

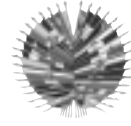
# Meeting of National Committees on International Humanitarian Law of the Americas

La Antigua, Guatemala, August 27 - 29, 2003





**ICRC**



**OAS**

**REPORT**

**“MEETING OF NATIONAL COMMITTEES ON  
INTERNATIONAL HUMANITARIAN LAW OF THE AMERICAS”  
La Antigua, Guatemala, August 27 - 29, 2003**

Organized by

Technical Secretariat for Legal Cooperation Mechanisms,  
Secretariat for Legal Affairs of the General Secretariat  
of the Organization of American States and the  
International Committee of the Red Cross

with the support of the

Government of Guatemala  
and the Government of Canada

**Editors:**

**Luis Gerardo Aguilar Esponda  
Luis Alonso Serrano Echeverría  
Anton Camen**

**International Committee of the Red Cross**  
Advisory Service on International Humanitarian Law  
Latin American Unit  
Regional Delegation for Mexico, Central America  
and the Spanish-speaking Caribbean  
Calderón de la Barca No.210 Col. Polanco  
Delegación Miguel Hidalgo 11510 México D. F.  
T++ 52 55 52 43 55 F++ 52 55 52 55 24 95  
[www.icrc.org](http://www.icrc.org)

Original: Spanish  
December 2003

PAGINA BLANCA

## INDEX

### INTRODUCTION – Editor’s Note

<b>Anton Camen</b> , Legal Adviser for Latin America Advisory Service on International Humanitarian Law International Committee of the Red Cross .....	9
--	---

### OPENING CEREMONY

<b>César Gaviria</b> , Secretary General Organization of American States (Message) .....	13
<b>Claudio Baranzini</b> , Delegate in Guatemala International Committee of the Red Cross .....	16
<b>Lieutenant Colonel Kirby Abbott</b> , Director International Law Department of National Defence Judge Advocate General Office Government of Canada .....	18
<b>His Excellency Alfredo Trinidad Velásquez</b> , Deputy Minister Foreign Affairs Ministry Government of Guatemala .....	19

### KEYNOTE SPEECH

<i>“The implementation of International Humanitarian Law in the Inter-American system for the protection of persons”.</i> (The decisions of the Inter-American Commission on Human Rights and the jurisprudence of the Inter-American Court of Human Rights) <b>Brian Tittlemore</b> , Legal Adviser Inter-American Commission on Human Rights (IACHR) .....	23
--	----

### OBJECTIVES OF THE MEETING

<b>María Teresa Dutli</b> , Head Advisory Service on International Humanitarian Law International Committee of the Red Cross .....	35
--	----

### DIAGNOSTIC OF THE CURRENT STATE OF IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW

<b>(IHL) IN THE AMERICAS</b> .....	41
------------------------------------	----

#### A) NATIONAL COMMITTEES ON IHL IN THE AMERICAS

<b>ARGENTINA</b> .....	43
------------------------	----

BOLIVIA .....	46
CANADA .....	48
CHILE .....	51
COLOMBIA .....	54
EL SALVADOR .....	56
GUATEMALA .....	59
NICARAGUA .....	62
PANAMA .....	65
PARAGUAY .....	68
PERU .....	70
DOMINICAN REPUBLIC .....	72
TRINIDAD & TOBAGO .....	75
URUGUAY .....	76

**B) INTERESTED GOVERNMENTS**

BRAZIL .....	79
COSTA RICA .....	80
ECUADOR .....	82
HAITI .....	83
HONDURAS .....	84
MEXICO .....	86
VENEZUELA .....	89

**DIAGNOSTIC OF THE WORK OF THE OAS IN REGARD TO THE NATIONAL IMPLEMENTATION OF IHL IN THE AMERICAS**

**Jorge García-González**, Head

Technical Secretariat for Legal Cooperation Mechanisms, Secretariat for Legal Affairs of the General Secretariat of the Organization of American States .....	92
---	----

**KEYNOTE SPEECH**

*“Adapting International Humanitarian Law to current conflict situations”*

**María Teresa Dutli**, Head

Advisory Service on International Humanitarian Law International Committee of the Red Cross .....	95
--	----

**TOPIC I :**

<b>FUNCTIONING OF THE NATIONAL COMMITTEES ON INTERNATIONAL HUMANITARIAN LAW .....</b>	<b>107</b>
---	------------

## **Introduction to the topic**

<b>Marisela Silva Chau</b> , Legal Adviser International Committee of the Red Cross, Lima .....	109
--	-----

## **Electronic Forum**

<b>Liliana López Ortiz</b> , Legal Assistant International Committee of the Red Cross, Mexico .....	115
--	-----

## **Working Groups**

<i>Group I: Position of the National Committees before executive, legislative and judicial authorities</i> .....	117
--	-----

<i>Group II: Mutual communication of measures implementing treaties of IHL</i> .....	121
--	-----

<i>Group III: Follow-up of the Universal Meeting of National Committees on International Humanitarian Law held in Geneva, March 25th – 27<sup>th</sup>, 2002</i> .....	124
--	-----

## **TOPIC II :**

<b>CURRENT ISSUES RELATING TO INTERNATIONAL HUMANITARIAN LAW</b> .....	129
--	-----

## **Introduction to the topic**

<b>Anton Camen</b> , Legal Adviser for Latin America Advisory Service on International Humanitarian Law International Committee of the Red Cross .....	131
--	-----

## **Introduction to the topic**

<i>“National Committees on International Humanitarian Law as promoters of the effective operation of the International Criminal Court”</i> <b>José A. Guevara</b> , Coordinator for Latin America and the Caribbean of the Coalition for the International Criminal Court .....	133
---	-----

## **Working Groups**

<i>Group I: Cooperation with the International Criminal Court</i> .....	139
---	-----

*Group II: Protection of cultural property in case of armed conflict* ..... 143

*Group III: Treaties on Weapons* ..... 145

**TOPIC III :**

**INTERNATIONAL CONFERENCE OF THE RED CROSS  
AND THE RED CRESCENT (Geneva, December 2003)** ..... 149

**Introduction to the topic**

**María Teresa Dutli**, Head  
Advisory Service on International Humanitarian Law  
International Committee of the Red Cross ..... 151

**Introduction to the topic**

Gabriel Pablo Valladares, Legal Adviser  
International Committee of the Red Cross, Buenos Aires ..... 155

**Working Groups**

*Group I: Reaffirmation of IHL* ..... 157

*Group II: Missing Persons* ..... 160

*Group III: Participation in the 28th International Conference* ..... 162

**CONCLUSIONS AND RECOMMENDATIONS**

**María Teresa Dutli**, Head  
Advisory Service on International Humanitarian Law  
International Committee of the Red Cross ..... 167

**CLOSING CEREMONY**

**Jorge García-González**, Head  
Technical Secretariat for Legal Cooperation Mechanisms,  
Secretariat for Legal Affairs of the General Secretariat  
of the Organization of American States ..... 173

<b>Claudio Baranzini</b> , Delegate in Guatemala International Committee of the Red Cross .....	177
<b>Lieutenant Colonel Kirby Abbott</b> , Director International Law Department of National Defence Judge Advocate General Office Government of Canada .....	179
<b>His Excellency José Luis Domínguez Quintanilla</b> , Adviser Office of Foreign Affairs President of the Guatemalan Committee for the Implementation of International Humanitarian Law (COGUADIH) Government of Guatemala .....	180
<b>ANNEXES</b> .....	183
<b>PROGRAM OF THE MEETING</b> .....	185
<b>LIST OF PARTICIPANTS</b> .....	192
<b>INFORMATION FACT SHEET ON NATIONAL COMMITTEES FOR THE IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW</b> .....	199
<b>GUIDING PRINCIPLES CONCERNING THE STATUS AND METHODS OF OPERATION OF NATIONAL BODIES FOR THE IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW</b> .....	202
<b>LIST OF NATIONAL COMMITTEES FOR THE IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW IN THE AMERICAS</b> .....	207
<b>STATE OF PARTICIPATION OF AMERICAN STATES IN IHL TREATIES AND OTHER RELEVANT INSTRUMENTS</b> .....	220
<b>OAS GENERAL ASSEMBLY RESOLUTION AG/RES. 1944 (XXXIII-O/03)</b> .....	225



PB

## **INTRODUCTION – Editor’s Note**

By the end of 2003, fifteen States in the Americas had established national committees entrusted with the task of making recommendations on the adoption of necessary measures for the implementation of treaties on international humanitarian law and advising their respective government in matters of ratification and accession to these treaties.

These efforts reflect a dynamic that can be seen today all over the world. States are increasingly aware that the effective protection of the victims of armed conflict requires sustained and permanent efforts involving various government departments as well as the legislative and judicial authorities. The creation of a national committee on international humanitarian law is motivated by a desire to facilitate work that is both extremely complex and increasingly specialized. It is a question of coordinating the skills distributed throughout the different State bodies to achieve the solutions required to comply with the treaty obligations. In this sense, the committees assist States in the fulfilment of their international commitments.

It is important to underline that the major role played by the national committees on international humanitarian law has been highlighted at various international conferences. In this respect it is fitting to recall in particular resolutions AG/RES. 1771 (XXXI-O/01), AG/RES. 1904 (XXXII-O/02) and AG/RES. 1944 (XXXIII-O/03) adopted by the General Assembly of the Organization of American States over the last few years; they urge the Member States to support such committees and to consider establishing them where they do not yet exist.

The different national committees on international humanitarian law tend to confront common challenges. Some appear difficult to overcome, bearing in mind structural, political and economic limitations. One cannot emphasise enough the benefits to be gained from exchanges between committees of different States. They not only enable them to learn from experiences acquired elsewhere but also allow them to coordinate efforts geared towards similar objectives, for instance through comparing legislation that put into practice specific treaty provisions, or analysing the impact of a dissemination strategy.

To entrust the implementation of international humanitarian law to a body such as an inter-ministerial committee supposes that it can carry out its functions efficiently and with the seriousness required for a task of this magnitude. The organisation as much as the definition of its mandate are key elements in guaranteeing that a committee can realize activities for which it has been

established. Those are activities which all States must perform under international treaty law, independently of the fact that they choose to rely on the services of a special committee. A committee allows the State to concentrate resources, both human and financial, which are required for the adoption of measures of national implementation of international humanitarian law. Hence, States have an immediate interest in ensuring that their committees have the necessary facilities at their disposal to accomplish their work.

The *Meeting of National Committees on International Humanitarian Law of the Americas*, held in La Antigua, Guatemala, from 27th - 29th August 2003, allowed for a discussion of a range of subjects related to the role of national committees, their operation and their organisation. The meeting itself was made possible thanks to the invaluable co-operation of the Organization of American States, as well as the support of the governments of Guatemala and Canada. Representatives of all national committees on international humanitarian law in the American continent took part, along with representatives from States which are considering setting up such a structure. It is worth pointing out that one of those States has in the meantime established a committee of its own.

The aim of this report is to present the conclusions reached during the debates and to make the insights obtained available to a wider public. It might serve as a tool which could facilitate the task of existing committees as well as support those States examining whether to set up a committee on international humanitarian law.

After presenting a diagnostic on the current state of national implementation of international humanitarian law in the States represented, the *Meeting* was organised into working groups, which analysed various topics related to the work of the committees. The results of each group were discussed in the plenary sessions which added substantially to the experiences shared.

It is appropriate to highlight the important progress made over the last few years in the participation in treaties, and with respect to their implementation by States that made use of a national committee. In many cases the committees were those who drew the attention of their respective governments to the relevant treaties and to the steps to be taken in order to adapt the national legal order to international obligations.

It was also noted that most of the progress achieved was in times of peace which is the ideal moment to carry out prevention work. The participants agreed that it is much more difficult to adopt measures of implementation once armed

conflict has broken out. In fact, it cannot be stressed enough that all national measures of implementation ought to be adopted systematically, already in times of peace, so that international humanitarian law can be respected during times of armed conflict.

As regards the topics discussed, the participants in the *Meeting* identified a variety of solutions that merit the attention of States. There was the importance of having a permanent secretariat that can follow up on the recommendations drafted by the committee, the necessity of a budget required for the proper functioning of the committee, the cooperation from legislative authorities as well as the option of resorting to the services of experts when dealing with specialized subjects such as international criminal law, rules concerning weapons or cultural property, or the problem of missing persons.

The International Committee of the Red Cross would like to thank the Organization of American States, particularly the General Secretariat and its Technical Secretariat for Legal Cooperation Mechanisms of the Secretariat for Legal Affairs, for having made possible the *Meeting of National Committees on International Humanitarian Law of the Americas* which contributed in a most constructive manner to the respect of international humanitarian law, and therefore to the protection of the victims of armed conflict. We would like to express profound gratitude as well for the support provided by the governments of Guatemala, Canada and Switzerland, who demonstrated yet again their strong commitment to international humanitarian law. We would also like to thank the speakers and experts, particularly the Inter-American Commission on Human Rights, for their enlightening contributions; and finally all the participants, whose knowledge and enthusiasm led to such a successful outcome of the meeting.

***Anton Camen***

Legal Adviser for Latin America

Advisory Service

International Committee of the Red Cross

PAGINA BLANCA

## **OPENING CEREMONY**

### **Message from the Secretary General of the OAS, César Gaviria, on the occasion of the Meeting of National Committees on International Humanitarian Law in the Americas<sup>1</sup>**

As I am unable to attend this important event in person, I would like this present message to express my particular pleasure at the realisation of this, the first meeting of the national committees for the implementation of international humanitarian law in the Americas.

Allow me, first of all, to thank Guatemala and its Government for the welcome and support they have provided so that this meeting could take place in the beautiful city of La Antigua.

On behalf of the OAS, its Member States and also, I am sure, expressing the feelings of all those present, I wish to express our most sincere gratitude to the International Committee of the Red Cross, the institution with which we have joined forces, and which, with its usual professionalism, competence and quality, has been crucial in helping this meeting to take place. In particular, our thanks go to the officials of the ICRC from Mexico, Geneva, Guatemala and the various regional delegations, which worked together in the coordination of many aspects relating to the organisation of this event.

This meeting is part of an increasingly strengthened process of legal cooperation between the International Committee of the Red Cross and the General Secretariat of the OAS, which began in 1994 and has relied on the determined support of our General Assembly. Part of the process have been activities such as the Seminar on the occasion of the fiftieth anniversary of the 1949 Geneva Conventions; the Conference of Governmental Experts on the Implementation of International Humanitarian Law and related Inter-American Conventions which took place in San José, Costa Rica, in 2001; and the special sessions held within the framework of our Committee on Juridical and Political Affairs, in 2002 and 2003.

The promotion of, and respect for, international humanitarian law in the hemisphere have been a permanent concern of the OAS. Our General Assembly has repeatedly expressed it in numerous resolutions, be it generally or with

---

<sup>1</sup> This message was read out, on behalf of the Secretary General of the OAS, by Jorge García González, Head of the Technical Secretariat for Legal Cooperation Mechanisms of the Secretariat for Legal Affairs of the OAS.

respect to specific aspects. In fact, this meeting is held in compliance with the explicit mandates of the General Assembly, stated in resolutions 1904 and 1944 of 2002 and 2003, respectively, amongst others.

On previous occasions I have had the opportunity to share a few ideas on the importance of the promotion of, and respect for, international humanitarian law in the States in the Americas. Allow me to repeat, on this occasion, some of these ideas which, I believe, remain pertinent and valid.

In our countries in the Americas, with the sad and lamentable exception of some internal conflicts, we have made progress of great significance in the promotion of the belief in, and the consolidation of, peace, as much between our States as within them.

Today, the threats to peace in the nations of the hemisphere are not military threats from other States. They are terrorism, drug trafficking, the illicit manufacture and trade of firearms or, on other levels and depending on the country, natural disasters or civil unrest.

This was confirmed by the atrocious terrorist acts of September 11 caused civilian victims from many of our countries. However, even today the regional environment has new characteristics. Today our nations are united by shared values and ideals. The Inter-American Democratic Charter is the best expression of those principles that link together all people in the Americas. We have brought decades of isolationism, confrontation and distrust to a close. Co-operation is the trend today. On central subjects such as the fight against corruption, drug trafficking or the illicit manufacture of firearms, the nations of the Americas have signed hemispheric conventions or strategies, which bind them legally and politically in the search for common objectives and results. Without a shadow of a doubt, the process of economic integration taking place in the Americas is greatly contributing to the reduction of tensions between countries.

Now there is more space for diplomatic action, for the prevention of conflicts, to advance a redefinition of the concept of hemispheric security to assist us in the search and defence of peace.

To achieve this aim, we have created an American doctrine of solidarity in democracy to counter any threat, regardless of denomination or ideology. With the aim of easing tensions, throughout the 1990s and particularly since 1995, the member States of the OAS have agreed upon and implemented a series of measures of trust.

We are adopting a treaty on transparency in the acquisition of conventional weapons. We have completed essential work in areas such as the removal of landmines and post-conflict activities and the Ministries of Defence now have hemispheric meetings.

The entire structure of our preventive diplomacy, of the use of peaceful procedures in crisis management and post-conflict activities, is rooted in the principle of the defence of democracy. That is our paradigm of solidarity.

The quest for peace in the Americas is firmly associated with the profound respect for the principles of our Charter. These are: international law as the rules of conduct for States; respect for the principle of non-intervention in the internal affairs of a State; the equality in law of all States; respect for each State's sovereignty and territorial integrity; and, above all, to use and apply peaceful solution mechanisms to situations for which these are intended.

This is the current trend in our hemisphere. It is one of the advancement of mechanisms for dialogue and peaceful resolution of conflicts; of seeking new and more efficient means of promoting trust; of consolidating processes of co-operation in areas of security.

In this context, as I have said on other occasions, others may begin to ask themselves if there is any sense in giving importance to international humanitarian law, which was conceived for armed conflict, in a hemisphere where, fortunately, States have generally moved away from conflict and wish to make much more progress in ways of avoiding it.

However, contrary to what one might think these new conditions of greater trust and hemispheric co-operation are precisely those that create a favourable atmosphere to press ahead in the consolidation of international humanitarian law in the Americas, especially as prevention is concerned.

For this, it is required that, amongst other measures, States move forward in the process of treaty participation, and the incorporation into national law of their rules, in dissemination and training in humanitarian law as well as strengthening co-operation and exchange of information between States and with organizations working in that field.

This is where the national committees on international humanitarian law play an essential role and where this meeting between the committees in the hemisphere, along with representatives of those Governments either in the process of setting up a committee or about to begin that process, takes on a particular importance and usefulness.



I am certain that this first meeting between national committees will not only allow representatives of different committees to get to know one another, but also provide many fruitful opportunities to share experiences and compare working methods with a view to strengthen the efforts undertaken in the promotion and implementation of international humanitarian law at national level.

With this in mind, we consider this meeting not as an end in itself or an isolated event, but rather we understand it to be an essential contribution to an ongoing process of mutual cooperation and exchange between national committees on international humanitarian law in the Americas.

The General Secretariat of the OAS, within the framework of the mandates of our General Assembly, will remain committed to support initiatives aimed at achieving that objective, working in conjunction with the International Committee of the Red Cross and the Governments of our Member States.

I wish you all success in your work and discussions. Thank you very much.

***Claudio Baranzini***

**Delegate for the International Committee of the Red Cross in Guatemala**

Deputy Minister for Foreign Affairs; Director of the OAS in Guatemala; Ambassador of Canada; Lieutenant Colonel Director of International Law of the Department of National Defence of Canada; Head of the Technical Secretariat for Legal Co-operation Mechanisms of the OAS; guests; dear Representatives of the national committees. A very good afternoon and welcome to this event in La Antigua.

One of the affirmations already having been made in this meeting is without doubt the fact that in this region of the world, we are little by little moving away from our history of conflicts which battered and badly affected not only Central America, but also parts of South America. However, the work does not end there, and this why the national committees play a crucial role now for the faithful implementation of international humanitarian law.

We know that permanent observance of this law is the responsibility of all. That is to say, while it is the States party to the Geneva Conventions that have promised to respect and promote their provisions, it is also certain that those same conventions oblige everybody.

In this respect, we must not forget that while efforts and promises were made after the barbarity of the First and Second World Wars, human beings are still resorting to force to overcome certain difficulties. The civilian population continues to suffer in various parts of the world where international humanitarian law continues to be violated.

To limit the horrors of war is a responsibility of each and every one of us. Thanks to the committees there has been important progress in implementing international humanitarian law.

The ICRC is aware of the difficulties involved when it comes to reconcile the demands of humanity with military requirements, and it endeavours to support the States tackling this issue not only at the operational level, but already when implementation of humanitarian law is concerned.

In this way, the ICRC, through its Advisory Service, assists national authorities in fulfilling their commitments under treaties of international humanitarian law. This is why the establishment of national committees is encouraged, assistance provided to committees and States that require it. The assistance goes from legal support to encouraging the exchange of information between committees.

The support of national committees has been essential in the adoption of various national measures of implementation of international humanitarian law such as those related to the repression of war crimes, the protection of the emblems of the red cross and the red crescent, the protection of cultural property in the event of armed conflict, the prohibition on anti-personnel mines or the dissemination of international humanitarian law.

There are now 62 national committees worldwide, assisting their respective governments in complying with the obligations that arise from international humanitarian law treaties. Owing to their hard work, dynamism and co-operation, their work is now widely accepted and acknowledged.

I would like to welcome the 14 national committees of the Americas, observers and the representatives of those governments interested in establishing such a body in their own countries, as well as to the Inter-American Commission on Human Rights. We are grateful for the co-operation and interest shown in the development of this activity, along with the comments made to us on the work carried out and expectations of this Meeting.

In this context, we know that this meeting will represent an important achievement for the work carried out in the field of international humanitarian law, as much for the continent's national committees on implementation as for interested States and organisations participating in this event today.

Indeed, there is much work still to be done, mainly to ensure that international humanitarian law is being respected and promoted and the suffering of the victims prevented and alleviated.

On behalf of the organisers of this event, I wish to extend my most sincere gratitude to our hosts the Government of Guatemala, the Government of Canada and the Swiss Embassy, all of whom assisted in the organisation of this meeting of national committees.

Thank you very much. I wish you success in your work.

*Lieutenant Colonel Kirby Abbott*

**Director of International Law, Department of National Defence  
Judge Advocate General Office, Government of Canada**

Mister Chairperson, friends. First I would like to begin by expressing my appreciation for all the tremendous efforts that have been undertaken by the ICRC, as well as the General Secretariat for the Organizations of American States. It is obvious that a lot of time and effort on their part has been put into organizing this conference. I would also like to thank the government of the Republic of Guatemala for agreeing to hosting this conference, particularly in such a historical and unique venue. On behalf of the Canadian National Committee of Humanitarian Law it is indeed a pleasure to come to Guatemala and to share our experiences and learn from your experiences in the first meeting of the national committees in the Americas.

The Government of Canada is particularly proud to be able to make a modest contribution to this conference through our Global Security Program, which is managed by the Department of Foreign Affairs and International Trade. I am particularly happy today to present Ambassador Lambert, representing the Government of Canada who is able to attend from Guatemala City.

Our modest contribution builds upon a history of different initiatives that the government of Canada has undertaken in promoting IHL in the Americas. And these initiatives in large part occurred in partnership with the ICRC, as well as the Canadian Red Cross. We are pleased that we can financially contribute to this meeting as we did in the 2002 meeting of national committees

in Geneva because it provides a forum that allow us an opportunity to listen, to share and to exchange all the ideas that will be brought to the table over the next two days.

We believe that the promotion of international humanitarian law is absolutely critical and the leadership on its domestic implementation is fundamentally key. And in this respect, Canada believes that national committees provide an important forum or mechanism for such action. With respect to the promotion of the international humanitarian law and its importance to be effective, we also believe that partnership with the Red Cross and Red Crescent Movements is absolutely critical. In Canada, the Canadian Red Cross is a very active and a very welcome partner in the work that is undertaken by the national committee on humanitarian law. In this regard I am pleased to introduce to you today Ms Susan Johnson, who is the Director of International Program for the Canadian Red Cross, who is indeed an active member with our national committee.

As I mentioned earlier, the March 2002 representative meeting between national committees in Geneva was an opportunity to share lessons learned but also discuss, creating new tools and mechanisms that allows all of us to strengthen our work. Indeed from that meeting the Canadian National Committee on Humanitarian Law went back, we worked and developed our work plan for the next two years based on the ideas that were shared and the ideas that we learned. Clearly however, I believe that we all agree that we benefit from further dialogue, from further exchange of information. This meeting of national committees of the Americas is another great opportunity to do just that. We will be able to assess our respective progress, to exchange ideas, to help each other continue to advance the promotion of IHL. As a follow-up to this meeting we hope a report will be produced that will provide a long lasting resource for States, as well as National Societies who either want to strengthen an existing national committee or create one for the first time.

Thank you for your attention and your patience and I look forward to what I know will be a very productive meeting. Thank you.

***His Excellency Alfredo Trinidad Velásquez***  
**Deputy Minister, Foreign Affairs Ministry**  
**Government of Guatemala**

Mr Jorge García, Head of the Technical Secretariat for Legal Cooperation Mechanisms of the Organization of American States; Mr Claudio Baranzini,

Delegate of the International Committee of the Red Cross in Guatemala; Lieutenant Colonel Kirby Abbott, Director of International Law of the Department of National Defence of the Government of Canada; His Excellency James Lambert, Ambassador for the Republic of Canada; members of the national committees of the Americas; members of the Diplomatic Corps.

On behalf of the government led by Mr Alfonso Portillo and the people of Guatemala, I would like to wish a very warm welcome to the delegations of the thirteen national committees on international humanitarian law of North America, Central America, the Caribbean and South America, which will honour us with their presence over the next three days. It is a real honour for Guatemala that the authorities of the International Committee of the Red Cross and the Organization of American States have chosen our country and especially the historic city of La Antigua, colonial monument of the Americas and world heritage site, to hold such a significant meeting for discussion of the steps to be taken in our countries, on a subject of such universal importance.

The main aim of international humanitarian law, within the framework of the Geneva Conventions and their Protocols, is to provide protection and assistance to the persons affected by armed conflict, as well as to limit the effects, methods and means of waging war, with the goal of avoiding unnecessary pain and suffering on the part of civilian populations of women, children and the elderly not playing a part in war; moreover, to protect those persons who having been part of the war, are no longer participating in the fighting.

The principles of international humanitarian law, as a truly universal law, contained within the Geneva Conventions and Protocols, are laudable and we must promote them, ensure their implementation in our countries through the national committees, invoke them and support each other with them, so that they are applied in those countries in the midst of armed conflict where unfortunately peace still seems a long way off. In the Americas we can feel reasonably satisfied because, with a few sad exceptions, we have made considerable advances in eradicating armed conflict not only between our countries but also within them; it falls to us now to work very hard to consolidate peace, democracy, integration and the development of our region.

In the Americas we still have faith in international law as an instrument of peace and democracy; therefore I believe that through peaceful negotiation, preventive diplomacy and the strengthening of co-operation and the processes of integration, including economic integration, we will manage increasingly to ease the tensions between our countries, to solve shared problems and to satisfy regional interests in development, security and the promotion of peace.

However, although we are on the right path to peace, reality warns us that we must remain ever alert to and protected against the spectre of armed conflicts that may be waiting for us.

Within this context, it is important to strengthen, both between and within our American countries, preventive diplomacy and policies of consolidation in our societies, even in times of peace, of the postulates of international humanitarian law. So we see here the importance of the role to be played by the national committees to make the proper recommendations to their governments on the steps to be taken in their respective countries, so as to render effective all the existing international legal provisions in matters of international humanitarian law, and for the dissemination thereof in the institutions of their States and societies.

I do not wish to miss the opportunity to express the satisfaction of the Government and people of Guatemala at being part of the sixty-two national committees on international humanitarian law in the world, and the fourteen that exist in the Americas and the Caribbean.

The Political Constitution of the Republic of Guatemala establishes that the State guarantee and protect human life from conception, as well as the integrity and security of the person. Moreover, it establishes the general principle that in matters of human rights, the treaties and conventions accepted and ratified by Guatemala take precedence over national law.

Guatemala is a party to the 1949 Geneva Conventions and the Protocols of 1977. Furthermore, it is party to the 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict, as well as the Protocol. Guatemala has also ratified the 1972 Biological Weapons Convention; the 1976 Convention on the prohibition of military or any other hostile use of environmental modification techniques; the 1980 Convention and Protocols on the Prohibition of Certain Conventional Weapons and the 1993 Convention against Chemical Weapons. Additionally the 1997 Ottawa Convention banning anti-personnel mines has also been ratified.

During this current administration, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts has been ratified. We also hope and believe that Guatemala will shortly become party to the Rome Statute. Finally, I would like to extend the warmest welcome once again to all the national committees on International Humanitarian Law and wish them much success in their evaluation and project work. I also hope that your stay in our country will be agreeable and that you will

enjoy Guatemala's human and natural treasures. I feel it fitting, on such a special occasion, to quote the pacifist Mahatma Gandhi: "There are no paths to peace" – I would add that peace is the only path.

On behalf of the Chancellor of the Republic of Guatemala, Mr Edgar Gutiérrez Girón, I declare this meeting officially open. Thank you very much.

## **KEYNOTE SPEECH**

*“The implementation of International Humanitarian Law in the Inter-American system for the protection of persons”*

(The decisions of the Inter-American Commission on Human Rights and the jurisprudence of the Inter-American Court of Human Rights)

***Brian Tittlemore***

Legal Adviser

Inter-American Commission on Human Rights (IACHR)

### **Introduction**

I would like to begin by thanking the OAS General Secretariat and the International Committee of the Red Cross for inviting me to speak on the application of international humanitarian law in the inter-American human rights system. In my role as a staff attorney with the Inter-American Commission on Human Rights, I have been fortunate to witness some of the innovative ways in which the human rights institutions of the inter-American system have addressed the co-extensive application of international human rights and humanitarian law, and I am pleased to share some of these developments with you today.

### **Framework for Discussion**

As most of you are likely aware, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are the principal human rights institutions of the Organization of American States. Among the responsibilities of the Commission and Court is the adjudication of complaints of violations of human rights instruments of the inter-American system. For the Court, this jurisdiction extends to the application of the American Convention on Human Rights in respect of OAS Member States that have ratified the Convention and accepted the Court’s contentious jurisdiction. For the Commission, its competence encompasses not only States parties to the American Convention but also those Member States that have not yet ratified the Convention but are nevertheless bound by the provisions of the American Declaration of the Rights and Duties of Man by virtue of their ratification of the OAS Charter, in particular Canada, the United States, Cuba and much of the English-speaking Caribbean. It is therefore principally in the context of alleged violations of the American Convention and the American Declaration



that the Commission and Court have had occasion to consider the role of international humanitarian law in protecting human rights in the region.

In this procedural framework, it can be observed that throughout much of the last century, numerous countries of the Americas have experienced situations of political violence, including instances of armed conflict. In addressing complaints of human rights abuses arising out of such circumstances, the human rights institutions of the region have taken varying approaches as to the applicable corpus of international law. In some instances, the Commission and the Court have determined cases based solely upon the terms of applicable human rights treaties, in isolation from other potentially relevant obligations to which the States concerned may be subject under international law. In certain other cases, however, the Commission and the Court have considered it appropriate to take into account applicable rules of international humanitarian law in order to more accurately determine state responsibility for human rights violations in situation of armed conflict. This analysis has taken place principally, though not exclusively, in relation to the protection of the right to life under Article 4 of the American Convention during situations of internal armed conflict.

In assuming this broader approach to examining human rights complaints in armed conflict situations, two issues in particular have arisen: whether the Commission and the Court have jurisdiction to interpret and apply international humanitarian law; and if so, how that regime of international law should be integrated with rules under the inter-American human rights instruments to determine state responsibility for human rights abuses.

The purpose of my presentation today is to review the manner in which the principal human rights bodies of the Organization of American States have addressed these issues to-date. I will begin with an overview of some of the complaints in which the Commission has considered and applied international humanitarian law, followed by a discussion of the main decisions of the Inter-American Court on this issue. Finally, I will discuss briefly some of the most recent developments in the inter-American system concerning the role of the law of armed conflict, including the Commission's recently-released Report on Terrorism and Human Rights and its precautionary measures adopted in respect of the post-September 11, 2001 detainees in Guantanamo Bay.

### **Jurisprudence of the Inter-American Commission on Human Rights**

A review of the Commission's jurisprudence indicates that the use of international humanitarian law has been a relatively longstanding practice in the

Commission's methodology. One of the earliest cases in which the Commission considered and applied international humanitarian law involved the attack by Bolivian army contingents against the city of Caracoles in Bolivia in August 1980.<sup>2</sup> According to the denunciation in the case, miners in the community had been on strike for several weeks. The army attacked on August 4, 1980 with ground troops, mortars and tanks, in order to occupy the city, and the miners met the attack with armed resistance. In the course of the hostilities, the army committed abuses against prisoners and other persons who no longer offered resistance to the attack, including executions, raping women and girls, beating children, looting homes and killing livestock. Although the State provided no response to the denunciation, the Commission had sufficient evidence to conclude that the "excesses and abuses" committed by the army constituted violations of the standards in existing treaties, in particular "humanitarian international law applicable to non-international conflict", and resolved, without any discussion of its competence to apply international humanitarian law, that:

these events constitute serious violations of the right to life (Article 4); the right to humane treatment (Article 5); and the right to personal liberty (Article 7) of the American Convention on Human Rights, as well as Article 3 of the 1949 Geneva Convention on protection of war victims, which has been ratified by the Bolivian Government.

In the years following the *Caracoles* decision, the Commission continued to receive complaints arising out of situations of political violence, but determined these cases largely in the absence of any consideration of potentially applicable rules and norms of international humanitarian law.

It was not until its 1997 decision in the case of *Abella et al. v. Argentina*<sup>3</sup> that the Commission undertook its first detailed analysis of the role of international humanitarian law in resolving individual human rights complaints before the Commission in situations of armed conflict. The *Abella Case* concerned events that took place on January 23 and 24, 1989, at the barracks of the Infantry Regiment No. 3 known as "La Tablada" in the Buenos Aires province, Argentine Republic, and the consequences following from those events. On January 23, 1989, 42 armed persons launched an attack on the aforementioned barracks. The attack precipitated a combat of approximately 30 hours'

---

<sup>2</sup> Resolution No. 30/82, *Annual Report of the IACHR 1981-82*.

<sup>3</sup> Case No. 11.137, Report No. 55/97, *Abella et al. V. Argentina*, *Annual Report of the IACHR 1997*.

duration between the attackers and military personnel which resulted in the deaths of 29 of the attackers and several State agents. The barracks had an arsenal from which the attackers, after having entered the site, seized a number of weapons which they used to defend their positions. In their petition before the Commission, the petitioners alleged, *inter alia*, that the State had used excessive force in seizing the barracks and therefore that the resulting deaths of the attackers violated the American Convention. The State defended its conduct in part on the basis that the attackers were engaged in armed insurrection that required intervention by the armed forces to restore order.

In this context, the Commission ultimately concluded in *Abella* that the facts of the case disclosed the existence of non-international armed conflict and that the conduct during the hostilities was governed by the rules on internal armed conflicts.<sup>4</sup> The Commission also concluded that this did not mean that the Commission was not competent to adjudicate potential human rights violations in these circumstances. Rather, the Commission clarified the reason why it had deemed it necessary to apply directly rules of international humanitarian law or to inform its interpretations of relevant provisions of the Convention by reference to these rules.<sup>5</sup> It stated in this regard that:

the Commission's ability to resolve claimed violations of this non-derogable rights arising out of an armed conflict may not be possible in many cases by reference to Article 4 of the American Convention alone. This is because the American Convention contains no rules that either define or distinguish civilian from combatants and other military targets, much less, specify when a civilian can be lawfully attacked or when civilian casualties are a lawful consequence of military operations. Therefore, the Commission must necessarily look to and apply definitional standards and relevant rules of humanitarian law as sources of authoritative guidance in its resolution of this and other kinds of claims alleging violations of the American Convention in combat situations. To do otherwise would mean that the Commission would have to decline to exercise its jurisdiction in many cases involving indiscriminate attacks by State agents resulting in a considerable number of civilian casualties. Such a result would be manifestly absurd in light of the underlying object and purposes of both the American Convention and humanitarian law treaties.<sup>6</sup>

---

4 *Id.*, para. 156.

5 *Id.*, para. 157.

6 *Id.*, para. 161.

In this sense, the Commission considered it appropriate, and indeed necessary, to look to international humanitarian law as providing rules of greater specificity - a *lex specialis* - governing the circumstances in which individuals may and may not be deprived of their lives in the context of armed conflicts. A similar conclusion was reached by the International Court of Justice in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, in addressing violations of Article 6 of the International Covenant on Civil and Political Rights in situations of armed conflict.

In the *Abella* case, the Commission proceeded to evaluate the responsibility of the Republic of Argentina for events at La Tablada in light of applicable rules under the American Convention and under international humanitarian law. In this regard, the Commission concluded that because of the lack of sufficient evidence establishing that State agents used illegal methods and means of combat, the killing or wounding of the attackers which occurred prior to the cessation of combat on January 24, 1989 were legitimately combat related and, thus, did not constitute violations of the American Convention or applicable humanitarian law rules. It emphasized, however, that the persons who participated in the attack on the military base were legitimate military targets only for such time as they actively participated in the fighting. Those who surrendered, were captured or wounded and ceased their hostile acts, fell effectively within the power of Argentine state agents, who could no longer lawfully attack or subject them to other acts of violence. Instead, they were absolutely entitled to the non-derogable guarantees of humane treatment set forth in both Common Article 3 of the Geneva Conventions and Article 5 of the American Convention.

In contrast with the application of international humanitarian law to an isolated incident of combat as was the case in *Abella et al.*, the Commission has also resorted to Common Article 3 to determine violations of the right to life in various cases in the context of the on-going internal armed conflict in Colombia. These include its 1997 merits decision in the case of *Arturo Ribon Avila*,<sup>7</sup> in which the Commission addressed the circumstances of an armed confrontation that occurred on September 30, 1985 between State agents and members of the armed dissident group M-19. The Commission also considered international humanitarian law in its 1999 merits report in the case of *Alexis Fuentes Guerrero et al.*,<sup>8</sup> in which the Commission determined that on

---

7 Case No. 11.142, Report No 26/97, Arturo Ribón Avila v. Colombia, *Annual Report of the IACHR 1997*.

8 Case No. 11.519, Report No. 61/99, Alexis Fuentes Guerrero v. Colombia, *Annual Report of the IACHR 1998*.

January 3, 1994 an army battalion carried out a counterinsurgency operation in the hamlet of Puerto Lleras, department of Arauca, during the course of which unarmed civilians were shot indiscriminately resulting in eight casualties. In these cases, the Commission drew upon pertinent sources of international humanitarian law, including Article 3 common to the 1949 Geneva Convention and UN General Assembly Resolutions 2444 and 2675, in evaluating the manner in which the alleged violations of the right to life under the American Convention should be interpreted and applied to attacks against combatants and civilians in an armed conflict situation. Indeed, the Commission found the state of Colombia responsible for violations of Article 4 of the American Convention as well as common Article 3 of the 1949 Geneva Conventions.

The Commission also resorted to the application of international humanitarian law in its 1999 merits report in the case of *Ignacio Ellacuría et al.*, concerning a notorious incident in El Salvador in which five Jesuit priests, their cook and her 15 year old daughter were summarily executed<sup>9</sup> during the final stages of the armed conflict in that country between 1980 and 1992.

In its report on the case, the Commission concluded that the victims were not legitimate military targets, but members of the civilian population who should not have been the object of attack. In the Commission's view, during the final stages of the Salvadoran armed conflict, agents of the State identified the Jesuit priests with subversion. In this respect, the Commission noted, as it had in the *Alexis Fuentes Guerrero* Case, that in any event, mere sympathy for the cause of one of the parties is not tantamount, nor can it be equated, to engaging in acts of violence that constitute a real and immediate threat to the adversary. Therefore, even if statements about the victims' alleged sympathy for the armed dissidents were true, the Army members had no right to treat the victims in this case as legitimate targets of attack.

On the basis of these considerations the Commission concluded that the State violated the right to life enshrined in Article 4 the American Convention. Interestingly, the Commission also found a violation of the "principles recognized" in Common Article 3 of the Geneva Conventions, rather than a violation of Common Article 3 *per se* as it had in its previous decisions.

I should note that the Commission's consideration of international humanitarian law has not been limited to the right to life in internal armed conflict

---

9 Case No. 10.488, Report N° 136/99, *Ignacio Ellacuría et al., v. El Salvador, Annual Report of the IACHR 1999.*

situations. In particular, the Commission has recognized similar associations between international human rights and humanitarian law in relation to the detention of civilians during situations governed by the law on international armed conflict. In particular, in its 1999 merits report in the *Bernard Coard et al. v. United States* case, the Commission considered the detention of individuals during the military action led by the armed forces of the United States in Grenada in October of 1983. In finding the United States responsible for violations of the right to personal liberty under Article XXV of the Declaration, the Commission noted that in a situation of armed conflict, the test for assessing the observance of a particular right, such as the right to liberty, may, under given circumstances, be distinct from that applicable in a time of peace, and in particular that the Geneva Conventions provide a wider range of justifications for the deprivation of liberty than does the American Declaration.<sup>10</sup> It therefore looked to the rules governing the detention of civilians in situations of armed occupation to inform the manner in which the right to personal liberty should be interpreted and applied in the circumstances of the victims in that case. The Commission concluded that the detainees had not been provided with sufficiently prompt access to a proper mechanism to determine the legality of their detention, in light of the requirements of Article XXV of the Declaration when interpreted in light of provisions of the Fourth Geneva Convention.

The extent to which the Commission or the Court may find discrete violations of international humanitarian law such as common Article 3 has emerged as one of the central issues in the use of the law of armed conflict in the inter-American system. Indeed, this was one of the main questions raised before the Inter-American Court in its first contentious case addressing international humanitarian law, the *Las Palmeras* Case against Colombia.

### **Jurisprudence of the Inter-American Court of Human Rights**

In its February 2000 judgment on preliminary objections in the *Las Palmeras Case*,<sup>11</sup> the Inter-American Court had its first occasion to address the competence of the human rights bodies of the inter-American system to consider and apply international humanitarian law. The Court's judgment arose out of a jurisdictional challenge posed by Colombia against a complaint referred to the Court by the Commission on July 6, 1998 regarding the extrajudicial

---

10 Case No. 10.951, Report N° 109/99, *Coard et al. v. United States*, *Annual Report of the IACHR 1999*.

11 I/A Court H.R., *Las Palmeras*, Judgment of 4 February 2000 on Preliminary Objections, Ser. C, No. 67.

execution of six civilians by members of the National Police at the school of a village known as “Las Palmeras”. In its complaint the Commission requested the Court to find violations of the right to life, as set forth at Article 4 of the Convention, and of Common Article 3 of the 1949 Geneva Conventions.

In response, Colombia challenged the competence of both organs to establish responsibility on the basis of non-compliance with Common Article 3. Colombia argued that it had not consented to the application of the Geneva Conventions by the Commission and the Court. In its view, the norms of the Convention establishing the competence of the organs of the System to examine cases failed to provide a legal basis for the determination of State responsibility in the light of other treaties.

In the hearing on preliminary objections in the *Las Palmeras* Case, the Commission maintained that the rules of codified in Common Article 3 were binding upon the State not only by virtue of the Geneva Conventions, to which it was a party, but also as a rule of customary international law which had reached the status of *jus cogens*. In its view the organs of the system should not consider themselves precluded from directly applying or informing their interpretation of the Convention by reference to these sources of international law. The Commission argued that other sources of international law, such as *jus cogens*, were part of the legal context of international law of human rights and therefore the interpretation and application of a human rights treaty with substantive and jurisdictional content might require their consideration. It maintained that the duties imposed on States by Common Article 3 belonged to the category of *erga omnes* obligations that make States accountable towards the International Community as a whole. In its view the Court ought not to refrain from examining compliance with international peremptory norms as long as they were linked to the effective application of the non-derogable rights enshrined in the American Convention.

The Court ultimately determined that neither it nor the Commission were competent to find the State responsible for violations of international humanitarian law in cases involving the right to life in the context of armed conflict. Although in his concurring opinion the President of the Court highlighted the importance of promoting the effective application of obligations *erga omnes* in the area of human rights through jurisprudence, the Court did not address the issue in its main judgment. Rather, it found based upon the norms of the Convention that neither the Commission nor the Court itself were competent to find state responsibility for violations of humanitarian law in cases regarding the right to life in the context of armed conflict. In his partially Dissenting

Opinion, Judge Jackman distinguished the validity of the objection to the jurisdiction of the Commission to apply rules of humanitarian law from that of the Court. In his view, the Commission was no longer seized of the matter upon referral of the case to the Court and therefore the purpose of the objection posed by the State regarding the Commission's jurisdiction *ratione materiae* "was at best moot and at worst impertinent and irrelevant."

The current state of inter-American jurisprudence therefore appears to preclude the Inter-American Commission or Court from finding state responsibility for discrete violations of international humanitarian law treaties, including Common Article 3 of the 1949 Geneva Conventions. It does not, however, appear to foreclose either body from utilizing international humanitarian law rules and principles to inform their interpretations of relevant provisions of inter-American human rights instruments in respect of complaints arising out of situations of armed conflict. This conclusion appears to be reinforced by the Court's more recent November 2000 judgment in the *Bámaca Velásquez Case*<sup>12</sup> against Guatemala, which involved the capture, torture and disappearance of a guerilla member by the Army during Guatemala's internal armed conflict. In this case, the Commission included in its application a request that the Court find that Guatemala failed to comply with its obligations under Article 1(1) of the Convention in relation to Article 3 common to the 1949 Geneva Conventions. In addressing this argument, the Court considered that it had been proved that an internal conflict was taking place in Guatemala at the time of the facts of the case. It also went on to hold that, as established in Article 3 common to the Geneva Conventions of August 12, 1949, the State, when confronted with an internal armed conflict, should grant those persons who are not participating directly in the hostilities or who have been placed *hors de combat* for whatever reason, humane treatment, without any unfavorable distinctions. The Court clarified in this regard that:

Although the Court lacks competence to declare that a State is internationally responsible for the violation of international treaties that do not grant it such competence, it can observe that certain acts or omissions that violate human rights, pursuant to the treaties that they do have competence to apply, also violate other international instruments for the protection of the individual, such as the 1949 Geneva Conventions and, in particular, common Article 3.<sup>13</sup>

---

12 I/A Court H.R., *Bámaca Velásquez Case*, Judgment of 25 November 2000, Ser. C, No. 70.

13 *Id.*, para. 208.



## **Recent Developments in the Inter-American System**

In closing my presentation, I would like to mention two of the most recent developments pertinent to the consideration of international humanitarian law in the inter-American system.

The first is the Commission's Report on Terrorism and Human Rights, which was released in December of 2002 and provides the Commission's latest pronouncements on the evolving interconnection between international human rights and humanitarian law. As those of you who have seen the report will be aware, the Commission's methodology draws heavily upon the corpus of international humanitarian law in attempting to articulate minimal standards of human rights that regulate state responses to the scourge of terrorism. In particular, the Commission acknowledges that terrorist or counter-terrorist actions may in some circumstances give rise to or occur in the context of armed conflict as defined under international humanitarian law. In such circumstances, the Commission indicated that they may implicate the application of rules of international humanitarian law in evaluating States' human rights obligations. Based upon this premise, the Commission analyzed the principal human rights potentially imperiled by anti-terrorist initiatives in light of the rules of both international human rights and humanitarian law. These included the right to life, the right to humane treatment, the right to personal liberty and security, the right to a fair trial, and the right to freedom of expression

While time does not permit a discussion of the Commission's various findings, it is interesting to note that the report reveals varying degrees of convergence and divergence between rules of international human rights and humanitarian law depending upon the particular right at issue. The greatest convergence appears to be found in the law governing humane treatment, where the standards are largely identical under each regime. The greatest divergence, on the other hand, is arguably found in the rules governing freedom of expression, which are virtually absent from international humanitarian law. Falling somewhere in the middle of this spectrum is the right to personal liberty, particularly in situations of international armed conflict. Here, humanitarian law provides specific and elaborate regimes of regulations governing the detention of combatants and civilians that differ in some significant respects from, and in some situations exceed, the standards prescribed under international human rights law.

It was in the context of the precautionary measures adopted by the Commission in March 2002 in respect of the detainees in Guantanamo Bay, Cuba that the Commission was required to address on a provisional basis the implica-

tions of international humanitarian law for the detention of individuals alleged to have been apprehended in the course of an international armed conflict. In their request for precautionary measures, the Petitioners contended that the United States has refused to treat the detainees in accordance with the procedures established under the Third Geneva Convention of 1949 Relative to the Treatment of Prisoners of War, namely that they be treated as prisoners of war under that Convention until a competent tribunal determines otherwise. They also alleged that the persons at Guantanamo Bay had been detained arbitrarily, incommunicado and for a prolonged period of time, and had been interrogated without access to legal counsel, contrary to the requirements of the American Declaration of the Rights and Duties of Man. Finally, the request alleged that certain detainees were at risk of trial and possible death sentences before military commissions that failed to comply with established principles of international law.

While the Commission ultimately adopted precautionary measures, these measures were limited to requesting that the United States take the urgent measures necessary to have the legal status of the detainees at Guantanamo Bay determined by a competent tribunal. In deciding to adopt this course of action, the Commission recognized that where persons find themselves within the authority and control of a state and where a circumstance of armed conflict may be involved, their fundamental rights may be determined in part by reference to international humanitarian law as well as international human rights law. In evaluating the request, the Commission also concluded, based upon the information available, that the United States considered itself to be at war with an international network of terrorists, that the United States undertook a military operation in Afghanistan beginning in October 2001 in defending this war, and that most of the detainees in Guantanamo Bay were apprehended in connection with this military operation. Accordingly, the Commission acknowledged that the legality of the detainees' incarceration depended in part upon which regimes of international law applied to their situation and the status of the detainees under those regimes of law. The Commission stated in this regard that:

without prejudging the possible application of international humanitarian law to the detainees at Guantanamo Bay, the Commission considers that precautionary measures are both appropriate and necessary in the present circumstances, in order to ensure that the legal status of each of the detainees is clarified and that they are afforded the legal protections commensurate with the status that they are found to possess, which may in no case fall below the minimum standards of non-derogable rights.

It remains to be seen how the situation of the detainees will finally be resolved before the U.S. Supreme Court and how the Commission might address the merits of the matter, should an effective domestic remedy not be available and a formal petition is filed with the Commission. And no doubt developments in the global struggle against terrorism will continue to provide the Commission and Court with opportunities to consider the role of international humanitarian law in securing respect for fundamental human rights in our system.

I hope that my presentation will make some useful contributions to your discussions over the following days, and I thank you very much for your attention.

## **OBJECTIVES OF THE MEETING**

PB

***María Teresa Dutli***

Head of the Advisory Service on International Humanitarian Law, ICRC

I would like to begin the presentation on the objectives of the meeting by highlighting the important work carried out by the national committees that you all represent and applauding the participation of representatives of those States that are currently in the process of creating these bodies. Before we begin, bearing in mind the participation of representatives of certain States that are in the process of creating national committees, it would perhaps be important to refer briefly to the performance of national committees: what is their role? What are their objectives? And why does the ICRC seek to support the work of national committees?

The existence of national committees in charge of the implementation of international humanitarian law is, in itself, nothing new. The first national committees were created in the 1970s, during the process of the adoption of the Additional Protocols to the 1949 Geneva Conventions, and with a view to the preparation for the adoption of those instruments. Over the last ten years there was particular emphasis on the creation of these bodies owing to the growing importance given to the search for measures intended to bolster respect for international humanitarian law. Thus, at the most recent International Conferences of the Red Cross and Red Crescent, States supported the proposal that national consultative organizations be created to support the authorities in the process of the implementation of international humanitarian law on a national level.

When the ICRC established its Advisory Service on International Humanitarian Law with the purpose of offering to national authorities technical advice in matters of the adoption of national legislation and regulations relating to humanitarian law, there were only thirty-eight committees in existence worldwide. That was six years ago. Today there are seventy-four, of which fourteen are in America. I will not expand on the important advances that you have all made through the bodies that you represent, because we will have the opportunity to discuss and see this in the course of the presentations yet to come. On my part, I would like to highlight certain facts that seem to me to be important. Firstly there is the fact that in nearly six years the number of committees has doubled. It seems to me to be particularly important to stress that the positive results obtained by the existing committees have led to the number of committees growing. Secondly, it seems important to emphasise that ever more committees are being created in countries that are either going through or coming out of armed conflict. To give an example, the last national committee to be set up was that in Sudan. This demonstrates that it is on the basis of real

experience that measures are sought to secure greater respect, and it is precisely this that renders the work done highly credible. This is to say that it is the States themselves, those that are experiencing conflict situations in which there have been serious violations of international humanitarian law, it is those that have the will to go further and create organisations to look for internal measures that allow them to ensure greater respect for international law. A third and final element to highlight is the fact that there is an exchange of experience and information on the work carried out by the national committees. This meeting is proof of this and proof of the importance to be attached to trying to harmonise and seek uniformity in the work carried out.

There have been various universal, regional and sub-regional meetings between national committees. The Advisory Service has held two universal conferences, the most recent of which was held in March 2002 in Geneva. On the basis of the discussions in this setting, the Advisory Service has produced documentation intended to facilitate the work of these bodies. The first universal conference, which was held in 1996, led to the preparation of a document aimed at facilitating the creation of these committees. Meetings have been organized in all continents on a regional level, with the aim of making easier the exchange of experience and ideas between committees with similar cultures and legal systems. There have also been meetings between two or three committees in the same region, which has allowed all members of the committees to participate and compare experiences.

The previous meetings in America had those aims. Right now, the objectives of this meeting, which is the first of its kind to be held in the region and is in conjunction with the OAS, are a little different. The main aims of this meeting are as follows:

- To evaluate the functioning of the national committees in the region and to seek solutions aimed at making their work easier. This is the first time that a discussion on a national evaluation of the work carried out by national committees and the impact of that work has been attempted;
- To facilitate the exchange of information and experience between national committees, trying to find measures or make proposals that tend to make their work easier. Among the topics we would like to cover on this issue is the Electronic Forum for national committees that opened recently for this purpose;
- To give an update on the central topics on which national committees are working, which will also give us the opportunity to raise

new concerns, such as the problem of missing persons and the rights of the families to know of their whereabouts; and finally

- To discuss the next International Conference of the Red Cross and Red Crescent, which will be held in December 2003 in Geneva, with a view to providing the most necessary resources that will allow ideal preparation and participation in that event.

As regards the first objective, in relation to the evaluation of the functioning of national committees, it is important to point out that this aim must be understood to be a self-evaluation. To this end, we have prepared a questionnaire, which you have all completed and the replies to which will be made available to all participants with a view to sharing information. I feel it is important to emphasise that, to our mind, there is no ideal formula for the operation of national committees. Any evaluation of the functioning of committees is dependent on the context in which the committee operates, on its aims and opportunities to act. Each committee operates within a particular framework into which it must fit; the important thing is that they be able to participate in the implementation of international humanitarian law on a national level.

There will be an exchange of information on the activities completed to date by each one of the bodies that you represent. However, moving on to your upcoming presentations, I feel it important to refer briefly to the important advances that have been achieved in these last few years. Whether it be the ratification of treaties – the level of the participation of States in the Americas in the instruments of international humanitarian law is among the highest in the world – or the adoption of measures of implementation on a national level – a process which is carried out at a slower rate – the advances are significant.

To assist this exchange of information and experience, and subsequently of the recommendations made by the participants at the universal meeting of national committees that took place in Geneva in 2002, the Advisory Service on International Humanitarian Law has opened an Electronic Forum that encourages an interactive dialogue between members of all the committees worldwide. There will be a power-point presentation on this Forum in the course of this meeting. The experience exchanged by these means can also facilitate and accelerate the internal process of national implementation.

A brief update on the central topics discussed by national committees will also be the subject of presentations and debates at this meeting. Among those themes it is fitting to highlight the progress made in the matter of the International Criminal Court, the project surrounding missing persons, as well as other issues related to the national implementation of humanitarian law.



Finally, we will also be concerned with the great challenge that is the next International Conference. As you all know, at the end of this year, the 28<sup>th</sup> International Conference of the Red Cross and Red Crescent will take place. It is important that national committees play a part in the composition of the delegations at the Conference, the preparation of these delegations, the monitoring of those pledges made by the different States at the previous Conference and in the preparation of commitments that could be made at the next one. We see it as important to reiterate that the committees play, or can or should play, a very important role in the suggestion of proposals with respect to the commitments that representatives will take on in the area of national implementation of international humanitarian law prior to the International Conference. The majority of the commitments made at the previous International Conference were made in relation to the ratification of a treaty, the adoption of a law, or the creation of a committee. Almost all of those commitments have been fulfilled, which demonstrates the importance of good preparation and adequate monitoring of the participation in these meetings.

Lastly, I would like to add that, in order to facilitate the achievement of these objectives, complete documentation has been prepared on each one of the subjects that will be debated in the workshops at this meeting, documentation that has been made available to you all. Our aim is to encourage an exchange of ideas and experience in a fluid manner to ensure that the experiences of some may benefit everyone. A great part of the topics will be dealt with in working groups. The working groups will be chaired by participants who have already been asked to take part and will benefit from the assistance of rapporteurs for the preparation of their notes. The work within the setting of the working groups will be preceded by a brief introduction to the subject presented in the full session. The notes will also be presented in the full session at the end of each working groups session. We, the organisers will prepare a final document, which will take the form of a report and will compile the body of presentations and debates. This document can also include certain recommendations or action that could be taken in the region as a consequence of the proposals made in the course of this conference. This written document, or report, will be given to all participants as well as the authorities and organisations concerned.

We sincerely hope that the discussions and exchanges will be fruitful and beneficial to all and that the work schedule for this conference meets your expectations.

Thank you very much.

**DIAGNOSTIC OF THE CURRENT STATE OF  
IMPLEMENTATION OF INTERNATIONAL  
HUMANITARIAN LAW (IHL) IN THE AMERICAS**

PAGINA BLANCA

## **DIAGNOSTIC OF THE CURRENT STATE OF IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW (IHL) IN THE AMERICAS**

### **Round table**

(participation in treaties, dissemination and integration, repression of serious violations of IHL, protection of distinctive signs, other national measures for the implementation, efforts on behalf of the OAS)

### **A) NATIONAL COMMITTEES FOR IHL IN THE AMERICAS**

#### **ARGENTINA**

##### ***Raúl Eugenio Comelli***

Embassy Secretary

Representative of the Ministry of Foreign Affairs

before the Committee for the Implementation of International Humanitarian Law

The Committee for the Implementation of International Humanitarian Law (CADIH) is a public entity formed by representatives of various ministries. It was created by Executive Order 933/94 whose Article 3 has ordered studies and measures that, as planned, will be presented by the Secretary of the Committee to the Ministries and Secretariats of the nation's presidency, as it may correspond, for their approval and subsequent drafting of Laws, Executive Orders, Resolutions or directives that will be necessary for their final legal establishment.

Having taken into account the assignment of responsibilities in all matters related to the implementation of international humanitarian law by the ministries of the Republic of Argentina, all action connected to the promotion of international humanitarian law requires the intervention of those who make up the committee. Therein, the inter-ministerial nature of the Committee ensures that there will be appropriate follow-up of its proposals in the various areas of the National State in which these proposals are analyzed and adopted. In accordance with this, all the initiatives of the Committee for the Implementation of International Humanitarian Law have been adopted by the responsible authorities or are in advanced stages of approval.

Along these lines, from the perspective of Argentine experience, its present composition does not, perhaps, include all the areas that should be established.

Thus, it would be useful, beginning with the information that other committees have developed or that we may become familiar from this meeting, to analyze the participation of other organizations. As one example, regarding the question of cultural property, unfortunately the Secretariat of Culture is not a part of the Argentine Committee.

Regarding the state of Argentine participation in the relevant treaties of international humanitarian law, it is appropriate to note that this country has been party to the Geneva Conventions of 1949 since September 18, 1956, and its Additional Protocols since November 26, 1986. It is also party to the Declaration of Article 90 of the Additional Protocol I since 1996, and recently to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts since last year. It is party to the Convention for the Protection of Cultural Property in Case of Armed Conflict since 1989 and of its Protocol II since 2002. It is also a State Party to the Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques since 1987. Regarding arms, it is party to the Biological Weapons Convention since 1979, to the Convention regarding conventional weapons and its three first protocols since 1995, as well as the Amended Protocol II and Protocol IV since 1998. Also, it has been a party to the convention regarding chemical weapons since 1995 and to the Treaty of Ottawa since 1999. It has also ratified the Rome Statute of the International Criminal Court on February 8, 2001 and more recently, ratified on August 26, 2003, the Convention on the non-applicability statutory limitation of war crimes and crimes against humanity of 1968.

On the question of protecting of the use of the Red Cross emblem, the Committee approved an updated version of the bill that was recently sent to Congress for approval.

Regarding the incorporation into the Criminal Code of specific actions that constitute serious violations of IHL, a special bill has been drafted that is under consideration for final approval. In addition, the Ministry of Justice has been required to analyze the possibility of incorporating, as crimes of national law, crimes against humanity, based upon specific provisions in the Rome Statute.

Regarding the incorporation into the Code of Military Justice of specific criminal provisions that constitute serious infractions of international humanitarian law, this was accomplished through the Bill to reform the Code of Military Justice.

An Inter-Ministerial Committee was formed in Argentina with a similar composition to that of the Committee for the Implementation of International Humanitarian Law (CADIH) for the purpose of implementing the provisions of the Rome Statute. Said Committee was assigned primary responsibility regarding the implementation of the Statute. However CADIH has also taken part in the process of defining the official position through the organization of various seminars on humanitarian law and the International Criminal Court.

The Inter-Ministerial Committee on the International Criminal Court ceased its activities once the bill for incorporating the penal provisions provided in the Statute was drafted.

In this case, the work of the Committee for the Implementation of Humanitarian Law was limited to dissemination. I believe that something else that should be stated is that in cases like Argentina, where there had been two committees, their scope of action has not been considered as invasive by the other committee.

There is also the proposal for creating a task force whose responsibility will be devoted to the updating of the Joint Rules for the Laws of War. This proposal was made by CADIH to the Joint Chief of Staff (EMCFFAA). It reported to this Committee that in 2001 a Joint Committee was established for the review and updating of RC 08-01 Laws of War—1989 Edition.

Regarding bi-national or regional meetings of national committees, it is worth pointing out the meetings that took place between Chile and Argentina during 1997 and 1998 where exchange of information related to advances in the implementation and dissemination of IHL was strengthened. A third meeting between both countries was foreseen for the second quarter of 2003. The Argentine Committee will also seek closer contact with the Committee of IHL of the Republic of Bolivia.

In addition, various seminars have taken place for the purpose of promoting the teaching and dissemination of international humanitarian law in civil and military areas. CADIH will also carry out various activities regarding anti-personnel mines and their effects.

About the protection of cultural property, the Committee has presented a new request for technical-financial assistance to UNESCO through the diplomatic offices of Argentina to obtain the assistance of that organization for the elevation of cultural property that must be protected in case of armed conflict in

Argentine territory. Also, the Committee approved getting the assistance of the Canadian and Austrian governments. In addition, the possibility has been examined of making contact with the appropriate authorities in Italy to exchange experiences regarding the elevation and protection of cultural property.

Concerning the creation of the National Office for Information, the Committee has received a proposal from the Ministry of Foreign Affairs by which the activities of the National Office for Information will be assumed by the General Legal Advisor of this ministry. The Committee has evaluated and accepted this proposal. The National Office for Information will be created by ministerial resolution. Thank you.

## **BOLIVIA**

### ***María Alicia Terrazas Ontiveros***

Advisor, Alternate Representative of the Ministry of Foreign Affairs and Worship before the Permanent National Committee for the Implementation of International Humanitarian Law (CNPADIH)

The nature of national committees as facilitators not only of the obligations set forth in the Geneva Conventions, its Additional Protocols and other legal instruments related to international humanitarian law, but also focused on prevention, as mechanisms responsible for the dissemination and implementation of these norms in time of peace has prompted the Permanent National Committee of Bolivia to take action since April, 1999.

In a first stage, the national committee engaged in presenting reports and explaining the need for signing, ratifying, and adhering to treaties related to international humanitarian law, and the approval of the Law on the Use and Protection of the Emblem of the Red Cross.

Over the last two years, the National Committee has achieved the following objectives: the enactment of Law of the Republic Number 2230 dated July 19, 2001 of the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects; also, the approval of the Bill for the Use and Protection of the Emblem of the Red Cross, enacted as Law of the Republic Number 2390 dated May 23, 2002; and finally, the enactment of Law of

the Republic Number 2398 dated May 24, 2002 regarding the Rome Statute of the International Criminal Court.

Currently pending is legislative approval of the Hague Convention of 1954 on the protection of cultural property in case of armed conflict, which will be introduced in the legislature that started on August 25 of this year. Likewise, there is the request for support of the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts, which has been sent to the National Congress on August 17 of this year.

The work group on the Rome Statute, put together under the framework of the National Committee, finished up in April 2002 the report on the comparative study of this legal instrument and the national legislation and sent it to the Foreign Affairs Committee of the National Senate for the purpose of facilitating the ratification process.

The Justice Vice-Ministry, responsible for promoting the updating of national legislation, has set up standards for the creation of an Implementation Committee of the Rome Statute.

The opening in April 2002 of the Center for Documentation and Referrals on international humanitarian law in the Central Library of the Ministry of Foreign Affairs and Worship, constitutes a first step in the work of dissemination. For that reason, the first bibliographic catalogues have been created. They contain periodical materials, research reports, reference collections, and other materials that the ICRC issues periodically. Also, a database has been established on international humanitarian law that for the time being is available through the Web site of the Biblioteca Virtual de Salud y Ambiente (Health and Environment Virtual Library), meanwhile the Center is getting its own virtual portal ready.

The National Committee has approached the School of Legal Studies and Policies of the Universidad Mayor de San Andrés de la Paz to know its study programs and needs regarding the development of personnel in this branch of international law.

In addition, the Executive Committee of the National Committee had its first preparatory meeting for the first seminar on dissemination of international humanitarian law in coordination with the Regional Delegation of the International Committee of the Red Cross in Lima, of which it became part in June of this year.



The first round of activities of the National Committee respond to analysis on the participation of Bolivia in treaties related to international humanitarian law and the degree of dissemination within the country. Therefore, the priorities have been directed towards the ratification or adherence to agreements and towards the development of activities towards its dissemination. It is important to emphasize that the political support of authorities at the decision-making level has contributed in a positive way to the accomplishment of these objectives. The work of the National Committee is laid out in the Annual Operating Plan of the Ministry of Foreign Affairs and Worship, corresponding to the General Executive Directorship of Multilateral Affairs, which constitutes the Permanent Secretariat of the National Committee.

The National Committee of Bolivia wishes to praise the efforts of the Technical Secretariat for Legal Cooperation Mechanisms of the OAS, as well as the assistance of the ICRC Advisory Service in International Humanitarian Law for Latin America that contributes in such a significant way not only to maintain continuity in governmental conferences but also to strengthen enforcement of rules that will protect the life and dignity of people affected by armed conflicts.

Distinguished representatives, the importance of this meeting that has among its objectives the preparation of national committees for the 28<sup>th</sup> International Conference of the Red Cross and Red Crescent, to be held in Geneva from December 2 to 6 next December, will be especially relevant for the national committees who will be able to coordinate favorable strategies that will enable a preventive focus in the implementation of international law regarding armed conflicts in the Americas. Thank you very much.

## **CANADA**

*Susan Johnson*

National Director of International Programs and Humanitarian Issues  
Canadian Red Cross

The presentation I am going to make on behalf of the Canadian National Committee on Humanitarian will to cover two areas.

Firstly, allow a few words about the nature of our Committee. Our Committee is made up of six members, five are Government ministries and one is the Canadian Red Cross. The five Government Departments of Ministries are the Ministry of Foreign Affairs and International Trade, Department of National

Defence, Department of Justice, the Royal Mounted Police and the Department of International Development Assistance – CIDA, and the Canadian Red Cross.

As my colleague was explaining earlier, the current Chair of our Committee is the Judge Advocate General from the National Defense. The Canadian Red Cross provides the secretarial support for the Committee. The universal meeting that the ICRC convoked a little bit more than one year ago in Geneva was a big impetus to the Canadian Committee.

We had already been working on a plan of action for the Committee before the universal meeting, but that meeting certainly contributed to clarify some issues that had remained pending. I think in some of the documentation we have for this meeting you will find that there is a brief mention of some of these matters.

I will just mention three areas in which we do work. First, we are developing a website for the NCHL in Canada to make basic material on IHL and our Committee available to the public. Second, we have compiled a list of Canadian experts in IHL in different aspects, and thirdly, we have been organizing seminars on current issues or critical matters related to International Humanitarian Law.

The second area I wish to share with you this morning concerns Canada's approach towards implementing IHL. One can say that Canada has a multi-faceted approach here as it involves action taken at the national as well the international levels. Aspects of our work touch upon defense operations and policy, others concern developing capacities to address international humanitarian law issues, and there is multilateral diplomacy as well as the adoption of national measures.

I think most of you know that Canada is a party to all of the major IHL treaties. We are of course particularly proud of the role that Canada was able to play in relation to the Mine Ban Treaty and in relation to the Rome Statute of the ICC. The Canadian Government continues to support other governments and different organizations promoting the implementation of both treaties.

In terms of domestic legislation, there are a number of domestic laws that have been adopted to implement international rules into Canadian law, for instance, legislation on the protection of the red cross emblem. There are acts implementing the Geneva Conventions and the ICC. We have adopted legislation concerning the Chemical Weapons Convention and we are in the process

of adopting legislation for the Biological Weapons Convention. In the year 2000 the defense act was amended to preclude persons under the age of eighteen from being deployed by the Canadian Armed Forces in hostilities.

In terms of dissemination of IHL to the armed forces as well as to the general public, the Department of National Defense itself has a very well developed program. There is an operational training, and there is a review procedure of all operational plans and rules of engagement. There are educational sessions, mandatory briefings and training in IHL. And there is the independence of the legal structure in the Department of National Defense with a direct access to the Minister.

The Canadian Red Cross and the International Committee of Red Cross are also involved in training of Canadian military. From time to time we provide training to armed forces, for example peacekeepers, providing them with information about the role of the Red Cross in times of conflict and material on IHL. Concerning the general public, we try to focus particularly on high school level students and university students. We have launched a campaign which has been running for the last two years.

The campaign includes topics such as education and promotion of the landmines treaty, raising awareness of the impact of war on civilians in general, and of children and women in particular.

The Canadian Red Cross website contains a series of materials related to those campaigns. We are also involved with our government, the Ministry of Foreign Affairs and International Trade, and non-governmental organizations, raising awareness about landmines through a specific youth program.

Concerning weapons, we have organized a number of initiatives, including more recently a workshop in Canada for advisers on issues related to new weapons and the potential implications in terms of IHL.

Another issue being discussed by the Canadian government and the Canadian Red Cross, within the NCHL framework for example, includes the problem of missing persons. Both the Canadian Red Cross and the Department of Foreign Affairs attended the International Missing Conference convoked by the ICRC in Geneva in February 2003. We are at this point organizing a follow-up workshop in Canada in September on the issue. And we are considering making a commitment or a pledge at the 28th International Conference on the issue of the missing, this December.

We have been very active in relation to the International Criminal Court, as I mentioned earlier. The Department of Foreign Affairs has launched a campaign in December 2000 to promote the Rome Statute and its effective implementation around the world. Over thirty workshops on the topic have been sponsored by the Department of Foreign Affairs. And a manual on the implementation of the Rome Statute has been produced by our Department of Foreign Affairs.

Heading into the International Conference of the end of this year, the Canadian Red Cross with the Government of Canada is discussing the possibility in discussion about the potential promotion of four pledges at the Conference. The pledges will probably concern the protection of children, a topic Canada has been very actively involved with. The second area we are looking at concerns the problem of missing persons. Thirdly, we are considering the issue of IHL and weapons. This will be a main team at the Conference. The Canadian Red Cross is in fact organizing one of the workshops at the 28th Conference on Biotechnology Weapons and Humanity, and we are considering a pledge in this regard.

Lastly, in the area of the ICRC program entitled exploring humanitarian law. Within the NCHL the Canadian Red Cross and government has not yet being involved in this program. We have been following with interest the project of exploring humanitarian law, and we are now looking at developing this in Canada with some of the school commissions.

I hope that was somewhat in seven minutes and I hope it was a useful presentation from Canada. Thank you.

## **CHILE**

### ***Dr. Claudio Marcelo Troncoso Repetto***

Director of Legal Affairs of the  
Ministry of Foreign Affairs

President of the National Committee on International Humanitarian Law

In Chile, the Committee was created by Executive Order on August 31, 1994. It is an Inter-Ministerial Committee, made of ministerial representatives, in other words, it is not an inter-institutional committee. I am the chairperson as Legal Director of the Foreign Ministry; and the committee also has representatives from the Ministries of Interior, Defense, Justice, Education, and Health.

The main concern of this committee is evaluating the participation of our country in the various treaties on international humanitarian law and so its work has been aimed towards the approval and ratification of these treaties. Among those that have been promoted by the committee and that have been approved by the Chilean Congress are: the Convention of 1980 on the prohibition and restriction of the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects and its Protocols, approved recently by the National Congress and which is in process of establishment and incorporation into national law. Also, approved and ratified this year, is the Protocol to the Convention on the Rights of the Child regarding the participation of children in armed conflicts. We are soon sending for congressional action -it had not been done yet— the Hague Convention of 1954 concerning the protection of cultural property.

The matter of implementation of international law is a question of great concern for the Committee. Regarding this, we have done research to determine, what are the rules that need to be developed internally related to the *non-self executing* rules and that require for their enactment some legislative measures. This includes, obviously, the mandates on incrimination embodied in the 1949 Geneva Conventions and the remaining mandates on incrimination established in other international treaties. We have also made progress in this regard through a bill we have drafted together with the Ministry of Justice and in which they have worked with the University of Chile. We are now in a stage of evaluation of a strategy to promote this draft bill; the initial idea was to draft it based on the treaties of which Chile is a party. Nevertheless, later we thought that it was important to update this implementing law for serious crimes, war crimes, genocide, crimes against humanity, to the status of the approval of the International Criminal Court. Regarding this, we note that in Chile the Rome Statute was approved by the Chamber of Deputies, but then a requirement was raised before the Constitutional Court in which the need was established to reform the Constitution first, a project that has recently been taken up in the Chilean Senate. The Executive branch presented the constitutional reform, but at the present time there has been no major headway.

We are at the present time in Chile, as I indicated, debating how to advance with this, whether to go the way of the International Criminal Court or to limit it to the treaties to which we are already a party and must comply with. It is going to depend on the legislative strategy that we can put together with Congress in terms of approval for constitutional reform.

First, the participation of Chile in treaties of humanitarian law. Second, implementation projects, as I pointed out. Third, the question of dissemination, which is for us always very important, as much for the general dissemination of the rules of international humanitarian law, as for the national armed forces, who are the main object of these rules and which require their due understanding and application in the performance of their activities. Along these lines, we have had seminars related to international humanitarian law during the past year. Specifically related to the Criminal Court, on October 14, 2002, we organized an International Humanitarian Law workday, in commemoration of the XXV Anniversary of Protocols I and II of the 1949 Geneva Conventions with the Ministry of Foreign Affairs and the support of the National Committee and the Regional Delegation of the International Committee of the Red Cross for our region. Current topics on international humanitarian law were dealt with, particularly those regarding the International Crime Court. In addition, we organized another seminar specifically related to the Criminal Court on November 4, 2002 in conjunction with the Chilean foundation called Chile Veintiuno (Chile Twenty-One) in which national and foreign panelists participated. It was also attended by representatives of the armed forces and the legislative branch. Therefore, it was our special concern to organize opportunities and seminars to disseminate information on international humanitarian law and, also, to learn about the experiences the armed forces have regarding teaching the topic of international humanitarian law and including these issues into the training of officers and sub-officers of the armed forces. We were interested not only in informing the armed forces about the rules of humanitarian law, but more precisely, on learning how the armed forces apply these norms to the training of their members.

Finally, it is important to mention certain initiatives related to joint meetings with other committees of international humanitarian law. We have met with the Argentine Committee, both in Buenos Aires and Santiago, but I think that it could be a good experience to have meetings with other committees in the region.

In conclusion, I think this is a very good time for evaluation and follow-up of the commitments that we adopted regarding international humanitarian law. I think that this is a time that allows us to provide essential follow-up, an evaluation regarding how our country is complying with international commitments that are adopted and from that perspective, I believe that the National Committee has contributed to the advancement of international humanitarian law in Chile and that this is a tangible achievement that should be emphasized. Thank you very much.

## COLOMBIA

### *Dr. Carlos H. Franco Echavarría*

Director of the Presidential Program for Human Rights  
and International Humanitarian Law

Technical Secretary of the Inter-Sectorial Committee for Human Rights  
and International Humanitarian Law

In what concerns legislation, we have achieved this year the approval of the Optional Protocol of the Rights of the Child and of the International Convention on the Taking of Hostages, and the Rome Statute of the International Criminal Court, even though our country took recourse to the reserve clause in Article 124 and the government has proposed that this debate remain open for the consideration of Colombian society in order to see when it may be appropriate to reject this declaration.

The Law of the Emblem is in process; two of the four necessary debates have already taken place, and we foresee the presentation of rules for the mechanism related to the search for missing persons, the adherence to Article 1 of the 1980 Convention regarding conventional weapons, and the presentation of Protocol II of the Convention of 1954 regarding cultural property.

In Colombia there is no International Humanitarian Law Committee. There is an Inter-Sectorial Committee for Human Rights and International Humanitarian Law, presided by the Vice President, with participation of the various ministries at the highest levels, and it is in charge of coordinating and creating policies on this matter.

I would like to take advantage of this opportunity to speak a little about the present situation of international humanitarian law in Colombia. We have received a report from the People's Ombudsman indicating that during 2002 there were eleven thousand complaints of violations of international humanitarian law. This means that in Colombia the Ombudsman received an average of twenty-nine such reports every day. This situation and this report from the Ombudsman gives us an opportunity to examine an important issue. In 2,500 of these complaints the responsible was not indicated, but regarding the balance of the complaints, 4,700 were attributed to insurgent groups; 3,900 to self-defense groups, and 230 to the Security Forces. This illustrates two things. The gravity of the situation, and also, the responsibility of illegal armed groups in this situation.

The national government wants to share with you some aspects of the human rights policy that affects the implementation of international humanitarian law in a positive way. First, we are committed to a national plan of action against anti-personnel mines, a plan that with the support of the OAS, the Canadian government, the Swiss government and the International Center of Humanitarian De-Mining of Geneva, we have implemented. The plan includes preventive measures, care of victims, observation and management of information and humanitarian de-mining. This plan has also involved the Armed Forces and they have already begun to destroy the anti-personnel mines in their possession, meeting the commitment that we made to destroy them before March 2005. The national government has included an amount equivalent to one million dollars in the budget for next year to implement this plan.

A second part of our policy is the separation of children from armed conflict in the country. It is estimated that in Colombia some six thousand children are involved in illegal armed groups, and the national government has strengthened its policy in this regard as well as the role of the Colombian Institute for Family Welfare in giving essential attention to these children. We have a program that would be worth analyzing regarding family reintegration, services, education, and the support of children in completing their education.

A third element is that of the medical mission. This is one of the most difficult issues in the national armed conflict; there is a total disregard towards the medical mission and the means to support its development.

Another issue concerns the protection of vulnerable communities. With the cooperation of the United Nations we are looking for means of protecting the vulnerable population in remote zones where the conflict is most severe.

Another one has to do with decentralization. We are making an effort to strengthen the ability of cities and towns to promote and guarantee human rights and international humanitarian law in the areas of their protection, so that this can be done at all levels of government.

The Armed Forces have played an important role in the appropriation of international humanitarian law. Regarding training, there is a CD that we have shared with you that provides some idea of the training that is now taking place. There is a major plan for this training, and now we have integrated international humanitarian law not only in training but also in doctrine and operational planning. All operations are being planned from the perspective of human rights and international humanitarian law and within the doctrine there is human rights training in all branches. It is part of all specialties.



In conclusion I invite you to consider this. Why do we think that the situation has become more serious? It's not simply that the conflict continues and it is escalating; it is that there are some strategies in the country's internal armed conflict that have an impact on international humanitarian law. The fundamental strategy is not to destroy the enemy; the fundamental aim is territorial control. The control of territory implies that the civilian population is either subjugated or eliminated, rendering the principle of *détente* irrelevant. When the fundamental objective is to destroy the enemy, international humanitarian law can remain in force.

The second reason is the lack of persistence in seeking full compliance with international humanitarian law. A third issue that is important to consider is a much more effective dissemination of international humanitarian law in Colombia.

We would wish that the International Committee of the Red Cross would receive a wider support to expand its disseminating work of raising awareness among citizens because in the situation that we have we do not need only a State which is aware, but also alert citizens that would raise the political price of breaching international humanitarian law.

In Colombia we have made many efforts to develop dialogue and when these dialogues break down, we have taken advantage to at least establish minimum agreements for the implementation of international humanitarian law. And, we believe that both in the civil society and in the international community, the most important contribution that you can make towards civilian groups in Colombia, that are the main victims, is to give priority and support to dialogue, observation and implementation of international humanitarian law as a condition for an eventual and negotiated political solution.

## **EL SALVADOR**

*Major Olmes Ramiro Duque*

Ministry of National Defense

Representative of the Inter-Institutional Committee of International Humanitarian Law [CIDIH-ES]

The CIDIH-ES was created in January 1997 for the purpose of advising the government of El Salvador on measures to adopt, apply, and disseminate effectively international humanitarian law. One of its objectives is that El Salvador ratifies the instruments of IHL to protect persons and their belongings

against grave violations of international humanitarian law. Another of its goals is that El Salvador effectively understands and respects international humanitarian law.

El Salvador has ratified the four Geneva Conventions of 1949 and their Additional Protocols, as well as other instruments that limit the means and methods of making war, both, international or otherwise. El Salvador has pending the acceptance of responsibility for the International Humanitarian Fact Finding Commission, established in Article 90 of Additional Protocol I to the Geneva Conventions. Also pending ratification is the Statute of the International Criminal Court.

The question that arises is, how have we gotten to this point? The CIDIH-ES has taken steps towards the ratifications and creation of instruments that develop the contents of the agreements of international humanitarian law through sub-committees, specifically that of legislation. It has also disseminated information on international humanitarian law among officials and employees of State organs and among members of civil society by means of the Dissemination Sub-Committee. It has initiated the posting of signs for cultural property with the protective emblem established in the 1954 Convention for the protection of cultural property in case of armed conflict.

The activities in the sub-committees have made possible greater effectiveness in fulfilling the functions of the CIDIH-ES. There is the advantage of grouping in the sub-committees people who have the abilities to develop the objectives of each responsibility. The disadvantage is that not all members of the committee may know about the specific issue that it must act upon, but this is being worked out through meetings. There are regular meetings and meetings by sub-committees in which the general actions carried out are reported. Based in our experience, we conclude that for the accomplishing of the basic functions of advising, recommending, informing, disseminating, and for shepherding the objectives of international humanitarian law, the sub-committees are essential.

The CIDIH-ES has had significant success in accomplishing its objectives, given that the presidency and permanent secretary of the committee have been assigned to the Ministry of Foreign Affairs. This is a window to the world.

A recommendation has been made in El Salvador to set up a specific budget for the functioning of the committee and to continue receiving the support from the Organization of American States, the ICRC, and other institutions. It is necessary to continue the study and reform of the national penal code in

accordance with the Statute of the International Criminal Court, given the complementary responsibility of the Court.

Also, acceptance of the jurisdiction of the International Humanitarian Fact Finding Commission must be urged.

Regarding the relevant features of the 1954 Convention of Cultural Property, a signalization pilot program is being developed in one of the most important cities of El Salvador.

Concerning dissemination, international humanitarian law has been made known, as has already been said, among officials and civil societies. It has been integrated into the Armed Forces as a course of study at different levels in the educational system.

Regarding the repression of serious violations of international humanitarian law, at the present time we have no report, except for one case about the violation of human rights that is the first case that has been presented at the international level for El Salvador.

About the protection of the emblems, the Law for the Protection of the Emblem of the Red Cross and Red Crescent has been enacted and is in force.

Other measures of national implementation are the presentation of the emblem for the protection of cultural property, the signalization of the cultural property, patrimony of humanity, *Joya de Cerén*.

The inclusion of crimes against humanity in Title XIX of the present Electoral Code, such as genocide, violations of the laws and practices of war, violations of duties of humanity, the forced disappearance of persons and trafficking in persons, is found in Article 2 of the Rules of the Criminal Law. The first is universal, that is to say, it is the application of the Salvadoran criminal code to crimes committed by any person not subject to Salvadoran jurisdiction, whenever these affect assets protected universally by specific rules of international law. These are covered in Chapter III of the Code of Military Justice, crimes against the rights of people, destruction, plundering, and sabotage.

Among those legal instruments pending ratification, as already mentioned, Article 90 that accepts the jurisdiction of the International Humanitarian Fact Finding Commission is pending ratification of the Rome Statute of the International Criminal Court. Approval is being sought for reform of the national

Criminal Code, for the purpose of bringing it into accordance with the standards established in the Statute of the International Criminal Court.

Finally, at the present time El Salvador does not have an official report regarding the status of the present process of analysis for the ratification of this provision. I refer to the legal document of the Statute of the International Criminal Court, given that this is the reason for an ad hoc committee at the presidential level. But notice will be given, on this international instrument, of some standards that would be in contradiction with the constitutional standards of El Salvador. Thank you.

## **GUATEMALA**

*Ambassador José Luis Domínguez Quintanilla*

Advisor to the Ministry of Foreign Affairs

President of the Guatemalan Committee for the Implementation of International Humanitarian Law (COGUADIH)

I want to begin by referring to two levels of action. First I will focus on what the State has done—through COGUADIH as one of its own actions—and later I will refer to what the Guatemalan Committee has done.

Along these lines, I want to say that Guatemala is party to the most important conventions, that is, the Geneva Conventions and their Protocols, the Convention on the protection of cultural property and the Ottawa Treaty regarding anti-personnel mines. Recently, concerning the rights of children, the protocol on the participation of children in armed conflicts has been ratified.

With respect to the Rome Statute, in January of the past year, the President of the Republic requested the Constitutional Court to render an opinion regarding the compatibility of the Constitution with the Statute. The opinion emphasized that no such incompatibility exists, for which we believe that in the medium range, we will be able to be a party to this Statute.

Our Constitution, as also pointed out yesterday by the Deputy Minister, gives preeminence to international treaties of human rights over our national legislation. As a result, questions of international humanitarian law are considered an issue of highest importance for the country. The present Criminal Code has provisions regarding genocide, instigation of genocide, extrajudicial execution, the crime of torture, and forced disappearance. In the new project

relating to the criminal code there is consideration of the inclusion of the crimes outlined in international humanitarian law. Also, there is a project for the military code regarding the inclusion of features of IHL.

Some ministries, such as Education, are considering certain projects for educating young people on IHL, as is the case with the one entitled "Let's Explore international humanitarian law." With respect to the Ottawa Treaty, the Ministry of Defense has been put in charge of de-mining the country, result of the armed conflict that took place over three decades. It should be emphasized that this project has been very successful and that nearly the entire country has been cleared of mines. It is also important to stress that the same Ministry has training in international humanitarian law, and that recently it has created its own General Directorate of Human Rights.

Regarding the protection of the Red Cross emblem, the Law for the Protection and Use of the Red Cross Emblem has been enacted through Executive Order 10297. Based also on the Ottawa Treaty another Executive Order 10697 has been issued for the prohibition of production, purchase, sale, import or export, transit, use and possession of anti-personnel mines and anti-detecting devices or parts of the same.

Within the university system, programs or curricular content within the courses of the various universities of the country have been included.

Finally, regarding the State, I would like to remind you that in 1996, as you will all know, peace treaties were signed that put an end to the internal armed conflict that had lasted for 36 years.

Regarding my second point, I refer to COGUADIH. What have we done? What have we accomplished? The Guatemalan Committee for the Implementation of International Humanitarian Law was created in 1999 by Government Accord. Its composition took about a year. As you know, the Guatemalan Committee is composed of the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Education, the Ministry of National Defense, the Ministry of Public Health and Social Assistance, the Presidential Coordinating Committee for Executive Policies in matters of Human Rights, the Secretary for Peace, the Judicial Institution, the Congress of the Republic, the Office of Solicitor for Human Rights, the General Prosecutor of the Nation, and the Association of Attorneys and Notaries of Guatemala.

One of the undertakings that has kept COGUADIH much occupied is the creation of internal rules. Finally, at the beginning of this year, this was adopted. But why so much concern? Basically, because the formation of the Committee has been difficult. The Committee was created by a cabinet agreement and the Committee actually is composed of the three powers of the State. Even the Prosecutor Office of Human Rights is part of its composition, while these institutions want to maintain their autonomy. Regardless of the time it took, the text of the rules was adopted, and was submitted to judicial review for approval by the Ministry of Foreign Affairs and for publication in the Official Journal.

Why have we taken so much time? Because the Government Accord by which we were created strengthens us as an institution. Within the two main activities of the Committee is the work of incorporating national legislation in accordance with the norms of international law and also the dissemination of international humanitarian law. In order to be able to accomplish this in the best way, resources are required, so, we believe that the rule is what will open doors and enable us to operate better.

Particularly, regarding the work of incorporating the norms of international law into national legislation, this will take place in accord with the three sub-committees of the Committee, being the sub-committees of defense and security, the sub-committee of dissemination activities, and the sub-committee on legislation. The question of the compatibility between our national legislation and the international humanitarian law is being analyzed together with the Association of Attorneys.

Among the members of the COGUADIH we have not included the Ministry of Culture—I do not know exactly what took place at the time. Nevertheless, the rule has left open the possibility of the inclusion of other State institutions and, therefore, we have already approached that ministry to have their collaboration in the project of attempting to identify all national monuments with protective emblems.

Following the example of the achievements of El Salvador, we as a Guatemalan Committee have already had a meeting of a bi-national nature, if it can be called in that way. Reiterating, we have come to a point of having adopted a rule and we think that this is what is going to allow us to do a better job in the future. Thank you very much.

## NICARAGUA

### *Idayda Aguilar Roa*

Legal Advisor to the Directorate of Territorial Affairs of the  
Ministry of Foreign Affairs  
National Committee for the Implementation  
of International Humanitarian Law

Before anything else, on behalf of the government of Nicaragua and the Minister of Foreign Affairs I want to thank all the organizers of this event. This is a very important event for our country because it is the first time that we participate in a meeting after the creation of the Committee.

Nicaragua has enacted the law, creating on April 23, 1999, through Executive Order 5499, the National Committee for the Implementation of International Humanitarian Law —CONADIH—, carrying out the December 1995 recommendation of the International Conference of the Red Cross and Red Crescent. The National Committee is composed of representatives of Foreign Affairs, Defense, Interior, Health and Education; along with representatives of various parliamentary committees and members of the Judiciary. There are also specialists in international humanitarian law, those from universities, and especially schools of law, from humanitarian organizations. Eventually, we plan to incorporate members of the press and electronic media.

The main purpose of the Committee is to advise the Government of the Republic on matters related to the signing, ratification, adherence to treaties of international law and to promote the adoption of national measures in this area. For the operation of the Committee, a board of directors has been established whose members are the president, vice president, and permanent secretary. The Minister of Foreign Affairs serves as President; the Minister of Defense as Vice President, and the Permanent Secretary, counts with the collaboration of the Nicaraguan Red Cross.

In order to ensure the greatest efficiency in its management, three sub-committees have been created: a legislative committee, another for training and dissemination, and another for the protection of cultural property. The legislative is coordinated by the Exterior Committee of the General Assembly, training and dissemination by the Nicaraguan Red Cross, and the committee for the protection of cultural property by the Nicaraguan Institute of Culture (INC).

In order to make our meetings more dynamic and productive, we have adopted a work plan for meetings at the sub-committee level with the board of directors and at the same time we have programmed meetings every three months; these are regular meetings. We have also planned—well, in my case I have had barely two months as head of the Committee—to have an annual meeting at the highest level in order to present to everyone a report of what we have accomplished throughout the year.

In spite of the decree that was approved in April 23, 1999, the office was officially established as such at the headquarters of the Ministry of Foreign Affairs, on April 9, 2002. After the opening ceremony, the first immediate job of the committee was to have a national seminar to make known in a general way the process of creation and the legal framework for the implementation of IHL. Then on August 28, the Ministry of Foreign Affairs held a conference on the International Criminal Court created by the Rome Statute, an opportunity in which the guidelines for studying the national legislation and the Rome Statute were evaluated. Both conferences were made possible with the support of national experts and the valuable aid that the International Committee of the Red Cross and the NGO's International Coalition for the International Criminal Court provided.

Also, in the activities of the Nicaraguan Institute of Culture that took place on October 10, 2002, the Conference for the Protection of Cultural Property during war and peace explained the fundamental laws and procedures established in the conventions and protocols on these matters.

Respect for human rights and bringing Nicaragua into the system of IHL shapes the new culture and the renewed objectives of the government's policy. Because of this we are at the best point for advancing in our work projects although, for example, our legislation has a long way to go in this respect because there is much lacking. One such missing element relates to regulation regarding respect for the emblem of the Red Cross, since in spite of an already approved law, abuses take place, and it is essential to detect such abuses and deal with them immediately.

Therefore, the legislative committee is working on that part of the regulations. In fact, it is reviewing the documents that they have distributed here. And, in my country, Nicaragua, we are working for the meeting that is going to be held in Geneva in December, the creation of this law; but thank God we have it approved and we are working on the regulations.



We need to do work also on comparative law, learning about concrete experiences and practices. We are a poor country facing many difficulties; it's necessary to help communities, to provide protective civilian services to police, fireman, emergency personnel, and hospitals.

In addition we need to identify cultural and historical assets and to provide signalization as established by international accords. In this matter, we have an inventory that is a bit out of date, which took place in 1980. We have already indicated some five points that we are going to work on in the process of providing signalization and this will require some time.

Also we will begin this Monday, September 1<sup>st</sup> at the Universidad Americana, a course in international humanitarian law. This qualified course aims to disseminate and strengthen knowledge and analysis of IHL; provide exchange of experiences between participants of various disciplines and contribute to create new behavior in the Nicaraguan society in accordance with the principles of the IHL, and based on the respect for human rights with the final objective of facilitating the implementation of this important branch of law at the national level. We also wish to have the support of international experts and of the International Committee of the Red Cross.

We are also setting up an internet site that will be part of the web page of the Ministry of Foreign Affairs. At the same time I am going to facilitate documentation and I have taken the daring initiative of including the committees that are here. I would like them to give me their e-mails and perhaps in this way we can consult each other because I know that many countries are very advanced in this and we are very interested in learning from what they have accomplished.

We have also worked in dissemination of the treaties that Nicaragua has ratified, mainly on the subject of weapons. The convention that has had a wider implementation in Nicaragua is the Ottawa Convention on the prohibition of the use, stockpiling, production, and transfer of anti-personnel mines and about their disposal, an area in which Nicaragua has made important progress in the last three years with the work of the National De-Mining Committee, thanks to the international community, the OAS, and the Canadian government.

On the other hand, within the structure of the Ministry of Foreign Affairs, an Office for Democratic Security was created whose specific function consists of promoting at the international level the model of democratic security established in the Framework Treaty of Democratic Security in Central America in coordination with the competent authorities from the executive branch and

other government offices. There will be a follow-up on the fulfillment of treaties and agreements on the question of democratic security with other responsible institutions.

Regardless of these modest accomplishments achieved with much difficulty because the Committee has no definite or designated budget, and even though we have a long way to go, what is important is that today there is a strong awareness of this theme in the international community and especially on the national scene.

Nicaragua now enjoys a period of peace and about this transition, certainly difficult and stretched out, there is without a doubt progress in advancing towards democracy. Therefore, it is important to take advantage of the opportunity that we now have to strengthen this new culture of peace that will avoid a relapse of the country into violence. With this in mind, we promote the principles established by international humanitarian law, which is a work for all of us to be a part of.

Thank you very much for your attention. I am going to give you a complete package. We have the law, we have a brochure telling about how our committee is structured, material on the diploma course, and a small report on the activities that we have done and that I have read to you.

## **PANAMA**

### ***Angela Healy***

Legal Advisor and Head of the Department of Human Rights  
of the Ministry of Foreign Affairs  
President of the Permanent National Committee for the  
Implementation of International Humanitarian Law (CPDIH)

Thank you for your attention and for the opportunity that you have given me to tell a little of the experience that we have had in Panama regarding IHL and one of the mechanisms provided in the Geneva Conventions and in the Additional Protocols, and what exactly is the Permanent National Committee for the Implementation of International Humanitarian Law of Panama.

Panama has ratified and is a member of the majority of the most important treaties of international humanitarian law, including the Rome Statute. Seven of the treaties of which this country is a party were ratified after the establishment of the Committee for Implementation of the IHL. I want to emphasize

this because within the activities of the Committee for the Implementation of IHL is that of disseminating effectively international humanitarian law. Within this responsibility to inform, is not only the question of getting it to officials and the general community, but also to sensitize key officials in the adoption of the international legal documents of international humanitarian law.

Along these lines, I consider the establishment of the Committee in 1997 in my country to have been the crucial step towards the adoption of the most important legal instruments of IHL. Upon ratifying the Geneva Conventions, the first necessity of the Panamanian State has been the establishment of this Committee.

The CPDIH has as perhaps its most important purpose the dissemination, and within this activity, as I have already said, the sensitization of officials that are involved with the adoption of international legal instruments because, as we all know, this is one of the first steps for gaining respect for the promotion of international humanitarian law and for establishing limits on armed conflicts, as it should be.

Regarding implementation of international humanitarian law, Panama is, it should be said; a little slow in this regard within national law. Nevertheless, this is a logical consequence of events because we, the Panamanian State and Committee of Implementation, have concentrated, necessarily, on getting the adoption of these international instruments, and then as a real objective, achieving the implementation on a national level of the rules, mandates, and obligations that these instruments contain.

One of the things about which we are most proud on the Committee is the adoption in 2001 of the modern Law of Protection of the Emblem of the Red Cross and Red Crescent. This law did not exist in Panama. There was no legal protection or any control regarding the wrongful use of the Red Cross. Thanks to the efforts of the Committee and also to the Panamanian Red Cross, this law has been widely disseminated at a national level and as a result many ambulances and medical establishments that used the Red Cross as a symbol of identification had to replace or eliminate it. For example, in the Ministry of Health ambulances used the symbol of the Red Cross and now there are programs within the Ministry of Health to do away with this.

The Committee was established in 1997 and is made up of twelve government institutions and the civil society, represented by the Panamanian Red Cross. As a result, the International Committee of the Red Cross helps in a continuing advisory capacity. Meetings are held bi-monthly and rely on national

rules that are reviewed annually. It works on the basis of three-year plans, long-range plans, and annual plans that are developed at the beginning of the year and evaluated at the end of the year. Since its establishment it has been very active in its duties and has shown to be an important moving force and an effective mechanism in providing correct information, the adoption, the implementation and the dissemination of international legal instruments, such as the seven instruments ratified in the creation of the Committee.

I am going to take the liberty of enumerating these legal instruments to which we are party. The four Geneva Conventions of 1949 since 1956; Protocols I and II of 1977 of those conventions, ratified in 1999. The Convention on the Statute of Refugees of 1951, the convention of human rights converging with international humanitarian law, ratified in 1977. The 1967 Protocol of this refugee agreement, also ratified in 1977. The Hague Convention of 1954 regarding cultural property, ratified in 1962; however Protocols I and II were not ratified until 2001. The Ottawa Convention of 1997, ratified in 1998. The Conventional Weapons Convention of 1980, ratified in 1997 and its Protocols I, II, III, and IV in 1997 as well. The Amended Protocol II also related to the Convention on Weapons ratified in 1999. The Rome Statute was ratified recently in 2002 and the Optional Protocol of the Convention of the Rights of the Child, another convention converging with human rights and international humanitarian law, ratified in 2001. Other conventions that we have ratified that go along with human rights and international humanitarian law is the convention on the security of United Nations personnel that was ratified in 1996. The Inter-American Convention against the Manufacture and Illegal Trafficking of Firearms, Munitions, Explosives, and other related materials was ratified in 1999.

Regarding the definition of behavior prohibited by the conventions of IHL at national level, I already mentioned the Law for the Protection of the Emblem. Presently the Committee is working on a bill draft to stop serious violations prohibited by the instruments of the IHL of which Panama is a party, including the wrongful use of the emblem of the Red Cross and Red Crescent and crimes under the jurisdiction of the Court. This includes the outlawing of prohibited arms among other issues.

We are also very proud of this draft bill but we have a lot of work ahead of us to promote it throughout the country. This draft enjoys the support of the Minister of Foreign Affairs of the Republic, nevertheless, due to considerations of competency, it has been sent to the Ministry of Government and Justice and it will be the responsibility of this office to present it before the legislature. It contains, among one of its most important features, some changes to

the Criminal Code. It is adding the element of the non-applicability of the period of limitation regarding grave violations and of crimes that are under the jurisdiction of the Court, and this is the precise reason why I think there could be some problem in getting the changes passed by the legislature.

Within the activities of dissemination there is also the duty of the States to disseminate international humanitarian law, which is based on the obligations set forth in the Geneva Conventions. The Panamanian State had created permanent courses at the Police Academy. Thanks to the efforts of the Implementation Committee a course on IHL has also been created in the School of International Relations of the University of Panama. At the present time we are making immense efforts to also offer this course in the Law School at the University of Panama.

The CPDIH also provides to the general public specialized teaching and informational material that has been provided by the International Committee of the Red Cross. In the Implementation Committee, composed of state officials, we are conscious that respect for and the promotion of international humanitarian law is not completed with the ratification, implementation and dissemination of IHL, but that our responsibilities must go towards universalizing these legal instruments, encouraging and supporting all countries to join in the universal acceptance of these instruments because only in this way, will we be able to morally require all to comply with such important legal instruments in favor of humanity. Thank you.

## **PARAGUAY**

*Colonel JM (R) Andrés H. Zaracho Gómez*

Attorney, Colonel, Military Justice

Director of Human Rights and International Humanitarian Law

Ministry of National Defense

Chairman of the Inter-Ministerial Study and Implementation Committee for IHL

The Inter-Ministerial Study and Implementation Committee for International Humanitarian Law was established by Executive Order No. 8802 on May 2, 1995, issued by the Executive Power of the nation. This committee has had difficulties in its operations, perhaps because it had too many members. When the Directorship of Human Rights and International Humanitarian Law was established, in the Ministry of National Defense, a responsibility given to me, we engaged in the reorganization of this Committee. Therefore, in light of

Executive Order No. 15962 of December 28, 2001, it was restructured in order to give it greater functionality. Originally the members of this Committee were representatives of the Ministries of Interior, Foreign Affairs, Education and Worship, Justice and Labor, and the Ministry of National Defense.

With the reorganization, those who remained were representatives of the Ministries of Foreign Affairs, Justice and Labor, National Defense; a representative of the Paraguayan Red Cross was also included. The regulatory decree established that the chairmanship would fall to the representative from the Ministry of National Defense and because of that I am here with you today as chairman of this Committee. It was also established that the Permanent Secretary of the Committee would work from the Directorship of Human Rights and International Humanitarian Law of the Ministry of National Defense.

The national regulation was approved one month after its constitution or of the installation ceremony on March 12, 2002 and was approved by the members of the Committee at which time they took up their activities. In about one year we have studied and analyzed three draft bills. One of them has to do with changing Law 993 of August 6, 1928. This 1928 law regulated the use of the Red Cross emblem that, as you can notice, it is dated and must be adjusted to the norms of the convention on international humanitarian law subscribed later on and of which the Republic of Paraguay is a State Member. Therefore, we have drafted a new bill in cooperation with the Regional Delegation of the International Committee of the Red Cross for the Southern Cone region. The proposal was sent to the National Congress last year.

Also, another convention that we have analyzed and studied within the Committee, and that also has become a draft bill, is the Hague Convention of 1954 that establishes the Protection of Cultural Property in Case of Armed Conflict, and its Protocols I and II, signed also in 1954, and the latter in 1999. In addition, the Geneva Convention of 1980 has been put forward regarding the prohibition or restriction of the use of certain conventional arms that may be considered excessively harmful.

As you can see, in a year and a half we were able to have the Executive Office send three draft bills to the Parliament or National Congress for consideration. Also other activities have been developed within the area of dissemination, although this is not an obligation of the Committee but rather of the Directorship of Human Rights and International Humanitarian Law.

Therefore, with these brief comments I wish to point out that the Inter-Ministerial Committee is a new institution, having been recently created, a little

more than a year ago. With what we have already accomplished we believe that we have served the common cause of creating respect for the dignity of human beings during armed conflicts, be they national or international, bringing that ideal closer to reality. Thank you very much for your attention.

## **PERU**

### ***Dr. Sócrates Grillo Bockos***

Secretary of the National Council on Human Rights

Ministry of Justice

Chairman of the National Study and Implementation Committee  
of International Humanitarian Law

In an effort to summarize in a few minutes the meaning and work of our Committee, I want to begin by saying that it is appropriate for a genuine implementation of international humanitarian law, that the committees of the countries were formed by multi-institutional bodies. In the case of Peru, the chairman of the National Committee on International Humanitarian Law is under the Ministry of Justice and especially the Executive Secretary of the National Council on Human Rights.

It is important to point out that this model came to be precisely because in our country there is a National Council on Human Rights that includes all State entities, all ministries and the bodies from civilian society. This singular feature means that the very core of the National Study and Implementation Committee of International Humanitarian Law can be in this way represented by all entities or can articulate to the other entities of the State. On the date of June 1, 2001 we established the Committee that is formed, as I said, by the Ministry of Justice, who presides over it; the Ministry of Foreign Affairs; the Ministry of Defense; and, the Ministry of Interior, as full members and as observers, highly important entities from civil society such as the People's Ombudsmen, the National Coordinator for Human Rights that is made up of NGO's that participate in keeping watch over human rights in my country, and finally, the International Committee of the Red Cross that occupies a primary role.

It would take a long time to describe in detail all the things that have been developed during the time of the functioning Committee. I would simply like to enumerate some aspects that I consider important. There is the draft bill for

incorporating into the Criminal Code the sanctions that include those actions prohibited by the Ottawa Convention. It is important to tell you that our Committee has already drafted a bill for a special article that prohibits and punishes the traffic and use of anti-personnel mines. Hopefully the efforts of my country will bear fruit in this area especially because the National Legislature is working on changes to the Criminal Code and this will probably bear itself out in the points presented by our Committee.

Regarding anti-personnel mines, we have a lot to say because we have been able to accomplish quite a lot, essentially all the mechanisms that are needed to proscribe this type of weapon. Also we can say that an adjustment project has been undertaken to the juvenile code regarding Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflicts. The Committee is also working on legal changes regarding provisions of the Rome Statute of 1998.

These are the main points that we have been working on. Regarding taking action on various activities and conferences, we have completed up to the present time three events related to the dissemination of international humanitarian law. I would not wish to conclude these comments about the Committee without saying something about the main difficulties we have encountered in our work. We have noticed that we need a representative from the legislature within the Committee, since the changes regarding the implementation of international humanitarian law must go through the legislature. Thus, we consider it to be highly important, and we are evaluating the means to expand the membership of the Committee to include a representative of the legislature to make viable the proposals that the Committee has been studying. Otherwise, we will probably have to bring much more effort to bear and obviously we will have it, but if we can make adjustments in the Committee and add another person along these lines I am sure that this will be extremely positive.

Also we have observed the need of relying on some further instrumentality, or perhaps better said, a more permanent form of organization than the sessions that have taken place in the Committee. For this we have presented a project to the German Development Service (DED) that will allow us to rely on an expert in some on-going form, that can be with us in the Committee for monitoring and following all the points that we are viewing and attempting, and also with the aim of preparing national experts that can take the lead, consolidate, and make our Committee more dynamic. I believe that we can do this and we're going to do even better than we have already done.



I do not wish to conclude this comments without thanking the governments of Canada and Switzerland who have helped so much in the achievement of our objectives, mainly concerning the question of anti-personnel mines. And I believe that it is hardly necessary to say that the cooperation from the Regional Delegation of ICRC in Peru has been invaluable and I hope to be able to continue to rely upon them. Thank you.

## **DOMINICAN REPUBLIC**

*Ambassador Jorge A. Santiago Pérez*

Legal Adviser

Office of Secretary of State for Foreign Affairs

Chairman of the Permanent National Committee for the  
Implementation of International Humanitarian Law

I will begin by describing in some detail what the Permanent National Committee for the Implementation of the International Humanitarian Law of the Dominican Republic has been doing since 1995. We came into being under the legal jurisdiction of the Secretary of State for Foreign Affairs. But something interesting is that we were brought into being with the help of the Dominican Red Cross and with the aid of the ICRC and with a very special characteristic, we were created as a Committee with a State connotation. In 1999, this definition was eliminated, which all of us who work in this area considered a backward step. Nevertheless, in the middle of this year by means of Executive Order 101 dated February 6, 2003, the Permanent National Committee for the Implementation of IHL in the Dominican Republic again regained the connotation of a State.

Our Committee is presently composed of the representatives from the Judicial Branch through the Supreme Court of Justice; by the Legislative Branch with a representative from the Chamber of Deputies and a representative from the Senate. Also, civil society is a member through the Dominican Red Cross and the Executive Branch is represented by various ministries including Labor, Health, Armed Services, Education, Science and Technology, and the Secretary of Foreign Affairs, who presides. In addition, the Dominican National Police is a member of the Committee. The chairmanship, as I have said, is through the Secretary of Foreign Affairs from the outset until the present, through the Judicial Advisor. We have in the organization two vice presidencies, one elected, currently held by the Dominican Red Cross, and one that rotates in order to provide an opportunity for all those who are members of the

Committee to have a dynamic participation; what we are trying to avoid is the protagonism that has often been a characteristic of our politics. We do not want politics-as-usual, nor do we want a predominant role of one particular institution within the core of the Committee, this is the working philosophy of our Committee.

I would also like to point out that before the existence of the Committee, the Dominican Republic was a party to the Geneva Conventions of 1949 and to the Additional Protocols I and II of 1977, and, in addition, a party to the Treaty on the protection of cultural property and its Protocol I of 1954. As soon as the Committee was created, we undertook a study of all the instruments related to the interests of IHL. We did this in order to become a party to the Ottawa Treaty and also to correct an error in the ratification instrument when it was filed. It was after thirty years that we noticed this error. And now, the International Committee of the Red Cross is publishing that we are part of Protocol I to the Convention on the Protection of Cultural Property. Protocol II to that Convention is at the present time in the process of ratification.

Among the works that we have proposed in the course of this year or the objectives that we want to reach, I want to cite the following: we are taking steps to have the authorities concerned complete the study of all the instruments to which the Dominican Republic is not a party, particularly, those authorities that we understand to have a voice and vote in this decision. I might add that all of them are grouped together in the Implementation Committee of IHL.

We are also involved in the preliminary study of the law relating to the protection of the Red Cross emblem. Nevertheless, we do not think enough time has been given in order to obtain this law, but we have proposed during the course of this year to forward it to Congress in order to gain its acceptance and incorporation into Dominican statutes. We will continue to promote IHL at the university level, in primary education, in the press and, especially, we are urging this matter of the International Criminal Court where there is some disagreement in our society. We want to create an awareness of this issue, the International Criminal Court has been officially declared by our country as a State matter. We are seeking to inform society at large on this question as well as the communication media. Why these particular efforts? To meet criticisms that may arise when we take the issue to the National Congress. Our president presently wants that when we go to the National Congress that it be upheld with all favorable opinions that we understand must be present in the ratification of the International Criminal Court.

Also, we want to make our declaration as a unified body, in favor or not of the International Criminal Court. At the present time there is only one sensitive issue for the Dominican Republic on this matter of the International Criminal Court and that is the question of the definition of crimes against humanity. For the Dominican Republic the definition contained in the Statute regarding the deportation of persons is very important. We are basically and completely in agreement with the wording of the article, except with the final phrase about the legal transport of persons in areas legally established, according to the provisions of international law. For us—I am not going to go into an analysis now of how this happened— those who represented us in the negotiation, I blame them for omitting something which is so important for us — because we believe that the international law has no explicit instrument to define what is a deportation as it is defined by the Court. We want to be members of the Court, and basically we all agree, as soon as we get a clarification on the meaning of “according to the disposition of international law” as stated in the Statute. For us, this last phrase is an important issue and creates some problems because we believe that the Dominican State should reserve under its own jurisdiction the declaration of deportation. We agree that we cannot declare a deportation in illegal terms because our law does not forbid it. There is a legal and constitutional process for declaring a deportation, so that I can request of all my colleagues that they contribute something to this question, providing us with information about what the Statute means with this phrase that I am going to read, it says that “Deportation or forcible transfer of population means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law”. Up to this point we agree, it creates no problem for us, but what is problematic is where it says, “without grounds permitted under international law.” We, the Dominican Republic, would like, that all our colleagues here help to clarify for us what this phrase means “without grounds permitted under international law.” It seems to us that international law in an explicit way, officially or formally, has not established the canon. Undoubtedly there is a doctrine, some jurisprudence, but we understand that internally the State must govern itself by its law and by the treaties to which it is party; for the Dominican Republic this is constitutional. Thank you very much.

## **TRINIDAD & TOBAGO**

***Mr. Eden Charles***

Foreign Service Officer  
Ministry of Foreign Affairs

Good morning Mr. Chairman and other distinguished delegates gathered around this table.

In relation to implementing international humanitarian law Trinidad and Tobago established in 1997 an ad hoc Inter-ministerial Committee. By doing so it followed a recommendation of the government that Trinidad and Tobago would examine accession or ratification of certain conventions which deal with IHL.

The Committee includes State and Non State actors. The representatives of the State are as follows: the Ministry of Foreign Affairs, the Attorney General's office, the Ministry of Social Development, the Ministry of Culture and Tourism, the Ministry of Education, the Ministry of Health, the Ministry of National Security, and the Trinidad and Tobago Defense Force. Non State actors include the national the Red Cross Society and the Institute of International Relations of the University of the West Indies. Trinidad and Tobago is a State Party to the following conventions: The Four Geneva Conventions of 1949, the Two Additional Protocols to the Geneva Convention of 1977, and in this regard, Trinidad and Tobago has also accepted in accordance with Article 90, paragraph 2, of Additional Protocol I, the competence of the International Fact Finding Commission. Trinidad and Tobago is also a party to the 1993 Convention on the prohibition of chemical weapons, and on the Ottawa Convention prohibiting landmines of 1997.

I wish to focus on the Rome Statute of the International Criminal Court which was adopted in 1998. Trinidad and Tobago has played a significant role in its establishment. At this point I would like to mention an issue which Trinidad and Tobago has found to be disturbing because of its implications for the integrity and the object and purpose of the Rome Statute of the International Criminal Court. It refers to the so-called article 98 agreements intended to prevent certain persons accused of war crimes from being handed over to the ICC. Trinidad and Tobago is of the opinion that the conclusion of such agreements would not only undermined the object and purpose of the Rome Statute, but affect the implementation of international humanitarian law. We continue to defend the position taken at the forum of the CARICOM States which met in Montego Bay, Jamaica, in July.

The Inter-ministerial Committee on IHL is in the process of finalizing its recommendations to the government concerning accession to the Hague Convention on the protection of cultural property in the event of armed conflict.

Trinidad and Tobago is also seeking to include in the curricula of primary and secondary schools the understanding of the principles of international humanitarian law. As far the legislative agenda is concerned, draft legislation has been prepared to give effect to the Chemical Weapons Convention. Other legislation has already been prepared.

We also wish to take this opportunity to thank the regional office of the ICRC in Port of Spain, and in particular through its representative Mrs. Chatoor who has been doing humanitarian service on behalf of the ICRC, not only in my country but in the entire Caribbean region where the ICRC is to be congratulated.

This concludes the presentation on behalf of the delegation of Trinidad and Tobago. Thank you Mr. Chairman.

## **URUGUAY**

***Lt. Col. (Nav.) Dr. (Attorney) Hugo C. Corujo Sansserviero***

Legal Adviser to the Commander of Air Control Operations

Uruguayan Air Force

Member of the Committee on International Humanitarian Law

With respect to the incorporation of the International Humanitarian Law into the laws of Uruguay, allow me to say that Uruguay has been party to a large number of treaties in this regard. For example, it is party to the Geneva Conventions of 1949 and of the Additional Protocols of 1977. It has made a declaration with respect to Article 90 of Additional Protocol I, recognizing the responsibility of the International Fact-Finding Commission. It has also participated in the Convention on Cultural Property of 1954; of Biological Weapons of 1972. Also regarding Environmental Modification Techniques of 1976; of the Conventional Weapons Convention of 1980 and its four Protocols, including Protocol II Amended; the Convention of 1993 regarding chemical weapons and the Ottawa Convention of 1997. It has also participated in 1998 in the negotiations of the Rome Statute. Obviously, in order to give value and constitutional enforcement to treaties in our country it is necessary for the Legislative Branch to ratify them. By these means, the rules of IHL have been incorporated through laws and executive orders.

Through these actions, we have the Geneva Convention of 1964, the Hague of 1899; the Geneva Conventions of 1949 along with their Additional Protocols of 1977; the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment of 1985; the Convention regarding the prevention of and sanction against torture of 1985; the use of the Emblem of the Red Cross, the Cross of Geneva or the Red Crescent of 1992, all this was accomplished by the work and promotion impelled by the Committee on International Humanitarian Law. Also the Protocol for the American Convention on Human Rights, relative to the Abolition of the Death Penalty, 1990, something that Uruguay has constitutionally prohibited; the Convention on the Prohibitions and Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects of 1980; the Convention on the Prohibition of the Use of Laser Arms that may cause Blindness of 1995; the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and their Destruction of 1993; the Amendment to the Protocol regarding the prohibition and restrictions on the use of mines, booby trap explosives, and other devices of 1996; Protocol IV of the United Nations Convention on certain conventional weapons that can be considered excessively injurious or having indiscriminate effects of 1995; the Convention for the protection of cultural property in case of armed conflict and its Protocol of 1954; the Convention against the recruitment, use, financing, and training of mercenaries; the Convention regarding the prohibition of the use, stockpiling, production, and transfer of anti-personnel mines and their destruction of 1997. I refer to the National Army, that through its engineer division does the monitoring based on the provisions established by the Ottawa Treaty. Uruguay only has in storage some five hundred mines for training purposes since the National Army has a special de-mining force. This group has participated many times in peace maintenance operations. We are also part of the Convention on the non applicability of the statutory limitation to war crimes and crimes against humanity of 1968; Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts of 2000; the approval of the Rome Statute in 2000 and for which implementation a bill has been sent to the Parliament. Also, the Vienna Convention regarding civil responsibility for nuclear damages and the Optional Protocol on the mandatory jurisdiction for the resolution of disputes of 1963.

Among other measures regarding the incorporation of IHL, the Executive Branch has organized courses on IHL in coordination with the National Committee on Humanitarian Law for the ministries of Foreign Affairs and National Defense. In the area of foreign affairs, the dissemination has taken place through the ARTIDAS Institute, school of diplomacy, in the Ministry of National Defense through the Center for Higher National Studies, where mili-

tary and civilian students from different backgrounds hold university degrees from various fields of study. Training is also given through the institutes of higher studies of the armed forces. The Universidad de la República through its School of Law and the department of International Public Law has created a module on International Humanitarian Law.

Uruguay has sought ways to apply IHL through various committees. The National Committee was created in November 1992 and is composed by a member of the Ministry of Foreign Affairs who is the chairperson up to now—with the present exception in which I am in the position of Chairman— also a member of the National Defense as would normally be my case—a member of the Ministry of Interior, of Public Health, of Education and Culture, and the Supreme Court, the Uruguayan Red Cross, and representatives from academic circles. The Committee obviously serves as a consultant, that is to say, it serves to advise, study, and formulate recommendations regarding the dissemination of IHL and the implementation of this law through legislative laws and regulations for the effective implementation of treaties.

Uruguay also relies on two committees for the joint work with the Commission for Human Rights, which are the Inter-Ministerial Committee for the Prohibition of Chemical Weapons, created in January 1998, and the Committee for the Historical, Artistic, and Cultural Patrimony of the Nation, created in October 1971 and functioning within the purview of the Ministry of Education and Culture and being responsible for determining all assets that constitute the historical patrimony of the nation. As an example, Uruguay has the city of Colonia, a common cultural heritage of humanity. The work of this Committee is going to be important for the future work of the Committee for IHL regarding the protection of cultural property and also relating to the question of serious breaches. Uruguay refers to the rules of IHL in its Military Criminal Code; but there is not a full incorporation of the treaties and conventions of IHL in the national legislation. I believe that will be the work of the Committee. Thank you very much.

## **B) INTERESTED GOVERNMENTS**

### **BRAZIL**

*Louis Guilherme Nascentes da Silva*

Secretary of the United Nations Division  
Ministry of Foreign Affairs

I would like to thank the organizers of this event for inviting Brazil. My intention is to make a very quick analysis of the situation regarding IHL in my country. Brazil has a long tradition of respect for international law, having ratified or supported the principal treaties of IHL, springing from The Hague and Geneva. At the present time the Legislative Branch is considering the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts and Protocol II on the subject of the Protection of Cultural Property.

In Brazilian law, three exceptional mechanisms can be activated in cases of armed conflict: these are federal intervention, a state of defense, and a state of siege. The state of siege is the only constitutional option that allows for the suspension of fundamental guarantees and rights. There is a list that specifies the rights that can be suspended in cases of serious disorder, there is not so much provided regarding what rights can be suspended in case of war; reference would be the treaties and practices of IHL. The state of defense admits only a few restrictions of certain rights. In regards to the criminal penalties of violations of IHL, Brazilian legislation has some gaps. On one hand, the ratification of the treaties and their enactment as they are incorporated into national law; on the other, in those cases in which there are strict legal requirements, there are some technical problems that I believe are common to other countries with similar legal traditions. I refer to criminal standards, when defined in international treaties, sometimes it is necessary to develop new definitions in the national law to include the provisions for sanctions, establishment of legal procedures, and definition of attenuations or aggravations. Late in 2001 a work group was created to define crimes established by the International Criminal Court. This group prepared a draft plan that took into consideration not only the definition of such crimes but also the fulfillment of other obligations contained in the Geneva Conventions. It also creates mechanisms for cooperation with the ICC. The text amends the criminal code, military code, and criminal and military procedures. The new government is studying the matter to send the bill to the legislature in the near future.



Other means to comply with IHL regarding definition, localization, identification, and protection of property and sites still need implementation. This is not because of problems with rules, but rather with operational problems. The same applies to the protection of the emblems, the existence of military objectives near urban centers and other issues. Regarding the Hague, there is a process not only to include prohibited weapons, but also to completely disarming of the population with respect to light arms. There are major programs for making IHL known to military, police, and in civilian sectors.

Allow me to refer to ongoing programs involving strong cooperation with the International Committee of the Red Cross. The first is the Program for the Training of Police Instructors. The purpose of this plan is to include IHL in police training, and secondly, include Human Rights in all public security activities. At the present time, more than a thousand instructors in all the provinces of Brazil have been trained. This program has been very successful and it is serving as a model for other countries in the Americas. The ICRC also provides courses to all those in the Brazilian military who participate in United Nations peace missions. The military academies are developing their own courses about IHL to the same troops; I do not have the impression that these are so widely known. It is a matter that needs a lot of work.

I want to add that the implementation and dissemination work of IHL in Brazil accomplished a great deal long before the creation of our National Committee. As you know, we are only now in the process of creating our own Committee. It was clear to us that to advance faster, we needed a central organ able to channel and optimize our efforts. We hope that by the end of the year the Committee will be ready to function fully. Thank you very much.

## **COSTA RICA**

*Norman Antonio Lizano Ortiz*

Officer of the Human Rights Division  
Department of Multi-Lateral Policy  
Ministry of Foreign Affairs and Worship

Thank you. I am going to divide my presentation into two parts. First I will speak on the efforts we have made in our country to create a National Committee on Humanitarian Law, and secondly I will talk about what our country has done in this area.

At the end, more or less, of the past year, in the Division of Human Rights we approached the task of forming and appointing the members of a National Committee on Humanitarian Law in light of the recommendations of the International Conference of the Red Cross of 1995 and based on our commitments in international forums, for which we undertook the job of drafting a bill to establish this Committee. The Division of Human Rights as well as the Legal Office of the Ministry of Foreign Affairs worked on this draft bill. Also thanks to the support of the Office of the International Committee of the Red Cross in Costa Rica, we had available many of the executive orders that created the committees that you represent and that served as a basis for our work. Later we created this draft decree, before sending it on to the President for his signature, which is the legal procedure to follow and we considered necessary to have preliminary meetings—at least two—with representatives of the institutions that would be represented in the Committee.

Some of the institutions that will make up the Committee participated in the first meeting last Friday, August 22, and we will have a second meeting next Friday, September 12. Those who make up the Committee are the following institutions: the Ministry of Foreign Affairs and Worship, the Ministry of Education, the Ministry of Justice and Grace, the Ministry of Public Security, the Ministry of Health, the Ministry of Culture, Youth, and Sports, the Judicial Branch, the Legislative Branch, the General Attorney of the Republic, the Ombudsman of the People, the Lawyers College, the Costa Rican Red Cross, the First Vice Presidency of the Republic and the National Commission of Rectors. In that first meeting, we undertook a study of the draft order to see what changes could be made. As I already mentioned, very likely within the next month, a national Committee will be set up. Therefore, not only is it important to have studied the creation of the committee that you represent, but also in this meeting, we will learn a little of what constitutes good practices, challenges, perhaps the mistakes that might have been made in order for us to work somehow based on what you have already built. For that we also want to thank the Regional Delegation of the International Committee of the Red Cross and the Juridical Sub-Secretary of the Organization of American States for inviting us to participate in this meeting.

Regarding the implementation of the International Humanitarian Law in Costa Rica, I should say that Costa Rica is party to the majority of the principal instruments of the International Humanitarian Law. I am not going to read them, but I am going to make brief reference to recent ones that we have approved at an international level: the Statute of the International Criminal

Court, the 1999 Protocol II to the Hague Convention of 1954, and the Protocol to the Convention of the Rights of Children regarding the Participation of Children in Armed Conflicts. At a national level we also now have the Law for the Protection of the Emblem of the Red Cross and Red Crescent and a Law on the subject of anti-personnel mines. Recently, in December of last year, in 2002, the country was declared free of anti-personnel mines. This is what I have wanted to share with you and thank you very much.

## **ECUADOR**

### ***Minister Juan Larrea Miño***

General Direction of Human Rights  
Ministry of Foreign Affairs

Thank you very much. Ecuador does not at the present time have a national Committee, but we have tremendous interest in creating one in the near future. There are a number of State institutions that are responsible for human rights; among them there is the State Solicitor General, the Attorney General, the Department of Human Rights of the Ministry of Foreign Affairs, the People's Ombudsman, and the Ministry of Government. There is also the Congressional Human Rights Committee.

I want to point out two important aspects of human rights in the country, one of which is the National Plan for Human Rights adopted by the country as a State policy. The other very important instrument, adopted in October of last year at the Andean regional level, is the Andean Charter for Human Rights that govern Bolivia, Colombia, Peru, Venezuela, and Ecuador. Ecuador is party to the majority of international instruments that deal with International Humanitarian Law, among which I want to cite the Ottawa Convention against Anti-Personnel Mines. In recent years, Ecuador has destroyed many mines that were planted in the country, with the cooperation of the government of Canada and the International Committee of the Red Cross.

According to the National Constitution international agreements take precedence over national legislation, hence the importance of Ecuador's support of international instruments and their implementation. There are courses at university levels on IHL and human rights in general. It is important that at every level—secondary school, university, professional education— knowledge on international humanitarian law and its proper implementation be spread.

Another point that I want to refer to is the question of refugees; this is something that has become very important in the country. Ecuador has always been open to receiving such people and has received the cooperation in this case, of the UNHCR, the United Nations, and other international bodies. Ecuador, consequently, has a major interest in creating a national committee and, therefore, meetings such as this one in this beautiful city, allows us to get information that we can put into practice along with the experiences that have stimulated other countries to create a body that will work in the activities of the International Committee of the Red Cross. Thank you very much.

## **HAITI**

### ***Christian Toussaint***

Alternate Director for International Cooperation  
Ministry of Foreign Affairs

Mr. President and ladies and gentlemen delegates. I would like at the outset to thank you in the name of the Government of Haiti and the organizers of this event for the invitation to participate as an observer to this meeting. Likewise, I thank the host government and others that have made this meeting possible.

It's true that at the present time there is still no national committee on international humanitarian law. I consider it important to make this presentation on the situation of international humanitarian law in Haiti. First, I want to refer to the Constitution of 1987 that requires the State to guarantee the right to life, to personal security and the protection of their goods. In the framework of that institution, the Government has taken some administrative and legislative measures, such as the creation of the Office for the Protection of the Citizen. That office is an autonomous organism that has the role of ensuring the defense of every citizen and victim of damage caused by any public authority or institution. There is also the Department of Civil Protection that serves as an office of the Ministry of Government. That office has responsibility for protecting civilians in the event of natural disasters.

In terms of international commitments, Haiti has signed and ratified various conventions in both the universal arena as well as in the regional. Of the treaties that the Republic of Haiti has signed I mention the Convention of 1949 regarding the protection of civilians in the event of war. Also, although Haiti has still not ratified the Convention on the Protection of cultural property in the event of armed conflict, the government of Haiti recently created

the Department of Patrimony. That Department is in charge of making an inventory of cultural property and advising the government on legislative and administrative measures for assuring the protection of this historic patrimony.

To ensure dissemination on the issue of human rights and IHL in the country, since 1996 the School of Juridical Sciences offers a course on human rights, which is part of the core curriculum. This course is also offered at the Police Academy. We cannot congratulate ourselves on the advances made in this area because we have yet to achieve in this important area. We must not forget our shortcomings in this area. Now what we need is the dissemination of accords related to humanitarian law to the general population, universities, and, above all, to the National Police Force.

Another important step to take is to adapt our national legislation to the international conventions that we have signed and ratified. For example, one important issue is a reform of the Criminal Codes as well as the Code for Criminal Procedures, because these texts are not in conformity with the obligations that the country has in the international arena.

Regarding the Rome Statute and the International Criminal Court, Haiti is a signatory but still has not ratified the agreement. We hope that the next Congress, convening at the beginning of 2004, will ratify this extremely important text. Also, at the present time there is no national committee, but we have the support of OAS Mission for the Promotion of Human Rights in Haiti and the support of the International Committee of the Red Cross, which are both very active. During the past month of May we created an informal committee, a non-ministerial committee. Their role is to create restrictions, guarantees, and strategies so that we can soon form a national committee on the humanitarian law.

This concludes my presentation and I thank you for your attention.

## **HONDURAS**

*Jessica Alejandra Urbizo Martínez*

Legal Officer of the Board of Legal Affairs

Secretary of Foreign Affairs

Good morning distinguished participants, ladies, and gentlemen. To begin this presentation, I need to say that in Honduras we do not have a permanent committee on international humanitarian law; and the creation of such a

committee in other countries responds to historical and social factors particular to each country. Nevertheless, there is at the national and governmental level a clear disposition towards the creation of a committee that not only will be able to promote but also provide preventive action on the basis of IHL; for example, the prohibition of anti-personnel mines employed in armed conflicts of neighboring countries. As a result, Honduras in November 2002 became the first country in the Americas to completely destroy its arsenal of mines. It is important to emphasize that Honduras never has produced, exported, or placed anti-personnel mines. Honduras has developed a de-mining program and has taken as its own the political commitment of making the Western Hemisphere a zone that is free of anti-personnel mines.

Honduras is working on the de-mining of communities in the provinces of Choluteca and Paraíso and of the river bordering Nicaragua, which during the time of Hurricane Mitch carried mines into our territory, causing deadly accidents even with anti-tank mines. In the present political world it is clear that States should not be a direct party in conflicts, but to the contrary, they should contribute to finding solutions to conflicts in a peaceful way. This resulted in the responsibility of joining in a multinational force for the establishment of peace in other countries. As a result of this responsibility, there is now an agreement between Honduras and Kuwait for stationing troops of our armed forces in that country whose purpose is to define and establish a military contingent from Honduras in Kuwait so that it can participate as a member of the coalition involved in the reconstruction and distribution of humanitarian aid to the population of Iraq.

This had been in response to the call made by the Security Council of the United Nations to its Member States and interested organizations to help the people of Iraq in the work of reforming its institutions, reconstructing the country, and contributing to the establishment of stability and security. All this shows the great need of creating a duly qualified and constituted governmental organism that facilitates the States' implementation of instruments and the dissemination of standards among public officials, university students, and society in general and particularly to members of the armed forces that are called to be involved in a conflict, to have knowledge of and respect for the rules of international humanitarian law and human rights in general.

Also, I should point out that Honduras has ratified and supported IHL in recent years, thanks to the support of the International Committee of the Red Cross, the Honduran Red Cross and both governmental and non-governmental institutions. Even though the need of a governmental representative to oversee its implementation and the political will for its creation exist, this has not

been translated into budgetary provisions necessary for the creation and operation of such a committee. Before the 1990's, Honduras had only adhered to and ratified—on May 8, 1974—the four agreements of the Geneva Conventions of 1949. Beginning in the 90's, the Agreement on the Prohibition of the Development, Production, Stockpiling, and Deployment of Chemical Weapons and on their Destruction of January 13, 1993 which is on the process of its approval; the two Additional Protocols to the Geneva Conventions of 1949 ratified January 4, 1995; the Inter-American Convention to Prevent and Punish Torture and other Cruel and Degrading Treatment of 1985 ratified April 16, 1995; the Agreement on the Prohibition and the Use, Stockpiling, Production, Transfer of Anti-Personnel Mines and their Destruction ratified September 24, 1998. In recent years, Honduras has adhered to and has ratified the Hague Convention of 1954 for the Protection of Cultural Property in Case of Armed Conflict, whose adherence was in May of 2001; the Rome Statute for the creation of the International Criminal Court and 1998 and 1999 amendments ratified May 30, 2002; the Convention of 1980 on the prohibition and or restriction of use of certain conventional weapons that could be considered excessively injurious and indiscriminate in their effects and its four protocols ratified May 21, 2002 and the Hague Protocol of 1954 for the protection of cultural properties in the event of conflict which Honduras has adhered to also. Thank you very much.

## **MEXICO**

### ***Socorro Flores Liera***

Director of International Law

Legal Consultant

Secretary for Foreign Affairs

Thank you very much. Although there is no national committee on IHL in Mexico, the Federal Government is pressing forward with a series of actions that are specially aimed at strengthening and disseminating international humanitarian law and I am going to comment on this further.

In Mexico, there is an Inter-Secretarial Committee on IHL established in 1994 because of the situation in Chiapas. The objective of this was essentially to coordinate the activities of the Federal Government in Chiapas and to establish cooperation between Mexico and the International Committee of the Red Cross in that State. In the midst of the situation, as it was stabilized, this inter-secretarial committee has been expanding its activities and has become involved in broader questions in the area of international humanitarian law. For

example, this committee has considered a headquarters' agreement, between Mexico and the International Committee of the Red Cross for the establishment of a regional delegation of the ICRC in Mexico and this agreement was ratified last year and is in force.

In addition, within the framework of the inter-secretarial committee, negotiations are also being considered regarding an agreement with the ICRC on visits to detained persons, but this is only one part of the activities that have been studied in this committee. It is hoped that in the future there will be an official national committee on IHL. The inter-secretarial committee is made up of the Secretary for Foreign Affairs who presides; the Secretary of National Defense; the Secretary of Health; the Secretary of Public Safety; the Secretary of Government, and the Commission for Dialogue and Cooperation in Chiapas. Occasionally, and depending on the questions that are undertaken, other agencies are invited, for example, the General Attorney of the Republic, the Secretary of Public Education, and the Mexican Red Cross.

Now, independently of the committee, the activities that the Federal Government has undertaken in recent years resulted in the ratification of a series of international treaties. For example, Mexico now is a party to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts; it has ratified the Amendment to the Convention regarding Prohibitions and Restrictions on the Employment of certain Conventional Weapons that can be considered excessively injurious or indiscriminate in their effects. Soon it is going to ratify the Second Protocol of the Convention for the Protection of cultural property in the event of armed conflict, which was already approved by the Senate and the instrument of ratification will be deposited before UNESCO. Also, already ratified is the Inter-American Convention on the Forced Disappearance of Persons; the Convention on the non-applicability of statutory limitation to war crimes and crimes against humanity. I have already mentioned the agreement to set up a headquarters between Mexico and the International Committee of the Red Cross. These, then, are actions that have just been carried out between 2002 and now. There is another series of actions that are foreseen in the future, for example, Mexico has already forwarded to the Senate the Statute of the International Criminal Court and is urging its adoption by the Senate of the Republic. This involves the adoption of a constitutional amendment necessary for ratification. This amendment has already been approved by the Senate of the Republic, and we hope that this year it will be taken up by the Chamber of Deputies.

Advances are made on what will be the implementation legislation of the Rome Statute at the national level and this implementation is an opportunity



for incorporating, in a clearer way, provisions of the Geneva Conventions, especially in reference to the definition of war crimes. These are only some of the actions that relate to the implementation of international humanitarian law. I would like to mention very briefly something about the dissemination of this law and basically what the government has done through the Secretary of Foreign Affairs, which has sought to strengthen its relationship with national education institutions in order to create courses, workshops, and seminars on IHL. This work has been carried out in particular with the National Association of Universities and Institutions of Higher Studies and has resulted in courses at the Universidad Nacional Autónoma among other institutions. Also the Secretary of State organizes, on an annual basis, workshops on international law that are conducted by professors and students of international law throughout the country. These workshops include IHL. In fact, the workshop that took place this past year was fundamentally focused on human rights and IHL.

Regarding the armed forces, training programs have been established on the question of IHL, of course with the cooperation of the International Committee of the Red Cross. Already included in the training courses is the topic of international humanitarian law and human rights as part of the official core curriculum. The Mexican Army has a permanent program for the promotion and strengthening of IHL and gives courses to its members, in particular to instructors and military personnel that are responsible for training members of the armed forces. In addition, the Secretary of National Defense has published and distributed among its members a series of handbooks that are used as official reference texts by personnel of the Armed Forces. This includes the Geneva Conventions of 1949 and Additional Protocol I, human rights manuals for the Mexican Army and Air Force and manuals on international humanitarian law that were published in April of last year.

Additionally, the State Department has participated in holding international conferences on the theme of international humanitarian law, in particular the International Criminal Court, and has participated in the publication of books on this subject. One of the most recent was, in cooperation with the Universidad Iberoamericana, a book entitled "The International Criminal Court, essays on the ratification and implementation of its provisions."

Thank you.

## VENEZUELA

### *Lieutenant (Aviation) Nathali Carolina Berrios Marrero*

Chief of the Division of Human Rights

Directorship of Human Rights and International Humanitarian Law

Ministry of Defense

Thank you. First of all it is extremely important to thank you for the invitation to this meeting. It may be a good idea to explain why the Directorship of Human Rights and International Humanitarian Law of the Ministry of Defense is representing Venezuela. It so happens that in Venezuela, in spite of the fact that there is not a national committee for the implementation of international humanitarian law, there is an official organ that is working actively and progressively on the topic. It is in this case the Directorship for which I work.

The Directorship is an organism that provides permanent counsel to the Joint Chief of Staff, created in 1967 in accordance with national laws. In this regard, since its inception, it has provided on a continuing basis talks, workshops, courses, and seminars to military and civilian personnel of the National Armed Forces in order to make known the provisions of the International of Armed Conflicts (ILAC) in the Armed Forces and all the agreements, all the protocols Venezuela has subscribed, which are nearly all of them, related to this matter.

The Directorship of Human Rights has as its mission the study, understanding, and fulfillment of the requirements that govern human rights and international humanitarian law, as well as the policies, doctrines, and other activities related to such rights in the National Armed Forces. It is for this reason that the Joint Chief of Staff needs counsel in this regard, approaches the Directorship in which we work. There are several divisions, a human rights division, one for IHL, one for programming and doctrine, and most recently formed, a division of human rights for indigenous people, since the latest Venezuelan Constitution included many provisions related to the human rights of indigenous people, which is considered a very important legislative advancement for the indigenous Venezuelan community. This division is going to be incorporated, we hope soon, into the organizational structure of the Directorship.

Each one of the divisions has its responsibilities clearly defined, advising in the specific areas for which they have been established. Of course we work in complete harmony and coordination, and a person that works in one division might offer counsel in another. Perhaps, that is why we have the dichotomy of my being Head of the Human Rights Division and at the same time I am

attending the meeting on International Humanitarian Law. This is only to clarify any doubt that someone might have.

Also, the International Humanitarian Law division advises and establishes politics and doctrine on these issues for the National Armed Forces. That is to say, any course, workshop, or advise in international humanitarian law required by the National Armed Forces will be provided by this division and policies set and coordinated through the division become policies of the Ministry of Defense.

We have the Division for Programming and Doctrine that is responsible for the logistics for all events organized by the Directorship; we try to increase the number of events to serve as a strengthening factor for international humanitarian law. It is also responsible for the creation of Annual Operational Plans, which determines the projects that we are going to work on the next year. Finally, in the Division of Human Rights for Indigenous Peoples, we have a staff specialized in the specific area that provides counsel on this subject.

On the other hand, regarding legislative matters, the Venezuelan State is working in the National Assembly for the incorporation into national legislation of laws related to the crimes of genocide, crimes against humanity, and war crimes. This process is taking place in the legislature; we know about it but since we do not work directly on it, we will not give further details.

Regarding the work of the Directorship of Human Rights and IHL of the Ministry of Defense, the central purpose of our work at this time is to focus on incorporation of the law manual, put together by the ICRC, into military doctrine. We do this with the very active collaboration of the delegation of the ICRC in Venezuela under the leadership of Mr. Jean Luc Noverraz. This has required a full revision of the manual and of all the international instruments related to the area, work that have been carried out by the Directorship for the last six or eight months.

We also wish to later adapt the law manual to military doctrine, incorporating it into current operational plans. This will be done with the participation of personnel from the four branches of the National Armed Forces. Once this project is accomplished, we plan to incorporate the final provisions created by the Directorship into all IHL regulations of the military, so that when the National Armed Force has to act in a specific situation, it will be done in a conscious and well-planned manner.

Along these lines, once this process is completed, the Directorship wants to create a culture of respect for international humanitarian law, not only from a doctrinal perspective but carried out in the operational training of military personnel.

All this has been discussed in joint meetings supported by the ICRC and the Directorship of Human Rights in the Joint Chief of Staff and the process is in development. We would also like to reconsider an idea the ICRC proposed recently, that is the creation of workshops or training courses for legal experts, offered by the ICRC so that in the larger combat units, specifically, in frontier areas, each unit commander will rely on a single adviser and who works exclusively on international humanitarian law. This is due to problems at the border that many times require such action. Then we would like that the ICRC take this concern into consideration so that in the future there could be a course for legal expert officers. We are very interested in this and we would like an expert body in this area to provide the required orientation.

At this time we would also like to make a request to the ICRC, since we know that they are very generous, that the courses that the International Committee of the Red Cross had been giving— for instructors in the ILAC, that had been suspended—that they be taken up again. It is a fact that Venezuelan military personnel is very interested to know about and study international humanitarian law. We see this almost daily at the Directorship, when people come to us requesting advice and in many of their written reports for the Joint Chief of Staff, for courses of the Joint Chief of Staff, officers chose some subject related to international humanitarian law in order to develop a written report or some research project. They are really quite concerned, and we are very interested in taking this on and we could like to count on your help if it is possible.

For the moment this is all and in spite of our not having a committee, we are working actively on international humanitarian law. We are very pleased to be here and we are at your service in Venezuela. Thank you.

## **DIAGNOSTIC OF THE WORK OF THE OAS IN REGARD TO THE NATIONAL IMPLEMENTATION OF IHL IN THE AMERICAS**

*Jorge García-González*

Head of the Technical Secretariat for Legal Cooperation Mechanisms,  
Secretariat for Legal Affairs of the General Secretariat  
Organization of American States

Thank you very much. You have asked me to tell about what we are doing in the OAS on this matter. Because of time constraints I am going to do this very briefly.

First, this issue has acquired a tremendous force and importance within our organization where a series of developments have taken place. The most important of these developments relates to the inter-American treaties. There are a series of treaties related to the protection of the human person even in circumstances of armed conflict. Information has been distributed in the folder, and is also found at our internet page, [www.oas.org](http://www.oas.org), this would be the main resource that I would refer you to, where you will find all the information regarding the treaties adopted in the framework of the organization, including those relative to the protection of the human person.

In this regard, I would like to urge you that as a part of the effort that you are making and that I see has been a continuing effort, in which many very important advances have been made in recent years, you also take into account promoting the ratification and implementation of the Inter-American treaties related to the protection of the human person. In particular those that have a most direct relation with the issues of international humanitarian law.

As part of the materials that have been distributed to you, you'll find information on the signatures and ratifications of some of those treaties. Some of these, in spite of having been adopted a good number of years ago, still have a very small number of ratifications. For example, the Protocol to the Convention on Duties and Rights of States in the Event of Civil Strife, which was a 1957 convention, has just seven ratifications. The Inter-American Convention on the Forced Disappearance of Persons, from 1994, has ten ratifications; this, to mention only a few. You'll find a report on signatures and ratifications of the treaties on our internet page where you have all the information including the treaty itself. So, this would be the first thing that I would like to call your attention to because I believe that in this all the committees can play a very important and effective role.

The second area, in which we, at the OAS, have been moving ahead over the last decade, is in the political dialogue between States. This has to do with the promotion and respect for international humanitarian law. To some extent this contributed to the conclusion of the agreement between the International Committee of the Red Cross and the General Secretariat. The agreement strengthened the process of deliberation within the framework of our Organization regarding issues of international humanitarian law.

Since 1995, the General Assembly of the OAS has adopted resolutions exclusively dealing with the promotion and respect for international humanitarian law. I am sure that you, or a large number of you, are aware of the content of these resolutions. They become increasingly more developed, thanks to specific commitments on the part of the States. There are each time more detailed and concrete actions for moving ahead. With time, these resolutions have gained increasing support from a large number of States in the hemisphere regarding the initiative itself and the presentation of the resolution proposal.

Since 2001, our General Assembly has been adopting a resolution for promoting the International Criminal Court. The text of the last resolution is available in the documentation that has been distributed to you.

Finally, there are a series of resolutions on specific themes. For example, on issues of arms and specific resolutions on questions of anti-personnel mines, without mentioning the broader issue of hemispheric security. The texts of the resolutions adopted in the last regular session of the General Assembly in June in Santiago, Chile, are in the folder as well. There is, for example, Resolution 1966, whose heading is “The Americas as a biological –and chemical-weapons-free region”; the Resolution 1968 on the proliferation of and illicit trafficking in small arms and light weapons; and, Resolution 1929 on the Promotion of the International Criminal Court.

From the operational point of view, and I believe that it is the holding of special sessions of the Committee on Juridical and Political Affairs of the OAS on questions of international humanitarian law has been institutionalized. It is an exercise that has been undertaken for the last two years.

In 2002 the first special session was held in which the Committee considered issues related to international humanitarian law and the developments that are taking place in some States. In March of this year there was another session. Something I’d like to call your attention to is that the sessions will gain much from the attendance and active participation of the national committees. Some

of your have participated in these meetings. This is a new formula, and we expect to have another session in March of next year. Your participation would be appreciated.

Finally, the other area in which the Secretary General has received specific mandates from the General Assembly has to do with the work of dissemination and of cooperation; all this with continuing coordination and joint work with the International Committee of the Red Cross. To a large extent, this was accomplished thanks to the Conference of Governmental Experts on International Humanitarian Law in Costa Rica in 2001. Our participation in the present meeting is also in accord with the mandate of the General Assembly which called for cooperation in the implementation of international humanitarian law in the Americas.

Our work in dissemination is carried out mainly through our internet page. There you will find a page dedicated exclusively to informing about the developments that have taken place in our Organization. On issues related to international humanitarian law, information has been included on legislative developments and the work of different committees. We have been in conversations with the ICRC about establishing a link with the information system that the ICRC has. This would expand greatly the information on our page by combining it with information provided by national committees. We could maintain permanent links with pages that some of these committees have or some of the other institutions that are working this field.

This brings to a conclusion my description of the work that we are doing in the Organization. Thank you very much.

**KEYNOTE SPEECH**

*“Adapting International Humanitarian Law to current  
conflict situations”*



PB

***María Teresa Dutli***

Head of the Advisory Service on International Humanitarian Law, ICRC

Distinguished participants, ladies and gentlemen,

It is an honor for me tonight to be able to share with such a distinguished audience certain thoughts on the current situation of international humanitarian law.

International humanitarian law today faces important challenges. One of these is their adaptation to post-9/11 reality, to the so-called “war on terrorism”. Much has been said about this, but insofar as it concerns us, and to avoid any misunderstanding, we prefer to use a term like “fight against terrorism”. The question that arises is whether international humanitarian law is able to respond adequately the needs for protection generated within this effort.

More than fifty years after the adoption of the Geneva Conventions in 1949, it should be noted that this set of norms, together with its Additional Protocols, has retained all its relevance and continues to respond to the needs generated by armed conflict. We should not over-generalize, but it should be noted that since these instruments have been in existence millions of people have benefited from them. The Geneva Conventions have ensured humane treatment for prisoners of war, saved the lives of civilians, reunited families, saved hospitals from attack, etc.

Without a doubt, the Conventions have been respected far more times than not. Nevertheless, the Conventions have been respected above all, in situations of international armed conflict rather than in civil wars. Moreover, today we face another problem caused by terrorist acts and the international humanitarian law response to these types of acts.

We at the International Committee of the Red Cross (ICRC) are convinced that humanitarian law provides answers to these types of situations and covers these acts insofar as they occur in armed conflicts. It is crucial to apply the treaty rules, i.e. during armed conflict as well as in peacetime when States must adopt measures of implementation in order to guarantee respect of international humanitarian law.

I would like to take this opportunity to refer to a particularly topical event. This concerns the initiative taken at the beginning of this year by the Swiss government and Harvard University to carry out research on the current

relevance of international humanitarian law. This study began with a conference on international humanitarian law held near Boston in the United States. Representatives from around 25 countries took part in the event as did the ICRC.

Before the conference, many of the participants expressed their fears over the possible results of this study. At the end of the conference, these fears faded given that the conclusions of the meeting confirmed the need to reaffirm and apply international humanitarian law rather than looking for possible adaptations of the texts. International humanitarian law is not perfect, but its norms cover adequately situations of armed conflict. At the most, a clarification of the interpretation given to certain of its clauses may be required.

This view was shared by a majority of the participants at the conference to which I referred. And this is also the view of the ICRC. This conclusion does not mean that no further development is possible, given that we know that proposals exist for further development such as the adoption of a fifth protocol to the 1980 Convention on Conventional Weapons.

Questions concerning the implementation of international humanitarian law are complex and have various facets.

For example, the application of humanitarian law requires the participation of various players: States, members of their armed forces, as well as members of armed groups. It takes National and international courts, as well as the participation of civil society, including non-governmental organizations, it involves the International Movement of the Red Cross and the Red Crescent, the National Societies, the International Federation and the ICRC with its special mandate in this regard.

When referring to States, I am not just referring to States involved in an armed conflict, but to all States that are parties to international humanitarian law treaties, even if they are not party to a conflict. States have an obligation to make sure that these treaties are respected under all circumstances. I shall return to this in a few moments.

Please allow me now to address the subject of national implementation of IHL, and analyze more specifically the various stages in which this endeavour should be carried out. I shall do this in a summarized form, since the working groups will have the opportunity to go more deeply into the various aspects of the challenges it implies.

I would like to concentrate on the following three stages:

- Obligations in times of peace,
- Obligations in times of armed conflict, and
- Punishment of crimes.

These stages are often superimposed, although, in theory, it is useful to separate them to facilitate the understanding of the difficulties in implementing IHL.

### **Obligations in times of peace**

International humanitarian law applies, of course, only to situations of armed conflict – whether international or non-international. Nevertheless, it is essential that certain measures be taken in peacetime to guarantee the effective application of the law in situations of armed conflict.

What are the measures that have to be taken in peacetime? I would like to refer to four distinct elements.

The *first* of these is that States should ratify international humanitarian law treaties. This is not, of course, a legal obligation. It is, nevertheless, an important step in guaranteeing that humanitarian law is respected. The principal treaties of international humanitarian law are:

- The 1949 Geneva Conventions on the protection of victims of war
- The Additional Protocols I and II of 1977
- The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols
- The 1980 Convention on Certain Conventional Weapons and its four Protocols
- The 1925 Protocol on Asphyxiating Gases
- The 1972 Convention on Biological Weapons
- The 1993 Convention on Chemical Weapons
- The 1997 Convention for the prohibition Anti-personnel Mines
- The 1998 Rome Statute of the International Criminal Court
- The 2000 Protocol on the Participation of Children in Armed Conflicts

This enumeration appears important to me as it shows the dynamics involved in the development of the law and its current state. An impressive number of treaties concerning international humanitarian law have indeed been adopted over the last ten years.

If we look at the Americas, we can also see an important commitment of American States to most of these treaties. The States in the Americas have ratified a great number of them.

All States in the Americas have ratified the Geneva Conventions. Almost all of them have ratified the Additional Protocols. And I would like to take this opportunity to call on the representatives of the National Committees, or of the States, that have not yet done so, to begin a process of considering participating in these instruments.

The *second* element refers to the fact that States should do everything possible to ensure that the national measures required for the implementation of these instruments be adopted. It is only through the adoption of laws and regulations that national authorities will be able to comply with their international obligations, and have them respected. I will not enter here into details of what they represent, since this will be discussed in the working groups and also constitute the central focus of the activities of the National Committees.

I would like to take the opportunity to offer once more, the ICRC's Advisory Service on International Humanitarian Law availability to assist the national authorities in their work. The Advisory Service has a small team at ICRC headquarters in Geneva that includes an expert in civil law and another in common law, as well as regional legal advisers who maintain contact with national authorities to support their efforts. My colleagues present here today, take part in this work under the coordination of our regional legal adviser based at the ICRC's Delegation in Mexico City.

The role of the ICRC Advisory Service is to provide technical assistance regarding the ratification of IHL treaties and their incorporation into domestic law. This is done in close coordination with the national authorities, with the intention of facilitating their task.

The Advisory Service therefore tries to assist the national committees in the implementation of international humanitarian law. Today there are over 60 national committees in the world – the latest being the National Committee on International Humanitarian Law of Sudan – and 14 of these committees are located in the Americas. The concrete work of these bodies will be the object of presentations and debates during the course of this meeting, and for this reason I won't speak further on the subject.

I would also like to refer to the fact that in order to facilitate the work of the national committees and the exchange of experiences and information, the

Advisory Service has recently inaugurated an Electronic Forum for the committees which is accessible via the ICRC extranet. This Forum's principal aim is to allow interactive discussions on questions related to the implementation of international humanitarian law, and the functioning of the committees. We hope that this tool will be useful and widely used by the members of the national committees.

The *third* point to which I wish to refer is the obligation to disseminate humanitarian law to the armed forces in first place, and to the general public. Instructing international humanitarian law to the armed forces means promoting and participating to facilitate conduct that conforms to its premises. The ICRC has over the years developed different programs to integrate international humanitarian law in the training and doctrine of the armed forces.

The *fourth* and last point concerns the fact that the armed forces should designate legal advisors with a responsible for the implementation of IHL. Finally, the later also includes the identification of qualified personnel.

### **Obligations during armed conflict**

During armed conflict, national governments should take all the measures needed to ensure that the armed forces respect international humanitarian law. Military commanders have very important obligations in this respect. If violations of IHL are committed, the military commanders should and have them punished.

International humanitarian law foresees a series of mechanisms to ensure compliance. One of them is the institution of Protecting Powers; another is the role foreseen for the ICRC.

Perhaps at this stage we should also refer to the International Fact-Finding Commission provided for Article 90 of Protocol I. It is highly regrettable that, more than ten years after its creation, the Commission has never been asked to intervene. As regards the ICRC, we have always supported its intervention, and we will continue to do so.

I would now like to talk in more detail of the duty to respect international humanitarian law and to "ensure its respect". This implies certain obligations for the States directly taking part in an armed conflict, and hence their importance.

The question that arises regarding this obligation is that of knowing whether it is a legal obligation or a moral or political duty.

If the conclusion is that it is a legal obligation, the next question would be: what is to be done about it? Article 1 of the Geneva Conventions which codifies that rule is somewhat vague.

It is our understanding that at least there is an obligation *not* to favor violations of international humanitarian law, *nor* take part in their violation. Nevertheless, some positive action is required as well. Certain examples that can be mentioned are measures such as diplomatic pressure, public denunciation, or measures of an economic nature.

Article 89 of Additional Protocol I is more specific by establishing that in the case of violations of the Conventions or of the Protocol, the High Contracting Parties should act either together or separately in cooperation with the United Nations and according to its Charter.

Experience shows, however, that States rarely intervene when faced with violations of international humanitarian law by other States. There are various reasons for this. In cases of serious violations a detailed study should be undertaken to determine what kind of action may be taken so that the States involved in the conflict respect international humanitarian law.

Article 89 does not imply that just any kind of measure may be taken. It establishes that States should act according to the United Nations Charter. Armed intervention cannot be based on this clause unless it is based on Chapter VII of the Charter.

### **Punishment of crimes**

States have a duty to look for persons suspected of having committed or of having given the orders to commit, any of the serious violations defined by the Geneva Conventions and its Protocol I. Although the principle of universal jurisdiction has already been enshrined in the 1949 Geneva Conventions until recently there had been few cases in which States had effectively punished those guilty of war crimes. The trend is now toward reversing the situation, but much remains to be done to ensure punishment of all perpetrators of war crimes.

The creation of *ad hoc* tribunals for ex-Yugoslavia and for Rwanda provided an important incentive for the promotion of international justice. The creation of the International Criminal Court is an event of great importance in this respect, and its work will be of major significance for the prevention and punishment of crimes committed during armed conflicts.

I would like to emphasize something I consider to be crucial in this respect, i.e. the cooperation between humanitarian organizations, including the National Red Cross or Red Crescent Societies and the ICRC, with national and international tribunals. This cooperation is problematic for humanitarian organizations as it can challenge their independence and neutrality. It is for this reason that, although recognizing the importance of having an operative and efficient judicial system, and despite their activity in legal assistance, these organizations require exemptions from the obligation to testify. Exceptions of this kind have been granted to the ICRC by the jurisprudence of the International Tribunal for ex-Yugoslavia, as well as in the Rules of Procedure and Evidence of the International Criminal Court.

For the ICRC, building and maintaining a relationship of trust with the parties in an armed conflict is essential for the accomplishment of its humanitarian mandate. This would not be possible if it were thought that the institution might collaborate directly with or provide evidence to national or international courts.

### **Organized armed groups**

I would like to speak of an especially important challenge: how to ensure respect for international humanitarian law on the part of armed groups.

The problem with these groups is that they might not consider themselves obliged by treaties they have neither negotiated nor accepted. The ICRC is frequently confronted with this reality. The argument that the norms of these treaties are of a humanitarian nature and should apply to all those participating in armed conflict all too often carries little weight.

There is also another problem with which it is very difficult to make progress. Contrary to international armed conflict those who participate in armed conflicts that are not of an international character do not enjoy any kind of immunity. In the case of capture, they are not considered as prisoners of war and may be punished on the basis of national legislation for the mere fact of having taken part in hostilities.

The overriding problem is that even if those fighting respect international humanitarian law, he or she may be punished as a criminal. This means that there is little incentive for those participating in the fighting to respect international humanitarian law.



The Additional Protocol II of 1977 makes an attempt at improving this situation. In article 6, paragraph 5, it asks authorities to grant the widest possible amnesty to those who have been deprived of liberty in relation to the armed conflict. This does not, however, imply that those who have violated international humanitarian law should be given amnesty, but rather on the contrary, these amnesties should only be granted to those who have not committed any violations of that law.

The question is how to encourage or motivate those who participate in an internal armed conflict to respect humanitarian law.

Can we ask armed groups to recognize their commitment to respect humanitarian law? Can we request immunity for persons detained in internal armed conflicts?

These questions are essential and should be addressed openly. If not, there is a risk that those participating in non-international armed conflicts will be treated but as criminals.

It is important at this point to say that at the meeting organized at Harvard to which I referred previously, various participants asked questions on this subject and everyone concluded that it was an issue that deserved greatest attention.

Another important aspect is determining how to evaluate compliance mechanisms. If we refer to the three stages I referred to earlier, it seems that it is above all during armed conflicts that the greatest efforts should be made to ensure proper application of IHL. It is also in this period that progress has been slowest in recent times.

What can be done to improve the respect of IHL during armed conflicts? Can we develop new mechanisms of compliance with IHL?

Various ideas have been brought up, and I will mention a few of them now.

The setting up of a system of periodical reports is one of them. One can foresee the possibilities: reports from the parties involved in an armed conflict about their respect of humanitarian law, or reports from the States of the country's measures to implement humanitarian law. It is above all the second option that has received some support although it is far from talking about a consensus.

At the Universal Meeting of National Committees for the Implementation of IHL held in Geneva in March 2002, and at which many of you were present, participants were asked about their opinion. Many alleged that they could see no added value in setting up a system of periodical reports on national measures of implementation.

Another proposal refers to the establishment of a system of individual complaints for victims of violations of the humanitarian law. They would be able to resort to an organ especially created for this purpose. The proposal has received little discussion, and it is unlikely that such a system will be instituted.

Another suggestion is to set up a diplomatic mechanism that would come under the rubric of an obligation to “ensure respect” of international humanitarian law. This mechanism would deal with institutionalizing Article 1 of the Geneva Conventions, to which I have previously referred.

I have briefly outlined these mechanisms and certain ideas, but I am at this moment unable to give an answer to where the discussion will lead. The problems raised are the object of a study currently being made by the ICRC and a report on this will be presented at the next International Conference of the Red Cross and the Red Crescent. This report will also contain no formulated answers, but will indicate a certain direction in the analysis of the possibilities identified. It should be emphasized, however, that we do not think it is the right time to begin a process of negotiation of new international norms, and that we should be cautious that every response or proposal be realistic.

In effect, what is lacking in order to better protect the victims in armed conflicts is greater respect of international humanitarian law and a firm demonstration of political will from the States.

In conclusion, I would like to underline the importance of the correct implementation of international humanitarian law in situations to which it applies. The respect of its norms by all actors is a challenge we all face. It is by demonstrating real political will, a respect for the commitments undertaken, and through cooperation between all the actors involved, that a step forward can be made.

Thank you very much.

PAGINA BLANCA

**TOPIC I:**

**FUNCTIONING OF THE  
NATIONAL COMMITTEES ON  
INTERNATIONAL HUMANITARIAN LAW**

PB

## **Introduction to the topic**

***Marisela Silva Chau***

Legal Adviser

ICRC Lima

Theme I deals specifically with the functioning of the *National Committees on International Humanitarian Law (IHL)* and their capacity as consultative bodies to States in the matter of the implementation of IHL. Obviously, since their establishment in more than 60 countries, the mandate of the committees has been to promote and facilitate the adoption of national implementation measures of IHL on a national level.

With a view to achieving effective implementation of IHL, the main actors continue to be the States themselves, from where the national committees on IHL – being of inter-ministerial and inter-institutional composition – construct the bodies that support their States in adopting national measures that bring about the implementation of IHL.

Generally, and you will already be aware of this, the national committees on IHL present a structure that involves Ministries, National Red Cross Societies, academic experts, and other institutions such as public ombudsmen, non-governmental organisations that work in the field of human rights and, in some cases, there will be representatives of the Legislature and the Judiciary. More exactly, it has already been mentioned that it would be particularly appropriate that the committees had representatives from the Legislature as much as possible, given that the recipients of the recommendations and/or normative proposals drafted by the committees will be the legislative authorities and, if this were not the case, the necessary efforts would have to be made to bring the national committees on IHL closer to those authorities. Another case is the process of adoption of measures of an administrative nature, for example those that should be adopted by institutes for national culture in respect of the identification, cataloguing and signposting of cultural property.

Bearing in mind that optimising the operation of the committees will greatly benefit the concrete adoption of national implementation measures of IHL by the States, we thought it appropriate to present the *Practical Advice to facilitate the work of National Committees on IHL* (see below, *Practical Advice*), drafted on the basis of the Universal Meeting of National Committees, held in March 2002, with the aim of setting out recommendations for the improved operation of national committees.

We now present the *Practical Advice* so that these may be taken into account in the course of the debates in each one of the working groups on Theme I. To be more precise, this *Practical Advice* conveys the comments of the participants at the Universal Meeting of Committees in 2002 and other meetings on the operation of those bodies.

The first theme covered in the *Practical Advice* concerns the *composition* of the Committees. The second refers to the committees' *human and financial resources*, resources that determine the opportunities for the committees to develop their timetable. We must not forget that, like any business, a national committee on IHL needs to provide itself with mechanisms and resources to be able to fulfil its tasks.

The third fundamental theme set out in the *Practical Advice* explains the problems of the committees' working methods. What are their methods? How do they direct their work? How is work organised within the committees?

The fourth theme: the concept of *communication* as managed by the committees – how do the committees become known? How do they build up a network of partners? The fifth theme to be included in the *Practical Advice* is of particular importance: the *committees' relations with State authorities*. We are referring to relations that the national committees on IHL could develop with state authorities, such as other commissions in charge of dealing on an *ad hoc* basis with the implementation of the Rome Statute, or commissions responsible for the problem of landmines. There are also other commissions dealing with the implementation of specific treaties, for example the 1993 Chemical Weapons Convention. It is fitting to ask ourselves how national committees on IHL will establish links with other State authorities, or with the Legislature, where the Legislature is not part of the structure of the committee. And finally, the sixth theme: *international cooperation*.

To be brief, it is our intention to cover each of the themes mentioned. *Firstly*, the *composition* of the committees. This is a fundamental question to be borne in mind, especially in those cases where no committee exists and the creation of one is planned. An initial idea makes reference to the need for States to ensure that all the ministries and institutions involved, those concerned with IHL in one way or another can integrate or shape a committee of this nature. Essentially we know, for example, that the Ministries for Foreign Affairs, Ministries of Justice and Ministries of Defence, are three ministries that are always present, given their ambits. However, one must bear in mind that when, for example, the committees attempt to deal with the regulation of the protection of cultural property in a situation of armed conflict, it would be necessary

to liaise with institutes for national culture and/or the ministries of education – if these are not part of the committee already.

Here is a second idea. It is necessary to strike a balance between the seniority, availability and competence of the ministerial representatives who join committees. In this way, when it comes to directing the committees' work, one must try to give duties to those ministries and/or institutions that are best qualified in any given field.

Allocating responsibilities according to the topics in hand and being vigilant as to flexibility in the participation of committee members are two aspects of particular relevance to take into account on the part of the committees. It should not seem strange that subjects arise in which certain sectors or committee members are not most competent; in this case, they will be able to contribute to the committee's work in other areas.

Also relating to the composition of committees, it will be particularly appropriate to strike a balance between the openness of the committee in relation to the public and the need to preserve the confidential nature of its work. As is known, the majority of members of a national committee on IHL are from the State, from ministries. However, there are some committees that have opened themselves up to the public or, in some cases, to entities such as public ombudsmen, for example. Listening, in one way or another, to the expectation of the public and taking in, in specific cases, the proposals or particular concerns that many organizations can have on specific subjects will benefit the committees' work.

*Secondly*, the committees' *human and financial resources*. This is a subject that often eludes the will and intention of committees in the sense that the committees' work could be limited by the reduced funding that the States allocate in this field. Now one must bear in mind that, as is the case for any other institution, there will always be limits to the availability of human and financial resources. But, at the same time, there are creative mechanisms to optimise the use of the few resources that are available or to obtain those that are indispensable.

Thus, efforts will always have to be made so that committees have at their disposal a minimum level of funding and proper resources. When faced with the recurring limitations of States, there are alternative methods; there is always the possibility of requesting international co-operation. Additionally, there is the possibility of employing the resources of certain sectors or committee members who can make their infrastructure available to the committee. The



committees will have to be regarded as structures that need to provide themselves with certain basic, minimum elements for their operation. At the same time, it is undeniable that a national committee requires human resources that are focused on the development of a thematic timetable. This would imply the coherent organisation of a thematic timetable as well as implementing a strategic plan for developing it.

*Thirdly*, the *working methods* of committees. How do the committees work? Every country, every committee has its own style of work. However, it would be worth taking into account certain elements that can optimise the committees' work, and can also facilitate or accelerate their work in many cases. For example, many committees have proceeded with studying the compatibility of the national legal codes of their respective countries and the international obligations of these countries in matters of IHL. Why? Because to begin the process of adoption of national measures for the implementation of IHL, to be able to identify the kinds of measures required, one must know first of all the state of the national legal code. Maybe it is discovered that there already exist favourable norms for the incorporation of regulations relating to IHL. Perhaps it is necessary to adopt an entire collection of norms. Thus the compatibility studies will be useful tools in the work of committees.

The definition of priority activities and their objectives: as in any other organisation, committees must rely on directives, priorities and on concrete goals. They must foresee what will prevent the completion of those aims. They must foresee which would be the strategies for achieving those objectives. For example, an element to bear in mind would be to evaluate the relevance of that which, at the beginning, the committees deem to be firm short-term objectives to benefit the right motivation of the member sectors and institutions, leaving to the long term other subjects that require greater thought and dedication.

It is also relevant to make use of concrete tools to implement the thematic timetable. An example of these tools is the technical records that appear in the Report on the Universal Meeting in Geneva. These are records that cover models of compatibility studies, of plans of action and of work timetables, amongst other things.

As part of their working methods, the committees could also opt for producing periodic activity reports. This is a matter of self-discipline and self-organisation which allows, *on the one hand*, measuring and evaluating results and, *on the other hand*, informing other authorities of their work. In this respect, the committees can progressively consolidate their place and adopt their stance on their mandate in the same way.

*Fourthly*, the concept of communication that is used by the committees. It is essential that the committees make themselves and their activities known by means of effective instruments and communication methods. For example, it is obvious that, as well as the proper dissemination activities on IHL organised by the committees, these also constitute forums to make their work known.

The committees must also be sure to have a network of partners. The committees must not be isolated from another group of structures or institutions that are also working on related areas or could collaborate with the committees in their work as well. We would therefore point out the appropriateness of the national committees on IHL creating entities that are able to forge links with other authorities or institutions.

More precisely, *in fifth place*, building and maintaining *relations with state authorities* or with *ad hoc* commissions that can be set up on certain subjects, forming links with legislative authorities so as to bring about – within the framework of responsibility of the national committees on IHL – a proximity with all those actors involved in the process of adoption of national measures for the implementation of IHL. In many instances, the committees will have to draw closer to Parliament for the purpose of creating a normative draft, for example, concerning the definition of war crimes within national criminal law, or relating to the criminal definition on the prohibition of landmines, amongst other things. In this sense, it must remain clear that the work of the national committees on IHL does not end with the creation of the project, but rather continues in trying to monitor it in one way or another, so that it may become a reality. It is work of ongoing co-ordination in that sense.

Co-operating with the Judiciary in the application of IHL will be a subject to bear in mind for some of the committees in those countries where this is applicable and where it is required. Naturally, the first of the committees' contributions to the judicial authorities would be to offer advisory sessions in the matter of IHL for their consideration.

*The sixth and final theme* is *international co-operation*. Forging links with international organisations and other entities with competence in the field of IHL is of particular importance. For example, when an international organisation asks the States for information for a report on the state of implementation of treaties relating to IHL, the national committees could support their respective States in providing detailed information. This would be a concrete way for the committees to contribute and build relations with these organisations.

Moreover, strengthening direct relations between committees, be it in regional or sub-regional areas, also constitutes a viable option for optimisation of the committees' work, sharing and making use of the advances made by some committees. It is also worth mentioning that from this date, committees will be able to make use of a 'virtual' webspace for the exchange of information through the newly created *Electronic Forum for Committees*. My colleague Liliana López will be explaining the operation and design of this webspace to you in detail.

That concludes the presentation on the Practical Advice. Now for a few words on the subjects to be considered by the three working groups, Group I, as indicated, must analyse *the position of National Committees vis a vis the Executive, Legislative and Judicial authorities*. We would suggest covering, not only the methods of liaising with executive, legislative and judicial authorities, but also to be ready to take these opportunities. For example, if it is seen that in a particular country an *ad hoc* commission has been set up for the implementation of the Rome Statute, with a mandate and a fixed purpose of presenting a proposal, the national committee on IHL will have to take into account the need to act swiftly. The adoption of legislative measures relating to IHL in the majority of cases is contextualised in a particular situation, in a short-term window of opportunity.

Finally, Group II has the responsibility of dealing with the subject of *mutual communication of implementation measures of IHL treaties*, and Group III is to focus on the monitoring of the Universal Meeting of National Committees on IHL, held in Geneva from 25<sup>th</sup> to 27<sup>th</sup> March 2002.

I would like to end by stating that any meeting, as was the meeting in Geneva and as is this meeting in Guatemala, not only constitutes a forum for current discussion, but also a starting point for the later monitoring of the subjects covered here.

## Electronic Forum

*Liliana López Ortiz*

Legal Assistant  
ICRC Mexico

### ELECTRONIC FORUM FOR NATIONAL COMMITTEES ON INTERNATIONAL HUMANITARIAN LAW

Many States have set up National Committees or similar bodies on international humanitarian law (IHL). These bodies advise and assist governments in promoting and implementing IHL. The electronic Forum for National Committees was created by the Advisory Service on IHL of the International Committee of the Red Cross (ICRC), to assist the National Committees in their task.

#### Objectives of the Forum

- to facilitate the exchange of information and experience between IHL National Committees;
- to strengthen contacts between them;
- ... thereby encouraging States to take national IHL implementation measures.

#### Content:

- **information on existing IHL National Committees:** name, contact details, legal basis, membership, mandate, plus ICRC documents on their creation and operation;
- **events and announcements:** information on meetings, new Committees, etc.;

- **INTERACTIVE DISCUSSION:** on substantive national IHL implementation issues and on the functioning of the Committees;
- **documents from IHL National Committees:** plans of action, annual reports, work sheets, etc.;
- **information on existing and future legislation:** information posted by the Committees on laws or regulations themselves, or on the process of their adoption;
- **addresses and links:** contact details, links to IHL National Committee websites and to other websites on national implementation of IHL.

To ensure the widest exchange possible, the use of English is encouraged in the Forum. However, users

may also conduct discussions in French and Spanish and may post documents in any language.

#### **Who has access to the Forum?**

- IHL National Committees;
- the ICRC.

The ICRC may also grant access to other relevant specialists and organizations.

#### **How do I obtain access to the Forum?**

Please contact:  
Advisory Service on International  
Humanitarian Law International  
Committee of the Red Cross  
19, av. de la Paix  
CH-1202 Geneva  
Tel.: +41 22 734 60 01  
Fax: +41 22 733 20 57  
E-mail:  
**[advisoryservice.gva@icrc.org](mailto:advisoryservice.gva@icrc.org)**

International Committee of the Red Cross, 05.2003<sup>14,15</sup>

- 14 International Committee of the Red Cross, Advisory Service on International Humanitarian Law, [www.icrc.org](http://www.icrc.org), or <http://www.icrc.org/Web/Eng/> [http://www.icrc.org/Web/Eng/siteeng0.nsf/html/BD88C85E7CD136CFC1256D4E0045D94A/\\$File/Forum\\_eng.pdf?OpenElement](http://www.icrc.org/Web/Eng/siteeng0.nsf/html/BD88C85E7CD136CFC1256D4E0045D94A/$File/Forum_eng.pdf?OpenElement)
- 15 See also: International Committee of the Red Cross, “*Practical Advice to facilitate the work of National Committees on International Humanitarian Law*”, [www.icrc.org](http://www.icrc.org); or [http://www.icrc.org/Web/Eng/siteeng0.nsf/html/55C0D24B214154EEC1256D4E00471A6B/\\$File/Practical\\_advice.pdf?OpenElement](http://www.icrc.org/Web/Eng/siteeng0.nsf/html/55C0D24B214154EEC1256D4E00471A6B/$File/Practical_advice.pdf?OpenElement)

## Working Groups

### **Group I: Position of the National Committees before executive, legislative and judicial authorities.**

Moderator: *Claudio Troncoso Repeto* (Chile)

Rapporteur: *Gabriel Pablo Valladares* (ICRC)

**Objectives:** to analyze the role played by the national committees in decision-making on participation in treaties on IHL and its implementation on a national level; to evaluate consultation methods of the Executive, Legislature and Judiciary; to evaluate how the recommendations and other efforts of the national committees have been put into practice; to identify possible obstacles to the realization of said efforts and strategies for overcoming them.

In the questionnaire to National Committees drafted for this meeting, the majority of replies showed that 1) in matters of the ratification of treaties, the impact is minimal because of the progress on the subject or its recent creation; 2) as regards implementation on a national level their intervention has been important and instrumental, even when action has been taken prior to the committees being established; 3) only some committees mention the existence of informal consultation and monitoring on the part of the legislative and judicial powers; and 4) the majority of committees mention that there exist no formal systems or mechanisms for monitoring of the recommendations they make; these being carried out either by the committees themselves or through the leader of the committee.

With this in mind, the following topics were discussed:

- Which factors determine the participation or otherwise of the committees in the State's decision-making in relation to its participation in treaties, including the consideration of the withdrawal of funding, as well as its position regarding instruments being developed? Could it be assumed that it is a case of this being a task usually entrusted to State Departments? How could the committee have a bearing on the stance taken by the Executive when the latter has made a decision without consulting the committee?
- What measures are made necessary to secure and move towards effective national implementation of IHL, particularly in matters of the repression of war crimes and legislation on the emblem? Can it be said that the

processes of implementation are long or that the political circumstances of a State have a bearing on the priority given to the subject? Can it be assumed that the dynamic derived from the adoption of the Rome Statute of the International Criminal Court has been a determining factor in the issue of repressing war crimes?

- In the processes of implementation of IHL, what measures should a committee adopt to involve the Legislature and Judiciary in its work? In the committees' experience, is this involvement a necessity? What could be the possible advantages and disadvantages? Could this association be subsidiary or should it be complementary?
- What are the challenges faced by a committee in ensuring continuity in the work it carries out, particularly the recommendations it makes? How could it overcome these obstacles? How can one be certain of the relevance of a committee in a State where the fight against poverty or corruption, terrorism or organised crime is the sole priority on the Government's agenda?

### **Report:**

The majority of participants agreed that it is generally the Ministries for Foreign Affairs that make the political decision to present a treaty to Parliament for its approval. Once Parliamentary agreement has been obtained, they then proceed to deposit the international instrument of ratification or accession. However, some committees have mentioned that they take part in the political decision-making process, for example in putting questions to each of the state agencies involved in the matter, so that they make a statement on the need to ratify treaties on international humanitarian law. In some cases it was obvious that the interest in and swiftness with which the committees dealt with the subjects within the ambit of their work are, generally, quite different to those of the parliamentarians when the projects carried out by the committees are presented before the Legislature.

Having a Parliamentary representative on the committee, or establishing lines of communication with them, is both beneficial and desirable. In the case of Peru, there was a basic requirement to include in the committee one or two representatives from the Legislature. The main concern was to find a practical solution and establish the level of participation that the members of the Legislature would enjoy. One possibility is to have two members of Parliament on each committee; another is to have the Head of the Legislature nominate a functionary to be in regular attendance. The challenge has been to choose between these two options.

The experience of the National Committee in Bolivia has been to include a representative of the National Congress. According to any particular subject, this person could be a representative of the Commission for Foreign Affairs, or even a member of the Human Rights Commission. The Chamber of Deputies has shown particular interest in expediting these procedures.

In Mexico, in matters of the ratification of treaties on international humanitarian law, it is the Ministry for Foreign Affairs that promotes and drives for the ratification. The Ministry revises, analyses and determines which treaty would be worth promoting, and begins consultation with those Ministries involved. There is an internal procedure that is adopted in the framework of the Legal Advisory of the President of the Republic and the Ministry for Foreign Affairs whereby no treaty is ratified if the matter has not been raised by the Ministry for Foreign Affairs. The second condition is that each department that would be involved in its implementation approve ratification of the treaty. Contact with Congress is always an ideal, but in practice this is very complicated, because many treaties go to different legislative commissions. It is also very difficult having only one point of contact, as this must be identified according to each and every treaty.

In the Permanent National Committee on the Application of International Humanitarian Law in Panama, key figures have been identified who have supported the lobbying of the Legislative Assembly and who have shown interest in bolstering the work being done by the Committee.

Colombia has delegated responsibility according to subject matter. For example, on the issue of missing persons, there is a committee set up to find missing persons. In matters of landmines, there is an authority in the matter and several expert groups for prevention or the victims of landmines. As well as the establishment of legal norms, training in the correct implementation of these must be offered to personnel.

The process of ratification of the Rome Statute of the International Criminal Court has boosted the need to make advances in the implementation of the law against serious violations of IHL, which would lead to full application of the principle of complementarity with the Court. Various individuals stated that the committees have begun work to identify those norms in criminal law that would repress serious violations of IHL on distinct levels; for example, studies of compatibility, academic research, assignments given to criminal law and international law experts on the matter, etc. It was also stated that these are long processes, as they involve more than one State body and, in particular, more than one parliamentary commission. Depending on the



legislative state of each country, there are some committees that are permanent and others that are not, in which case more time is required for the process of implementation. On the other hand, it was stated that in many cases the principle of legality requires a highly detailed description of those criminal provisions to be incorporated in each State's national legal code.

In the case of the ratification of the Rome Statute in Bolivia, the Human Rights Commission of the Chamber of Deputies had a particular interest in continuing with the task of ratification. To this end, the commission formed a working group of open composition, which drafted a report that boosted the ratification of the Statute. However, for the ratification of the 1954 Convention, there was a procedural problem, for while the report and the exhibition of reasons had been submitted to the National Congress, the previous Government's Legislature did not have the time to transmit the report to the Executive branch for its enactment.

The ratification of the Rome Statute in Bolivia has presented a challenge to the updating of its Penal Code. The Penal Code had already been partially modified in 1997; however, once the Rome Statute had been ratified, a process of implementation within the ambit of the committee's duties began.

In many cases the criminal provisions contained in the Statute, or even those found in the Geneva Conventions, are not sufficiently clear or detailed for national legislations, and this entails an exercise in how to adapt these provisions to internal legislations without losing the meaning of the Statute. In Mexico, the principle of legality in criminal matters demands extreme clarity in the definitions of offences, which can be a challenge. For example, in military matters, the authorities are very cautious in the modification of their legislation, such as the Military Justice Code.

As regards implementation measures, the participants stated that a permanent technical secretariat is a necessity, owing to the fact that the members of these national committees generally have many other obligations and matters in their charge, and do not have enough time for the strict monitoring of the committee's tasks. There were cases that highlighted the need for such a secretariat and the benefit that came with it. Depending on the state of each nation, some deemed it necessary to involve authorities at a high level, while others believed in relying on people on a technical level, who would be capable of having influence on political decision-making, which in turn would allow for progress to be made in achieving the results hoped for by the committee.

In the case of the National Committee in Bolivia, there is a permanent secretariat, known as the General Directorship for State Department Multilateral Affairs. This permanent secretariat offers continuous strict monitoring of actions carried out towards the ratification of or adhesion to a treaty, which has yielded good results.

In Guatemala the majority of the institutional representatives do not work exclusively with the Committee. Nevertheless, the good will of each representative on the Committee is taken into account.

Committees work on the basis of its members. Within the technical ambit it is important that, at least once a year, the president of the committee invite the committee chiefs to give accounts of the activities of each committee and thus highlight the work being done by the representative within the committee. In many cases the representative has every intention of attending meetings, but must be able to count on the support of his/her chief.

**Group II: Mutual communication of measures implementing treaties of IHL**

Moderator: *Jorge Santiago* (Dominican Republic)

Rapporteur: *Carlos Hugo Ávila* (ICRC)

**Objectives:** to examine the autonomous methods of information exchange between committees; to analyze the possible advantages of the institutionalization of the exchange of information between committees on a sub-regional and or regional level; to examine the possibilities of regularizing mutual communication of implementation measures of IHL; to evaluate the impact of meetings between national committees on a sub-regional or bilateral level.

In the questionnaire to national committees drafted for this meeting, the majority of replies showed that there is no experience of meeting between committees in the strict sense, although they did state that experiences had been shared by their representatives in the course of related meetings. Respondents also considered that these meetings allow for the subject to be kept on the Government's agenda. Respondents shared the view that a system of information exchange is required.

With this in mind, the following topics were discussed:

- Should the exchange of information be generated by and for committees or should it be open to accessible to other entities? If so, to whom? What would the reasons be for this? Could it be important to build up a picture overseas on the basis of this exchange or would this be a secondary aspect?
- What role should the committees take on to ensure the continuity and the topicality of methods for the communication of current implementation measures, in particular regarding the biennial report of the General Secretary of the United Nations on the application of the Additional Protocols of 1977; the reports prepared by the Commission for Legal and Political Affairs of the OAS for the extraordinary session on IHL or the reports drafted by the ICRC through the Advisory Service on IHL in Geneva or through its Latin American unit? How have these methods impacted on the work of the committees? How can they take better advantage of this?
- In relation to the meetings between committees: should these be organized periodically? Who should call these meetings? Should participation be extended to other figures involved?
- As regards the obvious need for the exchange of information between committees, could the Electronic Forum launched by the ICRC be considered a suitable medium for this and with this in mind should participation in it be institutionalised? What can be expected of a tool that has been created for the committees but not by the committees?

### **Report:**

It was considered that the mutual communication of implementation measures for IHL treaties is necessary on two levels:

- a) between committees, and
- b) between committees and other entities, under the direction of the former.

These other entities could be distinct governmental bodies or non-governmental organisations (NGOs) that are dealing with an issue relevant to IHL. Some committees have already established this communication, for example in relation to the protection of cultural property or the International Criminal

Court. On the first of these points mentioned was that if the Ministry or Institute for Culture was not part of the committee, it had been deemed appropriate to invite them to take part in the committee meetings so that they became aware of the committee's activities and could decide to work with it in the protection of cultural property in situations of armed conflict. It was said that in those countries where there are no national committees, the Ministries of Foreign Affairs could be the co-ordinators through which information on IHL could be exchanged.

In order to facilitate the exchange of information, it was recommended that committees have at their disposal a permanent system to carry out this exchange in a co-ordinated way. This could be realised either through an advisor or a group financed by specific bodies. In this way the information could be monitored and committee meetings would no longer be required on matters that perhaps do not entail making important decisions.

On the other hand, it was stated that committees can also act as communication channels between entities from different States. One example in this context could arise between the Ministries for Culture of two or more States. This subject is of vital importance for national committees not only to its work on a national level but also to its presence on an international level.

It was also stated that committees should be promoters of the strengthening and maintenance of the methods of communication of measures for the implementation of IHL, particularly reports on the fulfilment of international obligations.

There was mention of the case of those committees that have been in charge of the compilation of information for the purpose of drafting those reports, such as that on the application of the Protocols of 1977. It is fitting to mention that while this task is not within the committee's remit, it has become a recurrent practice with the aim of co-operating with the State in the fulfilment of its obligations in this field.

Moreover, it was felt that the committees should be a catalyst for and a driving force in the completion of these reports. In this way there would be greater awareness of the current state of the fulfilment of said obligations and would indicate the action required in the areas of dissemination of information, education, etc.

As regards meetings between different committees, it was concluded that regional or sub-regional meetings, called by the ICRC, should be held regularly.

Bilateral meetings should also be held, at the committees' initiative and with ICRC support. It is recommended that, prior to the meeting, the matters of interest be decided, which would include, amongst other things, points relating to the protection of cultural property; the International Criminal Court; the dissemination of IHL; the development of regulations and manuals for the armed forces and police forces.

Examples were given of bilateral meetings that had already taken place between committees and other meetings planned, the preparations for which are already under way.

With respect to the Electronic Forum launched by the ICRC, this was deemed a useful tool in channelling information, experience and common proposals, which ought to be institutionalised. An example was given, as above, that the Forum would be useful for comparing working methods and the exchange of draft bills.

It was stated that this Forum had been created by the ICRC for the benefit of States and national committees and, to this end, the committees will regulate which of their members will have access and use thereof.

**Group III: Follow-up of the Universal Meeting of National Committees on IHL, held in Geneva, 25th – 27th March 2002.**

Moderator: *Eden Charles* (Trinidad & Tobago)  
Rapporteur: *Marisela Silva Chau* (CICR)

**Objectives:** on the basis of the results of the Universal Meeting, to examine the advances the committees could have made; to evaluate the impact of the Meeting on the work of the committees.

The questionnaire to national committees drafted for this meeting did not contain a specific question on this matter; however, the following was put forward for discussion:

- What impact has the Universal Meeting of National Committees in March 2002 had on the work of the committees?
- How useful is that meeting in this kind of multilateral conference? Can it be said that the exchange between committees makes finding solutions easier? What is the ideal form of exchange?

- Can it be said that the committees ensure that IHL remains on governmental agendas?
- Can it be said that the regularity and frequency of internal committee meetings encourages their proper operation?
- How do the committees' competences, the methods at their disposal and their position before the government, influence the achievement of their objectives?
- How does the availability of resources (both human and financial) influence the accomplishment of the committees' mission?

**Report:**

In reference to the impact of the Universal Meeting on the work of national committees on IHL, it was emphasised that on the basis of that meeting:

The committees have armed themselves with important tools with which to disseminate IHL to the appropriate national authorities of their respective States, as well as to the general public as a whole; in this way, and bearing in mind recent events ('9/11', Afghanistan and Iraq) that make IHL particularly relevant, the interest in and concerns about IHL on the part of state authorities and, notably, law students, journalists, individuals involved in National Societies of the Red Cross, amongst others, could find support in activities organised by national committees.

If some members of national committees had had any doubt regarding the importance or relevance of IHL in States enjoying a state of peace, the Universal Meeting in Geneva led to the conclusion that no State is immune to armed conflict and, by the same token, every State has a role to play in the promotion and strengthening of IHL.

An increase in the number of treaty ratifications in IHL has been witnessed (such as the Optional Protocol of 2000 to the Convention on the Rights of the Child relating to the involvement of children in situations of armed conflict, the Second Protocol of 1999 to the 1954 Hague Convention on the protection of cultural property in case of armed conflict and, in particular, the 1998 Rome Statute that created the International Criminal Court); this, as a consequence of recommendations and efforts – on the basis of information shared at the meeting – carried out by committees at the request of their respective States. Based on the subjects discussed, national committees on IHL could contribute

to the position of plans to implement the Rome Statute (which would include the definition of war crimes), as well as the process of adoption of measures to identify and catalogue cultural property. Regarding the usefulness of meetings of this nature, and with a view to qualifying these as forums for exchange that could facilitate solutions to recurrent problems faced by committees: it was concluded that organising meetings of a universal and regional nature for committees is of great use to them; there was a well-received recommendation on the appropriateness of promoting sub-regional meetings, enhancing those forums for integration that already exist. Moreover, it was emphasised that, in tandem with meetings of a general nature, it was more than appropriate to define for the purpose of said meetings strict work timetables that deal with common thematic concerns or similar topics for each of the representatives of participating States, for example in areas of ratification of or accession to treaties relevant to IHL; this discounting differences in geography or national legal systems. Thus, in the case of five States, for instance, with the ability to overcome these differences, and sharing the intention to adhere to the terms of the 1954 Hague Convention for the protection of cultural property in case of armed conflict, the ICRC could facilitate a meeting between these States, the effect of which would be to catalyse their intention to act in accordance with said Convention. In a similar vein, there was special emphasis on the fact that meetings such as those described should not only allow committees to exchange information but also make allowances for joint project initiatives. With respect to the question of the ability of committees to ensure that IHL remains on governmental agendas, it was agreed that while it may seem very ambitious to state that committees are able to ‘guarantee’ such an expectation, it is possible to state that these committees – as part of their mandate – could find themselves in the position to convince the authorities of their respective countries on the international obligations in this remit, thus promoting conformity between their work and that of other authorities. In any event, the committees are bound to promote regular dialogue on the matter of IHL with the authorities in their respective countries.

On the advantages of holding regular and frequent internal committee meetings in relation to their proper operation, it was agreed that:

The committees should do everything possible to ensure regular meetings are held, as this facilitates and optimises the monitoring of their work.

Moreover, in the case of committees that have sub-committees or working groups, such as the Canadian Committee, frequent meeting of these sub-groups can facilitate the work of the full committee (i.e., identifying different options in a particular matter that should be considered by the full committee).

As regards the influence to be gained by committees from having the competence, the means and the right position in relation to the achievement of their objectives, the conclusion was reached that a lack of means at the committees' disposal can limit their expectations when it comes to their position and competence to exert significant influence in the accomplishment of their mandate.

On the effects of the availability of resources, both human and financial, in the fulfilment of the committees' mandate:

There was particular emphasis on the fact that one of the main problems faced by committees is not having their own budget. In this respect, the contributions of Ministries for Foreign Affairs were highlighted as, in almost all cases, these must assume this responsibility as members of the committee.

It was concluded that national committees should adopt more creative methods to optimise the human and financial resources at their disposal, for example by promoting the specific exchange of information between committees.

Moreover, the contributions of the work of the ICRC were highlighted as an element that has enabled committees to overcome shortages in human resources, consultation material and, in specific cases, insufficient funding (for example by facilitating the participation of representatives in universal or regional meetings on behalf of committees).

As regards shortfalls in human resources, *on one hand*, it was suggested that committees promote their association with national experts with a view to obtaining their input on specific topics on an *ad hoc* basis. *On the other hand*, there was emphasis on the possibility that, for instance, committees consider (normative) initiatives or projects on IHL already created by some States. With this in mind there was also emphasis on the appropriateness of encouraging States that share a common language could, at the same time, share related documents or projects as a point of reference.

Finally, the suggestion was made that committees consider resorting to international co-operation with a view to overcoming – with certain methods – the shortages described above. There was particular mention of the initiative of the Peruvian Committee in requesting international co-operation for the possibility of having an advisor to the president of the Committee.



PAGINA BLANCA

**TOPIC II:**  
**CURRENT ISSUES RELATING TO IHL**

PB

## **Introduction to the topic**

### ***Anton Camen***

Legal Adviser for Latin America  
Advisory Service on IHL  
ICRC

We, the organisers have identified three main themes relating to the national implementation of international humanitarian law on which many States are currently working; these are co-operation with the International Criminal Court, the protection of cultural property from the effects of armed conflicts, and developments in the field of treaties on weapons. These are subjects characterised by the high complexity of their *materiae*. They have ramifications in various areas and typically involve different government departments. Hence, their suitability for the work of interdisciplinary groups such as national committees on international humanitarian law. Allow me to focus my introductory observations on the subject of cultural property and that of weapons. Doctor Guevara from the Coalition for the International Criminal Court will expand upon cooperation with the Court.

The protection of cultural property will receive particular attention in the course of the 50th anniversary of the 1954 Hague Convention, which will be celebrated in May 2004. That date affords us with the opportunity to recall the importance of this area in which there remains much to do in this continent as in the rest of the world. It is worth pointing out that a number of the committees here today have taken concrete and positive action in this respect, for instance in Central America. On the other hand, there are also other committees that have not been able to progress in this field, be it because they face limitations due, for example, to the high level of specialisation in the knowledge required to work on this subject, or the scarcity of resources available to take adequate steps in the protection of cultural property. It has been shown that these obstacles can be overcome. It is frequently a case of defining an adequate, realistic strategy that allows the concepts developed by the committees to be put into practice. For example, committees may consider support from outside experts to deal with specific aspects of the implementation of the Convention and Protocols, or strengthening cooperation with other committees on international humanitarian law that are more experienced in this field. These actions led to very positive synergies in various countries.

On the level of the ratification of treaties on cultural property, it is worth noting that only five States in the Americas are party to the Second Protocol of the Convention up to now. Here there are very important opportunities for

the committees to intervene. They can take the initiative and draw the attention of their governments to the achievements of the Protocol, conduct studies in that respect or formulate recommendations that could facilitate a decision on ratification.

The other subject I wish to discuss concerns treaties on weapons, in particular the Ottawa Treaty, the 1980 Convention on Certain Conventional Weapons and the 1972 Biological Weapons Convention.

As you all know, the First Review Conference of the Ottawa Treaty on anti-personnel mines will be held in 2004, that is five years after the entry into force of the treaty, in conformity with its article 12. It is planned that the conference will take place from November 29 to December 3, 2004 in Nairobi, Kenya. It will be preceded by preparatory meetings on February 13, 2004 and June 28 and 29, 2004.

The committees can contribute in preparing States for the Conference. In relation to this, Chapter IV of the folder that has been handed out to you contains a whole series of current documentation, United Nations reports and decisions made in the working groups that may help you in your advisory work with your respective governments. It is appropriate to mention that various committees here today already offer services to their governments for the adoption of national measures of implementation of the Ottawa Treaty, for example in matters relating to criminal sanctions. It would be worthwhile to rely on your experience to double efforts in States where the committees have been less active in this area.

Another field in which the committees have concrete opportunities for intervention concerns explosive remnants of war. It is hoped that the working group established by the States party to the 1980 Convention on Conventional Weapons will achieve a result that will bring to an end the suffering caused by unexploded ammunition. Its final session will take place in November 2003. Discussions are currently focused on resolving the issue of responsibility for the removal and destruction of munitions that did not explode during hostilities, the information that must be provided to facilitate said removal as well as the awareness of the populations affected. This is typically an area that requires the contribution of military experts present in various committees on international humanitarian law. They can provide the necessary elements that allow the government to define its position on the issue; they can contribute to raising awareness among the different state departments or facilitate the participation of the government in international negotiations on the subject. It is worth adding that the ICRC is convinced that only a linking element could effectively reduce the threat of explosive remnants of war.

Regarding the review process of the 1972 Biological Weapons Convention, negotiations were resumed in November 2002 in the setting of the Fifth Review Conference, after their interruption in December 2001. This conference decided to organise yearly meetings until the Sixth Revision Conference in 2006. They will examine control mechanisms, international responses to epidemics, codes of conduct and national measures, including criminal law to punish breaches of the Convention. These projects require the attention of the national committees because they generally appear to be well equipped to make the task of their governments easier in this area. It is hoped that the working group will contribute to defining concrete actions that could be taken in this matter.

As regards the final theme that we propose to deal with in this session, I will hand over now to Doctor Guevara, so that he may introduce the relevant aspects of the implementation of the Rome Statute of the International Criminal Court.

Thank you very much for your attention.

### **Introduction to the topic**

*“National Committees on International Humanitarian Law as promoters of the effective operation of the International Criminal Court”<sup>16</sup>*

**José A. Guevara**<sup>17</sup>

Coordinator for Latin America and the Caribbean  
of the Coalition for the International Criminal Court

Before I begin, I would like to thank the International Committee of the Red Cross, as well as the General Secretariat of the Organisation of American States for offering me the opportunity to share some ideas with you on the role that the national committees on international humanitarian law (henceforth NCIHL) ought to have in rendering the complementary jurisdiction of the ICC effective, as well as the co-operation of the States with the Court.

---

16 Diffusion and distribution prohibited. To quote document please obtain author’s permission. The opinions and interpretations put forward in this work are the sole responsibility of the author.

17 Presentation at the “Meeting of National Committees on International Humanitarian Law of the Americas”, organised by the Organisation of American States and the International Committee of the Red Cross. Held in La Antigua, Guatemala, from 27<sup>th</sup> to 29<sup>th</sup> August 2003

First, I would like to pass on the greetings of the International Coalition for the International Criminal Court (henceforth the CICC) a consortium of more than a thousand non-governmental organisations around the world, dedicated to the promotion and implementation of an effective, independent and impartial International Criminal Court. The CICC's mission is to promote the universal ratification of the Rome Statute of the International Criminal Court (henceforth the RS), as well as that of the Agreement on Privileges and Immunities of the International Criminal Court ("APICC"). Moreover, we promote and support the national initiatives relating to the adoption of legislation for the implementation of the RS; and we dedicate a large percentage of our time to defending the jurisdiction and competence of the International Criminal Court – (ICC) against all of those measures that could undermine or limit it. Finally, we endeavour to disseminate information on the aims, structure and procedures of the ICC fully and on all levels.<sup>18</sup>

We, at the CICC are convinced that the only way of reaching our goals is through shared responsibility. In other words, they will be achieved by means of the joint efforts of the non-governmental organisations, specialist academics and independent experts, inter-governmental organisations and the States themselves. What I intend to do in this brief exposition is precisely to encourage members of the NCIHL here today so that, in some matters, you share responsibility with us and that we seek together the best ways of developing strategic alliances, according to the nature of our institutions, to guarantee the proper operation of the ICC.

## I

The information on the subject of the ICC in the region is surprising: firstly, in the high degree of support shown by States in signing and ratifying the Statute, and secondly in the level of representation of the region in the composition of the Court itself. We will recall that the RS has been signed by 139 States and ratified by 91. Of the 35 countries of the Americas, 26 have signed and 19 have ratified it.<sup>19</sup> Furthermore, you all know that, of the 18 judges of the Court, 5 are from the Americas, and of the 7 women that are among them, 2 are from our region.<sup>20</sup> From the Americas, the nationalities represented in

---

18 For in-depth information on the mission and activities developed by the Coalition for the International Criminal Court since its inception, please consult their website: <http://www.iccnw.org>

19 To see the updated list of ratifications in the Americas, please go to: <http://www.iccnw.org>

20 For further details regarding the Judges in the different sections of the ICC, including names, CVs and positions held, please go to the ICC website: <http://www.icc-cpi.int>

the Court are Bolivia, Brazil, Canada, Costa Rica, Trinidad & Tobago, and also Argentina, among the prosecutors.<sup>21</sup>

On the other hand, only one country in this region - of the two in the world that have done so, namely Norway and Trinidad & Tobago – has ratified the *Agreement on Privileges and Immunities of the International Criminal Court* (“APICC”). This APICC was approved by the Assembly of States Parties on September 9th 2002 and, amongst other things, develops and extends the privileges and immunities to which Article 48 of the RS refers. This means that it details the obligations of States and above all extends the list of protected persons, such as the legal advisors of the accused, expert witnesses and those persons summoned by the Court or those whose assistance is required in the trial itself. For the CICC this document is of great importance in guaranteeing that the Court operates without interference, as well as the fact that its ratification ensures, to a certain extent, equality of resources between the prosecution and the defence in a trial before the ICC.<sup>22</sup> NCIHL must include the APICC in their lists of treaties relevant to IHL, write as soon as possible the respective reports on the compatibility of it with their domestic legal systems and obtain the governmental consensus necessary for presenting the treaty for ratification, so that they may make best use of the political momentum and incorporate the issues relating to immunities and privileges in those laws of implementation on matters of judicial assistance and cooperation with the ICC.

It is also surprising to see the small amount of implementation legislation that has come into force in the region.<sup>23</sup> Of the 19 countries to have ratified the RS, we have only one implementation law currently in force; I refer to the law of Canada.<sup>24</sup> We refer to it as the only one, as it already covers the part of complementarity or definition of the crimes in which the ICC will have competence - including the general principles of law reflected in the RS – as well as the other part that relates to co-operation with and provision of judicial assistance to the ICC.<sup>25</sup> However, there are five bills of implementation legislation that are in the advanced stages of obtaining assent from the parliaments of States Parties namely the projects in Argentina, Brazil, Ecuador, Uruguay

21 For more on the Prosecutors at the ICC, please go to: <http://www.icc-cpi.int/otp/ataglance.php>

22 Further information on our campaign for the signature and ratification of the APICC can be obtained on the CICC website: <http://iccnw.org/documents/asp/ungovdocs/1stsession/Report200209Eng.pdf>

23 The law proposals in Latin America and legislation in the rest of the work can be obtained at: <http://>

24 The Crimes Against Humanity and War Crimes Act 2000 which came into force on 7th July 2000.

25 In reality this involves amendments to its Mutual Legal Assistance in Criminal Matters.



and Trinidad & Tobago, which bills make provision for the two principles mentioned above – complementarity and cooperation. For its part, Costa Rica incorporated those crimes on the basis of an amendment of its criminal code; similar processes have begun in Panama and Peru.

## II

Within the Coalition, we are conscious of the time required to reform legislation as complex as criminal codes, and we are delighted that some States are concentrating their efforts in classifying the actions described in Articles 6, 7 and 8 of the RS, in relevant IHL treaties and other treaties on human rights. However, we are concerned to note that the issues of co-operation are not being dealt with as carefully.

Article 86 of the RS states that “States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court”. In order to comply with this obligation, Article 88 states that “States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part”. Consequently, States are obliged to incorporate into domestic legislation those provisions that permit and facilitate the reception and fulfilment of ICC requests for cooperation and judicial assistance.

But the obligation to cooperate with the Court does not apply exclusively to those States that have not wanted or been able to investigate, prosecute and sentence those guilty of committing crimes within their territory or crimes committed by their nationals. The ICC’s requests for cooperation must be complied with by States Parties when it is a matter of handing over persons who are simply within their territory; and moreover, another category of requests for cooperation and judicial assistance must also be fulfilled, such as the identification and search for persons and objects, the gathering of evidence, testimony, experts, questioning people, notifying them, carrying out inspections, confiscating items, protecting victims and witnesses, amongst others<sup>26</sup>. I put the following question to you: what would a State Party do if the Court asked it to hand over a person under investigation or indictment and the State did not have the legal framework required to do this? Could the legislations of those States that had not implemented the RS comply with a request for judicial assistance, such as the freezing of property or the taking of witness statements, without implementation legislation?

---

26 See Article 93 of the RS.

Furthermore, it will not only be the States party to the RS that will have to comply with requests for cooperation, but also all non-party States, when it is a matter that has been referred by the UN Security Council, under the terms of Article 13, in the implementation of the provisions of Chapter VII. I ask the question again: what will those States that do not have implementation legislation in place do with ICC requests in this kind of situation? We would all agree that in this scenario no State could refuse to co-operate with the ICC given that it is a case ultimately of decisions derived from Chapter VII of the UN Charter, and on the basis of that argument all countries most also comply with the requests for co-operation made by the tribunals for the former Yugoslavia and Rwanda.<sup>27</sup> I ask whether you would all agree that non-party States ought to put in place implementation legislation, at the very least regarding those provisions relating to co-operation with and providing legal assistance to ALL international tribunals?

Without a doubt, the NCIHL have a duty to recommend measures to the Executive and the other state powers to ensure compliance with IHL, particularly when it comes to prosecuting and sentencing those who breach the Geneva Conventions, be it through the national justice system or through cooperation and judicial assistance with the mechanisms afforded by international law, amongst which we find the jurisdiction of the ICC and the international criminal tribunals.<sup>28</sup>

In conclusion, the NCIHL must play a more active role in making recommendations to those authorities with which they have real or formal links<sup>29</sup>, so that along with reforms of national criminal law, be they States

---

27 On the obligations to co-operate with the Tribunals for the former Yugoslavia and Rwanda and with the ICC we recommend consulting: Sluiter, Göran, *International Criminal Adjudication and the Collection of Evidence: Obligation of States*, Ed. Intersentia, School of Human Rights Research Series Volume 16, Antwerpen-Oxford-New York 2002.

28 Duties which can be drawn from reading of NCIHL mandates. To find a summary of the mandate of the majority of NCIHL, please refer to ICRC (Advisory Service on International Humanitarian Law) *National Implementation of International Humanitarian Law and related Inter-American Conventions* (Report of the Governmental Experts Meeting, San José, Costa Rica, 6<sup>th</sup> – 8<sup>th</sup> March 2001), Ed. ICRC, pages. 71-74 (T2002.047/003 08/2002). We also recommend “*International Humanitarian Law at the National Level: Impact and Role of National Committees*” (Report of a Meeting of Representatives of National Committees on International Humanitarian Law – Geneva 25<sup>th</sup> – 27<sup>th</sup> March 2002), prepared by Isabelle Küntziger and Baptiste Rolle, ICRC Advisory Service, Geneva 2003.

29 “At the legislative level, some committees included representatives of human rights, foreign affairs or legal bodies. Others – not among those taking part in the Round Table – had representatives of the judiciary, which was of great importance in ensuring follow-up to legislative initiatives and the implementation of subsequent amendments.” *Ibid*, p.72.

Party to the RS or not, they take steps to implement the issues relating to cooperation and judicial assistance with the ICC, bearing in mind above all that there is the assumption that there is no basis for refusing cooperation; this means that they have no option but to comply with it, and I refer specifically to those cases in which the Security Council invokes the jurisdiction of the ICC.

As I have already mentioned, our prime objectives include promoting the creation and development of implementation legislation in both States Party and non-party States. You can all rest assured that we at the CICC will support you. Our most frequently-used form of support is through the exchange and supply of information on the experiences of other countries and expert analysis of the matter – when available. Secondly, through our technical and financial support and setting up of academic projects and dissemination of information on relevant ICC topics, it matters not what stage at which the processes of ratification or implementation of the Statute are. In the past, we have generally carried out activities thanks to the joint efforts of the CICC, NGOs, governments, congresses and, in more than a few instances, with the ICRC. Thirdly, the CICC, through its branches, offers technical support to those persons in charge of the processes of implementation of the RS, by providing commentary on bills, which observations are presented in a formal or informal way, depending on the stage at which the draft bill is in the normative “production line”. This is what was done, for example, in Argentina, Brazil and Uruguay.<sup>30</sup>

### III

On the other hand, the CICC is very concerned at seeing that a considerable number of countries around the world have signed and even ratified bilateral agreements for the exemption of their nationals, impunity agreements – as these are dubbed by non-governmental organisations – or those erroneously called agreements relating to Article 98.2 of the RS.<sup>31</sup>

**In terms of support, and of committees wanting it, the CICC can provide you with copies of the studies conducted by our members on the legal effects of these agreements.**

### IV

There remains only for me to thank you for your attention and ask that you view the CICC as an ally in the process of the ratification of the RS and APICC, in the implementation of the RS, as well as the unrestricted defence of the jurisdiction of the ICC.

30 For more information on the observations made, please see the CICC website: <http://www.iccnw.org>

31 The various documents drafted and speeches given by NGOs and governments on impunity agreements can be found on: <http://www.iccnw.org>

## Working Groups

### **Group I: Cooperation with the International Criminal Court**

Moderator: *Raúl Eugenio Comelli* (Argentina)

Rapporteur: *Gabriel Pablo Valladares* (ICRC)

**Objective:** to examine the role of the committees in the promotion and adoption of the Rome Statute; to analyse their responsibilities in putting the Statute into practice, with a view to co-operating with the International Criminal Court; to analyse the relationship with *ad hoc* committees that deal with the national implementation of the Rome Statute.

In the questionnaire to national committees drafted for this meeting, the majority of replies were that committees had not had a part to play in the matter.

With this in mind, the following topics were discussed:

- What could have been the reasons for governments choosing to create an *ad hoc* working group for the national implementation of the Rome Statute and not resort to the national committee on IHL?
- What could be, or what have been, the contributions of national committees in the national implementation of the Rome Statute?
- Is it necessary to involve committees in this task? What are the advantages or disadvantages of involving committees in this matter?
- What could be the benefits or problems that could arise in cases where the committees carry out activities that complement those conducted by *ad hoc* working parties?
- What kind of problems do the committees face in dealing with highly specialised subjects, such as that of the International Criminal Court? Could there be strategies to overcome these problems?

## **Report:**

Various members of the working group represented countries where there exists a committee for the implementation of the International Criminal Court and a committee for the Implementation of International Humanitarian Law. There were also representatives of countries where either one or the other of the aforementioned committees existed.

The participants identified the following reasons for their States' decision to create an *ad hoc* committee:

First is the lack of a committee for the implementation of international humanitarian law or the very recent creation thereof.

The second reason is the specificity of the subject. The implementation of the Rome Statute requires that the committee for the Implementation of the Statute include experts in different branches of the law: criminal law, procedural law, human rights, international humanitarian law and other areas linked to the requirements of the Rome Statute.

Thirdly, it was emphasised that, given the political importance of the subject, of the implementation of the Rome Statute, it demanded to be dealt with by the highest echelons of State decision-making.

Fourthly, there is the issue of the greater amount of time that an *ad hoc* committee can dedicate to the implementation of the Statute.

As regards the contributions of the committees to the national implementation of the Rome Statute, the participants expressed diverse experiences in this. The majority of committees took part in the drafting of bills for the implementation of the Rome Statute through studies and bills to incorporate grave violations of IHL into ordinary and military criminal codes. It was also stated that the dissemination of the contents of the Rome Statute linked to IHL was carried out by the committees through various events, such as seminars for audiences of academics, military figures, parliamentarians, judges and other governmental authorities. Events such as these have been very important.

In Panama, meetings and discussions were held in conjunction with the ICRC. It was a task of dissemination and training, during the course of which possible obstacles were identified, such as clashes with national legislation.

In El Salvador there is an *ad hoc* committee to deal with the adoption of the Statute of the International Criminal Court. The communication that has taken place with the Committee on International Humanitarian Law is limited to the normative contents of the Court that are contrary to the constitutional norms of the country. The reason why El Salvador created the *ad hoc* committee is the highly specialized knowledge required in this area of law. The committee includes members of El Salvador's Supreme Court of Justice, especially members of the Constitutional Division; institutions that are in charge of conducting legislative studies to determine the validity of norms; and, moreover, the technical legislative structure that directly advises the President of the Republic. The fact that there is an *ad hoc* committee to deal with this issue does not preclude the work that must be carried out by the "Comité Interinstitucional para el Derecho Internacional Humanitario (CIDIH-ES)" (Inter-institutional Committee on International Humanitarian Law of El Salvador). The CIDIH-ES has prepared a reform of criminal law intended to harmonise the content of national norms with the types specified under the Rome Statute.

On the other hand, there was emphasis on the work of some committees to clarify the inadmissibility of so-called impunity agreements. The experiences of the committees within the working group regarding the efforts made precisely in explaining the inadmissibility of these agreements to the competent authorities were told, regardless of the results involved in the experiences recounted.

Suggestions were made as to the contributions that committees could make, namely that they act as channels of communication between the State authorities and the NGOs with an interest in the matter. It was noted that some NGOs have made enormous efforts to communicate with the authorities, but perhaps these had not yielded the required results in this area. Thus the committees, in comprising representatives of state entities, could act as a channel for NGOs to make themselves heard by the authorities.

The national committees for the implementation of the Statute can take steps where other State bodies are slow in their progress. Their composition is more open and flexible, by which they can act within different State structures at the same time, and almost all are able to disseminate information.

In Costa Rica a working group of legal experts was formed, which analyzed the agreements presented on the basis of Article 98 of the Rome Statute, but it concluded that these were incompatible with the very nature of the Statute.

The position of Costa Rica is one of supporting the Court, which has one female judge of Costa Rican nationality, who was appointed thanks to the support of the Republic of Panama.

In Colombia's experience, the issue of public opinion is very important in helping the work of the Committees. If the work remains in the technical sphere, in legal experience, results are not improved because the technical experts have no means of building links with those who make policy decisions and affect them in the same way as public opinion does. It is very important to place the issue on the national agenda, to stress the values of international justice and the importance of condemning war crimes.

The national committees for the implementation of IHL and the *ad hoc* committees on the International Criminal Court are of a complementary nature. The shared interests of these committees were highlighted. In those cases where there was no *ad hoc* committee on the Court, there was mention of the possibility that the committee for the implementation of IHL could deal directly with the issue. An advantage of this is that the committees generally have a wider range of competences compared to those that would have been available for the purposes of implementing the Statute. committees for the implementation of the Statute generally focus on the drafting of a normative proposal, while the committees for the implementation of IHL have greater responsibilities, such as the tasks of dissemination of information.

The fact that the committees take on complementary activities does not constitute an overtaking of responsibilities, but it is rather considered as support to the enforcement of regulations.

As regards the problems faced by the committees in dealing with highly specialized subjects like that of the International Criminal Court, it was pointed out that work within the committee could eventually require a level of specific advice. This advice could be offered by the ICRC, by NGOs with an interest in the implementation of the Statute, or by specialist academics.

In the case of El Salvador, a problem that had to be faced was the lack of personnel specialized in the subject; this was overcome by studying and, later on, applying this knowledge. Nevertheless, the need for specialist advice was recognized. There was access to ICRC documentation and other aspects of the experience of other national committees on IHL; owing to the nature of these regulations, there is a requirement for advice and adequate funding.

## **Group II: Protection of cultural property in case of armed conflict**

Moderator: *Claudia Herrera* (El Salvador)

Rapporteur: *Carlos Hugo Ávila* (CICR)

**Objectives:** to examine the role of committees in the protection of cultural property; to analyse its competences and responsibilities in this field, particularly with respect to legal measures and practices, as well as matters of dissemination; to follow up the Regional Meeting of Experts “Protecting cultural property in case of armed conflict”, held in Lima, May 13<sup>th</sup>-14<sup>th</sup>, 2002.

In the questionnaire to national committees drafted for this meeting, the majority of replies showed a great deal of activity in this area, however, some committees still find themselves working on this issue while for others the opposite has happened; it was then advised that the following questions be discussed:

- What are the committees’ competences and responsibilities in the field of the protection of cultural property?
- Amongst the measures of implementation relating to this matter (be they legislative, practical, educational), which would be implemented effectively by the committees?
- Which measures presented the greatest difficulty in their implementation? Why? What factors facilitated, delayed or prevented the work of the committees in this area?
- What is the relationship between the committees and other bodies, whether belonging to the State or not, in charge of the protection of cultural property in case of armed conflict?
- Could the committees have a role in the drafting of the reports dealing with the state of implementation of the 1954 Hague Convention?
- How could the committees in each of their respective countries promote the conclusions of the Meeting at Lima?
- How can the committees be involved in following up these conclusions?



- Have there been exchanges between the experts who attended that meeting and the representatives of the committees on IHL?

**Report:**

In principle, it was stated that, independently of the current state of the 1954 Convention for the protection of cultural property in case of armed conflict and its Protocols, the work of the committees has been decisive in promoting the ratification of those instruments.

Additionally, it was noted that some committees had made contributions to the implementation of the Convention, such as the punishment of offences against cultural property and specialised laws relating to cultural property.

The committees deemed important the links with governmental bodies dealing with the protection of cultural heritage, either by including them in the committee as members or as guest experts.

It is also pointed out that it is important that the committees establish links with local authorities and civic organizations, with the aim of developing implementation activities for the protection and signposting of cultural property.

In relation to resources available for implementation (signposting, publications, posters, dissemination), it was considered important to forge links between the national committees of each country and UNESCO, with the aim of managing projects with that international organisation.

The case of El Salvador was highlighted: action there has been decisive in beginning the signposting of cultural property. It is important to point out the management carried out prior to UNESCO's involvement for the development of a project in this field. Additionally, that committee has worked with local authorities and "casas de la cultura" (arts centers) in different communities in this field.

As regards activities in the dissemination and promotion of the Convention, it was deemed necessary that the committees promote these with the aim of raising the awareness of military and cultural authorities, as well as the population generally, on the need to preserve and protect cultural property in case of armed conflict, by means of information days and public awareness campaigns.

It was noted that while all countries have taken steps in the protection of cultural property (registers; inventories; conservation; legislation), the protection of this property has not been binding on the context of armed conflict; thus, this is a task that the national committee could undertake again.

As regards the drafting of the reports provided for under Article 26 of the Convention, it was agreed that this work ought to be carried out by the relevant authorities in each country, but the committees should monitor the content and presentation of those reports.

It was considered to be worthwhile to promote the exchange of experience between committees regarding the implementation of these instruments; this would be done with the support of the ICRC. The meeting that was held at the beginning of 2003 between the committees of Guatemala and El Salvador, in Guatemala City was mentioned as example of this type of activities and it was pointed out that meeting provided the opportunity to share the experience in El Salvador.

### **Group III: Treaties on weapons**

Moderator: *Susan Johnson* (Canada)

Rapporteur: *Marisela Silva Chau* (ICRC)

**Objective:** examine the role of the committees with respect to participation and implementation of treaties on weapons; examine methods which might facilitate executing specialized work in that field; analyze relations with *ad hoc* committees dealing with the implementation of weapons treaties.

In the questionnaire to the national committees, some of them mentioned to have initiated studies related to treaties on weapons. However, often no concrete follow up was given to those studies so that their impact on the States' decisions to ratify a particular treaty is largely unknown. With respect to repression of violations, the committee seems to be more active in the sense that several of them contributed to the preparation of penal legislation. With this in mind, the following topics were discussed:

- What is or could be the role of the committees with respect to the implementation of treaties related to weapons? How could committees effectively contribute to State obligations regarding weapons treaties?

- Are there any other State organs which address issues related to weapons? If yes, how do they relate to the committee?
- How are questions related to the legality of certain weapons addressed in your State? Is there a specific State organ in charge of such matters? What is or could be the role of the committees in these questions?

**Report:**

In relation to the first question on the role of committees regarding the implementation of treaties on weapons, it was said that they could drive or help States, in accordance with their mandates, to increase their knowledge and dissemination of dispositions related to those treaties. Knowledge and dissemination should be addressed to the authorities concerned by those topics. This contribution seems to be the first step related to the implementation of these treaties.

There are several processes to progressively develop international law in relation to treaties on weapons. Therefore, it is necessary to have concrete positions from States. committees can contribute with specific advice to the authorities and their States.

Thus, sub-regional meetings among committees (with an specific agenda on the matter) should become important spaces to determine the national committees composition.

The implementation of treaties on weapons needs legal support and monitoring resources. International cooperation is necessary to consolidate this process.

In carrying out their work, IHL national committees should consider specific particularities of the regional context. *On one side*, they need to take into account that regional committees at this time -and according to the IHL international duties from their States- have an almost complete agenda. *On the other side*, accordingly to the perspective of approaching new subjects, committees should first overcome their structural deficiencies related to human and financial resources.

Committees have agendas organized by themes accordingly to their priority; right now, the main subjects are related to war crimes (implementation of the 1998 Rome Statute) and the adoption of national measures regarding the protection of cultural property during an armed conflict.

It would be ideal if committees from the region were able to influence an integral implementation of treaties on weapons –besides other existing proposals, elaborated by some of them, on matters related to antipersonnel mines; nevertheless, it seems to be difficult to accomplish such a high expectation given the situation faced by such committees in the region and also, given the situation faced by their own States.

When subjects become more technical, committees' lack of resources is also more evident.

Nevertheless, on that issue, committees are advised to ask for help from the ICRC or other competent institutions, to get more information on subjects specifically related to weapon treaties, the current process of negotiation and the mechanisms of implementation.

Regarding the existence of other state organs able to address issues on the matter, it was said that in the countries of this region, it is possible to identify, *on the one side*, ad hoc committees established in order to approach –in operational terms- matters about implementation of the weapon treaties and; *on the other side*, specific directives from the defense ministries responsible on the matter.

Thus, it is necessary to give priority to cooperation mechanisms between IHL national committees and other organizations responsible –specifically- of treaties on weapons. It is important to underline that some of the members of IHL national committees are also part of other relevant committees which deal with relevant issues to IHL; therefore, we can see an intrinsic interrelation.

To keep everyone informed, it is important and necessary to exchange information between authorities on these matters. It is even more important when the authorities are part of IHL national committees.

In relation to the treatment of specific topics like the implementation of treaties on weapons, committees become places to exchange information; besides, they also become an ideal space to elaborate concrete proposals, i.e. mechanisms for complying with the treaties.

Finally, regarding the query on how questions related to the legality of certain weapons are being addressed in the States represented, it is necessary to mention that it was not approached in detail. At the moment it seems that IHL national committees do not have specific knowledge on the matter. Consequently, to define their role about the issue becomes more difficult.

PAGINA BLANCA

**TOPIC III:**

**INTERNATIONAL CONFERENCE OF THE RED CROSS  
AND THE RED CRESCENT (Geneva, December 2003)**

PAGINA BLANCA

## **Introduction to the topic**

*María Teresa Dutli*

Head, Advisory Service on International Humanitarian Law,

Besides what has been said, I would like to refer to two important elements of the next International Conference. This first one is about the workshops concerning specific issues that will take place during the event and the second is about the promises that the Conference participants can make.

Before getting into those issues, I would like to take this opportunity to make reference to the importance of forming an adequate delegation that would follow-up the debates and works during the Conference.

Within the framework of the Conference, and at the request of its members, we should see the organization of eleven workshops that will take place during the afternoons. The members of the Conference who have asked that those workshops be held are those responsible for their organization and the issues those workshops cover are closely related to those covered in the Conference Agenda. Therefore, it is interesting and important that members of the different delegations participate in those workshops, if possible. The issues covered in the workshops are as follows: International Humanitarian Law and the challenges that contemporary armed conflicts present; Children and armed conflicts: to protect and reconstruct young lives; The National Societies and cooperation between civilians and military: questions, challenges, opportunities and perspectives; Biotechnology, weapons and humanity; Handheld arms and human security: humanitarian consequences and possibilities of action; Health and AIDS - prevention, taking charge and treatments, rejection and discrimination – four years of struggle in the Red Cross and the Red Crescent; National implementation of the Statute of the International Criminal Court; Reduction of disaster risks: the role of National Red Cross and Red Crescent Societies and relations that are worth establishing with governments and other key actors; participation of the civil society in international partnerships in favour of health, associating public and private sectors; concomitants in disasters: preparation of National Societies for conflict situations and natural catastrophes – convergence points and differences - , and the operational challenges for the carrying out of humanitarian activities in a changing world. Participation in those workshops is open to anyone who participates in the Conference and it is not necessary to be enrolled beforehand. The objective of these workshops, organized for the second time within the framework of an International Red Cross and Red Crescent Conference is to open up the exchange of ideas about issues of importance for the



Movement. The discussions within the framework of each workshop will be summed up in a report which will be presented to the Plenary in the closing ceremony of the Conference.

Each conference participant will have the chance to make a promise. The promises can be made individually or as a group. The promises can be made before the Conference, registering them in a computer or during the Conference. There will be a special stand open especially for you to write and register the promises during the Conference. It is fitting to remind you that this system of promises had already been used in the previous International Conference and many of the promises made by the States referred to their participation in international humanitarian law treaties, to the adoption of national laws for the implementation of humanitarian law and/or the creation of national committees for the implementation of humanitarian law. With respect to them, let me point to the document with the promises made by the States of the region, distributed in this meeting, that indicates the compliance level of those promises up to now. It would be significant if the national committees were able to verify that the respective authorities have done the follow-up to the questionnaire regarding this issue that they received, to show that the promises made in the 27<sup>th</sup> Conference have been carried out or on the contrary, to see what one can do from now on until the next conference; as well as to perform a proactive role before the authorities in relation to promises that concern them more particularly. The last role seems especially significant for us, as it contributes to making those promises into true commitments; written in a form that implies concrete actions and achievements.

To this day there are four written promises registered in the documentation that was sent to the Conference participants. Of the four promises, two are from the International Federation of National Societies, one from the ICRC and another from the British Red Cross. Regarding the latter, their promise refers to the promotion and ratification of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols, as well as the commitment to adopt measures for the national implementation of those treaties. That promise, aimed at establishing more active dynamics in the field of protecting cultural property in case of armed conflict, commemorates the 50<sup>th</sup> anniversary of the adoption of the 1954 Hague Convention, that will take place in 2004, and for which a series of events will be organized. The issue covered, the anniversary that will be celebrated and the importance of paying better attention to the protection of cultural property in armed conflicts are especially relevant themes in modern-day international context. That is why it is important to promote and assure the greatest participation possible in the fulfillment of that promise, so that cultural property can

be protected in all conflicts, since it constitutes the heritage of all peoples and therefore, that of humanity.

The promise of the ICRC refers to missing persons and the need to prevent the phenomenon of the disappearance of persons and take necessary preventive and healing measures to fight against this phenomenon, whether through national legislation or through the development of international law. I would like to say two things about the issue of missing persons in situations of armed conflict and internal violence and the rights of their families. As you know, there was an ICRC project that concluded with an international conference of governmental and non-governmental experts, in February of this year in Geneva that some of you attended. The international conference ended with a series of about eleven seminars and workshops that were held on different issues relating to preventing the disappearance of persons and the rights of their families. At that Conference, a document with recommendations and conclusions based on a debate carried out by a working group within the Conference was adopted; this document should always be read together with the President's report of that working group. You have a copy of these recommendations and conclusions in your folders. Follow-up at the regional level was given through the Lima Conference that took place in May of this year where the Executive Summary was also adopted, a document that has been made available to all of you. Both meetings adopted a series of recommendations that should receive follow-up by the national committees for their incorporation in the national legislations and regulations. I especially refer to the need to adopt measures to ensure the right of families to receive information regarding the search for missing persons, the need to establish documents of identity for the members of armed forces and other protected personnel, the possibility that all persons susceptible to taking risks may have identification documents, the establishment of national information offices which mandate may be extended to cover situations that go above and beyond international armed conflicts, and that the rules regulating the detention of persons take into account minimum international standards and regulations. Resolving problems caused by disappearances and preventing them is a key issue of the work the ICRC will be carrying out in the next four years. Many of the actions that should be taken pertain to the legislation level and internal regulations of the States and the follow-up of this issue carried out through the national committees that you represent will be of uttermost importance.

The other issue for the next International Conference is related to weapons, whether it be to reinforce the protection of civilians against the effects and indiscriminate employment of weapons or whether it be to reinforce the protection of the combatants against certain forms of wounding or killing, through

the control of development, proliferation and employment of certain weapons. They are within the framework of the issues that are the object of consideration by the Agenda for humanitarian action for sufferings caused by anti-personnel mines, the objective being to reduce those sufferings caused by weapons that cause excessive traumatic effects or that cause indiscriminate effects, the need to reduce the abusive employment of weapons, as well as the need to study the compatibility of new weapons with the standards and principles of international humanitarian law.

The final document of the Conference covers other concerns of the Movement such as natural disasters and hazard reduction, diseases and their impact and risks; bias and discrimination related to AIDS. The document will be debated before its adoption as part of the Agenda for humanitarian action in the framework of the International Conference.

To assure a suitable participation in the debates and treatment of issues during the International Conference, the committees may carry out an important role in preparing and advising members of different delegations that will attend the conference.

Thank you very much.

## **Introduction to the topic**

***Gabriel Pablo Valladares***

Legal Advisor ICRC – Buenos Aires

Dunant's gesture of attending to the wounded in Solferino bears the germ of an idea about what the International Movement of the Red Cross and Red Crescent is: to bring relief and protection to people in need.

The movement in itself has three components: the International Committee of the Red Cross (ICRC) in the field of protection and assistance for victims of armed conflicts and of internal violence; the Red Cross and the Red Crescent National Societies, that are auxiliaries to the authorities in the humanitarian field; and the International Federation of National Societies who basically works in supporting the national societies strengthen their programs regarding vulnerable persons as well as coordinating international aid actions of the International Red Cross and Red Crescent Movement, helping out with natural or technological disasters, as well as assisting refugees.

The three components of the movement base their activities on seven fundamental principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality. Each one of these components is independent from the other. However, for long term planning, the Movement holds a meeting approximately every four years under the name of the International Conference of the Red Cross and the Red Crescent, where 191 States parties to the 1949 Geneva Conventions also participate. The International Conference is a humanitarian forum of utmost importance in the international field, where not only the interests of the movement are discussed, but also the interests of the States in humanitarian areas, and where strategies for the next four years are being determined.

Between December 2 - 6, 2003, the 28th International Conference of the Red Cross and Red Crescent will take place, in the city of Geneva. The International Conference is the supreme deliberative body. Representatives of the National Societies, the ICRC and the Federation, who work on issues of concern to the Movement will present those at the International Conference.

A mandating body oversees the endeavors undertaken between conferences. This organ, called Standing Commission, is composed of five members of National Societies, eligible by consensus during the International Conference; two representatives of the ICRC, one necessarily has to be the President of the

institution; the President or the General Secretary of the International Federation of the Red Cross and the Red Crescent Societies, and another representative of the Federation.

The theme of the 28th International Conference of the Red Cross and the Red Crescent is the protection of human dignity. To achieve this, the first important action that we should take is to further the observance of international humanitarian law.

The other way in which we will attempt to reach the Conference objective is to reduce violence, discrimination and vulnerability. Throughout the Conference there will be a series of debates and workshops. The workshops are not necessarily presented by members of the Movement; governments may also take that role.

The ten workshops that will be carried out are:

- 1) International Humanitarian Law and Challenges in Contemporary Armed Conflicts
- 2) Children and Armed Conflicts, Protecting and Rebuilding Young Lives;
- 3) Participation of Civil Society in Public and Private International Sanitary Associations, Challenges and Lessons;
- 4) National Societies and Civic Military Cooperation, Questions, Challenges, Opportunities and Prospects;
- 5) Biotechnology, Weapons and Humanity;
- 6) Small Arms and Human Security: Humanitarian Impacts and Options for Action;
- 7) Where disasters meet: similarities and distinct factors involved in National Society preparedness to respond in contexts affected by both conflict and “natural” disasters;
- 8) The matter of Health and HIV-AIDS;
- 9) Implementation on the National Level of the Rome Statute, and
- 10) The role of Red Cross & Red Crescent National Societies in disaster risk reduction and the relevant links with governments and other key actors

With all these workshops and debates we will attempt to fulfill partially the Movement’s mandate and to provide the States with the opportunity to join us in our plans.

## Working groups

### **Group I: Reaffirmation of IHL**

Moderator: *María Alicia Terrazas* (Bolivia)

Rapporteur: *Gabriel Pablo Valladares* (ICRC)

**Objective:** Evaluate the need to reaffirm IHL; identify causes that could weaken IHL; determine strategies the national committees develop to strengthen respect for IHL.

The following questions have been submitted for discussion:

- What could be the role of the committees in the discussion about reaffirmation and development of IHL rules?
- The committees have committed themselves to work in favor of the participation in treaties and their implementation on the national level. They fulfill a role in promoting respect for IHL. How is that role specifically carried out? In other words, in what way committees promote, work on and have control over the implementation of those treaties?
- What is the follow-up that the States generally give to the initiatives of the committees?
- It has been confirmed that the lack of respect for IHL is the result of the absence of national implementation measures. Facing the inactivity of the States, are we able to say that the existence of a committee could impel activities on the part of authorities?
- What are the means an IHL committee has to influence promoting respect for IHL?
- How can this objective be reached? Can specific obstacles be identified?
- If these obstacles are the result of the lack of political will, how could the committees counteract this?

**Report:**

The role to carry out the reaffirmation of IHL rules comprises the same objectives for which the national implementation committees were created. The national committees are formed for the purpose of supporting the States in all matters related to IHL. They should recommend the State any measure that allows IHL implementation and propose draft bills that allow the carrying out of an agreement on the internal level. The committees are headed toward giving support to all state institutions.

If the committees faithfully carry out their mandate, IHL is reaffirmed. Due to the nature of the standards, there are no priority matters in the public agenda. It is the responsibility of each committee to remind the State of its obligations to include again some matters in the agenda. The committees should get strengthened and complete matters that are pending.

Regarding the participation in IHL treaties, in general, an agreement is signed by the country and sent to the executing institution and it remains there. Sometimes the committees cannot count on the resources and the means to follow-up and obtain the execution of the treaties.

There are three large areas through which committees implement treaties:

- A- A task to review IHL treaties and relevant instruments. To identify if the State is part of all the treaties and determine why they are not part of some, locate the reasons and make the appropriate enquiries.
- B- Analyze how the acquired international commitments are implemented, in other words, what kind of coordination exists among the different organs concerned with the ratification and adherence to international instruments.
- C- Dissemination can be divided into three subgroups: The first level of dissemination would be to actors who are, or could be, familiar with IHL. That includes universities, government, State officers, etc. The second level is the main destinaries of humanitarian law standards and therefore of its dissemination and education: the Armed Forces and Security Forces. The ICRC is concerned about how this education is being developed. A third and general area of dissemination regards the contact of the ICRC with the Ministries of Education.

Regarding the follow-up role, the committees will have the task of maintaining permanent communication with the authorities to remind them of the commitments they should fulfill with relation to the agreements they are part of. To do this, they should take full advantage of the representatives in each committee, of each state agency that they represent because each individual has a different way of reaching the authorities depending on their area of expertise. For example, when a draft bill is in Congress, it is likely that some of the ministries have an easier time getting through to the representatives of Congress to impel them toward that particular project. In other words, establishing informal systems, taking full advantage of the integration of the committee is a definite advantage.

The eventual failure in some countries in implementing IHL is partly due to the lack of national measures. Given that the committees clearly have within their objectives, the purpose of furthering the adoption of national implementation measures, it is evident that they have a protagonist role. The participants to the workshops unanimously recognized that the best resource committees have is their own members, depending on the level of commitment they have. They also pointed out that a big disadvantage is the lack of economic resources to finance their activities. National implementation measures should be geared toward reaffirming international law, and the means the committee has to carry out this task often depends on the resources of their members. The results will depend on the level of commitment that each committee and its members have.

Countries that do not have a national committee for IHL implementation should have their Ministries of Foreign Affairs form working groups to take care of the issues related to IHL.

The participants agreed that there are obstacles: the lack of resources, lack of comprehension on the part of authorities in high positions regarding issues that committees deal with; the lack of sufficient time to develop their activities since their members are engaged with other duties also, etc. If there is no political will it is not possible to move forward. However, they pointed out that the mere existence of a national committee is a sign that there is indeed political will for these issues in that State.

The Ministries of Foreign Affairs are the appropriate institutions to further the political will since IHL is part of international law.



## **Group II: Missing Persons**

Moderator: *Lanzeth Ludeña* (Perú)

Rapporteur: *Marisela Silva Chau* (ICRC)

**Objective:** Examine the role the national committees could carry out to prevent the disappearance of people, particularly through measures of national implementation of IHL and identify national strategies to clarify the fate of those reported missing in connection with an armed conflict or a situation of internal violence; the follow-up of the *International Conference of Governmental and Non-Governmental Experts on the Problem of Missing Persons in connection to Armed Conflicts or Internal Violence*, Geneva, February 19 – 21, 2003; follow-up of the *Regional Conference on Missing Persons in connection to an Armed Conflict or a situation of International Violence*, Lima, May 28 – 30, 2003.

In this regard, the questions for discussion were the following:

- Both the International Conference in Geneva and the Regional Conference in Lima, helped identify concrete actions that the States should carry out. These actions include prevention, clarification of the fate of missing persons, the dealing with mortal remains and family assistance.
- Were the committees involved in assisting participants to prepare for those conferences? What was or could have been the contribution of the committees?
- How were the committees informed of the results of those conferences? Was a reflection made on the part of the committees regarding the problem of missing persons?
- Today the problem of missing persons is a burning issue because it affects hundreds of thousands of persons all over the world, including the Americas. In many countries there are specific systems in place to deal with this issue and one can imagine the committees could take an active role in this issue. In what way could they carry it out? How could they coordinate with existing efforts? How could the committees strengthen those efforts?

- Complying with the role of each committee in its own country, should the committees be limited to preventive measures or could they also contribute in turn, to search efforts, dealing with mortal remains, family assistance, etc.?

### **Report:**

With respect to involvement of the committees in assisting participants to prepare for the above-mentioned conferences, it was established that the committees were not involved, which means that other institutions and sectors (through specific instances) have been in charge. A reference has been made to ad hoc commissions, Attorney General's Offices, public ministries, ombudsmen, and other institutions.

Regarding the question of what could have been the contribution of the committees in assisting participants to prepare for the conference, the conclusion reached was that an 'integral perspective' on the problem of missing persons and their families in connection with an armed conflict or situation of internal violence is relatively recent; it would be difficult to foresee the contribution that the committees that have remained distant from that problem would have been able to offer.

Asking about whether the committees were informed about those conferences, in what way, and if there was a discussion in the committees, it was reported that the relevant authorities neglected to inform the committees about those conferences.

It is worth mentioning, that even though the committees did not participate in the preparation or in the development of the conferences of Geneva and Lima, the representatives of the committees shared experiences from their own countries relating to missing persons and, in some cases, indicated that officials from their countries participated in said conferences (in particular, officials of *ad hoc* commissions, human rights general attorney's office, ombudsmen, among other institutions).

Regarding the contribution or role the national IHL committees could play in the solution to the problem of missing persons, it was brought up that the problem of missing persons as a consequence of an armed conflict or a situation of internal violence is not the exclusive competence of international humanitarian law but that it is also related to international human rights law; and some representatives declared that this issue could exceed the mandate of their own committees.

Having analyzed the issues dealt with in the Geneva and Lima conferences regarding fundamental aspects to take into account about the problem of missing persons and their families; particularly, the four themes dealt with at the Lima Conference: *prevention, clarification, human remains and family support*, it was determined that national committees on IHL could make contributions regarding the adoption of *measures for preventing people from disappearing in connection to armed conflict or internal violence*.

The representatives of the committees consider the following to be important: a) to be informed in detail about the results and recommendations of the Geneva and Lima conferences; b) identify from within the committees the results and recommendations which they could follow-up on; and c) based on their mandate, focus the work of the committees on the adoption of preventive measures related to IHL in this field.

*Finally*, after identifying those issues of IHL, the representatives declared that the committees could take some issues (in particular, those that are related strictly to IHL) to the relevant entities or sectors of their own countries.

### **Group III: Participation in the 28th International Conference**

Moderator: *Myrian Ruth Pinto* (Guatemala)

Rapporteur: *Carlos Hugo Ávila* (ICRC)

**Objective:** Examine strategies and actions for preparing for the 28th International Conference of the Red Cross and the Red Crescent; follow-up on the promises of the 27th International Conference; identify priorities that could be subject to promises on the part of the State and/or the Red Cross National Societies.

In the questionnaire to the national committees drawn up for this meeting, it was evident that there are few cases in which the fulfillment of the promises made regarding the 28th Conference are systematically followed up. Examples of some of the promises where there was a systematic follow-up concern the area of treaties, such as the 1954 Convention, the 1980 Convention, and legislation related to the Rome Statute as well as the marking of cultural property.

The questions submitted for discussion were:

- What has been the role of the committees in following up on the promises made by their governments in the 27th International Conference? What has their role been in the carrying out of their promises? Can we say that the committees have had an instrumental character so that the promises could be carried out?
- With respect to the 28th International Conference, what is the role of the committees concerning the participation of governments? Do the governments tend to consult the committees about proposals of possible promises?
- Considering that the committees are composed of representatives of the governments as well as Red Cross National Societies, it is possible that these coordinate the initiatives of both entities. In your own country, is this fact real and desirable?
- Is there some type of enquiry by the States to the committees with relation to potential promises to carry out?
- How is the role of the committees anticipated about the carrying out of the promises?
- What could the content of possible promises from your State be in the 28th International Conference?

### **Report:**

Regarding this issue, the majority of the participants agreed that the role of the committees has been confined to exhort the governments to fulfill their promises and to give a follow-up. Others think that their work has been decisive regarding the fulfillment of those promises.

Besides, some declared, that they have even approached National Red Cross Societies to exhort them to fulfill their promises.

They pointed out that in some cases the committees go above and beyond proposing to governments to make certain promises. Some declared that they consulted the ICRC and national societies to obtain suggestions about those promises.

Others explained the process for the official drawing up of the promises. The promises come first from national committees, then they are transferred to the Ministries of Foreign Affairs and they subsequently send them to the executive organs.

In those countries where there are no committees, the Ministries of Foreign Affairs and Justice are normally those who decide which promises are presented to the Government.

It is considered that the duty of the committees as coordinating entities of the governments and the national societies of the Red Cross is an idea that can bring good results. Regarding this, it is recognized that it is necessary to have good cooperation, communication and respect among all the parties, and of the areas of their respective areas of competence.

One of the participants indicated that his committee is already planning the participation of one of its members as part of the governmental delegation that will attend the 28th Conference. It was suggested that the national committees should be invited to be part of the official delegation of each government.

Besides, it was emphasized that the International Movement of the Red Cross should exhort the governments to include a member of the national committees on IHL within the official delegations.

Approaching international organisms about potential financing for the participation of members of the committees was considered necessary.

Regarding the role of the committees in the carrying out of the promises, it was pointed out that these could motivate and recommend the government to fulfill their promises and in addition, serve as key facilitators and channels of communication among different State entities, facilitating the carrying out of those promises on the part of the government.

Regarding the issues that could be considered in different countries, the following was pointed out:

- The adherence to the Rome Statute
- The non-subscription of agreements concerning Article 98 of the Rome Statute

- Aspects related to the issue of missing persons
- IHL dissemination in elementary and high schools
- Research on the compatibility between IHL and national legislations
- The signposting of cultural property, in agreement with the 1954 Convention and its Protocols
- The assignment of funds on the part of governments for the operation of the committees
- The creation of a system which in relation to Article 36 of the Additional Protocol I ensures that whatever weapon that is manufactured or used shall not cause unnecessary sufferings.
- Make promises related to respect for IHL, human rights and the fight against terrorism.

Finally, it was mentioned that at the time of carrying out this meeting, there had been no meetings for coordinating or assisting delegations that will represent the States in the International Conference.

PAGINA BLANCA

## **CONCLUSIONS AND RECOMMENDATIONS**



PAGINA BLANCA

***María Teresa Dutli***

Head of the Advisory Service of International Humanitarian Law, ICRC

This meeting has come to its end and it is time to draw conclusions and make recommendations as well as follow up so many interesting discussions. Firstly, I would like to remind you that our intention was not to propose the adoption of a formal text, which is why no document has been prepared for distribution. Our purpose as organizers is to present a summary of the debates and to highlight certain recommendations that may be implemented later on. I do not wish to give an exhaustive recapitulation of the presentations made by the chairmen; these will be included in the report of this meeting. I wish only to highlight a few issues that we consider particularly relevant and that merit, in our opinion, some concrete follow-up action.

First, I would like to take this opportunity to emphasize the important work that has been carried out in the field of national implementation and the progress that has been made. We at the ICRC Advisory Service think it particularly gratifying to acknowledge such important progress.

As regards the objectives established for this meeting, we think that they have been achieved. We hope that such important progress, as you indicated, will be models for other national committees to delve deeper into the same topics.

The discussions regarding national committees have emphasized the importance of involving parliaments in the work of national committees. Indeed, many national measures of implementation require appropriate legislation. Another recommendation worth making is to take a closer look at providing the committees with technical secretariats that could follow up and monitor the decisions taken by the national committees. Some concrete examples were presented throughout the discussions. Very often the lack of resources was mentioned as a limitation to progress. However, it was also mentioned, and actually demonstrated, that financial constraints are not obstacles that cannot be overcome. But an appropriate budget sure does make work easier, it was recommended to have a budget assigned to the committees. All participants considered that having regional or universal meetings or even bilateral meetings was most constructive. But organizing and participating in meetings require resources.

The work of the national committees covers a large spectrum of very important activities. They include the ratification and implementation of the Rome Statute, the protection of cultural property in situations of armed conflicts or other situations of internal violence, the problem of missing persons and the rights of their families to know their whereabouts, treaties related to weapons, and many more. Covering such a wide spectrum of activities requires specialization in many fields of international humanitarian law. It is difficult for the members of the national committees to work on all those issues in depth. Therefore, there is a need to count on experts for certain subjects. One of the characteristics of IHL committees is precisely the fact that they deal with such a great variety of issues, in contrast with other committees established to tackle one specific topic, e.g. the implementation of the Rome Statute. The diversification of issues entails certain problems, but has the advantage of providing a broad vision of progress accomplished, and the needs which still might exist in different areas of implementation of humanitarian law. Facing the difficulty of having specialized knowledge to deal with certain issues, the working groups encouraged the establishment of networks or links with specific organizations and external experts. It is also important to maintain close cooperation among all the national organizations involved in the implementation of humanitarian law treaties. Combining efforts and exchanging ideas and experiences is without doubt useful, and necessary, to fully benefit from the information and experience available.

The suggestion was made to establish specific strategies for every issue the national committee deals with. Concerting national strategies, together with the exchange of ideas and experiences certainly favours progress within regions, and seems to be an objective worthwhile pursuing.

International humanitarian law is not static. On the contrary, humanitarian law evolves continually and the work and priorities of national committees should in turn adapt. Among the new issues that are the subject of investigation and proposals on the part of the national committees, I would like to refer to the problem of missing persons and the right of their families to be informed. It is true that the problem of missing persons extends far beyond the implementation of international humanitarian law. It is important to start a coordinated process to be able to prevent persons from disappearing, and the dreadful consequences this causes to the families. Again, it is imperative to adopt all measures required already in times of peace.

It would be impossible to end this short summary without referring to the 28th International Conference of the Red Cross and the Red Crescent, which will be held in Geneva at the beginning of December of this year. National committees can play a key role within their own States to ensure participation, and see to the fulfillment of the promises made at the previous Conference with respect to IHL implementation.

This short summary is not meant to be exhaustive, and I am sure that you will have many more ideas to add to the proposals made in the working groups. However, given the fact that it is not possible to summarize all that was said in those extremely rich discussions, I will limit myself to some brief points. I would however like to emphasize the significant committed shown throughout the debates.

As regards following up this meeting, allow me to suggest that we prepare a written report of the comments and debates will be published and distributed to all participants as well as all national committees in the region. We will also continue to give technical assistance to the different national committees and we will maintain a direct relationship with you. A more concrete monitoring will depend on the on-going work of each one of the national committees or of the States that you represent. On this point, I would like to reiterate the availability of the ICRC Advisory Service to provide all the support you might request.

From our point of view, this meeting has more than achieved its aims and we hope to be able to continue having this kind of meeting. We consider it to be of the utmost importance to sustain and intensify the dialogue among all those involved in the national implementation of international humanitarian law.

PB

**CLOSING  
CEREMONY**



***Jorge García-González***

Head of the Technical Secretariat for Legal Cooperation Mechanisms  
Secretariat for Legal Affairs of the General Secretariat  
Organization of American States

On behalf of the General Secretariat of the Organization of American States, I would like to begin this part of our meeting by reaffirming what many of you have already stated, that is to express our gratitude to a number of individuals and institutions.

First of all, our special thanks of course go to Guatemala and its government, for having received us so warmly at this meeting and in this great city, in this historic site where I believe we have felt very honoured to be. Sincerely, we express our gratitude and we ask the governmental representative to convey that to the Ministry for Foreign Affairs and the Government.

On behalf of our organization, I would also like to express our sincere appreciation to the International Committee of the Red Cross. I believe that without the ICRC, it would have been practically impossible to hold this meeting; they have been crucial to the initiative, the organization, and support as well as the financing of this event. We would also like to express our appreciation to all their officers, in particular Anton Camen of the ICRC, who has dedicated countless hours of work in the organization of this event; the officers of the ICRC based in Mexico who have been working for a long time on the organization of this event, preparing the necessary documents, ensuring that the invitations reach their destinataires and coordinating whatever was related to our participation. Of course, our sincere gratitude goes to Maria Teresa, not only for her participation, but also because, as we know, she has been behind everything related to the planning and co-ordination of this meeting. In addition, we would like to acknowledge the remaining officers of the ICRC, the legal advisers as well as the administrative employees who have supported the staging of this meeting.

Our thanks go to the Canadian government, of course, not only now but also for all the support generously provided over the years. Within the framework of our organization, as well as in other settings, they have demonstrated tremendous leadership ability on every issue related to the advancement of, and respect for, international humanitarian law. They have especially provided support on this occasion in order to make this meeting possible today.



We would also like to thank our interpreters who have been working tirelessly, as you have seen. In some cases we have made them suffer because, as you all know, some of us have spoken very quickly. However, on behalf of all of us here, I truly believe that they have accomplished their task outstandingly.

I do not wish to elaborate further; I would only add two or three points. The first is that I agree with what Maria Teresa said here: that the goals set have been achieved, not only formally, but they have also surpassed the expectations we all had for the carrying out of this meeting. I believe that, by and large, this is due to something that was expressed at the beginning of this meeting: we have a group of highly qualified individuals, people who have been working effectively on these issues in every one of our countries, whose efforts have been reflected in the full sessions and working groups. I believe that all of us can feel very satisfied with the outcome of this meeting.

As has already been established, this meeting is part of a process of mutual cooperation between the International Committee of the Red Cross and the Organization of American States (in our case by express mandate of our highest political organization, the General Assembly) through an initial agreement between the International Committee of the Red Cross and the General Secretary of the OAS in 1994. Joint activities between the Committee and the Organization have been held since that time, among them the seminar that was held on the fiftieth anniversary of the Geneva Conventions, the Governmental Experts' Meeting in Costa Rica in 2001, and, to some degree, the special sessions that have been held within the framework of the Organization through the Committee on Juridical and Political Affairs.

We sincerely hope that this meeting will be a positive step in that process. In fact, some of you have already mentioned certain issues you would like to address in future meetings. We have informally spoken with the ICRC about possible activities that could be carried out between the Organization of American States and the ICRC, and we hope the Secretary can continue contributing to this effort - which is an effort of all States in the Americas and particularly of yours - in order to advance the respect for international humanitarian law in the Americas.

This is perhaps all I wish to say. Again, I would like to express my gratitude to all of you for the efforts you have made and for taking time out of your busy schedules to attend this meeting.

I hope we will continue to hold more meetings related to this issue. Thank you very much.

***Claudio Baranzini***

Delegate for the International Committee of the Red Cross in Guatemala

Ladies and Gentlemen,

Good evening and many thanks to everyone. It is a pleasure for me to be with all of you again to participate in the closing of this event.

In keeping with the established guidelines and conclusions already presented, I want to sincerely congratulate you on your achievements.

The ICRC has now a better understanding of your work and what type of support it can provide to you, though it is obviously the duty of each committee to look for the capabilities and appropriate resources for the faithful implementation of international humanitarian law.

Over the last two days we have been able to evaluate the responsibilities of the national committees and seek solutions to some obstacles we are confronted with. Now one of the challenges lies in establishing mechanisms for the exchange of information and experience relating to the implementation of international humanitarian law.

I believe that the observance of international humanitarian law should not only interest States. History has shown us countless times that thorough respect of this law is necessary and benefits us all. In understanding this responsibility and accomplishing what constitutes the duty of each individual, armed conflict might be much fairer for those who fall victims to its consequences.

For such an objective to be achieved, it is important that the national committees do not cease to promote IHL, and advise their governments on their duties under treaty law. In this sense, this meeting has been most helpful because it contributed to the implementation process in which your committees are directly involved. The same goes for the States present here and which do not dispose of such a committee, including concerning the organization of a committee of their own.

The ICRC will continue to support these endeavours, and the assistance to your committees in accomplishing their tasks of promoting and implementing their law. That is precisely where we share a common goal – that is to say, the effective implementation and strengthening of existing law.

The challenges we face can be approached from different angles, as has been outlined in some of the working groups. One of them is the establishment of systems of information and exchange of experiences about the implementing measures.

Among the areas work should probably concentrate on, I would like to recall the problem of missing persons, the implementation of the Rome Statute and cooperation with the International Criminal Court, the initiatives on regional levels for the protection of cultural property, and the implementation of treaties on weapons, among others. Also, there are challenges to the functioning of the committees themselves.

The implementation of the Rome Statute is of major importance, and is particularly taken into account in our work, as the Statute is without doubt a vital tool for ending impunity and, a means of contributing to the respect of IHL.

In relation to these and other issues, I would like also to encourage you to work hand in hand with the National Societies of the Red Cross in your own countries. Very often, these national societies are integral parts of the national committees. But in addition I would encourage you also to seek to support these entities in your countries. Ultimately, they also have a responsibility in the advancement of international humanitarian law, and the realization of humanitarian work in each country. This is an integral part of the *raison d'être* of these institutions.

Within the framework relating to the International Red Cross and the Red Crescent Movement, we equally hope that this Meeting has helped the national committees in the preparation of their States for their participation in the 28th International Conference of the Red Cross and the Red Crescent which will be held, as you know, in December of this year.

Finally, I would like to thank very much the Organization of American States for their ever constant collaboration and cooperation, the Guatemalan Government and especially the Ministry of Foreign Affairs for their unconditional support in the organization of this event, the government of Canada and their Embassy without whose help it would have been difficult to hold this meeting, the Swiss Embassy which, being committed to the great

success of this meeting, made a contribution for which we are thankful and which we do value, and clearly to all of you who have found the way to come here for three days and commit yourselves through detailed and praiseworthy work to clarify complex issues. The results reached surely will continue to be a reference point so that when you return to your own countries you can use them for the tasks that lay before you.

In conclusion, I wish to thank all the colleagues who have contributed to this meeting and all the individuals who have made this event a success, obviously including the persons who made translation possible.

At the ICRC, we are always willing to receive your proposals, ideas and suggestions to support the work you have been carrying out. We are sure that all of you who have been with us in the last three days will continue to look for ways to further the cause of international humanitarian law in the Americas, even in the most difficult situations.

I wish you all a safe trip back home. Thank you very much.

***Lieutenant Colonel Kirby Abbott***

Director of International Law, Department of National Defence  
Judge Advocate General Office, Government of Canada

Thank you. It is important that I begin on behalf of the Government of Canada and the Canadian Red Cross, as well as the Canadian National Committee on Humanitarian Law, thanking our great host, the Government of the Republic of Guatemala, for hosting this event in such a fine venue. Also it is important to express our gratitude to the Government of Switzerland, for hosting dinner this evening and importantly I would like to congratulate the ICRC and the OAS for, from the Canadian perspective, what has been a very productive and a very successful meeting. I concur completely with Maria Teresa's description that this Conference has indeed exceeded its objectives and I can say it has been incredibly successful.

The conference itself has demonstrated a number of important points that I will like to emphasize. First of all, the constructive role of the OAS and its institutions, as a facilitating and guiding force for all of us. It has also demonstrated at this conference and confirms the crucial importance of the Red Cross and Red Crescent Movement and in particular the ICRC and the National Societies as inextricable and important partners with governments in the development of IHL. Both the OAS and the ICRC should be commended for

their instrumental role in making this conference a success, so my thank you to both organizations. However, I believe that all the fundamental success of the conference was a consequence of your contribution as participants.

At the beginning of the conference, after we introduced ourselves individually, my friend from the OAS made a comment. He said that this was a well-qualified group, which was promising for the success of the conference. I think one of the keys to the success of the conference was that the people who came here were people with tremendous expertise and practical experience and that enriched the two days of discussions that we had. Although the OAS, the ICRC, governments of Canada and Guatemala made and created this opportunity, it was indeed all of you people as participants that sought that opportunity and realized the promise that the conference could hold. And I think we all listened, we actively shared and we respected other viewpoints, and we all learned a great deal from each other, which benefited us all. This dynamic network of ideas has also strengthened our national committees and will continue to do so. It has also been a source of guidance to our friends from Mexico, Ecuador, Costa Rica, Honduras, Brazil, Haiti and Venezuela, who are sparring to possible create a National Commission on Humanitarian Law.

In closing, I believe that the national committees of the Americas will arrive in Geneva for the 28<sup>th</sup> Conference, very well organized, with a well thought plan of action. I believe we will go there also with a regional identity and an important regional perspective that we can offer our fellow national committees from other parts of the world. That will be one of the legacies of this conference. Canada certainly endorses more meetings of national committees of the Americas in the future and I think it is something that will enrich all of us. So best wishes for your continuous success and thank you very much for your attention.

*His Excellency*

*José Luis Domínguez Quintanilla*

Adviser to the Office of Foreign Affairs

President of the Guatemalan Committee for the

Implementation of International Humanitarian Law (COGUADIH)

Government of Guatemala

Thank you very much. Honourable organizers and collaborators of the first meeting of national committees of International Humanitarian Law of the Americas, Representatives of the Organization of American States, of the International Committee of the Red Cross, the Canadian Government and the

Swiss Government, Respected Delegates of the national committees on international humanitarian law of the Americas, respected delegates special guests of the countries in process of organizing their national committees, Respected Colleagues, Members of the Guatemalan Committee on International Humanitarian Law that are with us, Respected Representative of the Coalition of the International Criminal Court, Respected translators, all our friends, good evening.

On behalf of the Government and the people of Guatemala, representing the Vice-Chancellor, Ambassador Alfredo Trinidad Velásquez, and as President of the Guatemalan Committee for the Implementation of International Humanitarian Law, I have the pleasure of expressing my deepest gratitude and congratulations to all the distinguished individuals of the honourable delegations of the committees and future national committees on international humanitarian law of the Americas, for your courageous efforts and contributions to achieving the objectives of this meeting of national committees on international humanitarian law of the Americas. Along with the participation and work of the delegation of the national committees on international humanitarian law in this meeting, our governments have once again demonstrated their interest and good will to respect and promote the implementation of international humanitarian law.

All who have participated in this meeting are certain that the dissemination and implementation of international humanitarian law is an arduous task, but it is possible. In this sense, the national committees have a big task ahead of them. Therefore, I reiterate our gratitude and congratulations to all the delegations and organizers. I hope that every one of you has had the chance to enjoy their stay in Guatemala and in this great historical city of La Antigua, Guatemala. I also wish you a safe return to your countries.

On behalf of the Ministry of Foreign Affairs of Guatemala, allow me to declare this first meeting of national committees on international humanitarian law in the Americas closed. Thank you very much.

PB

## **ANNEXES**

PROGRAM OF THE MEETING

LIST OF PARTICIPANTS

INFORMATION FACT SHEET ON NATIONAL COMMITTEES FOR THE  
IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW

GUIDING PRINCIPLES CONCERNING THE STATUS AND METHODS  
OF OPERATION OF NATIONAL BODIES FOR THE IMPLEMENTATION  
OF INTERNATIONAL HUMANITARIAN LAW

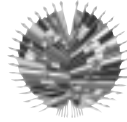
LIST OF NATIONAL COMMITTEES FOR THE IMPLEMENTATION OF  
INTERNATIONAL HUMANITARIAN LAW IN THE AMERICAS

STATE OF PARTICIPATION OF AMERICAN STATES IN IHL TREATIES  
AND OTHER RELEVANT INSTRUMENTS

OAS GENERAL ASSEMBLY RESOLUTION **AG/RES. 1944**  
**(XXXIII-O/03)**



PB



# OAS ICRC

With the support of the  
Government of Guatemala  
and the Government of Canada

## “MEETING OF NATIONAL COMMITTEES ON INTERNATIONAL HUMANITARIAN LAW OF THE AMERICAS”

La Antigua, Guatemala, August 27 – 29, 2003

### PROGRAM

#### OBJECTIVES:

- *evaluate the functioning of the national committees on international humanitarian law and look for solutions to facilitate their work*
- *facilitate the exchange of information and experiences between the national committees on international humanitarian law*
- *examine current issues related to the national implementation of international humanitarian law such as putting into practice the Rome Statute of the International Criminal Court with a view to analyze and strengthen the contribution of national committees in this regard*
- *prepare the national committees on international humanitarian law for the XXVIII International Conference of the Red Cross and the Red Crescent*

#### First day

**17.00 - 17.30 Register of participants and hand out of documentation**

**17.30 - 18.15 Opening ceremony**

- *Jorge García-González, Head, Technical Secretariat for Legal Cooperation Mechanisms, Secretariat for Legal Affairs of the General Secretariat of the Organization of American States*

- *Claudio Baranzini*, Delegate for the International Committee of the Red Cross in Guatemala
- *Lieutenant Colonel Kirby Abbott*, Director of International Law, Department of National Defence, Judge Advocate General Office, Government of Canada
- *Excellence Alfredo Trinidad Velásquez*, Deputy Minister, Foreign Affairs Ministry, Government of Guatemala

**18.15 – 18.45**

**Keynote Speech**

**“The implementation of IHL in the Inter-American system of the protection of persons”**

(The decisions of the Inter-American Commission on Human Rights and the jurisprudence of the Inter-American Court of Human Rights)

*Speaker: Brian Tittmore*

*Inter-American Commission on Human Rights (IACHR)*

**19.00**

**Welcome cocktail**

*Offered by the Organization of American States and the Ministry of Foreign Affairs of the Government of Guatemala  
Hotel Villa Colonial*

**Second day**

**9.00 - 9.15**

**Objectives of the meeting**

*Maria Teresa Dutli, Head, ICRC Advisory Service on International Humanitarian Law*

**9.15 - 11.00**

**DIAGNOSTIC OF THE CURRENT STATE OF IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW (IHL) IN AMERICA**

(participation in treaties, dissemination and integration, repression of serious violations of IHL, protection of distinctive signs, other national measures for the implementation, efforts on behalf of the OAS)

Round-table

*Speakers: Participating States and the OAS (7 minutes each participant)*

**11.00 – 11.30 Break**

**11.30 - 13.00 DIAGNOSTIC OF THE CURRENT STATE OF IMPLEMENTATION OF IHL IN AMERICA**

Round-table (continuation)

*Discussion and summary*

**13.00 - 14.00 Lunch**

**14.00 – 16.30 TOPIC I: FUNCTIONING OF NATIONAL COMMITTEES FOR INTERNATIONAL HUMANITARIAN LAW**

**Introduction to the topic**

*Marisela Silva Chau, ICRC Lima*

*Liliana López Ortiz, ICRC Mexico*

### **Working groups**

#### **Group I: Position of National Committees before executive, legislative and judicial authorities**

(analyze the role of the committees in decision making about participation in treaties and their implementation at the national level; evaluation of the modalities used by executive, legislative and judicial authorities to consult with national committees; evaluation of how recommendations and other efforts of the committees are put into practice; identification of possible obstacles in the realization of said efforts, and of strategies for overcoming them)

*Chairperson: Claudio Marcelo Troncoso (Chile)*

#### **Group II: Mutual communication of measures implementing treaties of IHL**

(examine mechanisms favoring the autonomous exchange of information between committees; analysis of the advantages which could result from institutionalizing the exchange of information between committees at the sub-re-

gional and, or, regional level; examine options available to regularize mutual communication of measures implementing IHL; evaluation of the impact of sub-regional or bilateral meetings between committees)

*Chairperson: Jorge Santiago (Dominican Republic)*

**Group III:** Follow-up of the Universal Meeting of National Committees on IHL held in Geneva from March 25 to 27, 2002

(based on the results of the Universal Meeting examine the advances the committees were able to achieve; evaluate the impact of the Universal Meeting on the work of the committees)

*Chairperson: Eden Charles (Trinidad and Tobago)*

**16.30 – 17.00      Break**

**17.00 – 17.30      Summary of the working groups**  
*Presentations and discussion in plenary*

**17.30 – 18.00      Keynote Speech**  
**Adapting International Humanitarian Law to current conflict situations**  
*María Teresa Dutli, Head, ICRC Advisory Service on International Humanitarian Law*

**19.00                      Cocktail**  
*Offered by the International Committee of the Red Cross  
Hotel Villa Colonial*

**Third day**

**09.00 – 11.30      TOPIC II : CURRENT ISSUES RELATED TO IHL**

**Introduction to the topic**

*Anton Camen, Legal Adviser for Latin America, Advisory Service on International Humanitarian Law, ICRC Mexico*

*José Antonio Guevara Bermudéz, Latin American / Caribbean Coordinator,  
Coalition for the International Criminal Court*

## Working groups

### **Group I: Cooperation with the International Criminal Court**

(examine the role of the committees in the promotion and implementation of the Rome Statute; analyze their responsibilities in the implementation of the Statute, particularly from the angle of cooperation with the International Criminal Court; analyze the relations with *ad hoc* committees which deal with the national implementation of the Rome Statute)

*Chairperson: Raúl Eugenio Comelli (Argentina)*

### **Group II: Protection of cultural property in case of armed conflict**

(examine the role of the committees with respect to the protection of cultural property; analyze their competence and responsibilities in that area, particularly with regard to legislative and practical measures as well as in relation to dissemination; follow up of the Regional Meeting of Experts on Protection of Cultural Property in Case of Armed Conflict, Lima, May 13 – 14, 2002)

*Chairperson: Claudia Herrera (El Salvador)*

### **Group III: Treaties on weapons**

(examine the role of the committees with respect to participation and implementation of treaties on weapons; examine methods which might facilitate executing specialized work in that field; analyze relations with *ad hoc* committees dealing with the implementation of weapons treaties)

*Chairperson: Susan Johnson (Canada)*

**11.30 - 12.00      Break**

**12.00 – 12.30      Summary of the working groups**  
*Presentations and discussion in plenary*

**12.30 - 13.30      Lunch**

**13.30 – 15.30      TOPIC III : INTERNATIONAL CONFERENCE OF  
THE RED CROSS AND THE RED CRESCENT  
(Geneva, December 2003)**

## **Introduction to the topic**

*María Teresa Dutli, Head, ICRC Advisory Service on International Humanitarian Law*

*Gabriel Valladares, ICRC Buenos Aires*

## **Working groups**

### **Group I: Reaffirmation of IHL**

(evaluation of the necessity to reaffirm IHL; identification of causes possibly weakening IHL; determination of strategies for national committees to strengthen respect for IHL)

*Chairperson: María-Alicia Terrazas (Bolivia)*

### **Group II: Missing persons**

(examine the role of the committees in preventing persons from disappearing and in identifying strategies to clarify the fate of persons gone missing in relation to an armed conflict or internal violence, especially through national measures implementing IHL; follow up on the International Conference of Governmental and Non-governmental Experts on Missing Persons, Geneva, February 19 – 21, 2003; follow up on the Regional Conference on Persons Missing in Relation to an Armed Conflict, Lima, May 28 – 30, 2003)

*Chairperson: Lanzeth Ludeña (Peru)*

### **Group III: Participation in the International Conference of the Red Cross and the Red Crescent**

(examine strategies and actions to prepare the International Conference; follow up on the pledges of the 27th international conference; identify priorities which could be the subject of pledges by States and /or National Red Cross Societies)

*Chairperson: Myrian Ruth Pinto (Guatemala)*

**15.30 – 16.00      Break**

**16.00 – 16.30      Summary of the working groups**  
*Presentations and discussion in plenary*

**16.30 - 17.30      Conclusions and recommendations**

- 17.30 - 18.00**      **Closing ceremony**
- *Jorge García-González*, Head, Technical Secretariat for Legal Cooperation Mechanisms, Secretariat for Legal Affairs of the General Secretariat of the Organization of American States
  - *Claudio Baranzini*, Delegate for the International Committee of the Red Cross in Guatemala
  - *Lieutenant Colonel Kirby Abbott*, Director of International Law, Department of National Defence, Judge Advocate General Office, Government of Canada
  - *Excellence José Luis Domínguez Quintanilla*, *President of the National Committee of Guatemala for the Implementation of International Humanitarian Law*
- 19.30**              **Cultural promenade in La Antigua**
- 20.30**              **Dinner**  
*Offered by the Embassy of Switzerland in Guatemala*  
*Restaurant “El Sereno”, Historical Center, La Antigua*



## **LIST OF PARTICIPANTS**

### **A) NATIONAL COMMITTEES FOR IHL IN THE AMERICAS**

#### **ARGENTINA**

COMELLI, Raúl Eugenio

Embassy Secretary

Representative of the Ministry of Foreign Affairs before the

Committee for the Implementation of International Humanitarian Law

#### **BOLIVIA**

TERRAZAS ONTIVEROS, Maria Alicia

Advisor, Alternate Representative of the

Ministry of Foreign Affairs and Worship before the

Permanent National Committee for the Implementation of  
International Humanitarian Law (CNPADIH)

#### **CANADA**

ABBOTT, Kirby

Lieutenant Colonel

Director of International Law,

Department of National Defence, Judge Advocate General Office

Government of Canada

JOHNSON, Susan

National Director of International Programs and Humanitarian Issues

Canadian Red Cross

#### **CHILE**

TRONCOSO REPETTO, Claudio Marcelo

Director of Legal Affairs of the

Ministry of Foreign Affairs

President of the National Committee on International Humanitarian Law

**COLOMBIA**

FRANCO ECHAVARRÍA, CARLOS H.

Director of the Presidential Program for Human Rights  
and International Humanitarian Law

Technical Secretary of the Inter-Sectorial Committee for Human Rights  
and International Humanitarian Law

**DOMINICAN REPUBLIC**

SANTIAGO PÉREZ, Jorge A.

Legal Adviser

Office of Secretary of State for Foreign Affairs

Chairman of the Permanent National Committee for the  
Implementation of International Humanitarian Law

**EL SALVADOR**

DUQUE, Olmes Ramiro

Ministry of National Defense

Representative of the Inter-Institutional Committee of  
International Humanitarian Law [CIDIH-ES]

HERRERA NOSTHAS, Claudia María

Permanent Secretary of the CIDIH-ES

**GUATEMALA**

TRINIDAD VELÁSQUEZ, Alfredo

Deputy Minister, Foreign Affairs Ministry

DOMÍNGUEZ QUINTANILLA, José Luis

Adviser to the Office of Foreign Affairs

President of the Guatemalan Committee for the  
Implementation of International Humanitarian Law (COGUADIH)

PINTO MAZARIEGOS, Myrian Ruth

Adviser, Ministry of Foreign Affairs

Executive Secretary, COGUADIH

MORA FLORES, Víctor Manuel

Representative from the Judicial Body before COGUADIH

ECHAVARRIA, Alejandra  
Representative from the Guatemalan Red Cross before COGUADIH

CIFUENTES, María Eugenia  
Representative from the Ministry of Health before COGUADIH

## **NICARAGUA**

AGUILAR ROA, Idayda  
Legal Advisor to the Directorate of Territorial Affairs of the  
Ministry of Foreign Affairs  
National Committee for the Implementation  
of International Humanitarian Law

## **PANAMA**

HEALY, Ángela  
Legal Advisor and Head of the Department of Human Rights  
of the Ministry of Foreign Affairs  
President of the Permanent National Committee for the  
Implementation of International Humanitarian Law (CPDIH)

URIETA QUINTERO, Jeremías  
Air Force Lieutenant / Department of Instruction Officer  
National Air Service

## **PARAGUAY**

ZARACHO GÓMEZ, Andrés H.  
Attorney, Colonel, Military Justice (R)  
Director of Human Rights and International Humanitarian Law  
Ministry of National Defense  
Chairman of the Inter-Ministerial Study and Implementation Committee for IHL

## **PERU**

GRILLO BOCKOS, Sócrates  
Secretary of the National Council on Human Rights  
Ministry of Justice  
Chairman of the National Study and Implementation Committee  
of International Humanitarian Law

LUDEÑA LÓPEZ, Lanzeth  
First Secretary, D. S.  
Ministry of Foreign Affairs  
Representative from the Vice-presidency before the  
National Study and Implementation Committee  
of International Humanitarian Law

## **TRINIDAD & TOBAGO**

CHARLES, Eden  
Foreign Service Officer  
Ministry of Foreign Affairs

## **URUGUAY**

CORUJO SANSEVIERO, Hugo  
Legal Adviser to the Commander of Air Control Operations  
Uruguayan Air Force  
Member of the Committee on International Humanitarian Law

## **B) INTERESTED GOVERNMENTS**

### **BRAZIL**

NASCENTES DA SILVA, Louis Guilherme  
Secretary of the United Nations Division  
Ministry of Foreign Affairs

### **COSTA RICA**

LIZANO ORTIZ, Norman Antonio  
Officer of the Human Rights Division  
Department of Multi-Lateral Policy  
Ministry of Foreign Affairs and Worship

### **ECUADOR**

LARREA MIÑO, Juan  
General Direction of Human Rights  
Ministry of Foreign Affairs

## **HAITI**

TOUSSAINT, Christian  
Alternate Director for International Cooperation  
Ministry of Foreign Affairs

## **HONDURAS**

URBIZO MARTÍNEZ, Jessica Alejandra  
Legal Officer of the Board of Legal Affairs  
Secretary of Foreign Affairs

## **MEXICO**

FLORES LIERA, Socorro  
Director of International Law  
Legal Consultant Office  
Secretary for Foreign Affairs

## **VENEZUELA**

BERRIOS MARRERO, Nathali Carolina  
Lieutenant (Aviation)  
Chief of the Division of Human Rights  
Directorship of Human Rights and International Humanitarian Law  
Ministry of Defense

## **ORGANIZATION OF AMERICAN STATES**

GARCÍA-GONZÁLEZ, Jorge  
Head, Technical Secretariat for Legal Cooperation Mechanisms,  
Secretariat for Legal Affairs of the General Secretariat

PALMA, Félix  
Head, OAS Office in Guatemala

## **INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR)**

TITTEMORE, Brian  
Legal Adviser

**EMBASSY OF SWITZERLAND IN GUATEMALA**

GARNIER, Paul  
Chargé d'Affaires, a. i.

**COALITION FOR THE INTERNATIONAL CRIMINAL COURT**

GUEVARA, José A.  
Coordinator for Latin America and the Caribbean

**INDEPENDENT EXPERTS**

BLASI MARTÍ, Teresa  
Spain

**INTERNATIONAL COMMITTEE OF THE RED CROSS**

DUTLI, Maria Teresa  
Head, Advisory Service on International Humanitarian Law  
ICRC - Geneva

BARANZINI, Claudio  
Delegate for the International Committee of the Red Cross  
ICRC - Guatemala

CAMEN, Anton  
Legal Adviser for Latin America  
Advisory Service on International Humanitarian Law  
ICRC - Mexico

SILVA CHAU, Marisela  
Legal Adviser  
ICRC - Lima

MARTÍNEZ, María Paula  
Legal Adviser  
ICRC - Bogotá

VALLADARES, Gabriel Pablo  
Legal Adviser  
ICRC – Buenos Aires

ÁVILA, Carlos Hugo  
Legal Adviser  
ICRC - Guatemala

LÓPEZ, Liliana  
Legal Assistant  
ICRC – Mexico

AGUILAR ESPONDA, Luis  
Legal Assistant  
ICRC – Mexico

SERRANO, Luis Alonso  
Head, Office in San José  
ICRC – San José

BELTRANENA, Roberta de  
Programs Responsible  
ICRC – Guatemala

PEÑALOZA, Estrella  
Logistics  
ICRC - Mexico

VELA, Nancy  
Welcome  
ICRC - Guatemala

## INFORMATION FACT SHEET:

### National Committees for the Implementation of International Humanitarian Law

The Geneva Conventions of 1949 and their Additional Protocols of 1977 are the principal treaties governing aid to and protection of the victims of armed conflict. In order to secure the guarantees provided by these instruments, it is essential that the States implement their provisions to the fullest possible extent. Implementation requires the States to adopt a number of internal laws and regulations. They must, for example, establish rules on the punishment of violations, the use and protection of the red cross and red crescent emblems and the fundamental rights for protected persons. In addition, the States are obliged to spread knowledge of the Conventions and Protocols as widely as possible. Owing to the broad range of issues associated with these responsibilities, comprehensive implementation of the rules of international humanitarian law (IHL) requires coordination and support from all the government departments and other entities concerned.

#### **The purpose of national humanitarian law committees**

To facilitate this process, some States have created either national interministerial working groups, often called committees for the implementation of IHL or national humanitarian law committees. Their purpose is to advise and assist the government in implementing and spreading knowledge of IHL.

Setting up such committees is recognized as an important step in ensuring the effective application

of IHL, and has been advocated by the International Committee of the Red Cross, the Intergovernmental Group of Experts for the Protection of War Victims and the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1995).

#### **The functions of a national humanitarian law committee**

The organization and objectives of a national committee must be determined by the State at the time of the committee's formation. However, since its

purpose is to further the implementation and promote knowledge of IHL at the national level, the committee should have the following characteristics:

- It should be able to evaluate existing national law in the light of the obligations created by the Conventions, Protocols, and other instruments of IHL.
- It should 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.

- The committee should play an important role in promoting activities to spread knowledge of IHL. It should have the authority to conduct studies, propose activities, and assist in making IHL more widely known. The committee should therefore 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.

### **The composition of the Committee**

Given its functions, a national humanitarian law committee requires a wide range of expertise.

The committee must include representatives of the government ministries

concerned with implementing IHL. Precisely which ministries are relevant will depend on the committee's mandate, but they are likely to include Defence, Foreign Affairs, Internal Affairs, Justice, Finance, Education and Culture.

It may also be useful to have representatives of legislative committees, members of the judiciary and personnel from the headquarters of the armed forces.

It is important that such a committee include other *qualified persons*. These may be individuals not associated with government ministries but who are appointed for their legal, educational, communications or other expertise. The committee should therefore consider inviting IHL specialists from universities (especially law faculties), humanitarian organizations and possibly the electronic and print media.

### **The role of the national Red Cross or Red Crescent Society**

It is likely that the national Red Cross or Red Crescent Society will already be involved in some of the activities and functions mentioned above.

The National Society often possesses valuable knowledge and experience, which can help achieve the committee's objectives. In some States where such committees exist, it was the National Society that requested its setting up and hence was instrumental in its formation. In many States, the National Society provides the committee's secretariat.

Considering the position and experience of a National Society, it is important that a national committee include representatives of the Society.

### **Setting up a national humanitarian law committee**

A national committee for the implementation of IHL need not have a specific structure. The process by which it is set up will depend on the structure and procedures of the State concerned. Generally, the executive power will have authority to establish such a body.

### **Implementing international humanitarian law**

Creating a national committee can be a useful and indeed decisive step in

ensuring the comprehensive implementation of international humanitarian law. It represents a commitment to securing the essential guarantees laid down for the victims of armed conflict, demonstrating that the State is taking steps towards fulfilling its fundamental obligation to respect and ensure respect for IHL.

Neither the Geneva Conventions nor their Additional Protocols require such a committee to be set up. It is therefore entirely up to the State concerned to determine how it is created, how it functions, and who are its members.

As a result, there is considerable flexibility as to the role and characteristics of

such committees. Some of the most important features have been outlined above, but any State is free to add others.

It is important to emphasize that the full implementation of IHL is an ongoing process and is not completed solely by passing laws and issuing regulations. Comprehensive implementation involves monitoring the application and promotion of the law, as well as keeping informed of and contributing to its development. It is therefore recommended that a national humanitarian law committee be a permanent and not an ad hoc body.

It is also recommended that, once created, the committee establish relations with other national com-

mittees and the International Committee of the Red Cross. Representatives of the national committees should meet regularly and share information concerning current activities and past experiences. This is particularly important among States within the same geographic region or with similar political or legal systems.

Through its Advisory Service on international humanitarian law, the International Committee of the Red Cross works on a regular basis with national committees for the implementation of IHL. It also stands ready to assist and provide further information to States interested in forming committees.

International Committee of the Red Cross, 01/2003<sup>32</sup>

32 International Committee of the Red Cross, Advisory Service on International Law, [www.icrc.org](http://www.icrc.org), or [http://www.cicr.org/web/eng/siteeng0.nsf/htmlall/57JNWF/\\$FILE/National\\_Committees.pdf?OpenElement](http://www.cicr.org/web/eng/siteeng0.nsf/htmlall/57JNWF/$FILE/National_Committees.pdf?OpenElement)

## **Guiding principles concerning the status and methods of operation of national bodies for the implementation of international humanitarian law<sup>33</sup>**

### **A. Status and structure**

1. Since the implementation of IHL is primarily the responsibility of governments, national bodies set up to this end must be linked to the executive branch. Their legal status will depend on the constitutional structure and the procedures applied by the State concerned.
2. Promoting respect for IHL and, in particular, the implementation of this law at national level, is a permanent process. Providing the IHL body with a formal structure will ensure the continuity of this work.

### **B. Competence and attributions**

3. National bodies on IHL must be authorized to *promote, advise on and coordinate* all matters relating to the implementation of the law at national level, and to compliance with and development of the law. The competence and composition of the bodies should be clearly defined and may be set out in a statutory text.

The bodies should have sufficient authority to:

#### ***Promote***

Promote the ratification of the humanitarian treaties or adherence to those treaties; work for the harmonization of national legislation, regulations and practices with the international instruments of humanitarian law to which the State is party, and promote their implementation.

#### **Evaluate**

Be in a position to study and assess existing national legislation, judicial decisions and administrative provisions in the light of the obligations stemming from the Geneva Conventions of 1949 and, where applicable, the Additional Protocols of 1977 and other instruments of humanitarian law.

---

33 International Committee of the Red Cross, Advisory Service on International Law, 1998

## **Propose**

Be in a position to submit to the national authorities advisory opinions on issues relating to the implementation of humanitarian law, and to formulate recommendations and proposals in this regard. Have a right of initiative in this regard.

These opinions and recommendations may relate to the following areas in particular:

- incorporation of the provisions of humanitarian treaties into national law;
- preparation of all the legislative, statutory or administrative measures required for the effective application of and hence *respect for the rules of humanitarian law*;
- in particular, adoption of appropriate legislation providing for the repression of grave breaches of the law and regulating the use of the red cross/red crescent emblem and other protected signs and signals;
- adoption of regulations to define and guarantee the status of persons protected under the terms of humanitarian law and to ensure respect for the individual and fundamental guarantees in times of armed conflict;
- training and appointment of staff qualified in the field of humanitarian law, particularly legal advisers to the armed forces;
- location and marking of sites protected by humanitarian law.

## **Monitor**

Monitor implementation of their recommendations and conclusions.

## **Support, coordinate and standardize**

Support individuals or entities involved in matters relating to humanitarian law, particularly representatives of the ministries and governmental departments concerned; encourage and support cooperation among those entities and coordinate their activities if necessary. Act as a catalyst for the political and social forces concerned.

## **Advise**

Carry out any other task relating to humanitarian law that the government may assign to them, and give opinions on any questions on the law submitted to them.

## **Disseminate**

Play a key role in spreading knowledge of humanitarian law and, to that end, have the necessary authority to carry out studies, propose dissemination activities, and take part in such activities. The bodies should also be involved in the preparation of training programmes on humanitarian law for the armed forces and the security forces, and for any civilian or military authority with responsibility for the application of IHL. They should also be involved in developing educational programmes on IHL for schools and other academic and vocational institutions, including universities.

## **C. Composition**

4. In order to fulfil their role, national bodies on IHL should be set up in such a way that they:

### **Are representative**

National bodies must comprise representatives of all government departments concerned with humanitarian law, and in particular must include representatives of the executive, judicial and legislative branches with sufficient authority to make commitments on their principals' behalf.

### **Involve National Red Cross and Red Crescent Societies**

They should associate the National Red Cross or Red Crescent Society with their work and activities, because of the role conferred on National Societies by the humanitarian treaties and by the Statutes of the International Red Cross and Red Crescent Movement, and because of the National Societies' knowledge and expertise in the humanitarian field.

### **Include experts**

Their operating mechanisms should allow them to consult or associate in their work experts such as legal specialists, doctors, university professors and

military personnel, as well as representatives of civil society such as professional associations and non-governmental organizations.

#### **D. Operating procedures**

5. The operating procedures of national bodies for IHL should take the following factors into account:

##### **Continuity and regularity**

They should be organized in such a way as to ensure continuity in their work on IHL, so that the matter remains a topical item on government agendas.

They should meet as often as is necessary, and if possible on a regular basis, with all members duly convened and present.

##### **Working methods**

The bodies should define their working methods, and in particular draw up a table of areas requiring implementation measures, identify the measures to be taken and the authorities concerned, establish a plan of action, and set priorities.

They should hold their discussions in plenary sessions or, if necessary, delegate responsibility for certain activities to individual members or sub-committees.

##### **Progress reports**

They should report periodically to the government and other authorities concerned with their work.

##### **Resources**

They should be allocated sufficient human, material and financial resources to undertake the tasks entrusted to them.

#### **E. Cooperation**

6. National bodies for humanitarian law should contact and cooperate with each other on a regular basis, since the problems and issues they handle are often similar. Accordingly, they should:

### **Exchange information and cooperate with each other**

Maintain relations and exchange information on their activities and experiences with bodies in countries in the same regions or with similar legal systems; organize joint activities and/or invite experts from other bodies to participate in their own work.

Develop regular contacts with other institutions involved in or concerned by the implementation of humanitarian law, and with the ICRC Advisory Service.

### **Inform the Advisory Service**

Keep the ICRC Advisory Service informed, in particular reporting to it any new development concerning humanitarian law at the national level.

### **Hold meetings**

Organize and take part in multinational and regional meetings between bodies of the same type; seek the support of regional and international organizations to this end.

**LIST OF NATIONAL COMMITTEES FOR THE IMPLEMENTATION  
OF INTERNATIONAL HUMANITARIAN LAW IN THE AMERICAS <sup>34</sup>**

Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
Argentina	<p><i>Comisión de Aplicación del Derecho Internacional Humanitario (CADIH)</i></p> <p>c/o Ministerio de Defensa Azopardo 250, Piso 13° 1328 Buenos Aires Tel. +5411 43468877</p>	<p><u>Established:</u> 1994</p> <p><u>Legal basis:</u> Executive Decree No. 933/94 of 16 June 1994</p> <p><u>Operation:</u> internal regulations</p>	<p><u>Representatives:</u> Foreign Affairs, Defence, Interior, and Justice</p> <p><u>Chairmanship:</u> rotating among the participating ministries</p> <p><u>Secretariat:</u> Ministry of Defence</p>	<ul style="list-style-type: none"> <li>• To ensure implementation of international humanitarian law by drawing up laws, regulations and other texts designed to ensure respect for international commitments in this area;</li> <li>• to teach and disseminate international humanitarian law among the military and civilians.</li> </ul>

34 During the edition of the present report, the “*Comissão Nacional para Difusão e Implementação do Direito Internacional Humanitário no Brasil*”, was created by a Presidential Decree from November 27, 2003, published in the “*Diário Oficial da União*” de la “*República Federativa do Brasil*”, November 28, 2003. As consequence, it turns to 15 the number of existing National Committees on International Humanitarian Law in the Continent.



Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
Bolivia	<p><i>Comisión Nacional Permanente para la aplicación del Derecho Internacional Humanitario (CNPADIH)</i></p> <p>c/o Ministerio de Relaciones Exteriores y Culto Plaza Murillo, Ingavi esq. Junín La Paz</p>	<p><u>Established:</u> 1992</p> <p><u>Legal basis:</u> Decree No. 23.345 of 2 December 1992; reorganized pursuant to Resolution No. 218.456 of 17 August 1998 issued by the President of the Republic and the Ministry of Justice and Human Rights, which came into force on 30 October 1998</p> <p><u>Operation:</u> internal regulations</p>	<p><u>Representatives:</u> Foreign Affairs, Justice, Defence, Interior, Sustainable Development and Planning, Supreme Court, National Congress, Bolivian Red Cross, and academic circles</p> <p><u>Chairmanship and secretariat:</u> Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> <li>• To monitor the dissemination and implementation of international humanitarian law;</li> <li>• to examine internal regulations and any amendments required for the incorporation of provisions of humanitarian law into national legislation, and to propose their approval by the executive and legislative authorities.</li> </ul>
Canada	<p>Canadian National Committee for Humanitarian Law</p> <p>c/o Canadian Red Cross Society 170 Metcalfe St., Suite 300 Ottawa, Ontario K2P 2P2</p>	<p><u>Established:</u> 1998</p> <p><u>Legal basis:</u> Memorandum of understanding of 18 March 1998</p> <p><u>Operation:</u> according to terms of reference of 18 March 1998</p>	<p><u>Representatives:</u> Foreign Affairs, Defence, Justice, Solicitor-General (represented by Royal Canadian Mounted Police and the Canadian Red Cross Society), and Canadian International Development Agency</p>	<ul style="list-style-type: none"> <li>• To recommend ratification of instruments of international humanitarian law;</li> <li>• to facilitate the implementation of obligations arising from this body of law,</li> </ul>

Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
	<p data-bbox="327 241 604 269"><u>Current presidency address:</u></p> <p data-bbox="327 298 571 464">Judge Advocate General Department of National Defense 305 Rideau Street, Ottawa, Ontario K1A 0K2</p>		<p data-bbox="949 246 1234 304"><u>Chairmanship:</u> Department of Defence</p> <p data-bbox="949 355 1234 407"><u>Secretariat:</u> Canadian Red Cross Society</p>	<p data-bbox="1260 246 1503 533">in particular by reviewing and advising on national legislation and administrative measures (repression of violations of humanitarian law, protection of the emblems, guarantees for protected persons);</p> <ul data-bbox="1260 533 1503 964" style="list-style-type: none"> <li data-bbox="1260 533 1503 964">• to advise on disseminating and training in international humanitarian law in Canada (aimed at the armed forces, police, civil servants, humanitarian organizations, legal and medical professions, schools and universities, journalists and the public at large);</li> </ul>

Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
				<ul style="list-style-type: none"> <li>• to coordinate and stimulate activities of the government and other organizations to strengthen and disseminate humanitarian law;</li> <li>• to recommend the adoption of measures to promote national implementation in other States drawing on the resources and expertise available in Canada;</li> <li>• to maintain a pool of personnel with expertise in humanitarian law and ensure links with other national committees and the ICRC.</li> </ul>

Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
Chile	<p><i>Comisión Nacional de Derecho Humanitario (CNDH)</i></p> <p>c/o Ministerio de Relaciones Exteriores, Dirección Jurídica Catedral 1158 3° Piso, Oficina 339 Santiago Tel. +562-6794237/8 Fax +562-699-5517</p>	<p><u>Established:</u> 1994</p> <p><u>Legal basis:</u> Decree No. 1229 of 31 August 1994</p> <p><u>Operation:</u> internal regulations of 1 June 1995</p>	<p><u>Representatives:</u> Foreign Affairs, Defence, Interior, Education, Health, Justice, and Culture</p> <p><u>Chairmanship and secretariat:</u> Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> <li>• To review and propose to the authorities legislative and administrative measures ensuring the practical implementation of international humanitarian law.</li> </ul>
Colombia	<p><i>Comisión Intersectorial Permanente para los Derechos Humanos y el Derecho Internacional Humanitario</i></p> <p>c/o Vicepresidencia de la República Carrera 8 No. 7-27 Bogotá Tel. +571 4442120/2864126 Fax +571 2863589</p>	<p><u>Established:</u> 2000</p> <p><u>Legal basis:</u> Presidential Decree No. 321 of 25 February 2000</p> <p><u>Operation:</u> internal regulations</p>	<p><u>Representatives:</u> Interior, Foreign Affairs, Justice, Defence, Labour and Social Security, and High Commissioner for Peace</p> <p><u>Chairmanship:</u> Vice-Presidency of the Republic</p>	<ul style="list-style-type: none"> <li>• To orientate, encourage and coordinate the national plan of action adopted in order to promote respect for human rights and the application of international humanitarian law;</li> </ul>

Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
				<ul style="list-style-type: none"> <li>• to ensure the adoption of national measures and evaluate periodically the progress made;</li> <li>• to consolidate institutional mechanisms for the protection of human rights and international humanitarian law and encourage dissemination to the public;</li> <li>• to promote the amendment of national measures to comply with international treaties to which Colombia is a party and help carry out international commitments;</li> </ul>

Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
				<ul style="list-style-type: none"> <li>• to analyse the recommendations formulated by international bodies and evaluate means of implementation at the national level;</li> <li>• to promote cooperation between the government and other organizations in order to strengthen respect for human rights and international humanitarian law.</li> </ul>
Dominican Republic	<p><i>Comisión Nacional Permanente para la Aplicación del Derecho Internacional Humanitario</i></p> <p>c/o Secretaría de Estado de Relaciones Exteriores Avenida Independencia 752 Santo Domingo</p>	<p><u>Established:</u> 1995</p> <p><u>Legal basis:</u> Presidential Decree No. 101-03 of 6 February 2003</p> <p><u>Operation:</u> internal regulations</p>	<p><u>Representatives:</u> Foreign Affairs, Armed Forces, Education, Culture, Health, Labour, Sports and Leisure, Public Prosecutor's Office, national police, legal office of the executive branch, and the Dominican Red Cross</p>	<ul style="list-style-type: none"> <li>• To recommend appropriate measures for better national implementation of international humanitarian law;</li> <li>• to promote draft legislation and regulations for the application of humanitarian law treaties;</li> </ul>

Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
	Tel. +1 809 535 6280 Fax +1 809 535 6848		<u>Chairmanship:</u> Secretary of State for Foreign Affairs	<ul style="list-style-type: none"> <li>• to disseminate this body of law among State authorities;</li> <li>• to promote the inclusion of this body of law in official teaching programmes.</li> </ul>
El Salvador	<p><i>Comité Interinstitucional de Derecho Internacional Humanitario (CIDIH-ES)</i></p> <p>c/o Ministerio de Relaciones Exteriores Edificio 3, 2da. Planta Centro de Gobierno San Salvador Tel. +503 22 24 447</p>	<p><u>Established:</u> 1997</p> <p><u>Legal basis:</u> Presidential Decree No. 118 of 4 November 1997</p> <p><u>Operation:</u> internal regulations</p>	<p><u>Representatives:</u> Foreign Affairs, Interior, Public Security, Justice, Education, Defence, Health, Treasury, Public Prosecutor's Office, Procurator for the Defence of Human Rights, and Salvadorean Red Cross Society</p> <p><u>Chairmanship and secretariat:</u> Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> <li>• To advise the government on measures to be adopted in order to implement, apply, and disseminate international humanitarian law at the national level.</li> </ul>

Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
Guatemala	<p><i>Comisión Guatemalteca para la Aplicación del Derecho Internacional Humanitario (COGUADIH)</i></p> <p>c/o Ministerio de Relaciones Exteriores 2a Avenida Reforma 4-47, Zona 10 Ciudad Guatemala Tel. +502 331-9610 Fax +502 331-7938</p>	<p><u>Established:</u> 1999</p> <p><u>Legal basis:</u> Government Agreement No. 948-99 of 28 December 1999</p>	<p><u>Representatives:</u> Foreign Affairs, Interior, Education, Defence, Health, Presidential Commission for Human Rights (COPREDEH), Secretariat for Peace, judiciary, Congress, Public Prosecutor's Office, Human Rights Procurator, Bar Association, and Guatemalan Red Cross</p> <p><u>Chairmanship and secretariat:</u> Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> <li>• To recommend measures for adoption by the government to ensure implementation of international humanitarian law;</li> <li>• in accordance with this aim, to submit draft legislation and regulations to the President of the Republic for consideration;</li> <li>• to spread knowledge of international humanitarian law within State institutions and among the general public;</li> <li>• to inform the Ministry of Foreign Affairs of the Committee's willingness to represent Guatemala at international fora dealing with this body of law;</li> </ul>



Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
				<ul style="list-style-type: none"> <li>to suggest other activities designed to promote respect for humanitarian law.</li> </ul>
Nicaragua	<p><i>Comisión Nacional para la Aplicación del Derecho Internacional Humanitario</i></p> <p>c/o Ministerio de Relaciones Exteriores Apartado postal No. 127 Managua Tel. +505 266 6512 Fax +505 266 6512</p>	<p><u>Established:</u> 1999</p> <p><u>Legal basis:</u> Presidential Decree No. 54-99 of 23 April 1999</p>	<p><u>Representatives:</u> Foreign Affairs, Education, Health, Justice, President's Office, commissions of the National Assembly, Supreme Court, Nicaraguan Red Cross, and academic circles</p> <p><u>Chairmanship:</u> Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> <li>To advise and provide support to the government on all issues relating to participation in international humanitarian law treaties, to incorporation of their provisions into national law, and to dissemination of their rules.</li> </ul>
Panama	<p><i>Comisión Nacional Permanente para la Aplicación del Derecho Internacional Humanitario (CPDIH)</i></p> <p>c/o Ministerio de Relaciones Exteriores Altos del Cerro Ancón Edificio 95</p>	<p><u>Established:</u> 1997</p> <p><u>Legal basis:</u> Executive Decree No. 154 of 25 August 1997, amended by Executive Decree No. 165 of 19 August 1999</p>	<p><u>Representatives:</u> Foreign Affairs, Justice, Interior, Education, President's Office, Labour, Legislative Assembly, police, Civil defence, academic circles, and Red Cross Society of Panama</p>	<ul style="list-style-type: none"> <li>To prepare a list of national legislation implementing international humanitarian law, to make recommendations and propose draft laws to the Executive to make effective the norms contained in that body of law;</li> </ul>

Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
	Ciudad de Panama Tel. +507 211 4296 Fax +507 211 4296	<u>Operation:</u> Resolutions No. 001-98 and No. 001-00 (internal regulations)	<u>Chairmanship and Secretariat:</u> Ministry of Foreign Affairs	<ul style="list-style-type: none"> <li>• to disseminate international humanitarian law in institutions of the State and of the general public;</li> <li>• to cooperate with the Ministry of Foreign Affairs in organizing meetings with the ICRC;</li> <li>• to promote the incorporation of humanitarian law into university and school programmes and cooperate in the development of such programmes;</li> <li>• to represent Panama in international conferences and meetings dealing with topics relating to international humanitarian law.</li> </ul>

Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
Paraguay	<p><i>Comisión Interministerial de Aplicación del Derecho Internacional Humanitario</i></p> <p>c/o Ministerio de Defensa Nacional Edificio del Ministerio de Defensa Mcal. López esquina Vicepres. Sánchez Asuncion</p>	<p><u>Established:</u> 1995</p> <p><u>Legal basis:</u> Presidential Decree No. 8802 of 12 May 1995; reorganization by Presidential Decree No. 15926 of 28 December 2001</p>	<p><u>Representatives:</u> Foreign Affairs, Defence, Interior, Justice and Employment</p> <p><u>Chairmanship and secretariat:</u> Ministry of Defence</p>	<ul style="list-style-type: none"> <li>• To consult with the public and private institutions concerned and make recommendations to the authorities on means of implementing, applying, and disseminating international humanitarian law.</li> </ul>
Peru	<p><i>Comisión Nacional de Estudio y Aplicación del Derecho Internacional Humanitario (CONADIH)</i></p> <p>c/o Ministerio de Justicia Scipión Llona 350 Miraflores Lima Fax +511 441 05 47</p>	<p><u>Established:</u> 2001</p> <p><u>Legal basis:</u> Resolution (Resolución Suprema) No. 234-2001-JUS of 1 June 2001</p> <p><u>Operation:</u> Ministerial Resolution No. 240-2001-JUS of 23 July 2001 (regulations of procedure and operation)</p>	<p><u>Representatives:</u> Justice, Foreign Affairs, Interior, Defence, and academic circles</p> <p><u>Chairmanship and secretariat:</u> Ministry of Justice</p>	<ul style="list-style-type: none"> <li>• To carry out studies and make recommendations on implementation of international humanitarian law;</li> <li>• to contribute to the monitoring of the implementation of this body of law;</li> <li>• to help spread knowledge of this body of law.</li> </ul>

Country	Name and address of the Committee	Year established / Legal basis / Operation	Composition	Mandate
Trinidad and Tobago	<p>Inter-Ministerial Committee on International Humanitarian Law</p> <p>c/o Ministry of Enterprise Development and Foreign Affairs 1 Queen's Park West Port of Spain Tel. +1 868 623 4116 Fax +1 868 624 4220</p>	<p><u>Established:</u> 1997 (ad hoc), 2001 (ad hoc)</p> <p><u>Legal basis:</u> Cabinet Decision No. 211 of 21 February 2001</p>	<p><u>Representatives:</u> Foreign Affairs, Defence, Security, Education, Health, Culture, Trinidad and Tobago Red Cross Society, and Public Prosecutor's Office</p> <p><u>Chairmanship:</u> Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> <li>To review and present to the government suitable recommendations relating to the 1954 Hague Convention for the protection of cultural property and its two protocols, and the 1980 Convention on certain conventional weapons and its four protocols.</li> </ul>
Uruguay	<p><i>Comisión Nacional de Derecho Humanitario (CNDH-Ur)</i></p> <p>c/o Ministerio de Relaciones Exteriores, Dirección de Derechos Humanos Colonia 1206 11600 Montevideo Tel. +5982 902 7806 or +5982 902 1327 (2215)</p>	<p><u>Established:</u> 1992</p> <p><u>Legal basis:</u> Executive Decrees No. 677/992 of 24 November 1992 and No. XXX/996 of 3 June 1996</p>	<p><u>Representatives:</u> Foreign Affairs, Justice, Defence, Interior, Health, Education and Culture, Supreme Court, Uruguayan Red Cross, and academic circles</p> <p><u>Chairmanship:</u> Ministry of Foreign Affairs</p>	<ul style="list-style-type: none"> <li>To make recommendations on dissemination of international humanitarian law at all levels of public and private education;</li> <li>to make recommendations on implementation of and respect for this body of law through the adoption of legislative provisions, regulations and other measures that ensure the application of this body of law.</li> </ul>



# CICR

INTERNATIONAL COMMITTEE OF THE RED CROSS

---

**Advisory Service on  
international humanitarian law**

**State of participation of American States  
in International Humanitarian Law Treaties  
and other relevant instruments**

- As at November 30, 2003 -

(\* ) The titles under which the instruments are placed are of indicative nature and do not reflect the ICRC's official position.

The annexed information is updated every month. It can be consulted at ICRC website: [www.icrc.org](http://www.icrc.org), or asked to ICRC delegations in The Americas.

*State of participation of American States in relevant  
International Humanitarian Law Treaties  
As at November 30, 2003*

**Protection of victims of armed conflicts**

- Four 1949 Geneva Conventions of 12 August 1949 (**GC I – IV**)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed conflicts, 8 June 1977. (**AP I**)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non- International Armed conflicts, 8 June 1977. (**AP II**)
- International Humanitarian Fact Finding Commission) (Article 90, Additional Protocol I) (**IHFFC**)
- Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts. Adopted by the General Assembly of the United Nations on 25 May 2000 (**OP CAC**)

**Protection of Cultural Property in the Event of Armed Conflict**

- Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954, (**HCCP**)
- Protocol I of 1954 to the Convention, (**HACCP I**)
- Protocol II of 1999 to the Convention of 1954, (**HCCP P. II**)

**Environment**

- Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques. Adopted by the General Assembly of the United Nations on 10 December 1976 (**ENMOD**)

**Arms**

- Convention on the prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Opened for Signature at London, Moscow and Washington, 10 April 1972. (**BWC**)
- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (**and Protocols**). Concluded at Geneva on 10 October 1980 (**CCW**)
- Additional Protocol to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects. Adopted at

- the 8th Plenary meeting of the States Parties on 13 October 1995(laser weapons) (P-IV) (**CCW P. IV**):-
- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II as amended on 3 May 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects. Adopted by the Conference of the States Parties to the Convention at Geneva on 3 May 1996 (**PIIa (1980)**).
  - Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. Opened for signature at Paris on 13 January 1993. (**CWC**)
  - Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. Oslo, 18 September 1997(**Ottawa**).
  - Amendment to the Convention on Prohibitions or Restrictions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (**with Protocols I, II and III**) Concluded at Geneva on 10 October 1980 (**CCW**)

**International Criminal Law**

- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Adopted by the General Assembly of the United Nations on 26 November 1968(**CSL WC & CAH**)
- International Convention Against the Recruitment, Use, Financing and Training of Mercenaries. Adopted by the General Assembly of the United Nations on 4 December 1989 (**Mercenaries**)
- Rome Statute of the International Criminal Court. Adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. (**ICC**)

**Level of acceptance of States of America in the relevant IHL treaties (as at November 30, 2003)**

Country		Protection of victims of armed conflicts					Protection of Cultural Property in the Event of armed conflict			Environment
		GCI – IV 1949	API 1977	AP I - CIHE (ART.90)	AP II 1977	OP CAC 2000	HCCP 1954	HCCP PI 1954	HCCP PII 1999	ENMOD 1976
1.	Antigua & Barbuda	06.10.1986.	06.10.1986.		06.10.1986.				25.10.1988	
2.	Argentina	18.09.1956.	26.11.1986.	11.10.1996.	26.11.1986.	10.09.2002	22.03.1989		20.03.1987	
3.	Bahamas	11.07.1975.	10.04.1980.		10.04.1980.			07.01.2002		
4.	Barbados	10.09.1968.	19.02.1990.		19.02.1990.		09.04.2002			
5.	Belize	29.06.1984.	29.06.1984.		29.06.1984.					
6.	Bolivia	10.12.1976.	08.12.1983.	10.08.1992.	08.12.1983.					
7.	Brazil	29.06.1957.	05.05.1992.	23.11.1993.	05.05.1992.		12.09.1958	12.09.1958	12.10.1984	
8.	Canada	14.05.1965.	20.11.1990.	20.11.1990.	20.11.1990.	07.07.2000	11.12.1998		11.06.1981	
9.	Chile	12.10.1950.	24.04.1991.	24.04.1991.	24.04.1991.	31.07.2003			26.04.1994	
10.	Colombia	08.11.1961.	01.09.1993.	17.04.1996.	14.08.1995.		18.06.1998	18.06.1998		
11.	Costa Rica	15.10.1969.	15.12.1983.	02.12.1999.	15.12.1983.	24.01.2003	03.06.1998	03.06.1998	07.02.1996	
12.	Cuba	15.04.1954.	25.11.1982.		23.06.1999.		26.11.1957	26.11.1957	10.04.1978	
13.	Dominica	28.09.1981.	25.04.1996.		25.04.1996.	20.09.2002			09.11.1992	
14.	Dominican Republic	22.01.1958.	26.05.1994.		26.05.1994.		05.01.1960	21.03.2002		
15.	Ecuador	11.08.1954.	10.04.1979.		10.04.1979.		02.10.1956	08.02.1961		
16.	El Salvador	17.06.1953.	23.11.1978.		23.11.1978.	18.04.2002	19.07.2001	27.03.2002	27.03.2002	
17.	Grenada	13.04.1981.	23.09.1998		23.09.1998					
18.	Guatemala	14.05.1952.	19.10.1987.		19.10.1987.	09.05.2002	02.10.1985	19.05.1994	21.03.1988	
19.	Guyana	22.07.1968.	18.01.1988.		18.01.1988.					
20.	Haiti	11.04.1957.								
21.	Honduras	31.12.1965.	16.02.1995.		16.02.1995.	14.08.2002	25.10.2002	25.10.2002	26.01.2003	
22.	Jamaica	20.07.1964.	29.07.1986.		29.07.1986.	09.05.2002				
23.	Mexico	29.10.1952.	10.03.1983.			15.03.2002	07.05.1956	07.05.1956	07.10.2003	
24.	Nicaragua	17.12.1953.	19.07.1999		19.07.1999		25.11.1959	25.11.1959	01.06.2001	
25.	Panama	10.02.1956.	18.09.1995.	26.10.1999	18.09.1995.	08.08.2001	17.07.1962	08.03.2001	08.03.2001	
26.	Paraguay	23.10.1961.	30.11.1990.	30.01.1998	30.11.1990.	27.09.2002				
27.	Peru	15.02.1956.	14.07.1989.		14.07.1989.	08.05.2002	21.07.1989	21.07.1989		
28.	Saint Kitts and Nevis	14.02.1986.	14.02.1986.		14.02.1986.					
29.	Saint Vincent and Grenadines	01.04.1981.	08.04.1983.		08.04.1983.				27.04.1999	
30.	Saint Lucia	18.09.1981.	07.10.1982.		07.10.1982.				27.05.1993	
31.	Suriname	13.10.1976.	16.12.1985.		16.12.1985.					
32.	Trinidad and Tobago	24.09.1963.	20.07.2001	20.07.2001	20.07.2001					
33.	United States of America	02.08.1955.				23.12.2002			17.01.1980	
34.	Uruguay	05.03.1969.	13.12.1985.	17.07.1990.	13.12.1985.	09.09.2003	24.09.1999	24.09.1999	16.09.1993	
35.	Venezuela	13.02.1956.	23.07.1998		23.07.1998	23.09.2003				
TOTAL	REGION	35	33	11	32	16	17	14	5	14
	UNIVERSAL	191	161	65	156	66	105	87	16	69



## Level of acceptance of States of America in the relevant IHL treaties (as at November 30, 2003)

Country		Arms									International criminal law				
		BWC 1972	CCW 1980			PIIa (1980) 1996	CCW PIV 1995	CWC 1993	Ottawa 1997	CCW a 2001	CPP Genocide 1948	CSL WC & CAH 1968	Mercenar ies 1989	ICC 1998	
			CCW 1980	PI	PII										P III
1)	Antigua & Barbuda	29.01.2003												18.06.2001	
2)	Argentina	27.11.1979	02.10.1995	x	x	x	21.10.1998	21.10.1998	02.10.1995	03.05.1999		25.10.1988		08.02.2001	
3)	Bahamas	28.11.1986								14.09.1999		05.06.1956	26.08.2003		
4)	Barbados	16.02.1973								31.07.1998		05.08.1975			
5)	Belize	20.10.1986								26.01.1999		14.01.1980	10.07.1992	10.12.2002	
6)	Bolivia	30.10.1975	21.09.2001	x	x	x	21.09.2001	21.09.2001	14.08.1998	09.06.1998			06.10.1983	27.06.2002	
7)	Brazil	27.02.1973	03.10.1995	x	x	x	04.10.1999	04.10.1999	13.03.1996	30.04.1999			15.04.1952	20.06.2002	
8)	Canada	18.09.1972	24.06.1994	x	x	x	05.01.1998	05.01.1998	26.09.1995	03.12.1997	22.07.2002	03.09.1952		07.07.2000	
9)	Chile	22.04.1980	15.10.2003	x		x	15.10.2003	15.10.2003	12.07.1996	10.09.2001		03.06.1953			
10)	Colombia	19.12.1983	06.03.2000	x	x	x	06.03.2000	06.03.2000	05.04.2000	06.09.2000		27.10.1959		05.08.2002	
11)	Costa Rica	17.12.1973	17.12.1998	x	x	x	17.12.1998	17.12.1998	31.05.1996	17.03.1999		14.10.1950	20.09.2001	07.06.2001	
12)	Cuba	21.04.1976	02.03.1987	x	x	x			29.04.1997			04.03.1953	13.09.1972		
13)	Dominica	08.11.1978							12.02.2001	26.03.1999				12.02.2001	
14)	Dominican Republic	23.02.1973								30.06.2000					
15)	Ecuador	12.03.1975	04.05.1982	x	x	x	14.08.2000		06.09.1995	29.04.1999		21.12.1949		05.02.2002	
16)	El Salvador	31.12.1991	26.01.2000	x	x	x	26.01.2000	26.01.2000	30.10.1995	27.01.1999		28.09.1950			
17)	Grenada	22.10.1986								19.08.1998					
18)	Guatemala	19.09.1973	21.07.1983	x	x	x	29.10.2001	30.08.2002	12.02.2003	26.03.1999		13.01.1950			
19)	Guyana								12.09.1997	05.08.2003					
20)	Haiti											14.10.1950			
21)	Honduras	14.03.1979	30.10.2003	x	x	x	30.10.2003	30.10.2003		24.09.1998		05.03.1952		01.07.2002	
22)	Jamaica	13.08.1975							08.09.2000	17.07.1998		23.09.1968			
23)	Mexico	08.04.1974	11.02.1982	x	x	x		10.03.1998	29.08.1994	09.06.1998	22.05.2003	22.07.1952	15.03.2002		
24)	Nicaragua	07.08.1975	05.12.2000	x		x	05.12.2000	05.12.2000	05.11.1999	30.11.1998		29.01.1952	03.09.1986		
25)	Panama	20.03.1974	26.03.1997	x	x	x	03.10.1999	26.03.1997	07.10.1998	07.10.1998		11.01.1950		21.03.2002	
26)	Paraguay	09.06.1976							01.12.1994	13.11.1998		03.10.2001		14.05.2001	
27)	Peru	05.06.1985	03.07.1997	x		x	03.07.1997	03.07.1997	20.07.1995	17.06.1998		24.02.1960	11.08.2003	10.11.2001	
28)	Saint Kitts and Nevis	02.04.1991								02.12.1998					
29)	Saint Vincent and Grenadines	13.05.1999							18.09.2002	01.08.2001		09.11.1981	09.11.1981	03.12.2002	
30)	Saint Lucia	26.11.1986							07.04.1997	13.04.1999					
31)	Suriname	06.01.1993							28.04.1997	25.05.2002					
32)	Trinidad and Tobago								24.06.1997	27.04.1998		13.12.2002		06.04.1999	
33)	United States of America	26.03.1975	24.03.1995	x	x		24.05.1999		25.04.1997			25.11.1988			
34)	Uruguay	06.04.1981	06.10.1994	x	x	x	18.08.1998	18.09.1998	06.10.1994	07.06.2001		11.07.1967	21.09.2001	14.07.1999	
35)	Venezuela	18.10.1978							03.12.1997	14.04.1999		12.07.1960		28.06.2002	
														07.06.2000	
TOTAL	REGION	32	18	18	15	17	16	15	26	32	2	27	8	3	19
	UNIVERSAL	151	93	91	82	88	74	74	157	141	21	135	48	25	92

**AG/RES. 1944 (XXXIII-O/03)**  
**PROMOTION OF AND RESPECT FOR**  
**INTERNATIONAL HUMANITARIAN LAW<sup>35</sup>**

(Resolution adopted at the fourth plenary  
session, held on June 10, 2003)

THE GENERAL ASSEMBLY,

REAFFIRMING the principles and purposes of the Charter of the Organization of American States and the Charter of the United Nations;

RECALLING its resolutions AG/RES. 1270 (XXIV-O/94), AG/RES. 1335 (XXV-O/95), AG/RES. 1408 (XXVI-O/96), AG/RES. 1503 (XXVII-O/97), AG/RES. 1565 (XXVIII-O/98), AG/RES. 1619 (XXIX-O/99), AG/RES. 1706 (XXX-O/00), AG/RES. 1770 (XXXI-O/01), AG/RES. 1771 (XXXI-O/01), AG/RES. 1900 (XXXII-O/02), and AG/RES. 1904 (XXXII-O/02);

DEEPLY CONCERNED over persistent violations of international humanitarian law affecting the world's civilian populations, in particular children and women;

AWARE that the aim of international humanitarian law is the protection of the civilian population and all persons affected by armed conflict and that it also establishes that the right of parties to armed conflict to choose the methods and means of war is not unlimited;

RECOGNIZING that international humanitarian law sets forth appropriate provisions for preventing and alleviating human suffering in situations of armed conflict, the need to reinforce its provisions by achieving their universal acceptance and their widest possible dissemination and application, and the importance of developing it;

RECALLING that it is the obligation of all states to observe and enforce, in all circumstances, the standards established in the 1949 Geneva Conventions and, for the states that are parties thereto, those contained in the 1977 Additional Protocols to those conventions;

---

35 The United States made a statement in relation to point 2.b and 9 of the present resolution, asking for it to be placed in the records. The text of the statement is attached at the end of the resolution.

REITERATING the need for states to adopt legislative, administrative, educational, and practical measures for the application, at the national level, of international humanitarian law;

AWARE of the need to punish those responsible for war crimes, crimes against humanity, and other grave breaches of international humanitarian law;

RECALLING that the Rome Statute of the International Criminal Court defines war crimes and crimes against humanity that the states parties thereto have committed must not go unpunished;

TAKING NOTE of the holding of the first meeting of the International Criminal Court, on March 11, 2003;

TAKING NOTE ALSO of the entry into force, on February 12, 2002, of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

CONCERNED over the disappearance of persons and the taking of hostages, particularly during armed conflict, and the suffering this causes to families and loved ones during and after the conflict;

TAKING INTO ACCOUNT the results of the International Conference of Governmental and Non-Governmental Experts on the Missing, held in Geneva, Switzerland, from February 19 to 21, 2003;

UNDERSCORING the need to protect cultural property from the effects of armed conflicts;

NOTING the decision of the states parties to the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects to commence negotiations with a view to adopting a new instrument on explosive remnants of war;

RECOGNIZING the important part played by the national committees or commissions established in numerous countries for the dissemination and application of international humanitarian law in ensuring that the Geneva Conventions and, where applicable, the Additional Protocols thereto, as well as the other instruments of international humanitarian law, are incorporated into the domestic law of states parties to those instruments, so as to ensure proper compliance with and dissemination of those instruments;

UNDERSCORING ONCE MORE the ongoing efforts of the International Committee of the Red Cross (ICRC) to promote and disseminate knowledge of international humanitarian law and the activities it carries out as an organization that is impartial, neutral, and independent under any and all circumstances; and

EXPRESSING its satisfaction with the fruitful cooperation between the OAS General Secretariat and the ICRC in furtherance of the agreement signed on May 10, 1996, and with the holding of the Special Meeting of the Committee on Juridical and Political Affairs on Promotion of and Respect for International Humanitarian Law, at OAS headquarters on March 20, 2003, regarding which the Chair of the Committee prepared a report (DIH/doc.23/03),

**RESOLVES:**

1. To urge member states and all parties to an armed conflict to respect their obligations under international humanitarian law, particularly those that apply to the protection of the civilian population.
2. To urge member states of the Organization that have not yet done so to consider becoming parties to the following treaties:
  - a. The 1977 Additional Protocols I and II to the 1949 Geneva Conventions; and that they consider making the declaration contemplated in Article 90 of Protocol I;
  - b. The 1998 Rome Statute of the International Criminal Court;
  - c. The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Antipersonnel Mines and on Their Destruction;
  - d. The 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, including the amendment to its Article I adopted in 2001 and its four protocols;
  - e. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, its 1954 Protocol, and its 1999 Second Protocol, on enhanced protection;

- f. The 1989 Convention on the Rights of the Child and its Optional Protocol on the involvement of children in armed conflict, which includes their participation in hostilities and their recruitment into armed forces and armed groups;
  - g. The 1997 ~~Inter~~American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA); and
  - h. The 1994 Convention on the Safety of United Nations and Associated Personnel.
3. To urge member states and all parties to an armed conflict to respect the impartiality, neutrality, and independence of humanitarian action in accordance with the guiding principles adopted by the United Nations General Assembly in its resolution 46/182, dated December 19, 1991, and to ensure the well-being of the staff of humanitarian missions.
  4. To urge member states to adopt the necessary measures to implement, at the national level, the provisions contained in the instruments of international humanitarian law to which they are parties; to enlist, if necessary, the technical assistance of the ICRC; to bring about the widest possible dissemination of international humanitarian law throughout the population, particularly among the armed forces and security forces, by including it in doctrine, military manuals, and official instruction programs.
  5. To urge member states to continue to support the work of national advisory committees or commissions or similar bodies for the dissemination and implementation of international humanitarian law where they already exist, and to consider the advisability of establishing such bodies where this is not already the case, with support from the ICRC.
  6. To urge the parties to an armed conflict to take immediate measures to determine the identity and status of persons reported as missing and to invite member states to consider the dissemination and application of the observations and recommendations adopted at the International Conference of Governmental and Non-Governmental Experts on the Missing, held in Geneva, Switzerland, from February 19 to 21, 2003.
  7. To urge member states to apply the necessary measures to protect cultural property from the effects of armed conflicts, such as the identification, registration, or distinctive marking of such property.

8. To urge states, in accordance with international legal obligations they have assumed, to pay special attention both in times of peace and in times of armed conflict to the obligation, in the study, development, acquisition, or adoption of a new weapon or means or method of warfare, to determine whether its employment would be contrary to international humanitarian law, and, in that event, neither to adopt it for use by the armed forces nor to manufacture it for such purposes.
9. To invite the states parties to the Rome Statute to define in their criminal legislation, in addition to crimes that must be repressed by other international humanitarian law treaties, those set forth in the Statute, and to adopt all measures necessary to cooperate effectively with the International Criminal Court.
10. To invite member states to contribute to the quest for a solution to the problem of explosive remnants of war by means of a new instrument and to take part in the negotiations under way for that purpose at the United Nations.
11. To urge member states to consider adopting the appropriate measures, at the national level, to address the grave humanitarian consequences of the unregulated availability of arms, in keeping with the Programme of Action adopted at the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (New York, July 9-20, 2001).
12. To request the General Secretariat to continue to organize, through the Secretariat for Legal Affairs and in coordination with the ICRC, governmental conferences to disseminate and reinforce the implementation of international humanitarian law and related inter-American conventions.
13. To instruct the Permanent Council, with support from the General Secretariat and in cooperation with the ICRC, to continue to organize special meetings on topical issues in the area of international humanitarian law.
14. To instruct the Permanent Council to present a report to the General Assembly at its thirty-fourth regular session on the implementation of this resolution.

## **Annex**

### **Statement by the Delegation of the United States**

The United States has long been concerned about the persistent violations of international humanitarian law and international human rights law throughout the world. We stand for justice and the promotion of the rule of law. The United States will continue to be a forceful advocate for the principle of accountability for war crimes, genocide and crimes against humanity, but we cannot support the seriously flawed International Criminal Court. Our position is that states are primarily responsible for ensuring justice in the international system. We believe that the best way to combat these serious offenses is to build and strengthen domestic judicial systems and political will and, in appropriate circumstances, work through the United Nations Security Council to establish ad hoc tribunals as in Yugoslavia and Rwanda. Our position is that international practice should promote domestic accountability. The United States has concluded that the International Criminal court does not advance these principles.

The United States has not ratified the Rome Treaty and has no intention of doing so. This is because we have strong objections to the International Criminal Court, which we believe is fundamentally flawed. The International Criminal Court undermines national sovereignty with its claim to jurisdiction over the nationals of states not party to the agreement. It has the potential to undermine the role of the United Nations Security Council in maintaining international peace and security. We also object to the Court because it is not subject to adequate checks and balances. We believe that an independent court with unchecked power is open to abuse and exploitation. Its structure lends itself to the great danger of politically-motivated prosecutions and decisions. The inclusion of the still-undefined crime of aggression within the statute of the Court creates the potential for conflict with the United Nations Charter, which provides that the Security Council determines when an act of aggression has occurred.

The United States notes that in past decades several Member States have reached national consensus for addressing historic conflicts and controversies as part of their successful and peaceful transition from authoritarian rule to representative democracy. Indeed, some of those sovereign governments, in light of new events, evolved public opinion, or stronger democratic institutions, have decided on their own and at a time of their choosing to reopen past controversies. These experiences provide compelling support for the argument that Member States – particularly those with functioning democratic

institutions and independent functioning judicial systems – should retain the sovereign discretion to decide as a result of democratic and legal processes whether to prosecute or to seek national reconciliation by other peaceful and effective means. The United States is concerned that the International Criminal Court has the potential to undermine the legitimate efforts of Member States to achieve national reconciliation and domestic accountability by democratic means.

Our policy on the ICC is consistent with the history of our policies on human rights, the rule of law and the validity of democratic institutions. For example, we have been a major proponent of the Special Court in Sierra Leone because it is grounded in sovereign consent, combines domestic and international participation in a manner that will generate a lasting benefit to the rule of law within Sierra Leone, and interfaces with the Truth and Reconciliation Commission to address accountability.

The United States has a unique role and responsibility to help preserve international peace and security. At any given time, U.S. forces are located in close to 100 nations around the world, for example, conducting peacekeeping and humanitarian operations and fighting inhumanity. We must ensure that our soldiers and government officials are not exposed to the prospect of politicized prosecutions and investigations. Our country is committed to a robust engagement in the world to defend freedom and defeat terror; we cannot permit the ICC to disrupt that vital mission.

In light of this position, the United States cannot in good faith join in the consensus on an OAS resolution that promotes the Court.



Esta publicación fue impresa en Serviprensa, S.A. en el mes de marzo de 2004. La edición consta de 200 ejemplares en papel bond 90 gramos.

## **MISSION**

### **THE INTERNATIONAL COMMITTEE OF THE RED CROSS**

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities conducted by the Movement in situations of conflict. It also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement.

### **THE ORGANIZATION OF AMERICAN STATES**

The Organization of American States (OAS) is the world's oldest regional organization, dating back to the First International Conference of American States held in Washington, D.C., from October 1889 to April 1890. During this meeting the establishment of the International Union of American Republics was approved. The Charter of the OAS was signed in Bogota in 1948 and entered into force on December 1951. The Charter was subsequently amended by the Protocol of Buenos Aires signed in 1967, which entered into force on 1970, and by the Protocol of Cartagena de Indias, signed in 1985, which entered into force on November 1988; by the Protocol of Washington, signed in 1992, which entered into force on September 25, 1997. The OAS currently has 35 Member States, in addition the Organization has granted Permanent Observer status to 45 States, as well as to the European Union.

The basic purposes of the OAS are as follows: to strengthen the peace and security of the continent; to promote and consolidate representative democracy, with due respect for the principle of non-intervention; to prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the Member States; to provide for common action on the part of those States in the event of aggression; to seek the solution of political, juridical and economic problems that may arise among them; to promote, by cooperative action, their economic, social and cultural development, and to achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the Member States

**MEMBER STATES:** Antigua and Barbuda, Argentina, The Bahamas (Commonwealth of), Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica (Commonwealth of), Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay and Venezuela.

The norms that regulate the protection of victims of war and limit the means and methods of warfare are enshrined today in the four 1949 Geneva Conventions (to which 191 States are parties, i.e. virtually all the States of the world), their two additional Protocols of 1977, as well as a number of other international treaties.

In the Americas, efforts aimed at protecting the individual in all circumstances, including armed conflict, have culminated in a large participation in treaties which pursue that very objective.

The States have committed themselves to respect and to ensure respect for the rules deriving from international humanitarian law treaties. In order to do so they have undertaken to implement the treaty provisions at the domestic level. Consequently, they are under an obligation to enact laws, and other regulations, to repress violations of international humanitarian law, to protect the emblems of the red cross and the red crescent, to guarantee the rights of protected persons, etc. States also have the responsibility to disseminate international humanitarian law as widely as possible.

The national committees for the implementation of international humanitarian law represent important mechanisms for assisting States engaged in complying with their treaty obligations. The committees counsel and assist their respective governments in the adoption of national measures of implementation and in the dissemination of international humanitarian law.

Convinced of the crucial contribution the committees make in that endeavor, the Organization of American States and the International Committee of the Red Cross have decided to join efforts in order to support the work done by the committees, facilitate the exchange of information and experiences among them, and share insights which could make their complex mission easier.

The present report of the Meeting of National Committees for the Implementation of International Humanitarian Law might serve as a reference for those who wish to know how these bodies function the Americas where important progress has been registered over the past few years. There are numerous recommendations and proposals for concrete action resulting from the productive discussions that have taken place during the meeting. They will benefit not only the national committees, but are certain to be most useful for the promotion of the respect for international humanitarian law on a wider scale, and the protection of the victims of armed conflict.



ICRC



OAS