



ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

The Exchange of Information on National Measures to Implement International Humanitarian Law

Any system for exchanging information aims to improve compliance with the law. International humanitarian law (IHL) has no uniform mechanism. A range of complementary, compulsory or optional systems exists, involving either the simple forwarding of information or the submission of periodical reports. This inter-State exchange of information may involve international organizations, depositaries of the treaties, National Committees for IHL, and the International Committee of the Red Cross (ICRC).

The States' obligations

Transmission of information: official translations, laws and implementing regulations

The *1949 Geneva Conventions and their 1977 Additional Protocol I*, which are part of the core of IHL, provide for the exchange of information between States parties on national measures to implement their provisions.

According to the terms of Articles 48, 49, 128 and 145, which are common to the Geneva Conventions, and of Article 84 of Protocol I, the States parties must communicate to one another the official translations of the treaties in question and any laws and regulations they have adopted to ensure implementation. These translations are to be communicated in peacetime through the Swiss Government, which is the depositary of the Geneva Conventions and their Protocols, and in wartime through the Protecting Powers.

The term "laws and regulations" is understood here in the broadest sense. It covers all legal instruments issued by both the executive and the legislative powers that have any bearing on the implementation of the treaties in question.

The States must thus inform one another of the measures they take by virtue of the provisions requiring them to do so (such as criminal laws repressing grave breaches of IHL or legislation regulating the use of the

emblem) but also of any other laws and regulations they adopt to ensure compliance with the Conventions and Protocol I.

Other treaties make provision for a similar system for exchanging information. The *1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, for example, in addition to providing for certain verification procedures, also requires the States parties to inform the Organization for the Prohibition of Chemical Weapons of the legislative and administrative measures taken to implement its provisions (Art. 7, para. 5).

Likewise, the *1999 Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict* requires the parties to communicate without delay information to one another, through the Director-General of UNESCO, on the laws and administrative provisions they adopt to ensure that the Protocol is applied (Art. 30, para. 3).

The aim in transmitting this information is to enable each party to examine how the others construe and fulfil their obligations. Errors, differences and contradictions can thus be brought to light or even avoided; the system can also prompt the parties to endeavour to outdo each other in their efforts at implementation.

Systems for reporting on the application of certain conventions

The exchange of information is the purpose of the reporting systems for which provision is made in other instruments of IHL. These documents, which are presented periodically, generally contain analysed data and often cover fields other than the adoption of legislative and administrative measures.

According to Article 26, paragraph 2, of the *1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict*, for example, the States parties must submit a report to the Director-General of UNESCO at least once every four years providing any information they deem appropriate on the measures which their respective administrations have taken or prepared or are envisaging in the implementation of the Convention and the Regulations for its execution.

Article 7 of the *1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction* requires the States parties to submit an annual report to the Secretary-General of the United Nations informing him in particular of national implementation measures, the stockpiles of anti-personnel mines, the location of mined areas, the quantities of anti-personnel mines retained for training purposes, the destruction of anti-personnel mines, and the measures taken to

warn civilians and prevent them from entering mined zones.

Finally, Article 8 of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, of 25 May 2000, stipulates that each State party must, within two years following the entry into force of the Protocol for that State, submit a report to the Committee on the Rights of the Child providing information on the measures it has taken to implement the provisions of the Protocol, including those on the recruitment of children and their participation in hostilities. Further information on the implementation of the Optional Protocol is included in the subsequent reports the State party submits to the Committee on the Rights of the Child (Art. 44 of the Convention).

Information transmitted within international organizations

United Nations

Since the adoption of the Additional Protocols in 1977, the General Assembly has regularly requested the Secretary-General to report to it on the status of these instruments. Initially, that report concerned only the signing and ratification of the two Additional Protocols, but its content has gradually been extended in accordance with the biennial resolutions on which it is based. It now includes an increasing amount of detailed information, which the Member States and the ICRC present on a voluntary basis. Furthermore, this information now covers the measures taken by the States towards the implementation of IHL as a whole.

Regional organizations

Regional organizations also provide a framework within which information on national measures to implement IHL can be exchanged.

Pursuant to the resolutions adopted each year by the General Assembly of the *Organization of American*

States, for example, numerous reports have been drawn up on the subject within that Organization since 1998, either by the Secretary General, the Permanent Council or the Member States, or by the ICRC.

Similarly, an office for monitoring the IHL was set up within the legal department of the *Ligue of Arab States* in 2001. The tasks of that office include collecting information and drawing up an annual report.

Role of the National Committees for International Humanitarian Law

Within the framework of their respective mandates, and in particular their activities to provide advice and assistance to government authorities, the National Committees for IHL can play a very useful role in the exchange of information.

Some Committees have already been very active in this respect, but all are encouraged to step up their involvement as far as possible, either:

- by encouraging their governments to honour their commitments to transmit information and issue reports;
- by encouraging their governments to supply relevant information in the context of the optional procedures, particularly within the international organizations; or
- by providing assistance in the preparation and/or editing of reports or other documents, whether by commenting on drafts, helping to seek or collect information at the national level, or coordinating preparatory activities.

The National Committees also contribute more directly to the exchange of information by developing cooperation amongst themselves or with the ICRC.

Role of the International Committee of the Red Cross

Working through the Advisory Service on IHL, the ICRC has considerably enhanced its activities to promote the exchange of information on national measures of implementation.

Database

One essential measure adopted by the Advisory Service was the creation of a public database, which can be accessed through the ICRC website (<http://www.icrc.org/ihl-nat>).

The database contains the text of legislative measures and regulations adopted by the States and, as far as at all possible, the texts of national court decisions relating to IHL.

The content of the database is compiled using the information made available to the Advisory Service notably by a network of experts based throughout the world.

Biennial report

Every two years, the Advisory Service also publishes a report summarizing the national measures of implementation taken by governments. The report includes country-by-country information on the status of ratification of IHL treaties, on the legislation enacted with a view to implementing the law, on whether or not a national committee has been established and, if so, on what it has accomplished.

The Advisory Service also provides *ad hoc* assistance to all those involved in these complementary systems and takes part directly in certain cases.

12/2002