
National implementation of international humanitarian law

Biannual update on national legislation and case law

January – June 2003*

A. LEGISLATION

Armenia

The Criminal Code of the Republic of Armenia was adopted by the National Assembly on 18 April 2003 and published on 2 May 2003. It entered into force on 1 August 2003.¹ The Code establishes a comprehensive system for the repression of war crimes, in accordance with the country's international obligations under the 1949 Geneva Conventions and their Additional Protocols of 1977. It does not distinguish between acts committed in internal and in international armed conflicts and contains general principles of repression such as universal jurisdiction, command responsibility, no impunity on grounds of superior order, no statutory limitation. The Code also contains, in a Special Part, a separate chapter on the repression of genocide, crimes against humanity and war crimes (*Part 13, Chapter 34*).

Austria

The Law on Cooperation with the International Criminal Court was adopted on 10 July 2002, published on 13 August 2002 and entered into force on 1 October 2002.² It provides the legal basis for compliance with requests from the ICC for the arrest and surrender of suspects and for other forms of assistance, including the handing over of information to the Court. It also provides that persons convicted by the ICC may serve their sentences in Austria and lays down rules for the enforcement of fines and forfeiture measures. Lastly, it includes a provision relating to the punishment of offences against the administration of justice by the ICC.

* National legislation and case law occurring before or after these dates may also be included in the update. The time frame essentially corresponds to the reception of the relevant material by the Advisory Service on International Humanitarian Law.

Belarus

The Law of the Republic of Belarus No. 173-3 “On Inclusion of Changes and Amendments into Certain Legislative Acts” of 2003 introduced amendments to Article 136 of the Criminal Code rendering violations of Protocol II to the 1954 Hague Convention for the Protection of Cultural Property a criminal offence. The Law was adopted by the House of Representatives on 11 December 2002 and adopted by the Council of the Republic on 20 December 2002. It was published on 22 January 2003 in the National Register and entered into force on 1 February 2003.

Belgium

Two laws were adopted in 2003 regarding the punishment of serious violations of international humanitarian law. The first one, amending the 1993 Law on the Punishment of Serious Violations of International Humanitarian Law, received royal assent on 23 April 2003 and was published on 7 May 2003.³ The second one, which introduces the content of the 1993 law into other laws and abrogates the 1993 law, received royal assent on 5 August 2003 and was promulgated on 7 August.⁴

The law of 23 April 2003 introduced substantial changes in that, first of all, it adds to the list of crimes against humanity three crimes that were previously left out, thus bringing it in line with the Rome Statute. Secondly, it includes a number of violations of IHL and slightly redefines others in order to cover as widely as possible all grave breaches of the Geneva Conventions and their Additional Protocol I, on the one hand, and all war crimes as defined in the Rome Statute, on the other. Moreover, specific provisions were added that criminalize the serious violations of Protocol II to the 1954 Hague Convention which are defined in Article 15 of that Protocol. The law also provides that the international immunity attached to an official position may prevent its application, within the limits set by international law. Other sections of the

1 Registration No.: HO-528-N, published in *Official Bulletin of Republic of Armenia* No. 25 (260) on 2 May 2003.

2 Bundesgesetz über die Zusammenarbeit mit dem internationalen Strafgerichtshof, *Bundesgesetzblatt für die Republik Österreich*, 13 August 2002, No. 135, pp. 1423-1436.

3 Loi modifiant la loi du 16 juin 1993 relative à la répression des violations graves du droit humanitaire et l'article 144 ter du Code judiciaire, published in *Moniteur Belge* on 7 May 2003, Ed. 2, No. 167, pp. 24846-24853.

4 Loi relative aux violations graves du droit international humanitaire, published in *Moniteur Belge* on 7 August 2003, Ed. 2, No. 286, pp. 40506-40515.

amended law modify the jurisdiction of Belgian courts over crimes covered by it. In particular, a mechanism was introduced to filter out cases that do not present a minimum link with Belgium.

The law of 5 August 2003 includes the crimes listed previously and introduces them into the Penal Code. It also maintains the imprescriptibility of these crimes by modifying the Penal Code and the Code of Criminal Procedure. Moreover, the following elements have been transposed into the Penal Code: the forms of participation in the commission of a crime; the exclusion of any defence based on interests or necessity of a political, military or national nature, even in the context of reprisals; and the exclusion of the defence of superior orders when, in the specific circumstances, the order could clearly have led to the commission of a serious violation of international humanitarian law. The law also develops further the limitations laid down for its application under the rules of immunity as they derive from international law. It substantially modifies the criteria establishing the jurisdiction of Belgian courts. These last modifications have been introduced into the Code of Criminal Procedure. A link is now required between a case and Belgium for the courts to have jurisdiction over it: this can be territorial, active personality or passive personality jurisdiction. However, the Federal Prosecutor may initiate proceedings relating to a case that has no link with Belgium if so demanded by international treaty or customary law.

Kazakhstan

Order No. 455 of the Minister of Defence was adopted on 26 November 2002. It basically determines the shape, and orientation (new moon, or moon opened to the left) of the red crescent emblem to be used by the medical services of the armed forces.

Kyrgyzstan

Order No. 448 "On Measures to Protect the Red Cross and Red Crescent Emblems" was issued by the Minister of Health on 31 October 2002. This order instructs various administrative offices and health care centres to stop using the emblem on ambulances, offices and signboards. It also instructs the administration to arrange for the development of distinctive signs to be used by medical services.

Under Order No. 17-ct "On the Red Cross Emblem", issued on 3 April 2003, the Kyrgyz State Inspection Board on Standardization and Metrology issued an instruction removing, as far as the territory of Kyrgyzstan is concerned,

the requirement of placing a red cross on the labels of medical products from the seven state standards (GOSTs).

Lithuania

The Criminal Code was adopted on 26 September 2000 and entered into force on 1 May 2003.⁵ In its Chapter 8, entitled “Crimes against Humanity and War Crimes” the Code defines, criminalizes and sets the sentences for the crime of genocide and crimes against humanity. It also defines a number of war crimes and provides for penalties for them, namely: the killing, injury, torture or other inhuman treatment of protected persons; the deportation of civilians of an occupied territory; violations of norms of international humanitarian law regarding the protection of civilians and their property in time of war; the destruction of protected objects or the looting of national treasures; marauding; prohibited military attacks; the use of prohibited methods and means of combat; the forced engagement of civilians or prisoners of war in enemy armed forces; undue delay in the repatriations of prisoners of war; undue delay in the release of interned civilians or impediment of the repatriation of other civilians; and illegal use of the red cross or red crescent emblem or of the United Nations emblem.

The Code of Criminal Procedure was adopted on 14 March 2002 and entered into force on 1 May 2003.⁶ It includes provisions for the proper cooperation with the ICC.

Malta

The International Criminal Court Act⁷ was passed by Parliament in November 2002. Its purpose is to make further provisions in Malta for the punishment of certain international crimes, namely genocide, crimes against humanity and war crimes, thereby enabling the State to cooperate with the ICC and to authorize ratification of the Rome Statute. The act introduces genocide, crimes against humanity and war crimes into the Criminal Code, using the same definitions for these crimes as the Rome Statute. It defines the responsibility of commanders and other superiors, and includes extraterritorial jurisdiction whenever one of the above mentioned crimes is committed by a

⁵ Law No. VIII-1968, published in *Valstybes zinios*, 2000, No. 89-2741.

⁶ Law No. IX-785, published in *Valstybes zinios*, 2002, No. 37-1341.

⁷ International Criminal Court Act to provide for assistance to the International Criminal Court, Act XXIV of 2002, Chapter 453.

person subject to military law, and jurisdiction over any citizen or permanent resident of Malta who, outside the country, conspires to commit such an offence either within or outside Malta. The Act also regulates assistance to the ICC, offences in relation to the ICC, the enforcement of sentences and orders, and arrest and surrender. Lastly, it contains a special clause on State or diplomatic immunity, and provides for an amendment of other Acts.

Mauritius

On 7 May 2003 the President of the Republic of Mauritius assented to the Geneva Conventions (Amendment) Act 2003. The Act was published in the *Government Gazette* on 17 May 2003, General Notice 722 as Act No. 2 of 2003, and came into force on that same day. It provides for an amendment of the Geneva Conventions Act 1970 to incorporate the 1977 Additional Protocols and allows for the prosecution of grave breaches and offences other than grave breaches, as well as the additional emblems signs and signals of the Protocol.

The Chemical Weapons Convention Act 2003 was likewise approved on 7 May 2003, to give effect to the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.⁸ The Act stipulates, in particular, that no person shall develop, produce, acquire, stockpile or keep chemical weapons, directly or indirectly transfer a chemical weapon to another person, or use a chemical weapon. It also establishes the Mauritius National Chemical Weapons Authority, which is in charge *inter alia* of supervising and monitoring the enforcement of the Act. In addition, the Act provides for extraterritorial jurisdiction over citizens of Mauritius and any person on board a Mauritian ship or aircraft. Lastly, it specifies the offences, lays down penalties for violations of this Act and provides detailed schedules of listed chemicals.

Moldova

The Penal Code was adopted on 18 April 2002, promulgated into law on 6 September 2002 and published on 13 September 2002.⁹ Its entry into force has been postponed by the Amendment to the Law on Entry into Force No. 1563 of 19 December 2002 which stated that the Criminal Code will

⁸ Act No. 3 of 2003, published in the *Government Gazette* on 17 May 2003.

⁹ Criminal Code, adopted on 18 April 2002 under No. 985-XV, promulgated by the Decree of the President No. 873-III on 6 September 2002, published in *Monitorul Oficial al Republicii Moldova*, No. 128-129, 13 September 2002, Article 1012 (the Presidential Decree is published under Article 1013).

enter into force together with the Criminal Procedure Code. The two Codes entered into force on 12 June 2003. The Criminal Code contains a specific Chapter on "Crimes against Peace, Security of Humanity and War Crimes" which imposes prison sentence for various crimes, including: genocide; inhuman treatments; planning, preparation, triggering and waging war; mercenary activity; attacks against persons and institutions benefiting from international protection. The new Code also contains a list of specific war crimes in several provisions which have been included both in the Chapter on "Crimes against Peace and Security" (Articles 137, 138, 141 and 143), as well as under the Chapter covering "Military Crimes" (Articles 389 to 392). These provisions cover acts such as torture, inhuman treatment, deportation, perfidious use of the red cross emblem and acts of violence against the civilian population in the area of military hostilities (e.g., robbery, destruction or illegal appropriation of goods under the pretext of war necessity). The Code further includes two provisions containing cross-reference clauses to "use of methods and means of warfare prohibited by international treaties" and to "grave breach of IHL committed during international or internal conflicts". Crimes against the peace and security of mankind, war crimes and crimes defined in international treaties to which the Republic of Moldova is a party entail criminal responsibility, even if committed outside the territory of Moldova by foreign nationals or stateless persons not residing permanently in the territory of Moldova (Article 11). Furthermore, statute of limitations does not apply to those categories of crimes (Article 60).

Sweden

The Act on Cooperation with the International Criminal Court¹⁰ was adopted on 25 April 2002 and entered into force on 1 July 2002. This Act covers the arrest and surrender to the ICC of suspects, indicted or convicted persons, legal aid, procedural hindrance, public defence counsel, indemnification and other expenses, cooperation regarding crimes that come under the ICC's jurisdiction, enforcement of penalties and forfeiture, confession, enforcement of decisions on indemnification for victims, and transport through Sweden of persons deprived of liberty. It also specifies that the Act on Extradition of Offenders (1957:668) applies in some aspects to the surrender to the ICC of suspects, indicted or convicted persons and that the

¹⁰ Act on Cooperation with the International Criminal Court, *The Swedish Code of Statutes*, SFS 2002:329.

Act on International Legal Aid Criminal Cases (2000:562) applies, though with minor adaptations, to legal aid in relation to the ICC.

B. CASE LAW

Belgium

On 12 February 2003, the Court of Cassation quashed the 26 June 2002 ruling of the Appeal Court's Accusation Chamber in the Sabra and Shatila case. The Court of Cassation held that a prime minister benefits from immunity as long as he is in office and thus cannot be prosecuted during that time, while persons not benefiting from immunity can be prosecuted, wherever they may be. The judgment thus invalidates the interpretation of the 1993 law on universal jurisdiction made by the Accusation Chamber whereby article 12 of the Law of 17 April 1878, requiring the presence of the suspect on the territory, was applicable in relation to offences set out in the 1993 law.

C. NATIONAL COMMITTEES ON INTERNATIONAL HUMANITARIAN LAW

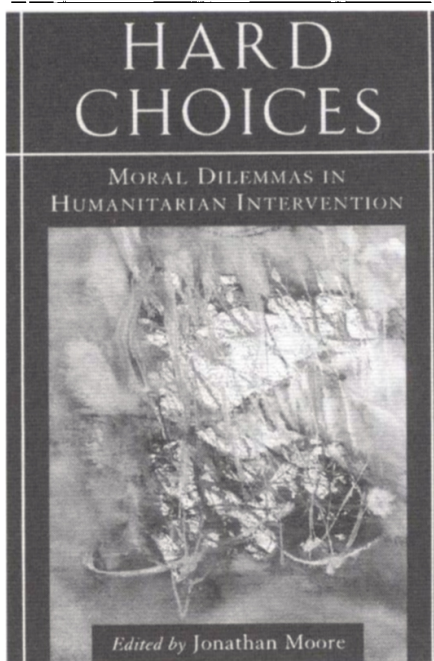
Kyrgyzstan

Governmental Resolution No. 361 of 18 June 2003 re-established, on a new basis, the Interdepartmental Commission on the Implementation of International Humanitarian Law in the Kyrgyz Republic. The Commission is composed of representatives of the Ministries of Justice, Foreign Affairs, Health, Internal Affairs, Environment and Emergency Situations, Defence, Education and Culture, and of the Social Fund, and in coordination with the National Security Service, representatives of the National Society of the Red Crescent. The role of the Commission consists, among other things, in helping to bring the legislation of the Kyrgyz Republic in line with the provisions of IHL treaties, making suggestions relating to the implementation of IHL, handing down opinions on draft IHL treaties, coordinating the activities of State bodies relating to the incorporation of IHL norms into national legislation, facilitating the dissemination of IHL, gathering information on IHL developments, and participating part in the exchange of information with international bodies.

Sudan

Presidential Decree No. 48/2003 established a National Commission for IHL on 8 February 2003. The Minister of Justice is in charge of the chairmanship and the Secretariat of the Committee, which comprises representatives of the Ministries of Justice, Foreign Affairs, Interior, Health, Education,

Higher Education and Academic Research, Defence, Humanitarian Affairs, International Cooperation, Information and Communication; representatives of the Council of Ministers; the Chairman of the National Assembly's Law Commission; the Sudanese Intelligence Bureau; the Sudanese Red Crescent Society and independent dignitaries and experts. The Commission's mandate is in particular to review national legislation and determine whether it is in line with IHL and to suggest possible improvements; to set up mechanisms and measures necessary to implement IHL; to approve dissemination plans and programmes; to monitor the implementation of legislation in this area; to study; to approve and/or organize workshops and other activities relating to IHL in Sudan and to participate in conferences or other activities abroad; to study new developments in the field of IHL and make recommendations to the national authorities; to cooperate and exchange experiences with national, regional or international organizations and assist national authorities in drafting required reports; to coordinate government efforts relating to IHL; and to provide the state with advice on IHL.



Hard Choices: Moral Dilemmas in Humanitarian Intervention

by Jonathan Moore

This volume of original essays by influential figures in international policy-making, practitioners and academics offers insights into the conflicting moral pressures brought to bear in various types of humanitarian operations. The authors

address issues relating to human rights, development, economic sanctions, the arms trade, refugees, HIV and the media. Together they make the case that, although there are no easy answers, paying due regard to moral considerations can improve the quality of decision-making and intervention in internal conflicts.

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CHF 45.- / Ref. 2166

French edition: Gallimard, Paris, 1999

CHF 35.- / Ref. 2166