

REPORTS AND DOCUMENTS

What's new in law and case law around the world?

Biannual update on national implementation of international humanitarian law* July–December 2015

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The biannual update on national legislation and case law is an important tool in promoting the exchange of information on national measures for the implementation of international humanitarian law (IHL).

In addition to a compilation of domestic laws and case law, the biannual update includes other relevant information related to accession and ratification of IHL and other related instruments, and to developments regarding national committees on IHL or similar bodies. It furthermore provides information on some efforts by the ICRC Advisory Service

ICRC Advisory Service

The ICRC's Advisory Service on International Humanitarian Law aims to provide a systematic and proactive response to efforts to enhance the national implementation of international humanitarian law (IHL). Working worldwide through a network of legal advisers to supplement and support governments' own resources, its four priorities are: (i) to encourage and support adherence to IHL-related treaties; (ii) to assist States by providing them with specialized legal advice and the technical expertise required to incorporate IHL into their domestic legal frameworks;¹ (iii) to collect and facilitate the exchange of information on national implementation measures and case law;² and (iv) to support the work of national committees on IHL and other bodies established to facilitate the IHL implementation process.

* This selection of national legislation and case law has been prepared by Cédric Apercé, legal attaché in the ICRC Advisory Service on International Humanitarian Law, with the collaboration of regional legal advisers.

during the period covered to promote universalization of IHL and other related instruments and their national implementation.

Update on the accession and ratification of IHL and other related international instruments

Universal participation in IHL and other related treaties is a first vital step toward the respect of life and human dignity in situations of armed conflict. In the period under review, ten IHL and other related international conventions and protocols were ratified or acceded to by twenty-nine States.³ These include, next to the IHL core conventions and protocols, treaties related to weapons and instruments such as the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance, which are also of relevance for the protection of persons and civilian objects during armed conflicts. In particular, there has been notable adherence to the 2013 Arms Trade Treaty (ATT). Indeed, ten States have ratified the ATT in the second half of 2015, bringing the number of States Parties as of 31 December 2015 to seventy-nine.

The following table outlines the total number of ratifications of and accessions to IHL treaties and other relevant related international instruments, as of the end of December 2015.

Ratifications and accessions, July–December 2015

Convention	States	Ratification/ accession date	Number of parties
1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict	Ethiopia	31 August 2015	127
1954 First Protocol to the Hague Convention of	Ethiopia	31 August 2015	104

- 1 In order to assist States, the ICRC Advisory Service proposes a multiplicity of tools, including thematic fact sheets, ratification kits, model laws and checklists, as well as reports from expert meetings, all available on the unit's web page at: www.icrc.org/en/war-and-law/ihl-domestic-law (all internet references were accessed in July 2016).
- 2 For information on national implementation measures and case law, please visit the ICRC Database on National Implementation of IHL, available at: www.icrc.org/ihl-nat.
- 3 To view the full list of IHL-related treaties, please visit the ICRC Treaty Database, available at: www.icrc.org/ihl.

(Cont.)

Convention	States	Ratification/ accession date	Number of parties
1954 for the Protection of Cultural Property in the Event of Armed Conflict			
1989 Convention on the Rights of the Child	Somalia	1 October 2015	196
1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction	Myanmar	8 July 2015	192
	Angola	16 September 2015	
2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	Kiribati	16 September 2015	162
	Bahamas	28 September 2015	
	Federated States of Micronesia	26 October 2015	
2002 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Belize	4 September 2015	80
2006 International Convention for the Protection of All Persons from Enforced Disappearance	Greece	9 July 2015	51
	Niger	24 July 2015	
	Belize	14 August 2015	
	Ukraine	14 August 2015	
	Italy	8 October 2015	
2008 Convention on Cluster Munitions	Slovakia	24 July 2015	98
	Rwanda	25 August 2015	
	Iceland	31 August 2015	

Continued

(Cont.)

Convention	States	Ratification/ accession date	Number of parties
2010 Amendment to Article 8 of the Rome Statute of the International Criminal Court	Colombia	10 September 2015	26
	Somalia	30 September 2015	
	Mauritius	1 October 2015	
	Switzerland	10 September 2015	
	Lithuania	7 December 2015	
	Finland	30 December 2015	
2013 Arms Trade Treaty	Mauritius	23 July 2015	79
	Niger	24 July 2015	
	San Marino	29 July 2015	
	Central African Republic	7 October 2015	
	Togo	8 October 2015	
	Tuvalu	4 September 2015	
	Mauritania	23 September 2015	
	Republic of Moldova	28 September 2015	
	Seychelles	2 November 2015	
	Ghana	22 December 2015	

National implementation of international humanitarian law

The laws and case law presented below were either adopted by States or delivered by domestic courts in the second half of 2015. They cover a variety of topics linked to IHL, such as detention in relation to armed conflict, criminal procedures and international criminal justice, weapons, protected persons and the protection of the emblem of the red cross.

This compilation is not meant to be exhaustive; it represents a selection of the most relevant developments relating to IHL implementation and related issues collected by the ICRC. The full texts of these laws and case law can be found in the ICRC's Database on National Implementation of IHL.⁴

4 See the ICRC Database on National Implementation of IHL, available at: www.icrc.org/ihl-nat.

A. Legislation

The following section presents, in alphabetical order by country, the domestic legislation adopted during the period under review (July–December 2015). Countries covered are Algeria, the Democratic Republic of the Congo, Ecuador, Kosovo, Luxembourg, Peru, the Philippines, Spain, Switzerland, Turkmenistan and Venezuela.

Algeria

*Law No. 15-12 on Child Protection*⁵

On 15 July 2015, the president of Algeria promulgated Law No. 15–12 on Child Protection.

The law refers to the 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. It calls for a global protection of children's rights, but also provides for the protection of children in the family, at school, or in the street.

The law states that if a child is a refugee or a victim of sexual exploitation, armed conflicts or other cases of trouble and insecurity, that child is considered as exposed to danger under the present law and falls under the definition of the term “child in danger”.

Moreover, it establishes the responsibility of the State in protecting the rights of the child in situations of emergency, disaster and armed conflict.

Democratic Republic of the Congo

*Law 15/022 modifying the Penal Code; Law 15/023 modifying the Military Penal Code; Law 15/024 modifying the Penal Procedure Code*⁶

On 31 December 2015, the president of the Democratic Republic of the Congo (DRC) promulgated three laws implementing the International Criminal Court (ICC) Statute ratified by the DRC on 30 March 2002.

Firstly, Article 4 of the law modifying the Penal Code introduces and defines in Title IX of the Penal Code of the DRC the crime of genocide (Article 221), crimes against humanity (Article 222) and war crimes (Article 223). In addition, Article 2 of the law provides that no statute of limitation or immunities apply to crimes under this Title.

5 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=3B2165988EBBFCEFC1257EBB0045DB53&action=openDocument&xp_countrySelected=DZ&xp_topicSelected=GVAL-992BUD&from=state.

6 Available at: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=49C04B6F6300E1E2C1258043002924E5&action=openDocument&xp_countrySelected=CD&xp_topicSelected=GVAL-992BU6&from=state.

Further, Article 1 of the law modifying the Military Penal Code provides that Title IX of the Penal Code is applicable to military courts as well. It also underlines the relevance of the responsibility of commanders and other superiors in the commission of the mentioned crimes.

Finally, the law modifying the Penal Procedure Code provides for the cooperation of the DRC with the ICC, as well as the rights of victims, witnesses and defendants.

Ecuador

*Law on the Amendments to Article 158 of the Constitution of Ecuador*⁷

On 21 December 2015, the president of Ecuador promulgated the Law on the Amendments of the Constitution.

Namely, Article 5 of the law modifies Article 158 of the Constitution by allowing the Armed Forces to support the Ecuadorian National Police in the maintenance of public order. This support is defined as complementary to the Armed Forces' primary function of defence of the sovereignty and territorial integrity of the country. Additionally, such support must be in conformity with the law. This constitutional amendment follows the 2014 legislative amendment of the law on State and public security which refers to the support that the Armed Forces can provide to the Ecuadorian National Police.⁸

Kosovo⁹

*Amendment No. 24 to the Constitution of the Republic of Kosovo, No. 05-V-139*¹⁰

On 3 August 2015, the Assembly of Kosovo adopted Amendment No. 24 to the Constitution of the Republic of Kosovo. In line with Council of Europe Parliamentary Assembly Report Doc. 12462 of 2011,¹¹ this amendment allows the establishment of Specialist Chambers (SC) and a Specialist Prosecutor's Office (SPO) within the justice system of Kosovo for a period of five years. The SC are competent for crimes against humanity, war crimes and other crimes under Kosovo law which occurred between 1 January 1999 and 31 December 2000.

7 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=1ADAB0F0AA7407EEC1257FA30046960B&action=openDocument&xp_countrySelected=EC&xp_topicSelected=GVAL-992BUA&from=state.

8 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=A9F3B7618608D0EEC1257EDE00557E9D&action=openDocument&xp_countrySelected=EC&xp_topicSelected=GVAL-992BUA&from=state.

9 UNSC Res. 1244, 10 June 1999. The boundaries, names and designations used in this report do not imply official endorsement, nor express a political opinion on the part of the ICRC, and are without prejudice to claims of sovereignty over the territories mentioned.

10 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=18AC13915C0591A0C1257F8C0029AEA7&action=openDocument&xp_countrySelected=XZ&xp_topicSelected=GVAL-992BU6&from=state.

11 Available at: www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12608&lang=en.

According to paragraph 4, the SC and SPO shall have full legal and juridical personality. They shall have all the necessary powers and mandate for their operation, judicial cooperation, assistance, witness protection, security, detention and the service of sentence outside the territory of Kosovo for anyone convicted, as well as in relation to the management of any residual matters after finalization of the mandate.

The amendment also provides that the organization, functioning, jurisdiction, specific administrative procedures, budgeting, oversight and other issues shall be regulated by a specific law, along with specific arrangements.

Finally, the SC and SPO shall uphold the protections enshrined under the Kosovo Constitution, and in particular shall act in compliance with international human rights standards.

*Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office*¹²

On 20 August 2015, the president of Kosovo promulgated Law No. 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office. The law establishes and regulates the organization, functions and jurisdiction of the SC and the SPO.

According to Article 1(2), the SC and SPO aim to ensure secure, independent, impartial, fair and efficient criminal proceedings in relation to allegations of grave trans-boundary and international crimes (including war crimes) committed during and in the aftermath of the conflict in Kosovo which relate to those reported in Council of Europe Parliamentary Assembly Report Doc. 12462 of 7 January 2011¹³ and which have been the subject of criminal investigation by the Special Investigative Task Force of the Special Prosecution Office of the Republic of Kosovo.

In terms of applicable law and according to Article 12, the SC shall apply customary international law and the substantive criminal law of Kosovo as provided by Article 15. The jurisdiction *ratione temporis* is limited to crimes which occurred between 1 January 1999 and 31 December 2000 (Article 7), whereas the jurisdiction *ratione loci* is consistent with the jurisdiction of Kosovo courts under criminal laws in force between 1 January 1999 and 31 December 2000 (Article 8). On jurisdiction *ratione materiae*, Article 6 provides jurisdiction over crimes which relate to the Council of Europe Report, as well as over offences which relate to its official proceedings and officials. As for the first category, the law further details crimes against humanity (Article 13), war crimes (Article 14) and other crimes under Kosovo law (Article 15). In line with Article 9, the SC are based on active and passive personality jurisdiction over natural persons of Kosovo/Federal Republic of Yugoslavia citizenship. Moreover, the SC have

12 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=B4E8F40ABCBBF7E3C1257F8C003FB738&action=openDocument&xp_countrySelected=XZ&xp_topicSelected=GVAL-992BU6&from=state.

13 See above note 11.

primacy over all courts in Kosovo (Article 10) and amnesties shall not bar prosecution or punishment (Article 18).

In terms of fundamental guarantees, the legislation also recalls the obligations under Chapter II of the Kosovo Constitution, and the legal framework set out by this for limitations to fundamental rights and freedoms.

In addition, Chapter V of the law defines the organization, structure and competencies of the SC, the Registry and the SPO. Further, the conduct of proceedings before the Court is specified under Chapter VI. Cooperation and assistance with other States, organizations and entities is described under Chapter VIII.

Luxembourg

*Regulation on the Brokering of Military Goods and Dual Use Goods*¹⁴

On 5 August 2015, the grand duke of Luxembourg promulgated the Regulation on the Brokering of Military Goods and Dual Use Goods, amending the Regulation concerning the Import, Export and Transit of Weapons, Ammunitions and Material for Military Use of 31 October 1995.

This new regulation extends control mechanisms to all products governed by European Union Directive 2012/10/EU on defence products including directed energy weapons and chemical warfare agents.¹⁵ Article 1, thereby amended, defines products covered by the regulation and sets out a license regime. Similarly, Article 8 regulates brokering activities of such products while Article 10 extends the scope of the regulation to environment modification techniques.

In addition, Article 2 of the regulation modifies the 2011 regulation on dual-use goods by submitting such goods to a license regime as well as regulating related brokering activities.

Peru

*Law No. 30339 related to the Control, Surveillance and Defence of the Airspace*¹⁶

On 28 August 2015, the president of Peru promulgated Law No. 30339 on Control, Surveillance and Defence of the Airspace. The law regulates the use of force against a hostile aircraft, as well as the criteria for determining the hostile character of such an aircraft.

Article 3 defines the notion of national airspace, while Article 4 provides for the establishment of an identified defence area zone.

14 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=47CCC9998A0C7CD5C125765800460B43&action=openDocument&xp_countrySelected=LU&xp_topicSelected=GVAL-992BUP&from=state.

15 Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:085:0003:0034:en:PDF>.

16 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=D49DA40F8732A017C1257FA3004B5DF7&action=openDocument&xp_countrySelected=PE&xp_topicSelected=GVAL-992BUA&from=state.

Further, Article 5 provides that an aircraft is to be considered as hostile if it violates the national airspace for illicit purposes; represents a threat to strategic facilities for the functioning of the country, essential public services, the population, resources, the armed forces or the national police; makes any moves that go against the intercepting aircraft; or disobeys the instructions of the crew of this aircraft. According to Article 10, the use of force may be applied as a last-resort measure against a hostile aircraft if the aircraft is being used to cause serious injury to the life or integrity of persons, or serious damage to property or damage to the environment; to traffic drugs; to transport weapons, ammunition, explosives (or material for processing) or antipersonnel mines; or to endanger the lives of the crew of the intercepting aircraft.

Philippines

*Republic Act No. 10697 Preventing the Proliferation of Weapons of Mass Destruction by Managing the Trade in Strategic Goods, the Provisions of Related Services, and for Other Purposes*¹⁷

On 13 November 2015, the president of the Philippines approved Republic Act No. 10697, also known as the Strategic Trade Management Act. The act declares the policy of the Philippine State to be free from weapons of mass destruction (WMD) in its territory consistent with its national security interests and foreign policy, and in support of efforts to counter terrorism, control crime and protect public safety. Towards this end, the State shall manage the trade of strategic goods and provision of related services in accordance with international standards and best practices. Under Section 5, the legislation defines WMD as any destructive device or weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination or impact of toxic or poisonous chemicals, or their precursors; any weapon involving a biological agent, toxin or vector; or any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

Section 3 of the legislation lays down its scope of application – export, import, transit and transshipment of strategic goods. It also provides for the establishment of a National Strategic Goods List to describe with specificity the strategic goods subject to authorization (Section 4). A Strategic Trade Management Committee under the National Security Council is also established under the act as the central authority focusing on the country's international commitment towards the promotion of a secured and safe environment in relation to the trade in strategic goods.

Finally, the act provides for international legal cooperation under which the Department of Justice shall make and receive requests for assistance from foreign States and execute or arrange for the execution of such requests (Section 29).

17 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=619833E50E6C51FFC1257F8F0032A712&action=openDocument&xp_countrySelected=PH&xp_topicSelected=GVAL-992BU6&from=state.

Spain

*Law 27/2015 amending Law 33/1998 Prohibiting Antipersonnel Landmines and Similar Weapons*¹⁸

On 28 July 2015, Law 27/2015 amending Law 33/1998 Prohibiting Antipersonnel Landmines and Similar Weapons was promulgated. It aims at implementing the Convention on Cluster Munitions by totally prohibiting cluster munitions, including the financing and advertising of these weapons.

In particular, Article 2 sets out the prohibition on the use, stockpiling, production and transfer of such weapons. However, Article 2(3) states that it is not prohibited for Spain to take part in military operations with other States which have not ratified the Convention. Article 3 provides that Spain undertakes to destroy or ensure the destruction of all antipersonnel mines and cluster munitions. Under Article 5, exceptions are formulated on the retention or transfer of a number of such weapons for the development of technical detection, clearance or destruction of these weapons.

Finally, Article 6 states that Spain will support international cooperation towards the implementation of the Convention.

Switzerland

*Federal Law on the Implementation of the International Convention for the Protection of All Persons from Enforced Disappearance*¹⁹

On 18 December 2015, the Swiss Federal Assembly adopted the Federal Law on the Implementation of the International Convention for the Protection of All Persons from Enforced Disappearance. The law approves the ratification of the Convention by the Federal Council and contains provisions aiming at its faithful implementation under Swiss law.

In particular, Article 2 provides that a person is considered as disappeared when deprived of liberty under the mandate or consent of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.

Moreover, Article 3 creates an obligation to maintain a register of individuals deprived of liberty, while Article 4 establishes a network between the federal authorities and the local governments (cantons) in order to facilitate exchange of information when a person disappears.

18 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=1C4EB7A62937ABDAC1257ECB0055FAD2&action=openDocument&xp_countrySelected=ES&xp_topicSelected=GVAL-992BUM&from=state.

19 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=83CDFE881B433779C1257FA70044E7CE&action=openDocument&xp_countrySelected=CH&xp_topicSelected=GVAL-992BUF&from=state.

Finally, the legislation amends the Penal Code of Switzerland by criminalizing enforced disappearance under its Title 4: Felonies and Misdemeanours against Liberty and Title 12: Felonies and Misdemeanours against Public Order. Through these amendments the law criminalizes enforced disappearance (Article 185 *bis*) and acts preparatory to its commission (Article 260 *bis*).

*Ordinance on War Material*²⁰

On 19 August 2015, the Swiss Federal Council modified the Ordinance on War Material in order to regulate the transit of civilian aircraft with war material on board.

According to the newly introduced Article 5(c), transit of civilian aircraft with war material on board is authorized in Swiss airspace if in line with international law, Swiss foreign policy principles and international obligations. In contrast to land transit authorizations, criteria laid down by Article 5 of the ordinance are not compulsory for air transit but remain a guidance for granting the authorization.

In addition, Article 13(3) provides that the authorization must be addressed to the Federal Office for Civilian Aviation. However, the State Secretariat for Economic Affairs is responsible for granting such authorization in consultation with competent services of the Federal Department of Foreign Affairs (Article 14(2)).

These provisions entered into force on 1 October 2015.

Turkmenistan

*Law on Amendments and Modifications to the Criminal Code of Turkmenistan*²¹

On 3 December 2015, the president of Turkmenistan promulgated the Law on Amendments and Modifications to the Criminal Code of Turkmenistan. It introduces eleven new articles under Chapter 21 – “Crimes against the Peace and Security of Mankind” – of the Criminal Code.

In particular, Article 167(4) criminalizes the use of prohibited means and methods of warfare, while Article 167(5) provides for violations of the laws and customs of war. Most serious crimes considered under those articles, such as wilful killing of persons protected under the Geneva Conventions or use of weapons of mass destruction, can be punishable by deprivation of liberty for a term of up to twenty-five years. Similarly, Article 167 considers the illegal use of emblems and signs under the protection of international treaties.

The law also criminalizes aggressive war and its propaganda, mass destruction of flora and fauna (ecocide) and the manufacture, acquisition or sale

20 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=DACF6A2B3A6EC963C1257EB900333419&action=openDocument&xp_countrySelected=CH&xp_topicSelected=GVAL-992BUP&from=state.

21 Available at: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=81707402D8D416BFC1258003002C6E4F&action=openDocument&xp_countrySelected=TM&xp_topicSelected=GVAL-992BU6&from=state.

of weapons of mass destruction. Finally, Article 169(2) outlines that the action of a national of Turkmenistan taking part in armed conflicts or hostilities in foreign States shall be punishable by deprivation of liberty for a term of three to eight years.

Venezuela

*Law on the Protection of the Name and Emblem of the Red Cross*²²

On 28 December 2015, the president of Venezuela promulgated the Law on the Protection of the Name and Emblem of the Red Cross. This new law repeals the previous law on the issue that was adopted in 1965.

Article 1 defines the scope of the law as the protection of the name and use of the red cross, red crescent and any other emblem as recognized by international instruments.

The law establishes a clear distinction between the indicative and the protective use of the emblem, as well as a precise distinction between the different types of misuse or abuse of the latter, namely imitation, improper use and perfidy (Articles 3, 4 and 9). Moreover, Article 10 states that a perfidious use of the emblem is punishable in conformity with the national laws and the relevant international legal instruments to which Venezuela is a party.

Articles 12 and 13 set out the sanctions, fees and aggravating circumstances linked to the different types of misuse of the emblem. Furthermore, revenues thereby created may be donated to the Venezuelan Red Cross for its humanitarian activities.

The Ministry of Defence, and in particular its Directorate for Human Rights and International Humanitarian Law, is entrusted with monitoring the application of the law.

B. National IHL committees and similar bodies

National authorities face a formidable task when it comes to implementing IHL within the domestic legal order. This situation has prompted an increasing number of States to recognize the usefulness of creating a group of experts or similar body – often called a national IHL committee or a national commission for IHL – to coordinate activities in the area of IHL. Such committees *inter alia* promote ratification of or accession to IHL treaties, make proposals for the harmonization of domestic legislation with the provisions of these treaties, promote dissemination of IHL knowledge and participate in the formulation of the State's position regarding matters related to IHL. In December 2015, Jordan adopted a definite law permanently establishing the national IHL committee

22 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=615FD99A8AE43A18C1257F3A0049E2C0&action=openDocument&xp_countrySelected=VE&xp_topic_Selected=GVAL-992BU8&from=state.

existing in the country since 1998, while the Bolivarian Republic of Venezuela established a national IHL committee. Additionally, the Syrian Arab Republic reactivated its committee in July 2015, bringing the total number of national IHL committees across the world to 108 by December 2015.²³

Jordan

National Commission for the Implementation of IHL

On 28 December 2015, the king of Jordan promulgated Law No. 5 of 2016 establishing the National Commission for the Implementation of IHL²⁴ in replacement of the temporary Law No. 63 of 2002.

The Commission has existed in Jordan since 1998, with its main branch located in the capital Amman. It possesses legal personality and administrative independence. The Commission determines the general policy and national strategy on IHL, approving plans and programmes for raising awareness of the principles of IHL at the national level. Moreover, the Commission is tasked with exchanging information and expertise with national, Arab, regional and international organizations and commissions concerned with IHL, and strengthening ties with them.

The law states that the Commission is composed of representatives of the prime minister, the Ministries of Defence, Justice, Foreign Affairs, Interior, Education and Health, the House of Representatives and the Senate, and the president of the Jordanian Red Crescent Society, as well as four experts appointed by the chairman. According to Article 4, a representative of the ICRC is also allowed to attend the meetings of the Commission as observer.

Syria

National Committee on IHL

On 21 July 2015, the Syrian National Committee on IHL was reactivated as a result of Prime Ministerial Decree No. 2072. The committee had been formally established under Prime Ministerial Decree No. 2989 of 2 June 2004.²⁵

The main function of the National Committee is to coordinate national action to disseminate IHL and encourage the adoption of domestic legislation. In addition, it provides support for the Syrian Arab Red Crescent and the General

23 To view the full list of national committees and other national bodies on IHL, please visit the ICRC's related webpage, available at: www.icrc.org/en/document/table-national-committees-and-other-national-bodies-international-humanitarian-law#.VBquQFOa4wo.

24 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=7BA8E2E55FC0EEA4C125702F0044DCD2&action=openDocument&xp_countrySelected=JO&xp_topicSelected=JPAA-9DWC8W&from=state.

25 Available at: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=7298A545C4F95EC7C12570570041B733&action=openDocument&xp_countrySelected=SY&xp_topicSelected=JPAA-9DWC8W&from=state.

Directorate for Civil Defence and International Cooperation. The Committee is also responsible for the examination of violations of IHL.

The Committee is composed of representatives of the Ministries of Foreign Affairs, Defence, Justice, the Interior and Higher Education, as well as the General Directorate of Civil Defence and the Syrian Arab Red Crescent. It is chaired by the Ministry of Foreign Affairs.

Venezuela

National Commission on IHL

On 28 December 2015, the president of Venezuela promulgated the law establishing the National Commission on IHL.²⁶ The law covers the Commission's composition, organization and functions.

Article 5 provides that the mandate of the Commission includes advising executive and legislative authorities on acceding to international instruments relevant to IHL, as well as preparing draft laws, regulations and instructions to harmonize the State's actions with the principles and norms of IHL. The Commission shall also promote dissemination and integration of IHL into training programmes within university curricula and military doctrine.

In addition, the Commission participates in meetings related to IHL and aims to create commissions of experts following its annual agenda items. It shall also establish relations throughout the region to promote the establishment of national IHL committees in other countries with the purpose of strengthening respect for IHL.

The Commission is composed of representatives of the Ministries of Foreign Affairs, Defence, the Interior, Education, Higher Education, Health and the Attorney General, the National Assembly, the Supreme Court and the Public Prosecutor. It is chaired by the Ministry of Foreign Affairs.

C. Case law

The following section lists, in alphabetical order by country, relevant domestic jurisprudence related to IHL and released during the period under review (July–December 2015). Countries covered are Colombia, Peru and the United Kingdom.

26 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=B693766DE0F446B8C1257F3A00327738&action=openDocument&xp_countrySelected=VE&xp_topicSelected=JPAA-9DWC8W&from=state.

Colombia

*Decision T-762 (2015), Colombia Constitutional Court Case on Detention*²⁷

Keywords: detention conditions, fundamental rights.

On 16 December 2015, the Fifth Review Chamber of the Colombia Constitutional Court issued its Decision T-762 addressing the conditions of detention in sixteen prison facilities.

The Court reaffirms its Decision T-388 of 2013 in declaring the detention conditions contrary to the Constitution of 1991. The ruling describes the current criminal policy as reactive, populist, poorly reflective and inconsistent with security policy. The decision concludes that massive violations of human rights of people deprived of liberty have taken place.

Judges ordered the Congress, government, Attorney General and other controlling institutions to address the criminal policy in a manner which is compliant with human rights. In its decision, the Court invites the ICRC and the national universities of Colombia to assist the Office of the Ombudsman in designing technical rules on deprivation of liberty and to follow up on their implementation nationwide.

Peru

*Decision No. 00022–2011-PI/TC, Constitutional Claim against Law No. 29548, Legislative Decrees No. 1094 and 1095*²⁸

Keywords: military and police courts, IHL application, definition of armed conflict.

On 8 July 2015, the Constitutional Court of Peru rendered its Decision No. 00022–2011-PI/TC based on the constitutional claim against Law No. 29548 and Legislative Decrees No. 1094 and 1095. The decision considers the competence of military tribunals, as well as the applicability of IHL within the Peruvian legal order.

Based on Law No. 29548 of 3 July 2010, the president of Peru promulgated Legislative Decree No. 1094 on the Military and Police Criminal Code and Legislative Decree No. 1095 Regulating the Use of Force by the Armed Forces. In December 2011, 6,430 citizens filed a remedy for unconstitutionality against the three legislations, alleging that they constitute a violation of the right to an independent and impartial judge as well as to the competence of the judiciary by allowing the military courts to judge crimes outside their jurisdiction. In the case

27 Available at: https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=29816281B2B6AE35C1258003002B20E4&action=openDocument&xp_countrySelected=CO&xp_topicSelected=GVAL-992BU6&from=state.

28 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=A9EBF299A99AFF2FC1257FA80050E360&action=openDocument&xp_countrySelected=PE&xp_topicSelected=GVAL-992BU6&from=state.

of Legislative Decree No. 1095, claims were also made on the basis of the restricted role that the armed forces should play in maintaining law and public order. In its decision, the Constitutional Court considered that military and police courts could only judge crimes that are against military or police functions but do not involve fundamental rights. With regard to IHL, the Court decided that crimes of devastation; looting, appropriation and destruction; arbitrary confiscation; confiscation with omission of legal formalities; extortion; illegal contributions; abolition of rights; violations affecting persons protected by IHL; injuring people *hors de combat*; unlawful confinement; and causing damage to the environment could not be judged by military or police courts. Conversely, the Court stated that using forbidden means or methods of warfare, attacks against humanitarian operations, or improper use of the protective emblem could be judged by military courts since they do not interfere with the rights of civilians or combatants.

Further, the judges reaffirmed that IHL is in line with the constitutional legal order and should be considered as the parameter of interpretation of the law during armed conflicts. Therefore, the Court stressed that international human rights law (IHRL) norms are not contrary to IHL. Rather, IHL could be used as *lex specialis* to interpret IHRL rules or national norms during armed conflict situations. Quoting the definition of armed conflict provided by the International Criminal Tribunal for the former Yugoslavia, the Constitutional Court considered that IHL does not apply to situations of internal disturbances and tensions.

Finally, the Court affirmed that the definition of “hostile group” in Legislative Decree No. 1095 should be interpreted in light of the rules of common Article 3 or AP II to determine, on a case-by-case basis, which body of law regulates the use of force.

United Kingdom

*Cases No. A2/2014/1862, A2/2014/4084 and A2/2014/4086, 30 July 2015*²⁹

Keywords: detention in NIACs, extraterritorial application of human rights law.

On 30 July 2015, the Court of Appeal of the Royal Courts of Justice issued its decision on Cases No. A2/2014/1862, A2/2014/4084 and A2/2014/4086, considering the legal basis for the detention by UK forces of an Afghan individual suspected of posing a security threat in Afghanistan.

The defendant was captured by UK armed forces in April 2010, before being handed over to the Afghan security forces in July 2010. The respondent claims that his detention by British armed forces was unlawful.

The Court held that IHL – under treaty or customary basis – does not contain an explicit authority to detain in non-international armed conflicts

29 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=B24C31F23736046AC1257FA90046FA63&action=openDocument&xp_countrySelected=GB&xp_topicSelected=GVAL-992BU6&from=state.

(NIACs) for security reasons. With regard to the relationship between the European Convention on Human Rights and IHL, the judges accepted that IHL “may in certain circumstances operate as a *lex specialis* so as to require the modification of general rules of human rights law”. However, the Court considered that these conclusions could not be transposed to the context of a NIAC, where IHL did not provide the legal basis or grounds for detention.

Finally, the Court concluded that the absence of the respondent’s opportunity to participate in any reviews or procedural steps concerning his detention violated the irreducible core procedural requirements and safeguards.

Other efforts to strengthen national implementation of IHL

To further its work on implementation of IHL, the ICRC Advisory Service organized, in cooperation with respective host States, or regional or subregional organizations, a high number of national workshops and several regional conferences directed at engaging national authorities in the period under review.

Of particular interest was the Fourth Commonwealth Red Cross and Red Crescent Conference on IHL, co-organized with the Australian Red Cross and the Australian government, with support from the British Red Cross, from 20 to 23 July 2015 in Canberra, Australia. The conference brought together governmental officials and members of National Societies from Australia, the Bahamas, Bangladesh, Botswana, Brunei Darussalam, Canada, the Cook Islands, Cyprus, Fiji, Grenada, India, Jamaica, Kenya, Kiribati, Malaysia, Malawi, the Maldives, Malta, Mauritius, Mozambique, Namibia, Nepal, New Zealand, Nigeria, Pakistan, Papua New Guinea, Samoa, the Seychelles, Singapore, the Solomon Islands, South Africa, Sri Lanka, Swaziland, Switzerland, Tonga, Trinidad and Tobago, Tuvalu, the United Kingdom, Uganda, Vanuatu and Zambia. Among other topics reviewed during the conference, particular attention was given to strengthening legal protection for victims of armed conflict, sexual violence and the repression of IHL violations.

Another event of interest was the 15th Annual Regional Seminar on International Humanitarian Law co-organized by the South African Department of International Relations and Cooperation and the ICRC, from 18 to 21 August 2015 in Pretoria, South Africa. It gathered governmental officials, members of national IHL committees and representatives from regional and subregional organizations from Angola, Botswana, Comoros, the Democratic Republic of the Congo, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Zambia and Zimbabwe. The conference dealt with topics such as the role of national IHL committees in advancing IHL and the 32nd International Conference themes.