

**INTERNATIONAL HUMANITARIAN LAW**

(presented by Dr. Ana Elizabeth Villalta Vizcarra)

Resolution AG/RES. 2611 (XL-O/10), “Observations and Recommendations on the Annual Report of the Inter-American Juridical Committee”, adopted on 8 June 2010 at the 40<sup>th</sup> regular session of the General Assembly of the OAS, paragraph 5, refers to “...the efforts undertaken by member states to fulfill obligations under international humanitarian law treaties,...”.

In this sense the Inter-American Juridical Committee took part in the “International Conference of National Committees on International Humanitarian Law of Latin America and the Caribbean” held in Mexico City from 30 June to 2 July 2010 under the sponsorship of the International Committee of the Red Cross (ICRC) and the Mexican Secretariat of Foreign Affairs. The author participated as a Member of the Inter-American Juridical Committee, presenting the lecture entitled “Ratification and Implementation of the Treaties of International Humanitarian Law”, as follows:

**RATIFICATION AND IMPLEMENTATION OF THE TREATIES  
OF INTERNATIONAL HUMANITARIAN LAW**

Ambassador Ana Elizabeth Villalta Vizcarra<sup>125</sup>

International Humanitarian Law is the ensemble of norms that for humanitarian reasons is designed to limit the effects of armed conflicts, protect people who do not or no longer participate in combats, and control the means and methods of waging war. It is comprised of agreements and treaties signed between States, international common law and the general principles of law.

International Humanitarian Law has been defined by Christophe Swinarki as “international treaties or customary rules which are specially intended to resolve matters of humanitarian concern arising directly from armed conflicts, whether of an international or non-international nature; for humanitarian reasons those rules restrict the right of the parties to a conflict to use the methods and means of warfare of their choice, and protect people and property affected or liable to be affected by the conflict”.

In this sense, international humanitarian law covers practically two spheres: protection of people who do not or no longer participate in the hostilities and a series of restrictions concerning the means of war, especially with weapons, and the methods of war, such as certain military tactics.

These restrictions refer to international humanitarian law prohibiting the military means and methods from failing to distinguish between people who participate in combats and those who take no part in them, in order to respect the life of the civil population (both people and goods), and prohibiting military means and methods that cause superfluous damage or unnecessary suffering, and serious lasting damage to the environment.

Governments must adapt international humanitarian law to new circumstances, especially as regards the evolution of methods and means of combat, in order to guarantee more effective protection and safety to victims of armed conflict, since various regions in the world still violate international humanitarian law.

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<sup>125</sup>

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In this sense, international instruments of international humanitarian law endeavors to limit those means and methods of attack that cause unnecessary suffering to the victims of conflicts, such as the use of anti-personnel mines or chemical and bacteriological weapons. The humanitarian mission currently in effect materializes through the action of the International Committee of the Red Cross (ICRC) and the National Committees on Application of International Humanitarian Law, the purpose of which is to protect the life and dignity of victims of war and internal violence by lending due assistance as well as promoting and strengthening international humanitarian law.

International Humanitarian Law is principally contained in the four Conventions of Geneva of 12 August 1949, complemented by the Additional Protocols of 1977 relating to protection of victims of armed conflict. At present there are other conventions that prohibit the use of certain weapons and military tactics, including the following:

- The Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925).
- The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons, and on their Destruction (1972).
- 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 (1980), and its five Protocols, namely: the Protocol I on Non-Detectable Fragments; the Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices; the Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons; the Protocol IV on Blinding Laser Weapons, and the Protocol V on Explosive Remnants of War.
- The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1993).
- The Convention on the Prohibition of the Use, Stockpiling, Manufacturing and Transfer of Anti-personnel Mines and on their Destruction (1997).
- The Convention on Cluster Munitions (2008).

It is gratifying to note that most of the Member States of the Organization of American States (OAS) are signatories to these international instruments. For example, the Protocol for Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and Bacteriological Methods of Warfare (1925), is signed by 26 Member States of the American region; the Convention on Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons, and on their Destruction (1972) is signed by 33 States in the region; 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 (1980) is subscribed by 21 States; the Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1993) is signed by all the Member States of the Organization of American States (OAS), that is to say, the 35 States of the region; the Convention on the Prohibition of the Use, Stockpiling, Manufacturing and Transfer of Anti-personnel Mines and on their Destruction (1997) enjoys the adherence of 33 States of the region, while the States of the region have initiated the necessary negotiations with their respective governments as regards signing the Convention on Cluster Munitions (2008).

Notwithstanding the fact that most of the Member States of the Organization of American States (OAS) take part in the treaties on weapons in international humanitarian law, the Organization is tireless in exhorting Member States to participate in all the international instruments of international humanitarian law, as verified in the text of its resolutions on the matter.

It is necessary to strengthen the norms of international humanitarian law by ratifying the treaties on the issue, as well as their subsequent execution and implementation, diffusion across all sectors of society, and effective application within the States.

International humanitarian law only applies to armed conflict and does not cover situations of internal tension or internal disturbance such as isolated acts of violence, but it is applicable when a conflict is triggered and applies equally to all parties, without taking into account who started the trouble. International humanitarian law distinguishes between international armed conflict and armed conflict of a non-international nature. The former involves at least two States and essentially entails application of the Conventions of Geneva of 1949 and its Additional Protocol I of 1977, whereas armed conflict of a non-international nature involves confrontation within the territory of the same State between the regular armed forces and dissident armed groups, which principally calls for application of the provisions of article 3 common to the four Conventions of Geneva of 1949 and Additional Protocol II of 1977.

All the States are obliged to take measures to guarantee that the use of weapons is in keeping with the norms existing in international humanitarian law. In this sense, it is prohibited to use weapons that cause extensive, lasting and serious damage to people and the natural environment, which refers to certain weapons such as those of a biological, chemical, blinding-laser or incendiary nature, as well as bullets that explode or scatter easily in the human body.

Accordingly, international humanitarian law contains norms that prohibit or restrict the use of certain conventional weapons such as anti-personnel mines, booby-trap weapons and explosive remnants of war, and urges all States to prohibit nuclear weapons totally and eliminate them.

It should be mentioned that through resolution 63/240 of the General Assembly of the United Nations (UN), many States agreed to establish a treaty to control international transfer of conventional weapons. This resolution bears the title: "Toward an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms".

The States have expressed the advisability of this treaty being based on international law, international humanitarian law and the international law on human rights. The debate on this treaty marked a historical moment in the United Nations, since the future international treaty on the weapons trade will be negotiated in a series of meetings to culminate at a Diplomatic Conference in 2012 for which a Working Group has been set up as a Preparatory Committee.

Negotiating this treaty is of utmost importance for the international community, since the international transfer of weapons contributes to armed conflicts, displacement of people, organized delinquency, terrorism, violations against peace, security, democracy, sovereignty and sustainable development.

The topic of weapons is of such importance in the Americas that at the 40<sup>th</sup> General Assembly of the Organization of American States (OAS) held recently in Lima, Peru, on 6-8 June 2010, the Ministers of Foreign Affairs of the Member States of the OAS adopted the "Declaration of Lima: Peace, Security and Cooperation in the Americas", which stated a firm commitment to promote transparency in arms acquisitions, as well as promoting a

propitious environment for control of armaments, limitation of conventional weapons and non-proliferation of weapons of mass destruction, which would enable each Member State to allocate a greater amount of resources to economic and social development, as well as to maintaining international peace and security.

This Declaration also urges the States in the region to consider signing or ratifying, as the case may be, the Inter-American Convention on Transparency in Conventional Weapons Acquisitions, as well as the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials (CIFTA).

Ratification of international treaties represents the first significant step toward applying international humanitarian law, which is complemented by national measures being taken in applying these treaties.

In order to enable all these norms in the treaties to be applied, they have to be known to the States, especially if some complementary action needs to be taken through legislative or regulatory measures. The States must pledge to implement all these treaties or conventions so as to put an end to the suffering caused by weapons and in this way prevent future violations of international humanitarian law.

In order for international humanitarian law to be concretely applied, the measures for national application in each State must continue to be pushed ahead. These may be legislative, regulatory and administrative measures, such as implementing Model Laws, adapting national criminal legislation to international treaties, identifying protected individuals, signaling protected sites and properties, translating instruments of international humanitarian law into local languages, diffusing the norms of international humanitarian law to the armed forces and the forces of public security and above all to society in general, sanctionary measures for serious violations of international humanitarian law, and adopting administrative measures in executing the international treaties in place.

To facilitate implementation of these treaties or conventions and thus attend to the requirements of international humanitarian law, such as complying with their norms, the States have created inter-ministerial and in some inter-institutional National Committees comprised of those State institutions that are competent to aid governments by contributing to the promotion and application of international humanitarian law. These are sometimes limited only to Executive bodies, in particular involving the Ministries of Foreign Affairs, Defense, Justice, Public Security, Health, Culture, Education, the Interior and in some cases more fully integrated by the Legislative and Judicial Powers. In all of these bodies, the International Committee of the Red Cross (ICRC) is associated with their work, principally through juridical counseling.

At the moment, the Inter-American system has instituted 19 National Committees, active in Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Trinidad and Tobago and Uruguay. In all these States, their presence has enhanced application of international humanitarian law, in this way advancing adoption of national measures by enabling rationalization of resources and concentration of normally dispersed competences.

The main aim of these Committees is to defend and promote respect for the norms, principles and institutions of international humanitarian law, as well as compliance with international commitments through its implementation in national legislations, in this way helping the States to comply with their obligations in respect to the various international treaties on the issue.

These National Committees also facilitate compliance with the obligations derived from international instruments, legislative standardization, as well as diffusion and teaching of international humanitarian law among government and civil-society personnel.

The following feature among the main functions of the Committees:

- To assist and support the States with regard to subscribing and adhering to treaties dealing with international humanitarian law.
- To evaluate the existing national legislation as regards the obligations set out in the instruments of international humanitarian law.
- To diffuse and promote the application of international humanitarian law and permanently check on its compliance.
- To propose adoption of a secondary legislation on the matter, as well as reforms or amendments to the legislation in effect.
- To coordinate adoption of administrative regulations and harmonize their content.
- To lend guidance as to the interpretation and application of the norms of international humanitarian law.
- To investigate compliance with the essential guarantees due to victims of armed conflicts.

It is appropriate for the National Committees to set up relations with other Committees and with the International Committee of the Red Cross (ICRC) in order to exchange good practices and experiences.

The following are among the legislative measures most adopted by the States in implementing these norms: laws that provide for sanctioning the war crimes defined in the Convention of Geneva of 1949, the Additional Protocol I of 1977 and in the Rome Statute that created the International Criminal Court in 1998. States must adapt their criminal legislation as regards typifying war crimes, universal jurisdiction on these serious violations and the responsibility of superiors for the acts of their subordinates, establishing laws relating to criminal and military procedures or instructions for the civil population in times of war and other armed conflicts. Some States have incorporated laws to implement the Rome Statute.

Many States have included in their national legislation a national weapons policy in which they prohibit transferring, importing, exporting and transporting weapons and ammunition to governments that systematically violate human rights, as well as prohibiting transferring, importing, exporting and transporting weapons and ammunition when agreements on control or non-proliferation of weapons are violated. Other States have established national policies on integral action against anti-personnel mines, non-explosive ammunition and improvised explosive artifacts, and measures to control chemical substances that can be used to make chemical weapons. Other legislations effectively regulate the problem of small and light weapons and are adopting laws addressed to reinforce control over the illicit manufacture and traffic of fire weapons and other similar materials.

The Armed Forces of the States must orientate their actions based on the norms of international humanitarian law, especially so as to guarantee protection of persons and property in the case of armed conflict. In this sense, the norms and principles of international humanitarian law must be contained in the military doctrines and manuals, in education and in the training of the Armed Forces so that they can count on the necessary means and mechanisms for their effective application.

So, it can be seen that many States of the Americas pay heed to compliance with the diffusion and teaching of international humanitarian law on all levels of the armed forces, conducting courses to train military instructors on the subject and even preparing manuals on international humanitarian law. In other States, the Ministry of Defense has created within its structure General Directorates on Human Rights entrusted with diffusing and promoting the International Law on Human Rights and international humanitarian law in the doctrine, instruction and training of the armed forces.

Some States have prepared primers for application of international humanitarian law that contain the most relevant principles and norms, and have held workshops and seminars in order to improve the concrete application of international humanitarian law in military operations. Other States have appointed the Sub-Chief of the Joint Chiefs of Staff as Officer in Charge of International Humanitarian Law. Still others have signed Conventions on Inter-institutional Cooperation with the Red Cross to incorporate international humanitarian law in the Armed Forces and have also set up Inter-institutional Committees for the Study and Application of International Humanitarian Law and International Law of Human Rights as part of the doctrine and instruction of the Armed Forces.

All this has meant integration and diffusion of international humanitarian law on all levels of the armed forces of the American continent, and has contributed especially to training and awareness-raising on the matter. As a matter of fact, approval was given to setting up a Training Course at the Conference of Central-American Armed Forces (CFAC - Guatemala, Honduras, El Salvador, Nicaragua and Dominican Republic), as well as a workshop with the Joint Chiefs of Staff of the Armed Forces of the Community of Caribbean States (CARICOM).

In addition to complying with the international treaties on the matter and their respective national legislations, it is advisable that States respect the Code of Conduct for personnel responsible for enforcing the law and the Basic Principles on the use of force and firearms, both instruments being international norms of the United Nations.

It is also necessary to integrate international humanitarian law with academic teaching, since States, by signing treaties on the matter, pledge to diffuse and promote it. In this sense it is especially necessary to diffuse it in Law Schools or at post-graduate level, since academic teaching is the vehicle for informing important sectors of society.

Many Universities on the American continent offer courses in international humanitarian law at the Master's or Doctoral level, as well as in Political Science Law, Social Sciences, Journalism and International Relations courses, in this way contributing to the integration and diffusing of international humanitarian law in academic teaching. This also favors research and the training of specialists on the subject who contribute through their papers to the work carried out in the National Committees on international humanitarian law, as well as the work of the Armed Forces.

There is a need to strengthen the norms of international humanitarian law by means of its universal acceptance and widest diffusion and adoption of national measures for its due implementation, which is why States must adapt their criminal legislation for the purpose of complying with the obligations provided in the Conventions of Geneva of 1949, as well as its Additional Protocol I of 1977, in respect to typification of war crimes, universal jurisdiction on serious violations and the responsibility of superiors for acts of their subordinates.

It is equally advisable to diffuse and promote the norms of international humanitarian law among the entire population, especially among judges and lawyers and all those who work in the sector of Justice, which is why it should be taught in universities

and secondary schools. It is necessary to diffuse it in times of peace so that its protector role can be put to effect in times of war.

The States must also adopt legislative measures to strengthen the national institutions and foster cooperation among them, as well as regional and sub-regional cooperation, in this way allowing codes of conduct and codes of professional ethics for the scientific and industrial community to be adopted and developed, especially in the case of the Biological Weapons Convention of 1972 and the Chemical Weapons Convention of 1993.

Also in this respect, the States must establish examination procedures to determine at the moment of studying, developing, acquiring or adopting a new weapon or new means and methods of combat, whether its use, manufacture, stockpiling, exporting or transfer stand in opposition to international humanitarian law, and if so, to prohibit their use by the Armed Forces and their manufacture for such purposes.

Accordingly, States should enact measures in their internal legislation to forbid the use of anti-personnel mines, which represent a serious threat to the safety, health and life of the civil population and can cause a humanitarian impact of very grave consequences, making their elimination an obligation and necessary condition for the development and integration of peoples. In this sense, recognition must be made of the efforts made by the Central-American region on declaring the zone free of mines, as well as the efforts being made by the States of the American continent to free their territories from anti-personnel mines and convert the Americas into the first zone rid of such mines in the world, thereby complying with the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel mines, and on their Destruction (the Ottawa Treaty).

In this sense it is satisfying to note the progress made by the States as far as application of international humanitarian law is concerned, as well as the measures taken on all levels in order to apply, diffuse and enforce this law.

Respecting international humanitarian law is not possible if international obligations are not met on the national level through regulatory legislative measures and necessary practices in order to incorporate it to the internal juridical system of the States. Here an extremely efficacious role has been played by the National Committees and the organizations that advise and support the national authorities in applying, developing and diffusing international humanitarian law.

In implementing these legislative and regulatory measures to apply international humanitarian law in the internal juridical systems of the States, the participation of the advisory service in international humanitarian law of the International Committee of the Red Cross (ICRC) has proved relevant, carrying out counseling work and raising the awareness of the competent national authorities on the matter, supporting the States committed to applying this law on the national level so that the technical assistance can be put to use in the following fields: a) promoting international humanitarian law treaties through signing, adhering and ratifying; b) supporting the translation of these treaties into the local national languages; c) lending technical assistance in drawing up draft laws, regulations or administrative measures to implement international humanitarian law; d) supporting the diffusion and teaching of international humanitarian law; e) assessing the work of the National Committees on International humanitarian Law; f) holding seminars, workshops and national or regional encounters, as well as meetings of specialists, aimed at exchanging good practices and experiences; g) preparing and providing documents and publications, among other items. The primordial interest in all this work is to improve assistance and protection of victims of armed conflicts and certain situations of internal violence.

In conclusion, respecting international humanitarian law implies adopting various juridical measures such as signing, adhering to and ratifying the international instruments on the subject, as well as approving proper legislation and regulation on the part of each State and diffusing and teaching their content so as to ensure respect for their principles and norms.

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