

AG/RES. 2433 (XXXVIII-O/08)

PROMOTION OF AND RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

(Adopted at the fourth plenary session, held on June 3, 2008)

THE GENERAL ASSEMBLY,

RECALLING resolutions AG/RES. 1270 (XXIV-O/94), AG/RES. 1335 (XXV-O/95), 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. 1709 (XXX-O/00), AG/RES. 1770 (XXXI-O/01), AG/RES. 1771 (XXXI-O/01), AG/RES. 1904 (XXXII-O/02), AG/RES. 1944 (XXXIII-O/03), AG/RES. 2052 (XXXIV-O/04), AG/RES. 2127 (XXXV-O/05), AG/RES. 2226 (XXXVI-O/06), AG/RES. 2231 (XXXVI-O/06), and AG/RES. 2293 (XXXVII-O/07);

RECALLING ALSO that, under the Charter of the Organization of American States (OAS) and pursuant to all applicable provisions of international humanitarian law and international human rights law within their respective spheres of application, human rights and fundamental freedoms must always be respected, including in situations of armed conflict;

DEEPLY CONCERNED about the persisting violations of international humanitarian law that continue to cause suffering to all victims of armed conflict;

ACKNOWLEDGING the Report of the Secretary-General of the United Nations General Assembly pursuant to the mandate in United Nations General Assembly resolution 61/89, of December 6, 2006, entitled "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms," and the work done by the group of governmental experts, within that framework and pursuant to the mandate in the same resolution, to seek the views of member states on the feasibility, scope, and parameters for a comprehensive, legally binding draft instrument on trade in conventional weapons;

RECALLING that it is the obligation of all member states, in all circumstances, to respect and ensure respect for the 1949 Geneva Conventions, and that the principles set forth therein are also binding on all parties to an armed conflict;

CONSIDERING that international humanitarian law contains provisions that reflect customary international law which states must observe;

EMPHASIZING that in cases of serious violations of international humanitarian law constituting crimes under international law, states have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if said person is found guilty, the duty to punish him or her, in order to prevent impunity and future violations;

EMPHASIZING ALSO the obligation of states to take all necessary measures, including, when applicable, penal sanctions, for the suppression of other breaches;

UNDERSCORING the need to strengthen the rules of international humanitarian law by means of their universal acceptance, their broader dissemination, and the adoption of national measures for their effective application;

NOTING WITH SATISFACTION the universal adoption of the four 1949 Geneva Conventions on the protection of victims of war, to which 194 states are parties to date;

RECALLING that 33 and 32 OAS member states, respectively, are parties to Additional Protocols I and II thereto, of 1977;

URGING member states to become parties to Additional Protocol III to the Geneva Conventions of 1949, which was adopted in 2005 and has been in force since 2007, regarding the adoption of the Red Crystal as an additional distinctive emblem to the Red Cross and Red Crescent, taking into account that several states in the region have already done so;

RECALLING that 11 member states have issued the declaration envisioned in Article 90 of Additional Protocol I, of 1977, on recognition of the competence of the International Humanitarian Fact-Finding Commission;

AWARE of the Hemisphere's rich cultural heritage, which contains cultural assets recognized by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as world heritage, and which could benefit from the systems for the promotion and protection of international humanitarian law;

RECALLING that the International Convention for the Protection of All Persons from Enforced Disappearance, adopted on December 20, 2006, by the General Assembly of the United Nations, requires 20 ratifications to enter into force;

NOTING all of the international efforts under way to promote international instruments, including the possibility of their being legally binding, on the development, use, production, transfer, and stockpiling of cluster munitions;

RECALLING the 10<sup>th</sup> anniversary of the signing of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention), on December 3 and 4, 1997;

RECOGNIZING the important advisory work of the national committees or commissions on international humanitarian law in support of the efforts of states in the area of promotion of and respect for that law through the adoption of national enacting measures, and that 17 member states of the Organization have such organizations;

NOTING the final declaration and the six resolutions adopted by the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent, entitled "Together for Humanity," held from November 26 to 30, 2007; and the commitments made by the states of the Americas participating in the Conference;

NOTING ALSO the results achieved at the following meetings in which representatives of member states and OAS officials took part:

- a. The meetings of the Group of Governmental Experts of the High Contracting Parties 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 (CCW) of 1980, held in Geneva, Switzerland, from January 14 to 18, 2008, and from April 7 to 11, 2008;

- b. The various conferences on cluster munitions, held in Lima, Peru, from May 23 to 25, 2007; in Vienna, Austria, from December 5 to 7, 2007; and in Wellington, New Zealand, from February 18 to 22, 2008; and the Diplomatic Conference for the Adoption of a Convention on Cluster Munitions, held in Dublin, Ireland, from May 19 to 30, 2008, following up on the process that began with the Oslo (Norway) Conference on Cluster Munitions, on February 22 and 23, 2007;
- c. The Regional Seminar for Latin America and the Caribbean on Ensuring the Universality of 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 (CCW) of 1980, held in Santo Domingo, Dominican Republic, on March 11 and 12, 2008;
- d. The First Latin American Regional Conference on Cluster Munitions, held in San José, Costa Rica, on September 4 and 5, 2007, and the Latin American and Caribbean Regional Conference on Cluster Munitions, held in Mexico City on April 16 and 17, 2008;
- e. The Regional Meeting of Governmental Experts on the Application of International Humanitarian Law in the Americas, held in Mexico City on August 6 and 7, 2007; and
- f. The meeting of legislators of the Central American region, Mexico, Panama, and the Dominican Republic on the incorporation of war crimes into international criminal law in commemoration of the 30<sup>th</sup> anniversary of the Additional Protocols of 1977 to the Geneva Conventions of 1949, held in San José, Costa Rica, on June 7 and 8, 2007;

WELCOMING the regional presentation of the International Committee of the Red Cross Study on Customary International Humanitarian Law, which took place on Bogotá, Colombia, in March 2008; and

EMPHASIZING the special role of the International Committee of the Red Cross (ICRC) as a neutral, impartial, and independent institution working to protect and assist the victims of armed conflicts and other situations of armed violence, as well as to promote respect for international humanitarian law and the principles underlying it,

RESOLVES:

- 1. To urge member states and the parties engaged in armed conflict to honor their obligations under international humanitarian law, including those pertaining to safeguarding the well-being and dignity of protected persons and property, and the proper treatment of prisoners of war.
- 2. To urge those member states that have not yet done so to consider becoming parties to the following treaties, among others:
  - a. The Convention for the Protection of Cultural Property in Time of Armed Conflict (Hague Convention, 1954), and its 1954 and 1999 Protocols;

- b. The 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity;
- c. The 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention);
- d. The 1977 Protocols I and II Additional to the Geneva Conventions of 1949, as well as Additional Protocol III, of 2005, including the declaration contained in Article 90 of Additional Protocol I;
- e. 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 (CCW) of 1980, including the amendment to Article 1 thereof, adopted in 2001, and the five protocols thereto;
- f. The 1989 Convention on the Rights of the Child and the 2000 Optional Protocol thereto on the involvement of children in armed conflict;
- g. The 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention);
- h. The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction;
- i. The 1998 Rome Statute of the International Criminal Court;
- j. The 1997 Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA);
- k. The 1999 Inter-American Convention on Transparency in Conventional Weapons Acquisitions; and
- l. The 1994 Convention on the Safety of United Nations and Associated Personnel.

3. To invite member states to bring about the widest possible dissemination of the rules of international humanitarian law, in particular by incorporating them into military doctrine and manuals, so that armed forces will have the means and mechanisms necessary for their effective application, and by making use of the pertinent media so that such law may be familiar to the civilian population.

4. To urge member states to adapt their criminal law in order to meet their legal obligations under the 1949 Geneva Conventions and, in the case of the states parties thereto, the 1977 Additional Protocol I thereto with respect to the definition of war crimes, the universal jurisdiction for these grave breaches, and the responsibility of superiors for the acts of their subordinates.

5. Also to urge member states that have not yet done so to adopt, in accordance with their internal law and pursuant to international law, legislative or other measures necessary to establish non-applicability of statutory limitations to the most serious violations of international humanitarian law constituting crimes under international law.

6. To invite member states that are parties to the Rome Statute to cooperate fully with the International Criminal Court and to define under their criminal law the crimes that are within its jurisdiction.

7. To call upon member states to enact laws to regulate the use of and to prevent and, when applicable, punish the misuse of the red cross, red crescent, and, where applicable, red crystal emblems, as well as their denominations, as established in relevant treaties.

8. To urge member states, in keeping with their obligations under international law, to adopt effective measures to prevent the disappearance of persons in cases of armed conflict or other situations of armed violence, to determine the fate of those who have disappeared, and to attend to the needs of their family members.

9. To encourage member states to ensure the adoption of the necessary measures and mechanisms to protect cultural property from the effects of armed conflict, in accordance with their international obligations, and in particular to give consideration to the adoption of preventive measures related to the preparation of inventories, the planning of emergency measures, the appointment of competent authorities, and the enactment of laws to ensure respect for such property.

10. To remind those member states that are parties to the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction of their obligation to prevent and suppress any activity prohibited therein when it is carried out by persons or in territory under their jurisdiction or control and of the importance of addressing the needs of victims of antipersonnel mines and, where appropriate, victims of explosive remnants of war, considering, as part of those needs, medical care, rehabilitation, and economic and social reintegration of the victims.

11. To urge member states to adopt legislative and other measures, including criminal legislation, to strengthen national institutions and coordination among national institutions, and regional and subregional cooperation, for implementation of the 1925 Geneva Protocol, the 1972 Biological Weapons Convention, and the 1993 Chemical Weapons Convention, *inter alia* by adopting or developing codes of conduct and of professional ethics for the scientific and industrial community, with the aim of preventing misuse in the context of advances in bioscience and biotechnology research, and considering national, regional, and international measures to improve biosafety and biosecurity, including laboratory safety and the security of pathogens and toxins.

12. To call upon member states to adopt all necessary measures to comply with their respective international legal obligations regarding the recruitment and use of children in armed forces or armed groups and to prevent their participation in hostilities, in accordance with recognized standards of international humanitarian law, international human rights law, and international refugee law.

13. To invite member states to step up their efforts to strengthen safeguards for civilians against the use and indiscriminate effects of arms and munitions in general, especially

through the enactment of laws aimed at strengthening control over the illicit manufacturing of and trafficking in firearms and other related materials.

14. To invite member states to consider becoming parties to the Convention on Cluster Munitions, adopted at the Dublin Conference on May 30, 2008, which will be open for signature in Oslo beginning in December 2008, and to continue participating in other processes relating to the development, use, stockpiling, production, and transfer of cluster munitions, and to assistance to victims and the removal of such munitions to lessen their impact on civilian populations.<sup>1/</sup>

15. To encourage member states to establish procedures for determining, when studying, developing, acquiring, or adopting a new weapon or new means or methods of warfare, whether using, manufacturing, stockpiling, exporting, or transferring them would be contrary to international humanitarian law, and, in that event, to prohibit their use by the armed forces and their manufacture for such purposes. Additionally, in such cases account will be taken of the international obligations assumed, as indicated in operative paragraph 11.

16. To encourage interested member states to continue to support the work of the Group of Governmental Experts established by United Nations General Assembly resolution 61/89, of December 6, 2006, so that it may continue to advance the study and negotiation of a comprehensive, binding draft instrument for the establishment of common international standards for the import, export, and transfer of conventional arms, and to gauge the interest of member states in such an instrument.

17. To invite member states to continue to support the work of national committees or commissions responsible for the dissemination and implementation of international humanitarian law; and to urge states where such bodies do not exist to consider establishing them, as a means of strengthening conflict prevention and the role those bodies play in times of peace.

18. To request the Inter-American Juridical Committee (CJI) to continue preparing and to propose model laws to support the efforts made to fulfill obligations under international humanitarian law treaties, on the basis of priority topics determined in consultation with the member states and the International Committee of the Red Cross (ICRC); to that end, member states are urged to forward to the CJI as soon as possible a list of such priority topics, to enable the Committee to carry out that mandate.

19. To express its satisfaction over the cooperation between the Organization of American States (OAS) and the ICRC in promoting respect for international humanitarian law and the principles that govern that law; and to urge the General Secretariat to continue to strengthen such cooperation.

20. To request the General Secretariat to continue organizing, within the framework of the Committee on Juridical and Political Affairs, through the Department of International Law of the Secretariat for Legal Affairs, and in coordination with the ICRC, courses and seminars for

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1. The delegation of Brazil supports all initiatives aimed at strengthening already existing provisions in international humanitarian law that regulate the use of arms and the distinction between military and civilian targets. As regards cluster munitions, Brazil favors discussion of the topic within the framework of 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 (CCW).

staff of the permanent missions of the OAS member states and for General Secretariat staff and the general public, in order to promote knowledge of and respect for international humanitarian law and related inter-American conventions, including measures for their effective implementation.

21. To instruct the Permanent Council to hold a special meeting with a high-level dialogue component, with support from the Department of International Law of the Secretariat for Legal Affairs and in cooperation with the ICRC, on topics of current interest in international humanitarian law, prior to the thirty-ninth regular session of the General Assembly.

22. To invite member states to continue, within the high-level dialogue of the special meeting and in pertinent forums, the discussion of topics of interest, such as the humanitarian consequences of cluster munitions, the participation of private sector security firms in armed conflicts, improvement of national committees on international humanitarian law, and other topics.

23. To request the Permanent Council to report to the General Assembly at its thirty-ninth regular session on the implementation of this resolution, the execution of which shall be subject to the availability of financial resources in the program-budget of the Organization and other resources.