

National implementation of international humanitarian law

Biannual update on national legislation and case law
January - June 2002

A) Legislation

Armenia

The Law of the Republic of Armenia on the use and protection of the emblems of the red cross and red crescent was adopted on 5 February 2002, was promulgated on 2 March 2002 and entered into force the same day.¹ It sets out rules for the emblem's use as a protective device (by the medical and religious personnel of the armed forces, troops of the Ministry of the Interior, border guards, other military formations and public authorities responsible for action in emergencies, civilian medical units, and the medical personnel of the Armenian Red Cross Society and other National Red Cross or Red Crescent Societies) and as an indicative device (by bodies belonging to the International Red Cross and Red Crescent Movement and, in peacetime, by authorized ambulances and aid stations providing free treatment to the injured and sick). The law also mentions the use by organizations that do not need any special authorization (the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies) and includes rules on the distinctive emblems and the names "Red Cross" and "Red Crescent". It states that any person who violates the law will be held accountable by virtue of the legislation of Armenia. In the event of contradictions between the law and treaties listed in the law itself, the treaties take precedence.

Azerbaijan

In application of the Law of the Republic of Azerbaijan "on the use and protection of the red cross and red crescent emblems", the law "on the changes and additions to the Criminal Code of the Republic of Azerbaijan and the

¹ Not yet published on 30 June 2002.

Code of Administrative Offences of the Republic of Azerbaijan” was adopted and promulgated on 16 April 2002. It was published and entered into force on 23 June 2002.² Essentially, it amends the Criminal Code in order to add penalties for misuse in wartime of the distinctive signals and the names “Red Cross” and “Red Crescent” and of signs that constitute an imitation of the red cross or red crescent emblems. It also adds penalties to the Code of Administrative Offences for such misuse in time of peace.

Bolivia

Law No. 2390 on the use and protection of the red cross emblem was adopted on 14 May 2002, was promulgated on 23 May 2002 and entered into force on 19 June 2002.³ It sets out in particular the different authorized uses of the emblem (use as a protective device by the medical and religious services of the armed forces, civilian hospitals, medical units and religious personnel attached thereto, and by the Bolivian Red Cross; use as an indicative device by this Society and by other National Red Cross or Red Crescent Societies; and use by the International Red Cross organizations) and provides for the punishment of misuse, including perfidious use in time of war, in accordance with the Criminal Code and/or the Military Criminal Code. The illegal marking with the emblem of various documents (letters, leaflets, etc.) or goods or their packaging, and the selling or putting on the market of items so marked, are subject to a specific sanction. The red crescent emblem, the names “Red Cross” and “Red Crescent” and the distinctive signals for the identification of medical units or transports are also covered by this law.

Bosnia and Herzegovina

The Law on the use and protection of the red cross emblem and the title of the Red Cross Society of Bosnia and Herzegovina was adopted on 29 April 2002. It was published on 30 May 2002 and entered into force on 8 June 2002.⁴ It sets out rules on the use of the red cross and red crescent emblems

² *Law of the Republic of Azerbaijan “on the changes and additions to the criminal code of the Republic of Azerbaijan and the code of administrative offences of the Republic of Azerbaijan” in keeping with the law “on the use and protection of the red cross and red crescent emblems”*, Azerbaijan (Official Gazette), No. 141 (3153) of 23 June 2002.

³ *Ley n° 2390: “El uso y la protección del emblema de la Cruz Roja”*, *Gaceta Oficial de Bolivia*, 19 June 2002.

⁴ *Law on the Use and Protection of the Red Cross Emblem and the Title of the Red Cross Society of Bosnia and Herzegovina*, *Official Gazette*, Bosnia and Herzegovina, Year VI, No. 11, 30 May 2002, pp. 274-276.

and names, of the distinctive signals for the identification of medical units and transports, and of the title of the Red Cross Society of Bosnia and Herzegovina. It distinguishes between protective and indicative use and, in connection with the latter, between time of war and time of peace. It lists in detail the establishments, units, means of transport and persons entitled to use the names and emblems for different purposes, and lays down the conditions governing such use. The International Red Cross organizations are expressly permitted to use the emblems at any time for all their activities. The law also provides for the dissemination of the text of the Geneva Conventions among members of the armed forces, health workers, university students and the population in general. Misuse of the emblems and, for certain medical or religious personnel, failure to wear the armband or carry an identity card when performing relevant duties, or failure to return such items after losing the corresponding status, are punishable by a fine. Perfidious use of an emblem or distinctive signal is considered a war crime which is to be punished in accordance with the provisions of the Criminal Code.

Burkina Faso

Decree No. 2001-180/PRES/PM/SECU of 2 May 2001 on the prohibition of anti-personnel mines in Burkina Faso, which entered into force on 2 May 2001,⁵ was adopted to implement the 1997 Ottawa Convention on Landmines. The decree prohibits the development, manufacturing, production, acquisition, stockpiling, retention, offer, import, export and transfer of anti-personnel mines. It stipulates the maximum number of mines (500) that may be held by State services for training in detection, demining and destruction techniques. It also includes provisions for the operation of a fact-finding mission in Burkina Faso in accordance with Article 8 of the Convention. This decree refers to the Penal Code and stipulates sentences of one to five years, imprisonment and/or a fine for breaches of its provisions.

Cambodia

The Royal Decree on the use and protection of the red cross or red crescent emblem was adopted on 6 May 2002 and immediately entered into force. It regulates the different authorized uses of the emblems (as a protective device by the medical and religious services of the armed forces, by civilian hospitals and medical personnel, transports and units, and by religious personnel

⁵ Décret n° 2001-180/PRES/PM/SECU du 2 mai 2001, *Journal officiel*, No. 20, 2001.

attached to such units, and by the Cambodian Red Cross; use as an indicative device by the Cambodian Red Cross and other National Red Cross or Red Crescent Societies; and use by the international components of the Movement). It provides for punishment of misuse, including perfidious use in time of war, which qualifies as a war crime under the applicable law.

Colombia

The new Disciplinary Code (Law No. 734) was adopted on 5 February 2002, was published on 13 February 2002 and entered into force on 5 May 2002.⁶ It contains disciplinary rules that must be observed by public officials. Article 34 provides in particular that every public official must “accomplish and ensure accomplishment of duties contained in international humanitarian law treaties”, and Article 48 states that “committing serious violations of international humanitarian law” and “failure to obey orders and instructions contained in Presidential Orders intended to promote human rights or implement international humanitarian law” are considered to be very serious offences.

The Republic of the Congo

On 20 January 2002 the new Constitution was approved by referendum. Article 10 of the new Constitution states that no one is bound to obey an order which would obviously constitute a violation of human rights or of any public freedom. Likewise, such violations cannot be justified by citing superior orders. Article 11 states that war crimes, crimes against humanity and the crime of genocide will be punished in accordance with the law and that such crimes are not subject to statutory limitations.

Costa Rica

Law No. 8231 on the prohibition of anti-personnel mines, adopted on 18 March 2002 and promulgated on 2 April 2002, was published and entered into force on 17 April 2002.⁷ This law was adopted in order to implement the 1997 Ottawa Convention on Landmines. In particular, it makes it illegal to use and to encourage the use of mines, to develop, produce, acquire, stockpile, retain, import, export, possess, transfer, trade or move about, directly or indirectly, mines, anti-handling devices, constituent parts or raw material for

⁶ Código disciplinario único, *Diario Oficial*, No. 44708, 13 February 2002.

⁷ Ley nº 8231: prohibición de minas antipersonales, *La Gaceta: Diario Oficial*, No. 73, 17 April 2002.

the manufacture thereof. It provides for the destruction of all mines and other prohibited objects in accordance with Article 4 of the Ottawa Convention and for the creation of a special unit to this end. Any violation of this law is punishable by three to six years, imprisonment regardless of any penal or civil action that may arise in connection with the death of or injury to a person, or damage to private or public property.

Law No. 8272 on penal repression to sanction war crimes and crimes against humanity, adopted on 25 April 2002 and promulgated on 2 May 2002, was published and entered into force on 22 May 2002.⁸ It amends Article 7 of the Penal Code to include acts committed in contravention of international humanitarian law in the list of acts punishable under national law irrespective of the law applicable at the place where they were committed and irrespective of the nationality of the perpetrator, and adds two new articles (378 and 379) that define and fix penalties for war crimes (serious violations of or war crimes under an international humanitarian law treaty) and crimes against humanity (crimes against humanity under a human rights treaty or under the Rome Statute of the International Criminal Court).

France

Law No. 2002-268 of 26 February 2002 on cooperation with the International Criminal Court⁹ spells out the conditions for French cooperation with the Court. It regulates judicial cooperation and lays down rules for the arrest and transfer of persons, as well as for the enforcement of sentences or compensation measures pronounced by the International Criminal Court. It achieves this by amending certain provisions of the Code of Penal Procedure and, in particular, by adding a series of new provisions to the code. The law also adds a chapter to Law No. 95-1 of 2 January 1995 adapting French legislation to the provisions of United Nations Security Council Resolution 827, which established the International Criminal Tribunal to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The new chapter refers to the new provisions on enforcement of prison sentences added to the Code of Penal Procedure, which also apply *mutatis mutandis*.

⁸ Ley n° 8272: *represión penal como castigo por los crímenes de guerra y de lesa humanidad*, *La Gaceta: Diario Oficial*, No. 97, 22 May 2002.

⁹ *Loi n° 2002-268 du 26 février 2002 relative à la coopération avec la Cour pénale internationale*, *Journal officiel de la République française*, 27 February 2002, pp. 3684-3687.

Germany

The Law to introduce the Code of Crimes against International Law was adopted on 26 June 2002, was published on 29 June 2002 and entered into force the next day.¹⁰ It introduces into national legislation a new code to deal specifically with the repression of genocide, crimes against humanity and war crimes. The latter are split into different categories (war crimes against persons, against property and other rights, against humanitarian operations and emblems, war crimes consisting of prohibited methods of warfare and war crimes consisting of prohibited means of warfare). Two related crimes are added to the three main categories (violation of the duty of supervision and failure to report a crime). It includes provisions on general principles of criminal law that need to be adapted to the crimes covered, such as rules regarding superior orders, the responsibility of commanders and statutory limitations. General rules of criminal law are, however, also applicable to the crimes covered by this law, as far as nothing to the contrary is provided for. The law also includes provisions amending other laws, such as the Penal Code, the Code of Criminal Procedure and the law governing the constitution of courts.

The Law implementing the Rome Statute of the International Criminal Court was adopted on 21 June 2002, was published on 28 June 2002 and entered into force on 1 July 2002.¹¹ It provides rules and procedures for cooperation between German courts and authorities with the International Criminal Court. It includes rules on the arrest and surrender of persons, on the execution of sentences and other orders of the International Criminal Court, and on other forms of assistance pursuant to Article 93 of the Rome Statute, including requests for assistance from the Court in respect of ongoing investigation or prosecution. It amends a dozen existing laws, for instance the Code of Criminal Procedure, the law governing the constitution of courts, the law on international cooperation in criminal matters, and the two laws on cooperation with the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

¹⁰ *Gesetz zur Einführung des Völkerstrafgesetzbuches*, Bundesgesetzblatt 2002, Teil I., No. 42, 29 June 2002, pp. 2254-2260.

¹¹ *Gesetz zur Ausführung des Römischen Statuts des Internationalen Strafgerichtshofes vom 17. Juli 1998*, Bundesgesetzblatt 2002, Teil I., No. 41, 28 June 2002, pp. 2144-2165.

Ireland

With the adoption of the Twenty-third Amendment of the Constitution Act, 2001, Ireland added a ninth paragraph to Section 29 of its Constitution, authorizing ratification of the Rome Statute of the International Criminal Court. This amendment was considered necessary since submission to the jurisdiction of the Court entails a partial transfer to the Court of the sovereign power of the State to administer criminal justice. The proposal was accepted by referendum on 7 June 2001 and signed by the President on 27 March 2002.

Mali

A new Penal Code was adopted on 30 June 2001, was promulgated on 20 August 2001 and entered into force the same day.¹² The first section of the code (“crimes against humanity”) includes articles on genocide, crimes against humanity and war crimes. The text of the provisions defining these crimes (Articles 29 to 31) is essentially based on Articles 6 to 8 of the Rome Statute of the International Criminal Court with, however, some important differences as far as war crimes are concerned. Article 32 of the code provides for the inadmissibility of statutory limitations and for the death penalty to be used against violators.

The Netherlands

The International Criminal Court Implementation Law was promulgated on 20 June 2002 and entered into force on 1 July 2002.¹³ It enables the Court to operate in the Netherlands and governs the country’s cooperation with it. It includes provisions on the transfer of persons to the Court, on other forms of cooperation with the Court as provided for in Article 93 of its Statute, on the execution of sentences passed by the Court and on the assistance provided to it by the Netherlands as host State. Also promulgated on the same day was another law to adapt the Criminal Code, the Code of Criminal Procedure and other laws to the provisions of the International Criminal Court Implementation Law. This law entered into force on

¹² *Loi n° 01-079 du 20 août 2001 portant code pénal*, *Journal officiel de la République du Mali*, 43rd year, 1 February 2002.

¹³ *Rijkswet van 20 juni 2002 tot uitvoering van het Statuut van het Internationaal Strafhof met betrekking tot de samenwerking met en bijstand aan het Internationaal Strafhof en de tenuitvoerlegging van zijn vonnissen (Uitvoeringswet Internationaal Strafhof)*, *Staatsblad* 2002, No. 314; Decision on its entry into force: *Staatsblad* 2002, No. 315.

8 August 2002.¹⁴ The second phase of the implementation of the Rome Statute by the Netherlands should be the adoption of the Bill on international offences, which was first submitted to Parliament on 19 April 2002.

Nicaragua

Law No. 418 on the protection and use of the name and emblem of the Red Cross was adopted on 26 February 2002, promulgated on 15 March 2002 and published on 22 March 2002.¹⁵ It entered into force on the day of its publication. It sets out in particular the different authorized uses of the red cross emblem (use as a protective device by the medical and religious services of the armed forces, civilian hospitals, medical units and religious personnel attached to them, and the Nicaraguan Red Cross; use as an indicative device by this Society and by other National Red Cross or Red Crescent Societies; and use by the International Red Cross organizations) and provides for the punishment of misuse, including perfidious use in time of war, according to the applicable law. The red crescent emblem, the distinctive signals for the identification of medical units or transports, and all other emblems or signs that may be adopted in future international treaties and used for purposes similar to the red cross or red crescent are also covered by this law.

Peru

Law No. 27741 setting up education policy in the field of human rights and a national plan for their dissemination and teaching was adopted on 9 May 2002, was promulgated on 28 May 2002 and entered into force two days later for most of its provisions.¹⁶ It provides for the compulsory teaching of the country's Constitution, human rights and international humanitarian law at all levels of the education system, civilian or military. It asks the executive power to adopt a national plan for the implementation of this provision within 120 days following publication of the law.

¹⁴ *Wet van 20 juni 2002 tot aanpassing van het Wetboek van Strafrecht, het Wetboek van Strafvordering en enige andere wetten aan de Uitvoeringswet Internationaal Strafhof*, Staatsblad 2002, No. 316; Decision on its entry into force: Staatsblad 2002, No. 317.

¹⁵ *Ley nº 418 de Protección y Uso del Nombre y del Emblema de la Cruz Roja*, *La Gaceta: Diario Oficial*, No. 57, 22 March 2002, pp. 1995-1998.

¹⁶ *Ley nº 27741 que establece la política educativa en materia de Derechos Humanos y crea un plan nacional para su difusión y enseñanza*, *El Peruano: Diario Oficial*, 29 May 2002, p. 223774.

Tajikistan

On 4 February 2002, the government published a decree entitled Resolution No. 28 on the implementation of the law of the Republic of Tajikistan “on the usage and protection of the red cross and red crescent emblems and appellations in the Republic of Tajikistan”. The purpose of the decree is to assign responsibilities to the various ministries for the following activities: marking medical establishments, health-care units and transports of medical equipment with the red crescent emblem in accordance with the law; providing medical personnel with identification material; producing armlets, identification cards and the equipment necessary for the sending of distinctive signals; preventing misuse of the red cross and red crescent emblems and names; designing a distinctive sign with which to mark medical and pharmaceutical establishments providing paid services; designing new road signs to mark first-aid posts and hospitals; and working out a draft law for Tajikistan “on the Red Crescent Society of Tajikistan”.

Yugoslavia

The Law on Cooperation of the Federal Republic of Yugoslavia with the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 was adopted and published on 11 April 2002 and entered into force the following day.¹⁷ The law sets out rules for the provision of legal assistance to the International Tribunal, for the operation of its officers on the territory of the Federal Republic of Yugoslavia, for the transmittal of criminal proceedings or the transfer of indictees to the International Tribunal, and for the execution of its sentences by the Yugoslav authorities.

B) Case law

Belgium

On 9 January 2002, the Belgian Court of Cassation issued a decision on the case of three Rwandans — a manufacturer and two nuns — accused of violations of the 1949 Geneva Conventions, their Additional Protocols of 1977,

¹⁷ *Law on Cooperation of the Federal Republic of Yugoslavia with the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Official Gazette of the Federal Republic of Yugoslavia, No. 18, 11 April 2002.*

the Belgian law of 16 June 1993 on the punishment of grave breaches of international humanitarian law and the Rwandan Penal Code — all with regard to acts committed during the events that took place in Rwanda in 1994. The accused had argued that the decision of the Brussels Appeals Court (Accusation Chamber) of 27 June 2000 was ill-founded, as were the decisions of the Brussels Court of Assizes of 18 April, 7 June and 8 June 2001.¹⁸ The Appeals Court had ruled that the case should proceed further and referred it to the Court of Assizes despite the fact that in the case of the manufacturer the International Criminal Tribunal for Rwanda had decided to reject the prosecutor's indictment. The accused's case was based on a number of international legal instruments, including the United Nations Charter, the Statute of the International Criminal Tribunal for Rwanda and the European Convention for the Protection of Human Rights and Fundamental Freedoms, several provisions of national law, including the Constitution, the Code of Criminal Procedure and the law of 22 March 1996 on recognition of the International Tribunal for the former Yugoslavia and of the International Tribunal for Rwanda and cooperation with these Tribunals, and on general principles of law, including the right to a fair trial, the *non bis in idem* principle, the principle that international rules directly applicable to national rules take precedence, and the principle that national law should be interpreted in accordance with international rules. The Court dismissed the case partly on the merits and partly as inadmissible.

On 16 April 2002, in a case relating to acts allegedly committed in their country by senior public officials of the Democratic Republic of the Congo, the Appeals Court of Brussels (Accusation Chamber) ruled that, as no specific indication to the contrary exists, the offences set out in the law of 16 June 1993 on the punishment of grave breaches of international humanitarian law are subject to the application of Articles 6 to 14 of the law of 17 April 1878 (Code of Criminal Procedure: prosecution of offences committed abroad) and in particular to Article 12, which requires the presence of the suspect on national territory. This not being the case for any of the four suspects, the Court declared the case inadmissible. On 26 June 2002, the same Court adopted an identical position in the case of senior public officials of Israel and Côte d'Ivoire.

¹⁸ See biannual update January-June 2001, *International Review of the Red Cross*, No. 843, p. 858.

United States

On 29 April 2002, in a civil action against a Bosnian Serb,¹⁹ the District Court of the Northern District of Georgia found that the accused had committed and was liable to prosecution for torture, cruel, inhuman or degrading treatment, arbitrary detention, war crimes, crimes against humanity, assault and battery, false imprisonment, intentional infliction of emotional distress and civil conspiracy. More specifically regarding war crimes, the court found that the man had committed torture and other abuses against civilians in the context of an armed conflict and that he had therefore violated Article 3 common to the four Geneva Conventions of 1949 and the customary international humanitarian standards enshrined in it, and at the same time committed a grave breach of those Conventions in that he had wilfully caused great suffering or serious injury and unlawful confinement. The Court's jurisdiction regarding these matters was based on the Alien Tort Claims Act and the Torture Victim Protection Act. The Court ordered the defendant to pay damages to each of the four victims who brought the lawsuit.

Yugoslavia

On 30 November 2001, the Supreme Court of Kosovo²⁰ overruled a decision taken on 6 March 2001 by the District Court of Gjilan²¹ and returned the case — which related to attempted murder, illegal detention of weapons and explosive material, war crimes and crimes against humanity — to the District Court for retrial. The accused claimed that essential criminal procedure and criminal law standards had been violated and that facts had been wrongfully and incompletely established. The Court found that the facts had been erroneously established in relation to all charges and that violations of several essential rules of criminal procedure had occurred.

C) National Committees on international humanitarian law

Slovakia

A Committee on International Law was established by a decision of the Ministry of Foreign Affairs on 20 September 2001 and entered into force on 1 January 2002. Chaired by the Ministry of Foreign Affairs and with the

¹⁹ *Mehinovic v. Vuckovic*, US District Court for the Northern District of Georgia, 29 April 2002.

²⁰ *Trajkovic*, Supreme Court of Kosovo, Case 145/2001, 30 November 2001.

²¹ *Trajkovic*, District Court of Gjilan, Case 68/2000, 6 March 2001. See Biannual update January-June 2001, *International Review of the Red Cross*, No. 843, p. 859.

Slovak Red Cross providing the secretariat, it includes representatives of the Ministries of Foreign Affairs, Defence, Justice, Interior, Health, Education and Culture, the Office of the Ombudsman, the armed forces and the Slovak Red Cross itself. The Commission's mandate is to analyse the degree of implementation of international humanitarian law in national law and its application by national courts and administrative authorities, to propose to the authorities the adoption of measures to ensure effective implementation of this body of law, to propose Slovakia's participation in other humanitarian law treaties, to help spread knowledge of this body of law in schools, the armed forces and the police, and to cooperate with national committees of other countries and with international organizations.

ICRC
ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW