

AG/RES. 1944 (XXXIII-O/03)

PROMOTION OF AND RESPECT FOR INTERNATIONAL HUMANITARIAN LAW^[1]

(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;

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.

[1]. The United States reserves on paragraphs 2.b and 9 of this resolution and requests that the text of its statement be placed on record. The text of the statement appears as an annex to this resolution.