

The ICRC Advisory Service on International Humanitarian Law will henceforth be publishing a biannual update on legislation and jurisprudence relating to national measures for the implementation of humanitarian law.

This new column forms part of the mandate entrusted to the Advisory Service. Indeed, in addition to offering advice to States, the aim of the Service is to promote the widest possible exchange of information regarding the implementation of humanitarian law, pursuant to the Recommendations of the Intergovernmental Group of Experts for the Protection of War Victims adopted by the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1995).¹

The update will feature legal texts and court decisions obtained by the Advisory Service documentation centre. We hope that this new section will be as comprehensive as possible and we invite governments and individuals to inform us (see address below) of new developments in national legislation and case law relating to the implementation of international humanitarian law. The Advisory Service also publishes an annual report.

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¹ *IRRC*, No. 310, January-February 1996, pp. 58 ff.; Recommendations of the Intergovernmental Group of Experts for the Protection of War Victims, Recommendation VI, *ibid.*, p. 86.

Implementation of international humanitarian law
Biannual update of national legislation
and jurisprudence
January to June 1998

A. Legislation

Canada

The Canadian National Committee on International Humanitarian Law was set up in March this year pursuant to the memorandum of understanding of 18 March 1998 between the Departments of Foreign Affairs and International Trade, National Defence and Justice, the Royal Canadian Mounted Police, the Canadian International Development Agency and the Canadian Red Cross Society.

Colombia

Decree No. 860, issued on 8 May 1998, provides for the protection and use of the Red Cross name and emblem and for the protection of Red Cross activities. It also facilitates the delivery of humanitarian services in Colombia.

France

On 25 June 1998 the National Assembly unanimously adopted an Act aimed at banning antipersonnel mines,² based expressly on the Ottawa Convention of 3 December 1997. This Act supplements the Act of 1 July 1998 authorizing ratification of the Convention.³

Besides prohibiting the development, manufacture, stockpiling, supply, transfer and use of anti-personnel mines, the Act provides for the destruction of existing stocks by 31 December 2000. A national committee for the banning of anti-personnel mines will monitor enforcement of the Act, which will come into effect on the date of the Ottawa treaty's entry into force on 1 July 1999.

²Loi n° 98-564 du 8 juillet 1998 tendant à l'élimination des mines antipersonnel, *Journal officiel*, 9 July 1998, p. 10/456.

³Loi n° 98-542 du 1er juillet 1998 autorisant la ratification de la Convention sur l'interdiction de l'emploi, du stockage, de la production et du transfert des mines antipersonnel et sur leur destruction, *Journal officiel*, 2 July 1998, p. 10/078.

Germany

The Act relating to cooperation with the International Criminal Tribunal for Rwanda was issued on 4 May 1998.⁴ It is almost identical to the Act of 10 April 1995 on cooperation with the International Criminal Tribunal for the former Yugoslavia. Both refer to the Act on mutual international assistance in criminal matters (*Bundesgesetzblatt*, I, 1537), which becomes widely applicable by analogy.

Italy

On 16 February 1998 the Minister for Foreign Affairs issued a Decree⁵ establishing the Italian National Committee for International Humanitarian Law. The Committee was set up to examine measures necessary to adapt domestic law to the rules of international humanitarian law. The Decree makes specific reference to the measures to stem from the decision of the July 1998 Rome Diplomatic Conference to establish a permanent international criminal court.

Peru

The Official Gazette of 21 February 1998 published Act No. 26/926 modifying various articles of the Penal Code and incorporating a chapter on crimes against humanity.⁶ The crimes covered include genocide, forced disappearance and torture.

Switzerland

On 20 March 1998 the Federal Assembly modified the Federal Act relating to military *materiel*.⁷ The purpose of the amendment is to bring the definition of anti-personnel mines, prohibited under Article 8 of the Act, in line with that contained in Article 2 of the Ottawa Convention. No date has yet been set for the amendment's entry into force.

⁴Gesetz über die Zusammenarbeit mit dem Internationalen Strafgerichtshof für Ruanda (Ruanda-Strafgerichtshof-Gesetz) vom 4. Mai 1998, *Bundesgesetzblatt*, 1998, I, No. 25, 8 May 1998.

⁵Decreto del Ministro degli Affari Esteri n° 215 bis del 16 febbraio 1998, hitherto unpublished.

⁶Ley que modifica diversos artículos del Código Penal e incorpora el Título XIV-A, referido a los delitos contra la humanidad, *El peruano — diario oficial*, 21 February 1998, No. 6450, p. 157/575.

⁷Loi fédérale sur le matériel de guerre, Modification du 20 mars 1998, *Feuille fédérale*, 31 March 1998, p. 1159.

Tajikistan

On 21 May 1998 Tajikistan adopted a new Penal Code containing various provisions regarding the implementation of international humanitarian law. Articles 403 to 405 punish grave breaches of humanitarian law committed in either international or internal armed conflicts. Article 333 states that abuse of the emblem and name of the Red Cross/Red Crescent is a punishable offence. The Code entered into force on 1 September 1998.

B. National jurisprudence

Belgium

In a highly criticized decision,⁸ the Brussels Military Court on 17 December 1997 confirmed the acquittal of two Belgian servicemen belonging to the Belgian contingent of the UNOSOM II operation in Somalia in 1993. They had been charged with threatening and committing assault and battery on Somali children at a checkpoint. The Court held that the Act of 16 June 1993 relative to the punishment of grave breaches of the Geneva Conventions of 12 August 1949 and their two additional Protocols was not applicable since these international instruments themselves did not apply. According to the Court, the situation in Somalia in 1993 could not be defined as an international armed conflict because the United Nations troops were conducting a peace-keeping mission and could not be deemed a party to the conflict or an occupying power. The Court further held that the events in Somalia in 1993 could not be regarded as a non-international armed conflict within the meaning of Article 3 common to the four Geneva Conventions, since the hostilities did not take place between organized armed forces, but between irregular factions behaving in an anarchical manner without an established chain of command.

In a subsequent decision handed down on 7 May 1998,⁹ the Military Court found a Belgian sergeant posted with the UNOSOM II troops guilty of assault and battery, threats and racial discrimination with regard to a Somali child, as well as incitement to immorality and indecent assault in a military camp. The Court remained silent as to the applicability of international humanitarian law to the situation in Somalia.

⁸ Military Court, Brussels, 17 December 1997, *Journal des tribunaux*, 4 April 1998, pp. 286-289.

⁹ Military Court, Brussels, 7 May 1998, hitherto unpublished.

France

On 6 January 1998 the Court of Cassation¹⁰ quashed a decision of the Indictment Division of the Nîmes Court of Appeal in the judicial investigation regarding W. Munyeshyaka, a Rwandan national charged with genocide and crimes against humanity. The Indictment Division had ruled that this case did not lie within the jurisdiction of the investigating judge, arguing that the alleged acts were crimes of genocide committed abroad by a foreigner on foreigners and that the Code of Penal Procedure contained no provisions regarding the jurisdiction of the French courts for such a case. The Court of Cassation held that the Indictment Division had violated the law by limiting its criminal charges to genocide, whereas the acts perpetrated could also be deemed crimes of torture, for which universal jurisdiction is provided for under Article 689-2 of the Code of Penal Procedure. The Court's decision referred the case to the Indictment Division of the Paris Court of Appeal.

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¹⁰Criminal Division of the Court of Cassation, 6 January 1998.