

faits, en se fondant sur le décret-loi n° 5 du 12 septembre 1973 qui qualifie la situation interne d'« état ou temps de guerre » à l'effet de rendre applicables certaines dispositions pénales internes. Les faits en question concernent un cas de disparition forcée commençant en date du 19 juillet 1974.

La Cour rappelle qu'une jurisprudence établie, fondée sur la Constitution chilienne, admet que les normes internationales touchant aux droits de l'homme imposent des limites aux autorités de l'État chilien, y compris au législateur. Elle se réfère à l'obligation de réprimer figurant à l'article 146 de la quatrième Convention de Genève, comme à la liste des infractions graves à l'article suivant, et conclut que pour les faits considérés une application de la loi pénale admettant l'amnistie serait erronée.

### **Irlande**

La loi de modification du *Geneva Conventions Act* de 1962 a été promulguée le 13 juillet 1998 (*Geneva Conventions (Amendment) Act, 1998*). La section relative aux infractions graves et celle relative aux infractions de moindre gravité sont étendues pour couvrir le Protocole additionnel I de 1977. Cette loi réglemente l'emploi du signe distinctif de la protection civile, tout comme celui de certains signaux distinctifs pour les unités et moyens de transport sanitaires définis dans l'Annexe I au Protocole additionnel I. Les deux Protocoles additionnels sont ajoutés comme annexes au *Geneva Conventions Act*. Cette nouvelle loi amende également le *Red Cross Act* de 1938 et le *Prisoners of War and Enemy Aliens Act* de 1956.

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## **Enforcement of international humanitarian law through national criminal legislation**

**S**TATES are required to adopt a number of measures to ensure compliance with their obligations under international humanitarian law. In particular, they must prevent and, where necessary, punish violations of humanitarian law through the adoption of national implementing legislation. This requi-

rement may be found in several humanitarian law treaties. For example, States party to the 1949 Geneva Conventions and their 1977 Additional Protocol I must enact laws to *repress*, that is, to punish the most serious violations of these instruments, those which are defined as grave breaches. In addition, States party to the Conventions and their two Additional Protocols must *suppress* all other violations of international humanitarian law.

The fact that countless violations of humanitarian law are committed around the world clearly shows that a greater effort must be made to ensure respect for the rules of this body of law if civilians, prisoners of war and sick or wounded soldiers are to receive the full protection to which they are entitled. Adherence to humanitarian law instruments is only a first step in this direction and additional efforts must be undertaken to implement and enforce their provisions. It is indeed of the utmost importance that States fulfil their obligations under the Geneva Conventions and other humanitarian law treaties and act to prevent and suppress violations thereof.

Since its establishment in 1995, the ICRC's Advisory Service on International Humanitarian Law has provided advice and assistance to States regarding the implementation of that law at the national level, in particular measures which must be adopted to punish war crimes and other serious violations of the Geneva Conventions and their Additional Protocols. Accordingly, the Advisory Service has conducted an in-depth analysis of such measures, in consultation with experts who have practical experience of criminal legislation and the prosecution of war criminals.

As part of this process of consultation, from 23 to 25 September 1997 the ICRC held a meeting during which experts from civil law countries exchanged views on the national repression of violations of international humanitarian law. This initiative was followed by a similar meeting of common law experts which took place from 11 to 13 November 1998, also in Geneva.

The objective of these meetings, which were attended by criminal lawyers, members of academic and military circles and government officials, was to draw conclusions and offer advice to decision-makers and legislators on substantive legal issues and procedure with regard to the repression of war crimes. They allowed the experts and the ICRC to share information on a wide range of technical and other questions relative to enforcement mechanisms provided for under international humanitarian law at the national level, and to compare State practice in this area.

The participants discussed various legislative models used in civil law and common law States to implement obligations under international humanitarian law. Working groups were set up to evaluate these different approaches and to identify substantive issues that should be considered when enacting or amending implementing legislation. If necessary, States were encouraged to adopt legislation to comply with their obligations under the Geneva Conventions and their Additional Protocols. States were also encouraged to amend their legislation to allow for the prosecution of the crime of genocide and crimes against humanity as well as for that of violations committed in non-international armed conflicts.

Other procedural and policy issues were discussed, including the importance of military law in enforcing international humanitarian law and the interaction between military and ordinary courts; the need for an independent judiciary, particularly when dealing with politically sensitive cases such as those of alleged war criminals; special training for persons involved in the criminal justice system; and the complementarity between national and international enforcement systems, especially in light of the adoption on 17 July 1998 of the Statute of the International Criminal Court. In that respect, it was noted that the establishment of the new court would not release States from their individual obligation to bring to justice those accused of having committed war crimes. On the contrary, national courts would keep their important and primary role in prosecuting alleged war criminals.

The final report on the meeting of civil law experts is currently available in French and Spanish, and a report on the meeting of common law experts should be ready by mid-1999. Both will provide practical advice to government officials in their efforts to implement and enforce international humanitarian law through the adoption of criminal legislation at the national level. Interested readers are invited to contact the ICRC Advisory Service. Other meetings of this nature will take place in the future, possibly at the regional level.

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