

*IMPLEMENTATION OF INTERNATIONAL
HUMANITARIAN LAW*

Activities of qualified personnel
in peacetime

by María Teresa Dutli

I. Introduction

Ever since international humanitarian law (IHL) was first codified the States, as contracting parties, have undertaken to adopt every measure necessary to implement their obligations under the relevant treaties. The duty to ensure implementation derives from the customary rule whereby the parties to a treaty must carry out its provisions in good faith. In addition, the Geneva Conventions of 1949 and their Additional Protocols of 1977 set forth special means of implementation which strengthen and specify this customary rule and apply from the moment a treaty enters into force. One such provision is Art. 6 of Protocol I, entitled “Qualified persons”.

Art. 6 can be traced to a 1964 draft resolution of the *Commission médico-juridique de Monaco* which recommended setting up groups of qualified persons, within each State, to monitor the implementation of IHL as provided for in the 1949 Geneva Conventions. A draft article conceived along the same lines, and taking into account various opinions gathered by the ICRC on the aforesaid proposal, was submitted to the first and second sessions (1974 and 1975) of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (CDDH). Although a number of amendments were proposed to the initial draft, the idea that States should train qualified personnel to facilitate the implementation of the Conventions and the Protocol met with virtually unanimous approval. The final text was written up by the drafting

committee of the CDDH and included in Protocol I as Art. 6,¹ which reads as follows:

Qualified persons

- 1. The High Contracting Parties shall, also in peacetime, endeavour, with the assistance of the National Red Cross (Red Crescent, Red Lion and Sun²) Societies, to train qualified personnel to facilitate the application of the Conventions and of this Protocol, and in particular the activities of the Protecting Powers.*
- 2. The recruitment and training of such personnel are within domestic jurisdiction.*
- 3. The International Committee of the Red Cross shall hold at the disposal of the High Contracting Parties the lists of persons so trained which the High Contracting Parties may have established and may have transmitted to it for that purpose.*
- 4. The conditions governing the employment of such personnel outside the national territory shall, in each case, be the subject of special agreements between the Parties concerned.*

Although the concept underlying this provision received broad approval during the Diplomatic Conference, in practice the provision has remained a dead letter. Yet its implementation could play a very important role in the implementation of IHL.

II. Recruitment and training of qualified personnel as a peacetime measure

The recruitment and training of qualified personnel is one of the measures of implementation which the States must adopt as soon as Protocol I enters into force. This is because competent personnel must be recruited and trained in advance, in peacetime, in order to be operational in time of armed conflict.

¹ See *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Sandoz, Y., Swinarski, C., Zimmermann, B., eds., ICRC, Martinus Nijhoff Publishers, Geneva, 1987, p. 92, para. 239.

² Since July 1980 there has no longer been a Red Lion and Sun Society nor any party to the Conventions which uses that sign.

The training of qualified personnel (and by implication the transmission of lists thereof) is included in the “Indicative List” of measures of implementation to be adopted in peacetime annexed to the report on “Respect for international humanitarian law: National measures to implement the Geneva Conventions and their Additional Protocols in peacetime” (Doc. C.I/2.4/2) which was submitted by the ICRC to the 25th International Conference of the Red Cross (Geneva, 1986). The indicative list was also joined to the written representations which the ICRC made as a follow-up to Resolution V of the 25th International Conference of the Red Cross on the same subject, in particular its circular letter of 28 April 1988 to all the States party to the Geneva Conventions and their respective National Societies. This letter requested information on the measures taken or planned at the national level to ensure, at the appropriate time, the effective implementation of the treaties.³ In response to its written representations the ICRC received very little information on the recruitment and training of qualified personnel.⁴ Some States may nevertheless have taken initial steps in this direction without having informed the ICRC.

III. Definition of qualified personnel

Art. 6 of Protocol I is silent as to the nature of the qualified personnel it mentions. The above-mentioned draft resolution of the *Commission médico-juridique de Monaco* referred to “a corps of volunteers, doctors, lawyers, paramedical personnel who could be made available to belligerent countries, Protecting Powers, and the ICRC whenever necessary”.⁵ This list was indicative, not restrictive. However, a multidisciplinary group is certainly required, in particular since ensuring full respect for the provisions of the Conventions and Protocols involves various fields of specialization.

³ The circular letter of 28 April 1988 was published in the *IRRC*, No. 263, March-April 1988, pp. 122-140. See also *National measures to implement international humanitarian law. Resolution V of the 25th International Conference of the Red Cross (Geneva, 1986). Written representations by the International Committee of the Red Cross*, ICRC, Geneva, 1991.

⁴ See “Replies received from States to the ICRC’s written representations concerning national measures to implement international humanitarian law” annexed to the report on *Implementation of international humanitarian law — National measures* (Doc. C.I/4.1/1) compiled by the ICRC for the 26th International Conference of the Red Cross and Red Crescent (which was to have taken place in Budapest in 1991).

⁵ See *Commentary, op.cit.*, pp. 93-94, para. 242.

IV. Duties of qualified personnel

According to Art. 6 of Protocol I, the role of qualified personnel is to facilitate the application of IHL in time of armed conflict, and in particular the activities of the Protecting Powers.

Since qualified personnel are to be recruited and trained already in peacetime, they could also play a role outside situations of armed conflict. For example they could, in addition to taking part in dissemination activities, assist government authorities to prepare for the adoption of national measures to implement IHL.⁶

In this article we shall focus on proposals concerning activities which qualified personnel could carry out in peacetime, deliberately leaving aside the subjects of recruitment, training and activities in time of armed conflict.

The following proposals, which are neither restrictive nor exhaustive, should be examined in the light of the various specializations which correspond to each field of activity. The aim is to provide a list of activities which could be undertaken to facilitate the participation of qualified personnel in the implementation of IHL in peacetime.

A. Dissemination

Qualified personnel could certainly contribute effectively to the dissemination activities undertaken by the authorities, in particular by reaching a wide variety of specialized target groups.

It would indeed seem quite impossible to carry out the programmes of instruction mentioned in Protocol I⁷ unless qualified personnel and adequate material are made available.

The fact that the courses on the law of war for officers organized by the International Institute of Humanitarian Law (IIHL) in San Remo are taught by officers provides an excellent example of recognition for the need to enlist the services of trained experts in each field. Such experts can identify the problems of concern to the target group in question and pass on their knowledge in the most effective way. The ICRC's dissemination activities among the armed forces are also carried out by officers acting as instructors.

⁶ *Commentary, op. cit.*, p. 94, para. 243.

⁷ Protocol I, Art. 82 on "Legal advisers in armed forces" and Art. 83 on "Dissemination".

B. Measures to implement the Conventions and Protocols

As already mentioned, the States party to the Conventions and Protocol I must adopt in peacetime the legislative and practical measures necessary to ensure effective implementation of the treaties in time of armed conflict. These advance measures, called “measures for execution” in Art. 80 of Protocol I, cannot be improvised at short notice, especially as they touch on a wide variety of fields, namely, the military and technical fields (for example, on the question of weaponry), the legal field (particularly in criminal law), the health and medical fields, administration and the organization of relief for victims. The solution of problems that arise in any of these fields obviously requires the participation of highly qualified personnel.⁸

The study and preparation of necessary measures to be adopted could be entrusted by the States parties, who bear the main responsibility in this respect, to interministerial committees comprising representatives of the various ministries concerned with the implementation of IHL.⁹ This possibility was also suggested by the ICRC in its written representations on national measures of implementation¹⁰ and in its contacts with government authorities. With a view to adopting national measures of implementation, the authorities could also rely on the help of consultative groups, possibly even private ones, consisting of qualified personnel in the sense of aforementioned Art. 6.¹¹

Qualified personnel could participate in the efforts of the government authorities in many ways. For example, they could:

1. establish an order of priority among areas of national legislation which need to be supplemented or modified following the adoption of IHL at the national level (for example in relation to punitive measures, misuse of the emblem, national information bureaux, hospital ships or medical aircraft);
2. remain abreast, in each area of specialization, of the national measures adopted by other States and pass on this information to the authorities concerned;
3. make specific proposals based on practical experience and knowledge of IHL as to the type of measure which should be adopted in each case;

⁸ See *Commentary, op.cit.*, p. 94, para. 243.

⁹ See *Commentary, op. cit.*, p. 931, para. 3296.

¹⁰ See note 3 above.

¹¹ See *Commentary, op.cit.*, p. 94, para. 243.

4. draw the attention of government authorities to the importance of each State party keeping the others informed of the national measures it has adopted to implement IHL;
5. assist government authorities with the translation of the Conventions and Protocols into their national languages and of national laws and rules into a universally understood language so that relevant information can be passed on to the other States party and the ICRC;
6. ensure respect for the emblem and draw the authorities' attention to cases of misuse so that the necessary corrective measures can be taken;
7. take part in the setting up of a civil defence service or, when needed, help coordinate existing public and private services which assist the population in various ways, such as fire, relief and rescue services, hospitals and the police;
8. help train members of the civil defence services in the areas of medical care and sanitation, among others, and instruct the population regarding possible dangers and protective measures to be taken against them;
9. assist the authorities with various tasks aimed at increasing the safety of civilians, in particular by providing advice with regard to the construction of shelters, the materials used, the supply of food and water, sanitation facilities and measures to fight fires and floods;
10. compile for the authorities a directory of groups which could provide volunteers (nursing schools, schools for social welfare workers, ambulance services, youth movements) in order to facilitate contacts and schemes which would enable volunteers to receive instruction, in particular in the basic rules of IHL;
11. provide supplementary training for medical and paramedical personnel, in particular by teaching them methods of evacuating victims of bombing attacks, war surgery, prosthetic and orthotic techniques and amputee rehabilitation;
12. promote the stockpiling of emergency food and non-food supplies;
13. remind the authorities of the importance of placing objects likely to become military targets at a safe distance from densely populated areas;

14. take any other measures conducive to ensuring effective implementation of the Conventions and Protocols in time of armed conflict.

In more general terms, besides taking part in dissemination activities and promoting the adoption of national measures to implement IHL, qualified personnel could also have the peacetime role of keeping a close watch on new developments in the field of IHL which are being discussed in international fora, informing the authorities of these developments and taking specific initiatives to promote IHL at the national and international levels.

V. Conclusion

Our aim in this article has been to suggest various activities which qualified personnel could carry out in peacetime to assist the States in fulfilling their obligation to ensure that IHL will be duly implemented. It should not be forgotten, however, that the primary responsibility for taking the appropriate advance measures falls to the national authorities and that the role of qualified personnel is limited to providing support for State efforts in this direction. Nevertheless, the activities and initiatives of qualified personnel in peacetime play a major role in ensuring the effective implementation of IHL in time of armed conflict.

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