

REPORTS AND DOCUMENTS

Ensuring national compliance with IHL: The role and impact of national IHL committees

Cristina Pellandini

Cristina Pellandini is head of the ICRC Advisory Service on International Humanitarian Law, which supports efforts by States to implement international humanitarian law at the national level. Since joining the ICRC in 1984, she has carried out several field assignments for the organization in Latin America and Asia. She has also held various legal and diplomatic advisory positions, both in the field and at headquarters. In 1995–1996 she helped create the ICRC Advisory Service on IHL.



Since the First Geneva Convention¹ was adopted in 1864, international humanitarian law (IHL) has become a complex and steadily developing body of international law. Its conventions, protocols and customary rules encompass a large range of subjects, from the protection of the sick and wounded, civilians, civilian objects, prisoners of war and cultural property to the restriction or prohibition of specific types of weapons and methods of warfare. All parties to a conflict are bound by applicable IHL, including armed groups involved in non-international armed conflicts.

The 1949 Geneva Conventions are universally accepted today, and the 1977 Additional Protocols enjoy increasingly widespread acceptance.² At the same time, other IHL instruments are not yet universally recognized. Furthermore, acceptance of international instruments is only the first – albeit vital – step towards effectively

implementing the legal protections contained in the instruments. States parties must then comply with their obligations under these instruments³ and, for the rules of IHL to be effective in times of armed conflict, States must carry out a number of actions domestically in times of peace. These include creating a legal framework that will ensure that national authorities, international organizations, the armed forces and other weapons bearers understand and respect the rules; that the relevant legislative and practical measures are undertaken; that applicable IHL norms are complied with during armed conflicts; and that violations of this body of law are prevented – and when they occur, that the perpetrators are punished. Responsibility for ensuring full compliance with IHL rests with States. This responsibility is prominently set forth in Article 1 common to the four Geneva Conventions, which requires States Parties to “respect and to ensure respect for the present Convention in all circumstances.”⁴

Genuine political will is an essential precondition to the protections that IHL affords in situations of armed conflict. Political will alone, however, is insufficient. It must be translated into legislative and regulatory measures, policy directives and other mechanisms aimed at creating a system that will ensure the law is complied with and violations are dealt with appropriately. Coordination among State entities, government departments, armed forces and civil society is a *sine qua non* of an effective system.

The national authorities face a formidable task. The very relevance of IHL is being challenged by the nature of today’s armed conflicts. Added to this is the complexity faced by States – competing political agendas and legislative priorities, and limited financial and human resources – whether or not they are involved in or affected by an armed conflict. This situation has prompted an increasing number of States⁵ to recognize the usefulness of creating a group of experts – often called a national IHL committee or a national commission for IHL – to coordinate activities in the area of IHL. In many cases this expert group acts as an interministerial and multi-disciplinary advisory body on IHL-related issues for

1 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 22 August 1864.

2 For the current status of ratifications of all IHL and related instruments, see: www.icrc.org/ihl (all internet references last visited in October 2014).

3 See Vienna Convention on the Law of Treaties.

4 See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950), Art. 1; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Art. 1; Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Art. 1; Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Art. 1; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978), Art. 1(1). For an analysis of the obligation to “respect and to ensure respect”, see the contribution by Knut Dörmann and José Serralvo, “Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations”, in this issue of the *Review*.

5 Currently 108; see the table showing the existing National IHL Committees at: <https://www.icrc.org/en/document/table-national-committees-and-other-national-bodies-international-humanitarian-law>.

political and military authorities and decision-makers. The creation of such entities was encouraged twenty years ago by the 26th International Conference of the Red Cross and Red Crescent, echoing the recommendations of the Intergovernmental Group of Experts for the Protection of War Victims on the usefulness of such mechanisms.⁶ The recent trend validates that initiative.

The International Committee of the Red Cross (ICRC), through its Advisory Service on IHL, assists States wishing to set up a national IHL committee and maintains regular contacts with existing committees. The ICRC supports them by providing expert legal advice, training their members, strengthening their capacity and delivering any needed technical assistance.⁷ Drawing on the best practices of existing national committees, the ICRC Advisory Service has developed specific tools to facilitate and harmonize the work of the committees and relations between them.⁸ It also organizes meetings of national-committee representatives from around the world to assess their achievements, discuss the challenges they face and facilitate the sharing of experience. The Advisory Service encourages peer exchanges and cooperation, especially among committees within the same region, which often have a common language and shared legal traditions and face similar situations and challenges.

The work and track record of the national IHL committees of Belgium, Peru and Mexico are discussed in detail in this section. Their success demonstrates that national committees can be effective if they are made up of the right people and given the necessary human and financial resources. They have a role to play in creating an environment that favours the implementation of IHL and other relevant international norms and increases respect for the law, and they help their respective States implement their IHL-related commitments and achieve policy objectives in this area. The chosen examples also show how the national committees' roles and tasks have evolved over time. National committees have gradually become part of their respective countries' governmental structures and have acquired a recognized advisory function when it comes to the implementation of *all* norms concerning the protection of people and objects affected by violence and *all issues* linked to IHL, i.e. beyond the mere adoption of domestic implementation measures.

Several factors underpin the success of these three national committees. Committee membership, including, in the case of Belgium, the role of the Red

6 "Commission I: War Victims and Respect for International Humanitarian Law," *International Review of the Red Cross*, Vol. 76, No. 310, 1996, p. 37; see also "Recommendations of the Intergovernmental Group of Experts for the Protection of War Victims," *International Review of the Red Cross*, Vol. 77, No. 304, 1995, pp. 33 ff.

7 For further information on national committees and commissions for IHL, see ICRC, *Preventing and Repressing International Crimes: Towards an "Integrated" Approach Based in Domestic Practice*, report of the 3rd Universal Meeting of National Committees for the Implementation of International Humanitarian Law, Publication Ref. 4138, 29 October 2013, pp. 89 ff, available at: www.icrc.org/en/war-and-law/strengthening-ihl/national-committees.

8 See ICRC, *Guiding Principles Concerning the Status and Methods of Operation of National Bodies for the Implementation of International Humanitarian Law*, and ICRC, *Practical Advice to Facilitate the Work of National Committees on International Humanitarian Law*, which supplements the Guiding Principles, both available at: www.icrc.org/en/war-and-law/strengthening-ihl/national-committees.

Cross National Society, is one. Another is the branch of government to which the committee is attached, as seen in the example of Peru. A third is the committee's terms of reference, working procedures – such as, in the case of Mexico, the annual work plan and reporting obligation to the President of the Republic – and concrete, theme-based activities.

Belgium was among the first States to appoint a specific body for the implementation of IHL, shortly after its adherence to the 1977 Additional Protocols. The initial purpose of the Belgian Interministerial Commission for Humanitarian Law was limited in scope: to identify and coordinate the development and adoption of the national measures required for Belgium to comply with its obligations under the Conventions and Protocols. Over the years, the Commission has developed into a technical IHL expert committee and permanent governmental advisory body that actively contributes to Belgium's IHL agenda and humanitarian diplomacy. Its structured and methodical approach to IHL implementation, consistent efforts over almost three decades and scope of activities have earned it recognition both domestically and worldwide and served as an inspiration for many other States.

Amongst the many activities undertaken by the Commission, two are particularly noteworthy, as they constitute pioneering work. The first was identifying 43 measures needed at the domestic level for the country to meet its obligations under the Geneva Conventions and their Additional Protocols. This effort, conducted with the support of working groups, clarified what type of action was required, which ministry was responsible, and what the financial implications were. It also resulted in a valuable collection of documents published in 1997 on the occasion of its tenth anniversary; this practical tool was widely circulated and consulted by many other national IHL committees and national experts.⁹ In its role as advisory body to the federal government, the Commission itself refers to the list of needed measures when drafting proposals on specific IHL issues to be submitted to the ministry concerned.

Another example of the Commission's pioneering work relates to the repression of violations of IHL. The studies it conducted and laws it drafted were instrumental in the adoption of the 1993 law on the prosecution of grave breaches of the Geneva Conventions and their Additional Protocols – the first-ever comprehensive, stand-alone piece of legislation dedicated to this topic adopted by a country with a civil law system. This law served as a model for many other States. The Commission also played a unique role as the national advisory committee for the protection of cultural property linked to the 1954 Cultural Property Convention and the 1954 and 1999 Protocols. This may serve as inspiration for other States.

The most notable achievement of **Peru's** National Committee for the Study and Implementation of IHL concerns its place in the structure of government. Following its creation in 2001, it was gradually incorporated into the executive branch and, in 2013, it attained the status of formal advisory body to the

9 See the Interministerial Commission for Humanitarian Law website, available at: http://cidh.be/fr/activites%20de%20la%20CIDH#documents_travail.

executive branch in the development of public policies, programmes, projects, action plans and strategies on all matters pertaining to IHL. Furthermore, as the technical secretariat of the Committee is run by the Justice Ministry's Directorate-General for Human Rights, which is formally tasked with promoting and overseeing human rights and IHL in Peru, the Committee benefits from additional human and financial resources to conduct its activities. Peru's Committee has made a number of important achievements within its two strategic fields of activity. These include Peru's adherence to IHL instruments and their incorporation in domestic law; promoting the adoption of specific domestic implementation measures, including an analysis of domestic legislation to identify gaps (such as the protection of cultural heritage in the event of armed conflict or other emergencies); and the preparation of draft laws on such topics as the prohibition on recruiting children into the armed forces, the use of force in law enforcement operations, the repression of war crimes and other international crimes, and the development of IHL training programmes for the public sector.

Peru's Committee acquired visibility and recognition nationwide through the coordination of its professional training activities. Particularly important in this respect were the nine Miguel Grau IHL training courses conducted on an annual basis since 2006. These were designed mainly for representatives of the public sector: the executive branch of government, judges and law professionals, and members of the military and police forces. The Committee has also coordinated a series of more issue-specific training courses on such topics as the protection of cultural property in the event of armed conflict and the protection of children in the case law of the International Criminal Court. Finally, the Committee's role in the implementation of Peru's reporting obligations is worth highlighting. This body has, on various occasions, coordinated the drafting of official reports on issues linked to IHL and/or international human rights law, including reports requested by the United Nations General Assembly (e.g. on the Additional Protocols of 1977), the Organization of American States (e.g. on the missing and on the domestic implementation of IHL), the Committee on Enforced Disappearances and the Special Procedures of the UN Human Rights Council.

Mexico's Interministerial Committee on IHL, created in 2009, has already gained recognition as the government body responsible for IHL-related issues. It also successfully expanded the dialogue and discourse of IHL beyond the traditional sphere of foreign policy and into the realm of domestic policy and legislative debate. The Committee has proved its usefulness in broadening awareness of the relevance of IHL within the Mexican government and clarifying uncertainties and misunderstandings related to IHL amongst government authorities. It has demonstrated its added value as a platform for the discussion and coordination of IHL-related issues and topics; it has managed to gradually bring to the table issues considered sensitive in Mexico; and it has helped bridge the gap between the civilian and defence sectors. As a permanent technical advisory body of the federal executive branch of government, it has also proved its effectiveness in supporting the dissemination and implementation of IHL at

the domestic level and in shaping Mexico's positions and foreign policy on IHL-related subjects. Its chairmanship rotates annually among the four permanent member institutions, a system meant to ensure that each of the institutions assumes responsibility for reaching the Committee's objectives; continuity of the Committee's work is achieved through a permanent technical secretariat. The Committee's work is guided by its annual work programme and summarized in annual reports to the President of the Republic. Its concrete achievements, such as the adoption of the law concerning the use and protection of the Red Cross name and emblem in March 2014, have quickly made this Committee one of the most dynamic in the region.

These three national committees have undoubtedly had a positive impact on the domestic implementation of IHL, its integration in domestic law and procedure, and the concern for compliance in their respective countries, and the committees have supported their respective States in promoting and ensuring respect for IHL.

Looking beyond the specificities of each country, the three national committees discussed here share some features that appear to have contributed to their effectiveness. For example, in all three cases, the committees had the membership, resources and operating structure needed to perform their duties and ensure the continuity of their work. These include having a permanent secretariat (or appointed secretary) and addressing specific issues and topics through working groups. Each committee asserted its role as an expert advisory body through a variety of activities, such as analysing individual issues and drafting legislative proposals, hosting international conferences and representing their respective governments at such events, and carrying out reporting requirements on behalf of their governments. These activities often dovetailed with the three States' domestic or foreign policy agendas and met specific international commitments.

These three national committees have gained visibility and recognition by virtue of their IHL-related dissemination and training activities targeting key governmental sectors and groups within their respective societies. These committees have also managed to become an integral part of their States' governmental structures over time and acquire a recognized advisory function for their government.

The national committees described here are surely representative of many other equally successful national IHL committees. That said, they may also serve as case studies on what can work at the domestic level in the ongoing effort to build an effective system for improving compliance with IHL and repressing violations.