition:</u> The Interdepartmental Committee includes representation from: Foreign Affairs, Defense, Justice, Interior, Education, Trade, Health, Social Security, Culture, International Development, Office of the Deputy Prime Minister, Cabinet Office, Northern Ireland Office, Devolved Administrations for Scotland and Wales and the British Red Cross. The Foreign and Commonwealth Office operates as the Chair and Secretariat.</p> <p><u>Mandate:</u></p> <ul style="list-style-type: none"> - To ensure interdepartmental consultation and coordination on IHL issues - To review domestic legislation in order to identify additions and amendments needed for full implementation of IHL obligations - To encourage the dissemination of IHL in the armed forces and among other parts of the population - To determine whether the United Kingdom should participate in specific international treaties and conferences related to IHL - To monitor developments in IHL and review the implications for the United Kingdom - To promote consultations between the government, the British Red Cross and other organizations concerned - To consider giving assistance to other States in implementing IHL

CREATING A COMMITTEE ON INTERNATIONAL HUMANITARIAN LAW IN PAKISTAN

To establish a national committee on IHL there are several procedures that may be employed. The following section identifies five potential methods that may be employed for launching an IHL committee in Pakistan. These processes ultimately lead to the creation of a body that reflects the international practices identified above, within the bounds of a domestic understanding of IHL.

Creating a National Committee on IHL through Act or Amendment

Organizations Established by Act

National Commission on the Status of Women

The National Commission on the Status of Women Act²⁹ received assent of the President on March 8, 2012. It was established for the promotion of social, economic, political and legal rights of women.

National Counter Terrorism Authority

The National Counter Terrorism Authority³⁰ was established in 2009 and formally brought into existence in 2013 through an act of Parliament. It serves as a counter terrorism policy unit, an

intelligence agency and a law enforcement operation.

Anti-Narcotics Force

The Anti-Narcotics Force Act³¹ received assent on April 12, 1997 for incorporating a force for the purpose of inquiring into, and investigating offences relating to narcotics and narcotics trafficking.

Pakistan Atomic Energy Commission

For the promotion of peaceful uses of atomic energy in Pakistan the Pakistan Atomic Energy Commission Ordinance³² was enacted on July 21, 1965.

Pakistan Sports Board

A Pakistan Sports (Development and Control) Ordinance³³ was passed in 1962, which established a Sports Board. The purpose of this Board is to promote, develop, regulate and control standards of competition in sports in Pakistan comparable to the standards abroad.

National Commission on Human Rights

The National Commission for Human Rights Act³⁴ received assent on May 30, 2012. The objective of this Commission is to promote and protect human rights as already provided for in the Constitution

of Pakistan and various international instruments of which Pakistan is a state party.

Pakistan Council of Scientific and Industrial Research

The Pakistan Council of Scientific and Industrial Research Act³⁵ came into force in 1973. The Council was enacted to undertake, promote and guide scientific and technological research in respect of problems connected with the establishment and development of industries under conditions prevalent in Pakistan and also to encourage the extension of the results of research to various sectors of the economic development of the country in the best possible manner.

Framework of Related Organizations

Research Institutions ³⁶		
<i>Organization</i>	<i>Division</i>	<i>Legal Basis</i>
Pakistan Studies Centres	Education	Act, 1976
Centres of Excellence	Education	Act, 1974
Councils, Commissions, Committees ³⁷		
<i>Organization</i>	<i>Division</i>	<i>Legal Basis</i>
National Commission for Human Development	Cabinet	Ordinance, 2002
Press Council of Pakistan	Information Broadcasting	Ordinance, 2002
Law and Justice Commission of Pakistan	Law, Justice and Human Rights	Ordinance, 1979
Pakistan Council	Science &	Act, 1973

of Scientific and Industrial Research	Technology	
National Commission on the Status of Women	Women's Development	Act, 2012 (originally Ordinance, 2000)

The Legislative Process

A bill concerning an issue on the Federal Legislative List or the Concurrent Legislative List may originate in either the National Assembly or the Senate and it becomes a law if passed by both Houses and approved by the President.³⁸ Bills are classified generally as either Private Member Bills or Government Bills, the latter of which are introduced by Ministers in their respective House.³⁹ Upon introduction, the proposed legislation is referred to the relevant Standing Committee, unless a vote negates this step.⁴⁰

If the House to which it is submitted does not pass the bill within ninety days or if it is rejected, the House within which the Bill originated may summon a joint meeting headed by the President.⁴¹ Within this joint sitting, if a majority within the two Houses votes in favor, the bill may then be presented to the President for their approval.⁴² The President may choose to return the bill to Parliament without approval for further amendment as well.⁴³ If again the majority within the joint session approve the bill and

resend it for the President's approval, then it shall be approved regardless.⁴⁴

Before a bill is introduced in either House in Parliament, it is formulated within the Cabinet through procedures established primarily in Rules 27 and 28 of the Federal Government Rules of Business, 1973.⁴⁵

Government Bills are proposed and propelled by the relevant ministry.⁴⁶ The ministry concerned must consult all other relevant divisions regarding the proposed legislation, including the Finance Division, and seek approval from the Cabinet (Rule 16(1)(a)) before creating a draft bill with the Ministry of Law.⁴⁷ Rule 27 also provides that a proposed amendment to an existing law does not require the prior approval of the Cabinet before proceeding to the Law Ministry.⁴⁸

Private member bills operate according to similar procedures.⁴⁹ The relevant ministry or ministries must be consulted, including, again, the Ministry of Finance.⁵⁰ These ministries then work with the Ministry of Law to determine the legal implications of the proposed legislation.⁵¹ Amendments are handled in the same manner as described above.⁵²

The Basic Structure of Existing Laws for Related Organizations

The organizations addressed in this section were established by acts of Parliament. These acts or ordinances formally codified the organizations within entire laws, the common structure of which shall be discussed below.

Upon cursory investigation, acts that codify organizations such as the National Commission on the Status of Women (NCSW) or the National Counter Terrorism Authority (NACTA), follow the same basic structure comprised of the following elements: Composition, Appointments, Terms of Office, Secretariat and Functions and Powers. This is not an exhaustive list of what these laws contain, but merely an overview of their substantive framework.

Composition: Generally, the composition of these bodies reflects a public-private partnership. Several ministries are frequently represented including, in particular, the Ministry of Finance. There are also several technical members and field experts chosen to participate. For example, the Atomic Energy Commission incorporates five technical members and two scientists within its governing body⁵³ and the Pakistan Council of Scientific and Industrial Research

(PCSIR) incorporates two scientists, six representatives of the private sector and a rotating membership of the directors of science research institutes approved by the Government.⁵⁴

Bodies like NCSW and the National Commission on Human Rights (NCHR) also incorporate representation from the provinces within their respective governing bodies.

Appointments: The Federal Government appoints the Chairs of these organizations, often through a nomination process. Members are also often appointed at the discretion of the Federal Government. However, in some cases the appointed chairs or relevant stakeholders identified by the Government are given discretion to make member appointments.

Term of Office: The majority of organizations allow for the appointment of organization heads for three years on average, renewable in some cases.

Secretariat: Also termed Advisory Committees, these sub-bodies have no standard structure, except that they exist in some form as a part of the larger

organization. The laws generally lay down their mandate and meeting policies as well.

Functions and Powers: The functions and powers of organizations are drafted relative to their purpose. However, the functions and powers identified within the law establishing PCSIR may serve as a guide for what the function and powers of a committee for IHL may comprise.⁵⁵ PCSIR is mandated to establish and manage a technological research institute that looks exclusively at a particular topic and seeks to promote its overall development within the country. It is also mandated to manage existing research bodies and coordinate and review the work of similar research facilities. Finally, PCSIR is also mandated to undertake special research that is referred by the Federal Government.

Additionally, there are less pervasive provisions contained within laws establishing similar organizations that may serve to guide the creation of an IHL committee through an act of Parliament.

Independent Authority: NCHR and NACTA are quite different in structure as far as their relative independence from the central government is characterized. NCHR is required to act without political or other bias

and operate separately from any other government body.⁵⁶ NACTA, however, as would naturally assumed from its mandate, works pursuant to the directives of the Federal Government.⁵⁷

Confidentiality: PCSIR operates in a manner similar to NACTA, in that, it operates with the directions of the Federal Government. In fact, the PCSIR Act goes a step further and requires that “Every member, adviser, officer or other employee of the Council shall make such declaration of fidelity and secrecy as may be prescribed.”⁵⁸

Amending an Existing Law

Not all research institutions or committees currently in existence are established under a law fully devoted to their creation. In some instances, broader laws incorporate the establishment of such an institution and therefore it is possible that an existing law be amended to incorporate a national committee on IHL.

*Chemical Weapons Convention Implementation Ordinance*⁵⁹

Section 9 - National Authority: The Secretary, Ministry of Foreign Affairs, Government of Pakistan, shall be the

National Authority for the purposes of this Ordinance.

Section 10 - Functions of the Authority:

In particular and without prejudice to the generality of functions under this Ordinance, the functions of the Authority shall be to –

- (a) Ensure effective operation of this Ordinance;
- (b) Carry out, on behalf of Pakistan, such obligations, which Pakistan has under the Convention;
- (c) Facilitate inspections of premises in Pakistan, in case compliance of Pakistan with the Convention is challenged; and
- (d) Do anything incidental or conducive to the performance of the aforesaid functions.

Section 11 - Delegation of Powers: The

National Authority may, for the purpose of efficient discharge of its functions and duties, delegate to an officer of the Federal Government, subject to such conditions and limitations as may be specified, such of its functions and duties under this Ordinance as it may deem necessary

The relevant provisions of the Chemical Weapons Convention Implementing Ordinance reproduced above reflect a similar institution created within the Ministry of Foreign Affairs (MoFA). This sets a promising precedent not only for its placement within a broader law, but also for its literal organizational set-up. It places a broad authority with MoFA to establish and maintain the facility and for the establishment of an IHL committee, provides a useful template.

*Pakistan Environmental Protection Act*⁶⁰

Section 5 Establishment of the Pakistan Environmental Protection Agency: The Federal Government shall, by notification in the official Gazette, establish the Pakistan Environmental Protection Agency to exercise the powers and perform the functions assigned to it under this Act and the rules and regulations made thereunder.

The Act is in substantial part devoted to the establishment of this Agency, but within the broader context of environmental protection. Within the larger Agency, the law also establishes a “National Environmental Co-ordination Committee,” a sub-committee for further implementation of Agency action.

*Police Order, 2002*⁶¹

Section 162 - National Police Bureau: (1)

A National Police Bureau headed by a Director General not below the rank of Additional Inspector General of Police shall be established.

(2) The National Police Bureau shall function as permanent secretariat of the National Public Safety Commission and the National Police Management Board.

(3) The Government shall determine the organization of the National Police Bureau and provide such number of staff as it may determine from time to time.

(4) The National Police Bureau shall perform research and development functions as assigned to it by the National Police Management Board and the National Public Safety Commission.

(5) Perform such other functions as may be assigned to it by the Government.

(6) The National Police Bureau as secretariat to the National Public Safety Commission shall function independently but for all other functions the Bureau shall be under the Interior Division.

The Bureau is created as a sub-committee to the larger National Public Safety Commission. An amendment in an existing law may be structured similarly to establish a

committee on IHL as a sub-organization to a body already in existence.

Creating a National Committee on IHL through Executive Action

Organizations Established by Executive Action

*National Bioethics Committee*⁶²

The Ministry of Health, through notification in the Official Gazette on January 28, 2004, established the National Bioethics Committee (NBC). The NBC is tasked with maintaining standards in the field of bioethics within Pakistan.

*National Institute of Population Studies*⁶³

The National Institute of Population Studies (NIPS) was established through a resolution in 1985 under the Ministry of Population Welfare. NIPS, currently under the Ministry of National Health Services, Research and Coordination, aims to undertake research on population and development to provide valuable information regarding future policy and government-based service delivery.

*Space and Upper Atmosphere Research Commission*⁶⁴

On September 16, 1961, the President of Pakistan, through an executive order, established the Space Sciences Research Wing of the Pakistan Atomic Energy Commission. The Research Wing became the independent Space and Upper Atmosphere Research Commission on March 8, 1966, under the Scientific and Technological Research Division.

Framework of Related Organizations

Resolution ⁶⁵		
<i>Organization</i>	<i>Division</i>	<i>Legal Basis</i>
National Commission for Child Welfare & Development	Social Welfare & Special Education	Resolution, 1980
National Council for Social Welfare	Social Welfare & Special Education	Resolution, 1956
Pakistan Medical Research Council	Health	Resolution, 1962
National Health Research Complex	Cabinet	Resolution, 1986
Notification ⁶⁶		
<i>Organization</i>	<i>Division</i>	<i>Legal Basis</i>
Pakistan Council for Science and Technology	Science & Technology	Notification, 1998
Pakistan Council of Renewable Energy Technologies	Science & Technology	Notification, 1998

Procedures for Executive Actions

The Rules of Business, 1973⁶⁷ generally detail the procedures and mechanisms

regarding the business of the executive. Though these provisions are to be read in the aggregate, there are certain rules that may be extracted to provide a general understanding of what the specified procedure is for performing executive actions.

Rule 4: A ministry, for example, the Cabinet Secretariat, is made up of divisions. The divisions are, for example, Cabinet Division, Establishment Division and Capital Administration and Development Division. The divisions are then divided into working units called sections. Sections that are considered extraordinary working units, such as research cells may be established without the approval of the Establishment Division, though they must be informed of its composition.

Rule 5: As regards the transaction of business, the Rules of Business require that all important policy decisions be taken with the approval of the Prime Minister. Generally, however, the Minister is responsible for policy within their Division.

Rule 8: When an issue concerns more than one Division, the primary Division concerned shall be responsible for consulting other

relevant Divisions and/or the Prime Minister to ascertain their views.

Rule 11: The Establishment Division must be consulted before the appointment of a grade BS-20 post.

Rule 12: The Finance Division must be consulted in relation to any “expenditure for which no provision exists in the budget or for which no sanction exists.”

Rule 13 concerns consultation with the Ministry of Foreign Affairs. It is assumed that this national committee on IHL shall have this Ministry as its in-charge.

Rule 14: The Ministry of Law, Justice and Parliamentary Affairs shall be consulted “on all legal questions arising out of any case” and “on the interpretation of any law.”

Rule 15: For issues presented to the Prime Minister for his orders, the submission should include, “a self-contained, concise and objective summary stating the relevant facts and the points for decision prepared on the same lines as those prescribed in these rules for a summary for the Cabinet, except that only one copy will be required which may not be printed. The summary shall include

the specific recommendations of the Minister-in-Charge and shall be accompanied by a draft communication, wherever appropriate.”

Rule 57: Under this rule, the Prime Minister is permitted to relax these rules in certain cases.

Schedule II - Section 5(3): The Defense Division is responsible for “Defense matters pertaining to treaties and agreements with other Governments.”

Schedule II – Section 13(5)(i): This Section places “Offences against the laws of nations” within the ambit of the Foreign Affairs Division. Sub-sections 13 and 15 of Provision 13 also place under the umbrella of the Ministry of Foreign Affairs the Pakistan Institute of International Affairs and the Institute of Strategic Studies.

Schedule II – Section 18(1): The Interior Division is responsible for matters related to internal and public security as regards dealings and agreements with other countries and international organizations. Generally under Section 18, the Ministry of the Interior is responsible for the supervision of preventative detention pursuant to state

security, administrative control of the civil armed forces, border disputes, genocide and penal reforms.

Schedule VII – Section 19: It is required that issues be submitted to the President for his information that concern important cases involving questions of policy and principles. This is also applicable to all issues of internal and foreign policy.

Within the Secretariat Instructions, ⁶⁸ established pursuant to Rule 5(15) of the Rules of Business, 1973, Section 31 provides that consultation with other Divisions requires “sending a written reference specifying the points on which the advice of the other Division is sought” and “personal consultation in the event of a difference of opinion or delay.” ⁶⁹ Section 33 of the Instructions details the procedure for situations where more than one Ministry must be referenced. The file pertaining to the issue may be delivered to the most relevant of additional Divisions and the remaining Divisions of relevance may be consulted through office memorandums, un-official notes, verbal communication and the like.

The Secretariat Instructions also provide formal definitions of executive actions that

may be employed, in this case, to establish perhaps a national committee on IHL.

Notification: This form should be used for notifying in the Gazette of Pakistan Ordinances, rules and orders, appointments, leave, transfer of gazette officers and other matters, which are required to be published in the Gazette of Pakistan.

Resolution: This form should be used for making public announcements in the Gazette of decisions of Government on important matters of policy, appointments of committees or commissions of enquiry and of the results of the review of important reports of such bodies.

The Use of Executive Action

Executive Action may be used in a manner similar to the amendment of a law, with the obvious difference that executive action is a decision purely of the executive branch. Thus, by executive action an extraordinary working unit may be established in the form of a research cell under the Ministry of Foreign Affairs, in conjunction with the Ministry of Law, Justice and Parliamentary Affairs and other Ministries as are necessary. This extraordinary working unit may take a

form similar to the national authority regarding the Chemical Weapons Convention created by the Chemical Weapons Convention Implementation Ordinance referenced above.

Similar action may be taken to establish a subordinate unit in the form of a national committee on IHL under the National Counter Terrorism Authority (NACTA). Though NACTA deals with counter terrorism specifically, its mandate may also be expanded through executive action to broadly incorporate IHL. NACTA operates directly under the Prime Minister, but it is associated primarily with the Ministry of Interior. Even under Section 22 of the NACTA Act, the Federal Government is permitted to establish rules pursuant to the purposes of the Act and the appointed National Coordinator may establish regulations regarding the internal workings of NACTA. Under this Section, it may also be possible to establish this national committee on IHL through the publishing of rules or the exercise of the National Coordinator's powers.

Generally speaking, there is deference provided to the executive branch of the Federal Government to use its internal procedures, those provided under the Rules

of Business, 1973, to establish a national committee on IHL if it so chooses. The procedures provided are not extensively detailed, but they strongly indicate the ability of a ministry to sub-divide itself in a manner that allows the creation of a national committee through the publishing of a formal notification, resolution, order, etc.

Executive Action through Ministry of Foreign Affairs Coordination

With the Ministry of Foreign Affairs at the helm, it is possible to establish a working group within the Ministry that issues directives to other relevant ministries and bodies to provide information as needed. The scope of IHL is vast and other ministries or institutions may be better situated to provide more specific information pertaining to their fields rather than one fixed central committee. Within the Ministry of Foreign Affairs (MoFA), an existing team may be reassigned or a new team formulated as needed to collect the data and research provided by other institutions. This team would be best served by including broad-based experts on IHL. MoFA, through this team, may then coordinate the information received as necessary. In other words, it may be beneficial to use executive action to perform the work of a national committee on

IHL rather than constituting a large formal committee.

The international law instruments that primarily comprise the body of IHL to be incorporated domestically include the following:

- Geneva Conventions, 1949
- Convention prohibiting Certain Conventional Weapons (CCW), 1980
- CCW Protocols:
 - Non-Detectable Fragments, 1980
 - Mines, Booby-Traps and other Devices, 1980, 1996
 - Incendiary Weapons, 1980
 - Blinding Laser Weapons, 1995
 - Explosive Remnants of War, 2003
- Convention prohibiting Chemical Weapons, 1993
- Convention on the Prohibition of Biological Weapons, 1972
- Hague Convention for the Protection of Cultural Property, 1954
- Hague Protocol for the Protection of Cultural Property, 1954

These instruments include those fully ratified by Pakistan, but not those to which Pakistan is a signatory, including Additional Protocols I and II to the Geneva Conventions, 1949.

IHL Treaty Based Issues for National Implementation

The Ministries of Foreign Affairs; Law, Justice and Parliamentary Affairs and Defense (Armed Forces) each play an extensive role in the interpretation, implementation and dissemination of IHL within the state. The table below further associates the various portions of the primary IHL treaties with the government bodies that have the most relevant mandate. Thus, MoFA may issue directives to the following institutions among many other relevant government bodies rather than constituting an entirely new committee on IHL to perform research and analysis already taking place in specialized divisions. The committee on IHL that would use these executive actions to supplement its implementation and dissemination efforts would be more specialized.

Geneva Conventions, 1949⁷⁰

First	Second	Third	Fourth
<i>Divisions of the Conventions are in BOLD and the Relevant Government bodies are in <i>ITALICS</i></i>			
Wounded & Sick	Wounded, Sick & Shipwrecked	Treatment of Prisoners	Wounded, Sick & Protected Persons
<i>Cabinet, Provinces</i>	<i>Cabinet, Provinces</i>	<i>Defense, Provinces</i>	<i>Cabinet, Provinces, Women, Minorities</i>
Medical Units & Establishments	Hospital Ships	Captivity / Internment of POWs / Discipline	Status & Treatment of Protected Persons / Aliens in Territory of Conflict
<i>Interior, Provinces</i>	<i>Defense</i>	<i>Defense, Law, Provinces</i>	<i>Interior</i>
Personnel	Personnel	Captivity / Labor of POWs	Status & Treatment of Protected Persons / Occupied Territories
<i>Interior</i>	<i>Defense</i>	<i>Law, Interior, Provinces</i>	<i>Defense, Interior</i>
Buildings & Material	Distinctive Emblem	Captivity / Financial Resources of POWs	Status & Treatment of Protected Persons / Regulations for Treatment of Internees
<i>Defense</i>		<i>Finance</i>	<i>Law, Defense</i>
Repression of Abuses & Infractions	Repression of Abuses & Infractions	Captivity / Relations between Authorities and POWs / POW Representatives	Status & Treatment of Protected Persons / Central Agency for Information
<i>Defense, Interior, Law</i>	<i>Defense, Interior, Law</i>	<i>Interior</i>	<i>Interior (NADRA)</i>
		Termination of Captivity / Repatriation in Neutral States	
		<i>Interior, Foreign Affairs</i>	
		Termination of Captivity / Death of POWs	
		<i>Interior, Defense</i>	
Convention on Certain Conventional Weapons & Its Protocols	Chemical Weapons Convention	Biological Weapons Convention	Hague Convention & Protocol on Cultural Property
<i>Defense, Defense Production</i>	<i>Foreign Affairs, Science & Technology, Law</i>	<i>Foreign Affairs, Science & Technology, Law</i>	<i>Law, National Heritage, Provinces</i>

Creating a National Committee on IHL under the Societies Act

Organizations Established as a Society

The Institute of Strategic Studies Islamabad

The Ministry of Foreign Affairs, under the order of the President, established the Institute of Strategic Studies Islamabad⁷¹ (ISSI) in 1973 through the Societies Registration Act, 1860⁷². This think tank is an autonomous, non-profit research and analyses organization. It is devoted to provide an in-depth understanding and objective analyses of regional and global strategic issues, affecting international peace and security. The Institute also promotes a broad-based and informed public understanding of vital issues affecting Pakistan and the international community as a whole.

Pakistan Industrial Technical Assistance Center

The Pakistan Industrial Technical Assistance Center⁷³ (PITAC) was created in 1962 under the Societies Registration Act, 1860. The Government of Pakistan established this Center by merging the Industrial Research and Development Center (IRDC) and Industrial Productivity Center (IPC). PITAC is

running under the control of Ministry of Industries. Since its inception PITAC has rendered technical assistance to industry by way of designing and manufacturing of production tooling equipment, prototyping, and rendering training services to engineers, supervisors and technicians from variety of industries throughout the country.

Pakistan Institute of International Affairs

The Pakistan Institute of International Affairs⁷⁴ (PIIA) was founded in 1948 and was registered under the Societies Registration Act, 1860, in affiliation with the Royal Institute of International Affairs, London and the Institute of Pacific Relations, New York. Prime Minister Liaqat Ali Khan formally inaugurated the institute on March 26, 1948. The Institute is a non-official, non-partisan, and non-profit making body. It seeks to encourage and facilitate the understanding of international affairs and to promote the scientific study of international politics, economics and jurisprudence.

PIIA disseminates research and knowledge about international developments, particularly those having a

direct bearing on the foreign policy challenges of Pakistan, by arranging lectures, seminars and roundtable discussions and publishing a quarterly journal by the name of Pakistan Horizon.

Framework of Related Organizations

Societies		
<i>Organization</i>	<i>Division</i>	<i>Legal Basis</i>
Pakistan Sports Trust	Sports	Societies Registration Act 1860
National Police Academy	Interior	Societies Registration Act 1860

Establishing a Society

A society, trust, mosque, center, NGO, foundation etc. can be established under the Societies Registration Act, 1860.

Purpose: Article 20 of the Act states, “societies established for the purpose of promotion of science, charitable purpose, literature, or the fine arts, for instruction, diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments and designs.”

Composition: Article 1 states, “any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in Section 20 of this Act, may, by subscribing their names to a Memorandum of Association and filing the same with the Registrar of Joint-stock Companies form themselves into a society under this Act.”

Registration: Article 3 states, “upon such memorandum and certified copy being filed, the registrar shall certify under his hand that the society is registered under this Act. There shall be paid to the registrar for every such registration a fee of fifty rupees, or such smaller fee as the Provincial Government may, from time to time, direct; and all fees so paid shall be accounted for to the Provincial Government.”

Article 18 further explains the procedure of establishing a society, “it shall be sufficient that the governing body file with the Registrar of Joint-stock Companies a Memorandum showing the name of the society, the objects of the society, and the names, addresses and occupations of the governing body, together with a copy of the rules and regulations of the society certified as provided in section 2, and a copy of the

report of the proceedings of the general meeting at which the registration was resolved on.”

The Societies Registration Act, 1860 does not lay down a formal procedure for registering a society. It is left up to the office of the Registrar Joint Staff Companies to determine the registration period depending upon their workload. From the date of submission, it may take from two weeks to more than a month.

A background check is usually carried out by the Registrar’s office. They often survey the premises and interview the applicants prior to granting status as a society.

Expanding an Existing Organization or Registering a Society

A new committee on IHL may be established through the Societies Registration Act, 1860. This would be in lieu of expanding the mandate of a society of a similar nature, under which the committee may be created.

Looking at the benefits and drawbacks of both options. It may be more efficient to establish a committee on IHL within an existing institution such as the Institute for Strategic Studies or the Pakistan Institute on

International Affairs. These institutions have experienced researchers and an existing presence within the academic community and the Government. To expand their mandates would essentially be the path of least resistance. However, a committee on IHL and its attached secretariat would be a portion of an organization with a larger mandate. If a new society is registered, though the process is longer, it would establish an institution solely created for the purpose of examining and promoting IHL within Pakistan. In either case, however, the Ministry of Foreign Affairs may provide representation and guidance.

Creating a National Committee on IHL through a Memorandum of Understanding

Organizations Established through a Memorandum of Understanding

Center for Applied Molecular Biology

The University of the Punjab established a nucleus Center for Advanced studies in Molecular Biology. In 1986, the Ministry of Education upgraded the University Center into a National Center of Excellence in Molecular Biology (CEMB). In April 1987, the Federal Ministry of Science and Technology approved the establishment of a Center for Applied Molecular Biology⁷⁵ (CAMB) by signing a Memorandum of

Understanding with the University of the Punjab. Both these centers are located next to each other on university premises.

Understanding an MoU

An MoU is a bilateral or multilateral agreement between two or more parties. It expresses a convergence of will between the parties, indicating an intended common line of action. It is often used in cases where parties either do not imply a legal commitment or in situations where the parties cannot create a legally enforceable agreement.

The Federal Government can easily initiate legally binding agreements with non-governmental institutions. Thus, signing an MoU is a viable option.

Employing an MoU to create a National Commission on IHL

A national committee on IHL may affiliate itself with existing institutions like the National Defense University ⁷⁶ (NDU), Pakistan Institute of International Affairs or the Institute of Strategic Studies. An altogether separate society may also be registered to achieve this purpose. Then either the subordinate institution affiliated with one of the organizations listed above or

a newly registered society may conclude an MoU with the Ministry of Foreign Affairs and/or any other relevant ministries to ensure that the established committee has a place within the Federal Government.

NDU may be a very promising institution within which to create a national committee on IHL. The University very recently inaugurated an International Law Center with the approval of President of Pakistan. An affiliation of a committee on IHL and the new International Law Center will certainly be advantageous to both institutions.

A national committee on IHL formulated within the International Law Center at NDU would compliment the objectives of both these institutions. The International Law Center will help promote IHL by providing a platform for research and analysis, arranging IHL awareness workshops and seminars and drafting policy briefs, reports, working papers etc. The committee's establishment within NDU will lend credibility to its mandate of examining and promoting IHL. This fledgling international law institution will also benefit from expanded ties with the Federal Government, specifically the Ministry of Foreign Affairs.

Additional Procedures for Establishing a National Committee on IHL

It appears that not all processes for creating working groups within ministries are inherently formal. Federal ministries often create committees similar to the national committee on IHL within their own divisions. The ministry then, as a formality, issues letters to other relevant ministries informing them of the creation of the committee and invite their participation. The Ministries of Defense and Defense Production appear to have employed this method in the establishment of several subordinate bodies, including Federal Government Educational Institutions Directorate and Defense Export Promotion Organization.⁷⁷

Special Assistants

Another method that may be employed is the creation of a Special Assistant under Rule 4(6) of the Rules of Business, 1973.⁷⁸ Rule 4(6) states, “There may be a Special Assistant or Special Assistants to the Prime Minister with such status and functions as may be determined by the Prime Minister.” Schedule V-A of the Rules of Business also provides that “Appointment, resignation and removal of Special Assistants to the Prime Minister” are to be submitted to the Prime

Minister for their orders.⁷⁹ Currently, there exists a Special Assistant to the Prime Minister for the Cabinet Division and a Special Assistant to the Prime Minister for Law.⁸⁰ The Prime Minister may therefore choose to expand the mandate of these Special Assistants or to establish a separate position for a Special Assistant to the Prime Minister on Armed Conflict and IHL.

Issuing Tenders

The Public Procurement Regulatory Authority Ordinance 2002⁸¹ deals with issuing tenders to public authorities for goods, services and works. According to Section 2(j) of the Ordinance, a procuring agency means, “any Ministry, Division, Department or any Office of the Federal Government and any authority, corporation, body or organization established by or under a Federal law or which is owned or controlled by the Federal Government.” Hence, the Federal Government can issue directives to the authority on matters of policy, and such directives shall be binding on the authority as per Section 4 of the Ordinance.

Hypothetically, MoFA can establish a secretariat on IHL by employing an expert on IHL who is authorized to build a small team

focusing solely on IHL matters. The secretariat should be given the powers to issue tenders to public bodies, think tanks, research institutions etc. already working on IHL or are known for their expertise on it. After a transparent bidding process takes place, the secretariat along with the approval of MOFA approves the services of the chosen bidder.■

RECOMMENDATIONS

- To create a national committee on IHL, if a new law is drafted, the general format provided above (i.e. appointments, functions and powers, terms of office, etc.) may be followed
- The format provided by the PCSIR Act regarding its functions and powers and fidelity and secrecy may be adopted within a new law establishing the IHL committee
- If an existing law may be amended (i.e. the NACTA Act or Protection of Pakistan Act, 2014) then the format provided by the Chemical Weapons Convention Implementation Ordinance establishing its National Authority may be adopted to create a national committee on IHL, rather than drafting a complete law
- As per the previous recommendation, a sub-committee on IHL may also be made under the umbrella of an existing institution already established by law
- The Ministry of Foreign Affairs may by notification or resolution in the Official Gazette establish a national committee on IHL, much like the National Bioethics Committee or National Institute of Population Studies
- As is permitted by the Rules of Business, 1973, an extraordinary working unit may be established within MoFA in the form of a research cell and this may be done in conjunction with the Ministry of Law, Justice and Parliamentary Affairs
- Executive action may also be employed to expand the mandate of NACTA and incorporate a committee on IHL within its counter terrorism agenda. This may also potentially be accomplished through the issuance of rules pursuant to the NACTA Act or through an act of the National Coordinator
- Rather than constituting a large committee on IHL, it may be beneficial to appoint a person or persons within MoFA to act as a coordination body to issue letters and directives to relevant ministries and institutions already working on matters ancillary to IHL issues. These directives may both seek and require research and analysis
- Like the ISSI, a society may be registered pursuant to the Societies Registration

Act, 1860, which may then operate as a national committee on IHL on behalf of the executive

- The mandate of the ISSI or the PIIA may be expanded to incorporate the agenda of a national committee on IHL. These institutions have existed for some time and already poses the tools and influence that a new institution may take time to build
- If an independent society is created, an MoU may be established between said society and MoFA to formalize the society's role as a national committee on IHL, similar to the actions taken in the case of the Center for Applied Molecular Biology
- As suggested above, if an existing society or societies expand its or their mandates, then they may also establish an MoU with MoFA to the same end
- Specifically, MoFA may seek to take the initiative and establish an MoU with the newly created International Law Center at NDU to establish a specific committee on IHL within the Center
- Informal processes may also be adapted to achieve a similar goal. If MoFA creates a committee on IHL in house, then it may issue letters to other relevant ministries to periodically participate in the committee's creation and its continuous work
- An existing Special Assistant to the Prime Minister (for Law or the Cabinet Division) may incorporate the work of a committee on IHL under their mandate or a new Special Assistant's position may be created to specifically oversee work related to the implementation and dissemination of IHL
- MoFA may appoint a legal expert on IHL as the head of a body within its Ministry that is then empowered to issue tenders to relevant institutions to undertake research and analysis related activities that would be required from a national committee on IHL

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