

The Protocols additional to the 1949 Geneva Conventions in relation to Mexico

by Antonio López de la Rosa

Introduction

On the occasion of the coming celebration of the tenth anniversary of the Protocols additional to the Geneva Conventions of 12 August 1949, the editor of the *International Review of the Red Cross* has very kindly invited the Mexican Red Cross to prepare an article on this event, bringing out the importance of these legal instruments for the Society, the measures it has taken to promote the dissemination of the Protocols and, perhaps more important, the work done by the National Society in favour of their ratification.

We feel that the efforts made to promote the dissemination, study and application of international humanitarian law in Mexico should be presented together with an analysis and evaluation of our work in this field.

1. Legislation in force in Mexico pertaining to international humanitarian law

Our judicial system, based on the Political Constitution of the United States of Mexico, promulgated in 1917, favours the signing and enforcement of all agreements entered into by the Mexican Government internationally.

This appears in *Article 133*, which provides that the Constitution, the laws of the Congress of the Union that emanate from it and all treaties in accordance with its provisions that have been or will be agreed by the

President of the Republic, with the approval of the Senate, shall have the status of Supreme Law throughout the Union. The justices of each State shall comply with the above-mentioned Constitution, laws and treaties, notwithstanding any contrary provisions that may appear in State constitutions or laws.

In addition to *Article 133*, two others should be mentioned:

Article 76 provides that one of the duties of the Senate is to analyse the foreign policy of the Federal Executive on the basis of annual reports submitted to Congress by the President of the Republic and the Secretary of the corresponding department, and to approve international treaties and diplomatic conventions agreed by the Executive of the Union.

Article 89 defines the powers and duties of the President; these include conducting diplomatic negotiations and making treaties with foreign powers, subject to ratification by the Federal Congress.

Mexico has been a party to the Geneva Conventions since the revision and development of the original Convention in July 1906, according to a presidential decree of 2 August 1907.

The constitutional provisions quoted above date from the end of the first decade of this century and thus postdate the coming into force of the first instruments of international humanitarian law in our country; it should be noted, however, that there was already a spirit of international co-operation favouring the signing of treaties at that level.

The very history of Mexico is an illustration: it is interesting to note that when the Mexican Revolution broke out in 1910, protection of the victims of that internal armed conflict was based on the humanitarian spirit of the Convention to which, a few years previously, the Mexican Government had acceded. That may have been the first interpretation and application of the provisions of international humanitarian law in a situation of internal armed conflict.

Since then, Mexico has adhered to all the changes, modifications and adaptations of the Geneva Conventions of 1929 and 1949. The Geneva Conventions of 12 August 1949 were ratified on 29 October 1952. In the words of our Constitution, since that date they have enjoyed the status of Supreme Law in the country.

Since the Geneva Conventions came into force in Mexico, fortunately no circumstances have arisen requiring recourse to them; as mentioned above, the last situation of conflict experienced by the country was in fact during the events of the Mexican Revolution.

Nevertheless, Mexico has always contributed to the development and reaffirmation of international humanitarian law, particularly when work

began in 1974 on its development based on drafts of the Additional Protocols that the International Committee of the Red Cross later presented to the international community. On that occasion, the Mexican delegation was led by Mr. Miguel Marín Bosch and Mr. Antonio Eusebio de Icaza, nominated as rapporteurs for Committee I of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts. With regard to the Additional Protocols approved on 8 June 1977, Mexico is party only to Protocol I relating to the protection of victims of international armed conflicts, to which it acceded on 10 March 1983.

2. Situation in Mexico with regard to international humanitarian law

In Mexico, the lack of concrete examples of situations calling for the direct application of international humanitarian law explains the fact that in many cases its use and effectiveness and the validity of its concepts are questioned.

The absence of any connection between the content of international humanitarian law and recent or current situations is relevant to this attitude. In terms of prevention, that is, development of an awareness leading to the setting up of an infrastructure allowing international humanitarian law to come into operation when necessary, it could be a disadvantage that there is no real point of reference or anything that brings out the importance of international humanitarian law, making it relevant to all levels of the population. Fortunately, actual situations calling for the direct application of international humanitarian law seem far from likely to occur in Mexico, in view of the effects of the country's foreign policy, the prevailing pacifist trends in education and conscience and the concept of peaceful co-existence among all peoples, principles which form part of the ideology that Mexicans have developed over the years.

On the subject of the articles relative to the undertaking by the States party to the Geneva Conventions to «... respect and to ensure respect for» the Conventions (common Article 1) and those relative to the dissemination of the Conventions and, in the case of Mexico, of Protocol I (Articles 47, 47, 127 and 144 respectively of the four Conventions and Article 83 of Protocol I), we can make the following remarks:

- a. With regard to the first undertaking mentioned above, **the principles of respect for self-determination on the part of peoples and non-interference**

in the internal affairs of other countries have to some degree inhibited statements pointing to countries where observance of the article is necessary, although statements have been made regarding the peaceful settlement of disputes, the limitation of the use of force, the choice of methods and means of warfare, peace and international co-operation. Such statements never cite international humanitarian law as a reference; they refer rather to human rights and other international treaties.

- b. With regard to **dissemination**, we cannot say that there is full and adequate knowledge of international humanitarian law even within the Government. For example, in the armed forces the content of the Geneva Conventions and their Additional Protocols is becoming known, but in an informative rather than an educational sense. This situation is aggravated when such information is imparted only to superior officers and not to the lower ranks.

In Mexico, education, which the State must provide under Article 3 of the Constitution, does not include at any level instruction in international humanitarian law. Some universities offering courses such as law and international relations are familiar with international humanitarian law, but in an informative rather than an educational sense; some institutions offer a special course on human rights, but only at postgraduate level. This is mentioned because in such courses international humanitarian law is dealt with under the heading of human rights.

3. The Mexican Red Cross

Perhaps the most important role in promoting knowledge and implementation of international humanitarian law in Mexico is that played by the Red Cross as an auxiliary to the public authorities and, in this case, as an agent for dissemination. In many ways this work is quite recent, in comparison with the dates of coming into effect of the Geneva Conventions and Additional Protocol I.

Activities in this field began formally in 1982, with the launching of the National Programme for the Dissemination of International Humanitarian Law and the Fundamental Principles of the Red Cross and the Red Crescent. The programme's manual of activities lists seven essential levels of dissemination, based on the outline used all over the world:

Level I – National Society; Level II – armed forces; Level III – government officials; Level IV – the academic community; Level V – medical circles; Level VI – the general public; Level VII – dissemination in times of emergency.

Sometimes, depending on the activity to be undertaken and the time available, the different groups listed above receive information or training. This is relatively simple, but it takes time.

The first group mentioned is the National Society itself; even here knowledge of international humanitarian law and the fundamental principles was not widespread at all levels.

It is possible that even now full and thorough knowledge of these two subjects has not been achieved within the Mexican Red Cross (387 branches spread out over the 2,000,000 km² of the Republic of Mexico), but we can state that enough material is now available to enable us to reach a more advanced stage.

Our activities in this field have been intensive: two national seminars; a one-week programme of dissemination (with ICRC participation); a national course and a national meeting of specialists in the dissemination of international humanitarian law; an inter-American course organized in co-operation with the ICRC; and a large number of courses and seminars on the local, state and regional levels.

Moreover, an infrastructure has been set up enabling us to go further afield: we have worked with the Navy and the universities and this work is to be extended to the Army in 1987. We have also organized courses for diplomats and students of diplomacy.

One very relevant aspect has received much attention from the Mexican Red Cross: the study of international humanitarian law. Since the educational and training establishments in Mexico offer no specific courses in international humanitarian law, there is a temporary shortage of specialists in the subject, both within and outside the Red Cross. This lack of specialists, a deficiency in human resources, clearly accounts for many of the problems encountered in this field, particularly in relation to the Additional Protocols.

Mexico does have specialists working for the Government who have taken part in international conferences on international humanitarian law, but they are not permanently resident in the country. There is no technical link between official departments and the private sector for the purpose of studying the Conventions and the Protocols. We have begun to form such relations, at the prompting of the Mexican Red Cross, but they are not yet stable and constant.

Another factor that must be borne in mind is that in Mexico the only comprehensive source of literature on international humanitarian law is the

Mexican Red Cross library; moreover, that is where the people knowing most about the subject meet.

The road we must take to achieve the permanent establishment of international humanitarian law in Mexico will depend upon the social and political conditions prevailing in the country. We feel that the only way to make progress in that direction is through dissemination, which must be developed on the basis of more direct promotion among the public, advice to persons wishing to do research (to date we have helped with only seven degree theses on the subject) and efforts to associate the relevant authorities with our efforts. This is quite a difficult and ambitious undertaking. It is now under way, and we shall continue along these lines, encouraging further academic studies.

4. Additional Protocol II

Fully aware of the *raison d'être* of Protocol II which, in our eyes, is a necessary complement for the protection of victims of armed conflict, we should like to make some pertinent remarks on the subject. We shall not deal with Protocol I, which is already in force in the country; we only hope that should the time come or the circumstances arise for its application, it will be seen to be effective.

Let us begin with the words of the second paragraph of the Preamble to Protocol II:

“*Recalling* furthermore that international instruments relating to human rights offer a basic protection to the human person,”

On the basis of this provision, we feel that Protocol II should be compatible with the Mexican judicial system.

Chapter I of the Mexican Constitution contains a whole series of provisions concerning individual guarantees which, implicitly and explicitly, constitute a true declaration on the human rights that were confirmed almost thirty years later in international and regional agreements reached in the framework of the inter-American system.

There is also a whole series of treaties and conventions that in one form or another have to do with Protocol II; Mexico is party to most of these. For example, the international conventions and those of the inter-American system regarding human rights; and the Declaration against torture and other cruel, inhuman or degrading treatment.

According to our interpretation, the provisions of all the agreements mentioned in the previous paragraph appear and are generally consolidated in Protocol II, although there they have a specific scope of applica-

tion. We consider that there is a very important common ground between Protocol II and such agreements (here, of course, we concur with the thesis of complementarity between human rights as a whole and international humanitarian law).

We support the view that a clearly humanitarian interpretation should always be given when studying the possibility of accession, not only to Protocol II but to any instrument of international humanitarian law. Since in Mexico there is a whole system that endorses this compatibility between the international standard (Protocol II) and the Constitution, which provides full humanitarian protection based on respect for the person, we feel that there should be no reason for delaying accession.

A considerable period of time elapsed between the signing of the Protocols and Mexico's accession to Protocol I. It may be even longer until Mexico accedes to Protocol II. Several reasons may be given for this: insufficient dissemination; lack of an adequate academic body that would support and help argue in favour of ratification; and the shortage of serious studies that would enrich bibliographical sources, from a specifically Mexican point of view.

One thing that must not be overlooked is that Mexico ratified the Conventions and acceded to Protocol I without reservations.

Our insistence on the desirability of Mexico acceding to Protocol II is based on a completely humanitarian concern arising from the need to have all the instruments necessary to ensure that when the moment comes, full protection and assistance will be provided. Since Mexico supports principles such as the limitation of the use of force and limitations as to the choice of methods or means of warfare, it is not surprising that the country has an instrument that implicitly expresses the same concern; moreover, the protection afforded is basically the same.

In insisting on this point we do not anticipate that the fact of acceding to Protocol II might be taken as an acknowledgement of certain situations of an internal nature, or might change or affect some judicial provision on the individual or group level. This is not possible, since when Mexico acceded to and ratified the instruments of international humanitarian law, it was on the understanding that this would not affect its legal status in any way (Article 3 common to the Geneva Conventions and Article 4 of Protocol I).

Conclusion

Ten years after the coming into effect of the Protocols additional to the Geneva Conventions of 12 August 1949, the Mexican Red Cross still sees them as a body of complementary humanitarian provisions necessary to ensure full assistance and protection for the victims of ever more intense and widespread armed conflicts.

Evidently they contain a series of technicalities that require constant and untiring study on the part of all who support their establishment and enforcement. We should like to see more countries acceding to them since, for us also, they are a force for the peace in the world for which we all long.

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