

## REPORTS AND DOCUMENTS

# What's new in law and case law around the world?

## Biannual update on national implementation of international humanitarian law\* July–December 2014

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The biannual update on national legislation and case law is an important tool for promoting the exchange of information on national measures for the implementation of international humanitarian law (IHL).

In addition to a compilation of domestic laws and case law, the biannual update includes other relevant information related to regional events organized by the ICRC, to the development of national committees for the implementation of IHL and similar bodies, and to accession and ratification of IHL and other related international instruments.

### ICRC Advisory Service

The ICRC's Advisory Service on International Humanitarian Law aims to provide a systematic and proactive response to efforts to enhance the national implementation of international humanitarian law (IHL). Working worldwide, through a network of legal advisers, to supplement and support governments' own resources, its four priorities are: (i) to encourage and support adherence to IHL-related treaties; (ii) to assist States by providing them with the technical expertise required to incorporate IHL into their domestic legal frameworks;<sup>1</sup> (iii) to collect and facilitate the exchange of information on national implementation measures; and (iv) to support the work of committees on IHL and other bodies established to facilitate the IHL implementation process.

\* This selection of national legislation and case law has been prepared by Lucie Boitard, legal intern at the ICRC Advisory Service on International Humanitarian Law, with the collaboration of regional legal advisers.

## Relevant ICRC regional events

To further its work on implementation of IHL, the ICRC Advisory Service organized, in cooperation with respective host States, a number of national and regional events directed at engaging national authorities in the period under review.

Of particular interest was the 14th Annual Regional Seminar on International Humanitarian Law co-organized by the South African Department of International Relations and Co-operation and the ICRC, from 2 to 5 September 2014 in Pretoria, South Africa. It gathered governmental officials, members of national IHL committees and representatives from regional and sub-regional organizations from Angola, Botswana, Comoros, the Democratic Republic of the Congo, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Zambia and Zimbabwe. The seminar dealt with topics such as the ICRC and IHL in the region, contemporary challenges to security, sexual violence in armed conflict, weapons, and repression of war crimes.<sup>2</sup>

Another event of interest was the 10th Meeting of Arab Government Experts on National Implementation of IHL, co-organized by Algeria's national committee for the implementation of international humanitarian law, the Arab League and the ICRC. The meeting brought together representatives from the governments of Algeria, Bahrain, Egypt, Iraq, Jordan, Lebanon, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan, the State of Kuwait, Tunisia, the United Arab Emirates and Yemen, and from various Arab organizations. The aim of the meeting was to discuss activities of the ICRC in the region, recent developments in IHL-related topics and the priorities of Arab common action in the domain of national dissemination of IHL provisions, national reports regarding the implementation of IHL provisions and the plan of action adopted at the 9th Regional Conference on IHL for Arab States, development of and coordination among National IHL Commissions, and priorities of Arab common legislative action, and to provide an update on initiatives to strengthen legal protection in armed conflict (in the follow-up to the 31st International Conference of the Red Cross and Red Crescent). The meeting resulted in the adoption of a regional plan of action (2014–2016) on IHL implementation in Arab States.<sup>3</sup>

1 In order to assist States, the ICRC Advisory Service proposes a multiplicity of tools, including thematic fact sheets, ratification kits and model laws, all available on the unit's web page at: [www.icrc.org/en/war-and-law/ihl-domestic-law](http://www.icrc.org/en/war-and-law/ihl-domestic-law) (all internet references were accessed in December 2014).

2 See: [www.icrc.org/en/document/geneva-conventions-150-years-later-still-relevant](http://www.icrc.org/en/document/geneva-conventions-150-years-later-still-relevant).

3 See Chérif Atlam and Mohamed Radwan Bin Khadraa, *Seventh Annual Report on the Implementation of the International Humanitarian Law at the level of Arab States, 2012–2014*, ICRC, p. 25, available at: [www.icrc.org/eng/assets/files/publications/icrc-002-t2014-0210.pdf](http://www.icrc.org/eng/assets/files/publications/icrc-002-t2014-0210.pdf).

## Update on the accession and ratification of IHL and other related international instruments

Universal participation in IHL instruments is a first vital step toward respect for life and human dignity in situations of armed conflict and is therefore a priority for the ICRC. In the period under review, thirteen IHL and other related international conventions and protocols were ratified or acceded to by various States.<sup>4</sup> In particular, there has been notable adherence to the Arms Trade Treaty (ATT). Indeed, in December 2014, sixty-one States had ratified the ATT, allowing it to enter into force on 24 December 2014 as provided for in Article 22(1) of the treaty.<sup>5</sup>

The Advisory Service also supports adherence to other international conventions that are considered to be of a relevance for the protection of persons during armed conflicts, such as the International Convention for the Protection of all Persons from Enforced Disappearance.

The following table outlines the total number of ratifications of and accessions to IHL conventions and other relevant related international instruments as of the end of December 2014.

### Ratifications and accessions, July–December 2014

Convention	States	Ratification/ accession date	Number of parties
1980 Convention on Conventional Weapons	Grenada	10 December 2014	119
	Iraq	24 September 2014	
1980 Protocol I to the Convention on Conventional Weapons	Grenada	10 December 2014	114
	Iraq	24 September 2014	
1980 Protocol II to the Convention on Conventional Weapons	Iraq	24 September 2014	94

*Continued*

4 To view the full list of IHL-related treaties, please visit the ICRC treaty database. ICRC, *Treaties and States Parties to Such Treaties*, available at: [www.icrc.org/ihl](http://www.icrc.org/ihl).

5 Article 22(1) of the ATT reads as follows: “This Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depository.”

(Cont.)

<b>Convention</b>	<b>States</b>	<b>Ratification/ accession date</b>	<b>Number of parties</b>
1980 Protocol III to the Convention on Conventional Weapons	Grenada	10 December 2014	110
	Iraq	24 September 2014	
1995 Protocol IV to the Convention on Conventional Weapons (blinding laser weapons)	Grenada	10 December 2014	104
	Iraq	24 September 2014	
1996 Amended Protocol II to the Convention on Conventional Weapons	Grenada	10 December 2014	102
	Iraq	24 September 2014	
2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict	Dominican Republic	14 October 2014	158
	Ghana	9 December 2014	
	Guinea-Bissau	24 September 2014	
2001 Amendment to the Convention on Conventional Weapons	Grenada	10 December 2014	81
	Iraq	24 September 2014	
2003 Protocol V to the Convention on Conventional Weapons (explosive remnants of war)	Greece	21 October 2014	87
	Grenada	10 December 2014	
	Iraq	24 September 2014	
2006 Convention against Enforced Disappearances	Slovakia	15 December 2014	44
	Togo	21 July 2014	
2008 Convention on Cluster Munitions	Belize	2 September 2014	88
	Congo	2 September 2014	
	Guinea	21 October 2014	
	Guyana	31 October 2014	

*(Cont.)*

<b>Convention</b>	<b>States</b>	<b>Ratification/ accession date</b>	<b>Number of parties</b>
2011 Optional Protocol to the Convention on the Rights of the Child on communications procedure	Costa Rica	14 January 2014	11
	Belgium	30 May 2014	
2013 Arms Trade Treaty	Argentina	25 September 2014	61
	Bahamas	25 September 2014	
	Bosnia and Herzegovina	25 September 2014	
	Czech Republic	25 September 2014	
	Dominican Republic	7 August 2014	
	Guinea	21 October 2014	
	Liechtenstein	16 December 2014	
	Lithuania	16 December 2014	
	Montenegro	18 August 2014	
	Netherlands	18 December 2014	
	New Zealand	2 September 2014	
	Poland	17 December 2014	
	Portugal	25 September 2014	
	Saint Kitts and Nevis	15 December 2014	
	Saint Lucia	25 September 2014	
	Senegal	25 September 2014	
Serbia	5 December 2014		
Sierra Leone	12 August 2014		
South Africa	22 December 2014		
Uruguay	25 September 2014		

## National implementation of international humanitarian law

The laws and case law presented below were either adopted by States or delivered by domestic courts in the second half of 2014, or collected by the ICRC Advisory Service during that period. They cover a variety of topics linked to IHL, such as the protection of cultural property, the protection of the emblem, the regulation of the export of war material, the repression of torture, the concept of universal jurisdiction, and criminal repression of IHL violations.

This compilation is not meant to be exhaustive; it represents a selection of the most relevant developments relating to IHL implementation and related issues collected by the ICRC. The full texts of these laws and case law can be found in the ICRC's database on national implementation of IHL.<sup>6</sup>

### A. Legislation

The following section presents, in alphabetical order by country, the domestic legislation adopted during the period under review (July–December 2014). Countries covered are Armenia, Austria, Chad, the Dominican Republic, Peru, Serbia, Spain, Switzerland and Tunisia.

#### Armenia

*Decree of the Prime Minister establishing an Inter-Governmental Commission on the Implementation of Commitments undertaken by Armenia within the framework of the 1954 Hague Convention on the Protection of Cultural Property in Times of Armed Conflict and its Protocols<sup>7</sup>*

On 8 December 2014, the prime minister of the Republic of Armenia issued a decree establishing an Inter-Governmental Commission on the Implementation of Commitments undertaken by Armenia within the framework of the 1954 Hague Convention on the Protection of Cultural Property in Times of Armed Conflict and its Protocols.

According to this decree, the Commission will be tasked with drafting and submitting recommendations on the national implementation of the above-mentioned Hague Convention and its Additional Protocols. The decree also stipulates that representatives of the Holy See Etchmiadzin as well as other interested organizations may be involved in the work of the Commission in an advisory capacity.

<sup>6</sup> ICRC, *IHL: National Implementation Database*, available at: [www.icrc.org/ihl-nat](http://www.icrc.org/ihl-nat).

<sup>7</sup> Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=FFA5BEECCB01E19DC1257EB9002737B2&action=openDocument&xp\\_countrySelected=AM&xp\\_topicSelected=GVAL-992BU7&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=FFA5BEECCB01E19DC1257EB9002737B2&action=openDocument&xp_countrySelected=AM&xp_topicSelected=GVAL-992BU7&from=state).

The Commission is composed of representatives of the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Defence, the Ministry of Culture, the Ministry of Emergency Situations, and the Constitutional Court of Armenia. It is presided over by the head of the International Organizations Department of the Ministry of Foreign Affairs.

## Austria

*Federal Law No. 106/2014 amending the Criminal Code and the Criminal Procedure Code of Austria*<sup>8</sup>

On 18 December 2014, the Federal Law amending the Austrian Criminal Code was adopted by the Austrian Parliament. It entered into force on 1 January 2015.

The amendments were adopted for the purpose of completing the implementation of the Rome Statute of the International Criminal Court (ICC), the Second Protocol of 1999 to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Geneva Conventions of 1949 and their Additional Protocols of 1977.

The amended Criminal Code includes a new Chapter 25 entitled “Genocide, Crimes against Humanity, War Crimes”, which lists new offences. In addition to the provisions in section 321 on “Genocide”, sections 321a through j of Chapter 25 include crimes against humanity, war crimes against persons, war crimes against property and other rights, war crimes against international missions and misuse of protective or national emblems, war crimes for the use of prohibited methods of warfare, and war crimes for the use of prohibited means of warfare. They also establish the responsibility of commanders and other superiors for not having impeded the persons under their effective control from committing the offences listed under Chapter 25, and for the breach of their duty of supervision in failing to report such offences. It furthermore represses the commission of these offences under orders or other instructions.

The Criminal Code also includes a new section 312b prohibiting “enforced disappearance of a person”.

The amended section 64(1)(4c) of the Code provides that the Austrian courts can exercise jurisdiction over the crimes listed in Chapter 25 if the alleged perpetrator or victim is an Austrian citizen, if other Austrian national interests are infringed by the act, or if the perpetrator is a foreigner who has his habitual residence in Austria or is present in Austria and cannot be extradited.

In addition, according to amended section 32(1a)(8) of the Austrian Criminal Procedure Code, the Regional Lay Assessors’ Courts have jurisdiction for crimes under Chapter 25 of the Criminal Code.

8 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=1FBCA1207A77DCD5C1257EB900290127&action=openDocument&xp\\_countrySelected=AT&xp\\_topicSelected=GVAL-992BU6&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=1FBCA1207A77DCD5C1257EB900290127&action=openDocument&xp_countrySelected=AT&xp_topicSelected=GVAL-992BU6&from=state).

## Chad

*Law No. 053/PR/2014 on Protection and Use of the Red Cross and Red Crescent Emblems and any other Distinctive Sign*<sup>9</sup>

On 5 December 2014, the National Assembly of Chad adopted a law on the Protection and Use of the Red Cross and Red Crescent Emblems and any other Distinctive Sign protected by a treaty to which Chad is a party.

The law regulates the use of the emblems both as indicative and protective devices and specifies in its Chapter 2 which entities are entitled to use the emblems both in time of peace and in time of war.

Chapter 3 of the law identifies ways by which respect for the rules related to the use of the emblems is ensured and specifically refers to the role of the Chadian Red Cross Society in preventing and repressing the misuse of the emblem.

In addition, Chapter 4 establishes sanctions for punishing the misuse of the emblem in wartime and peacetime alike.

## Dominican Republic

*Decree No. 249-14 establishing the Regulation for the Implementation of the Law on the Protection and Use of the Emblems and Name of the Red Cross and Red Crescent*<sup>10</sup>

On 29 July 2014, the President of the Dominican Republic issued a decree establishing the Regulation for the Implementation of Law No. 220-07 on the Protection and Use of the Emblems and Name of the Red Cross and Red Crescent.<sup>11</sup>

The Regulation includes two main parts on the protective and the indicative use of the emblem. In its Chapter 3, it establishes the procedure for the protective use of the red cross emblem in cases of armed conflict. It namely identifies the personnel, materials and facilities entitled to request the protective use of the emblem, the way the response will be delivered and the timeline of the response, the verification of documents, and the issuance and delivery of the identity card and armband.

For indicative use, Article 13 of the law states that the Dominican Red Cross Society is entrusted with establishing conditions for the use of the emblem in its internal regulations.

9 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=F8BAEC70AE6F70B9C1257EB90029B1F4&action=openDocument&xp\\_countrySelected=TD&xp\\_topicSelected=GVAL-992BU8&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=F8BAEC70AE6F70B9C1257EB90029B1F4&action=openDocument&xp_countrySelected=TD&xp_topicSelected=GVAL-992BU8&from=state).

10 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=B023ABA2EE691E69C1257E960030ABF3&action=openDocument&xp\\_countrySelected=DO&xp\\_topicSelected=GVAL-992BU8&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=B023ABA2EE691E69C1257E960030ABF3&action=openDocument&xp_countrySelected=DO&xp_topicSelected=GVAL-992BU8&from=state).

11 For further information regarding this law, please consult “What’s New in Law and Case Law Across the World? Biannual Update on National Legislation Implementing Humanitarian Law and Relevant Case Law, July–December 2007”, *International Review of the Red Cross*, Vol. 90, No. 871, 2008, p. 779, available at: [www.icrc.org/eng/assets/files/other/irrc-871-national-imp-jul-dec-ihl.pdf](http://www.icrc.org/eng/assets/files/other/irrc-871-national-imp-jul-dec-ihl.pdf).



Possible violations of the Regulation are to be punished in accordance with the applicable provisions of Law No. 220-07 on the Protection and Use of the Emblems and Name of the Red Cross and Red Crescent (Article 15).

## Peru

*Supreme Decree No. 005-2014-JUS approving a National Plan on Human Rights*<sup>12</sup>

On 5 July 2014, Supreme Decree No. 005-2014-JUS approving a National Plan on Human Rights was published in the Official Gazette of Peru.

The National Plan on Human Rights 2014–2016 contains guidelines with respect to the implementation and enforcement of IHL. In particular, the plan includes activities such as training in human rights law and IHL for the armed forces and the national police (in Goal 1 of Strategic Guideline 1), and the promotion of the approval of education plans in human rights law, IHL and international criminal law at university faculties of law, political science and education (in Goal 2 of Strategic Guideline 1).

It also includes promotion of a legal debate about the modification and improvement of the criminal legal framework according to the standards of international human rights law, IHL and international criminal law (in Goal 2 of Strategic Guideline 2).

Goals 1 and 2 of Strategic Guideline 4 aim to promote the ratification of international treaties on human rights law, IHL and international criminal law and to ensure their implementation as well as that of international standards related to these bodies of international law.

## Serbia

*Law No. 107/14 on the Import and Export of Weapons and Military Equipment*<sup>13</sup>

On 8 October 2014, the Parliament of the Republic of Serbia adopted a law to regulate the import and export of weapons and military equipment.

The law entered into force on 16 October 2014 and establishes a special registry in which all subjects related to the import and export of weapons and military equipment are registered. The law also regulates the process of issuing permits for the export and import of weapons and military equipment, as well as technical support and broker services in the defence industry. According to Article 17 of the law, in the process of issuing permits, authorities must take into

12 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=FAF85075E1D7A327C1257EB9002C5D8B&action=openDocument&xp\\_countrySelected=PE&xp\\_topicSelected=GVAL-992BUA&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=FAF85075E1D7A327C1257EB9002C5D8B&action=openDocument&xp_countrySelected=PE&xp_topicSelected=GVAL-992BUA&from=state).

13 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=18973C1A4A9F3A8FC1257EB9002F0F6A&action=openDocument&xp\\_countrySelected=RS&xp\\_topicSelected=GVAL-992BUP&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=18973C1A4A9F3A8FC1257EB9002F0F6A&action=openDocument&xp_countrySelected=RS&xp_topicSelected=GVAL-992BUP&from=state).

consideration several criteria notably related to the country's international legal obligations and obligations by virtue of Serbia's membership in international organizations, human rights and humanitarian law safeguards, prevention of armed conflicts or their escalation, regional peace and stability safeguards, and counter-terrorism. The law specifically provides in Article 17(2) that a permit will not be issued if it would endanger respect for human rights in the country of final destination or would contribute to a violation of internationally recognized rules of humanitarian law and international human rights law by that country. Similarly, according to Article 17(3), a permit will not be issued if it enables the outbreak or continuation of armed and other conflicts in the country of final destination.

The law proscribes providing technical support regarding weapons and military equipment to countries put under a sanctions regime by the United Nations (UN) Security Council, the Organisation for Security and Cooperation in Europe or other international organizations that the Republic of Serbia is bound by. It also proscribes technical support aimed at the development of weapons of mass destruction.

## Spain

### *Organic Law 8/2014 on the Disciplinary Regime of the Armed Forces*<sup>14</sup>

On 4 December 2014, Organic Law 8/2014 on the Disciplinary Regime of the Armed Forces was promulgated.

The objective of the law is to guarantee compliance with rules governing military behaviour, in particular discipline, hierarchy and unity, and to harmonize the rules governing military disciplinary with those governing military justice.

In particular, Article 7 of the law includes in the list of serious breaches ("faltas graves") non-compliance with the rules of engagement and careless inobservance of the duties set out in IHL.

In addition, according to the list of very serious breaches ("faltas muy graves") set out in Article 8, it is a very serious breach for a superior to omit carelessly ("omitir por imprudencia") to adopt the measures necessary to prevent or pursue actions of subordinates that are in breach of their duties set out in IHL.

14 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=54D03ED187950D88C1257EB90030EF59&action=openDocument&xp\\_countrySelected=ES&xp\\_topicSelected=GVAL-992BUA&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=54D03ED187950D88C1257EB90030EF59&action=openDocument&xp_countrySelected=ES&xp_topicSelected=GVAL-992BUA&from=state).

## Switzerland

### *Revised Ordinance No. 514-511 on War Material*<sup>15</sup>

On 19 September 2014, the Swiss Federal Council revised the Ordinance on War Material of 25 February 1998. This revision stems from an initiative by the Federal Assembly's Council of States following the adoption of the ATT and aims to give more flexibility to the Swiss Federal Council in granting licenses for the export of war material. The revised ordinance entered into force on 1 November 2014.

The ordinance regulates initial licenses and specific licenses for the trade, brokerage, import, export and transit of war material, as well as the conclusion of contracts for the transfer of intellectual property, including technical know-how and the granting of rights thereto.

The main revisions concern Article 5 of the ordinance, which relates to the licensing criteria for the export of war material. More specifically, the new Article 5 (1)c establishes that applications for export licenses will no longer be automatically rejected when “the country of destination is listed as one of the least developed countries on the current OECD-DAC list of countries in receipt of development aid”, but will instead be assessed on a case-by-case basis.

In addition, while the previous text of the ordinance established that licenses should not be granted if “the country of destination violates human rights in a systematic and serious manner”,<sup>16</sup> the new Article 5(4) states that a license may be granted if the risk that the exported war material will be used to commit serious violations of human rights is low.

### *Ordinance No. 520.31 on the Protection of Cultural Property in the Event of Armed Conflict, Natural Disaster or Emergency*<sup>17</sup>

On 29 October 2014, the Swiss Federal Council completely revised the Ordinance on the Protection of Cultural Property in the Event of Armed Conflict, executing the Federal Law on the Protection of Cultural Property in the Event of Armed Conflict, Natural Disaster or Emergency.<sup>18</sup>

The ordinance implements the federal law and notably expands the scope of its protections by including protection of cultural property in situations of natural disaster or emergency.

### *Amended internal regulation for the Interdepartmental Committee on International Humanitarian Law*

15 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=DACF6A2B3A6EC963C1257EB900333419&action=openDocument&xp\\_countrySelected=CH&xp\\_topicSelected=GVAL-992BUP&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=DACF6A2B3A6EC963C1257EB900333419&action=openDocument&xp_countrySelected=CH&xp_topicSelected=GVAL-992BUP&from=state).

16 Ordinance No. 514-511 of 25 February 1998 on War Material (as of 1 January 2013), Art. 5(2)c.

17 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=871B29F229BE3A55C1257EB900336986&action=openDocument&xp\\_countrySelected=CH&xp\\_topicSelected=GVAL-992BU7&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=871B29F229BE3A55C1257EB900336986&action=openDocument&xp_countrySelected=CH&xp_topicSelected=GVAL-992BU7&from=state).

18 For further information regarding this law, please consult “What’s New in Law and Case Law around the World? Biannual Update on National Implementation of International Humanitarian Law, January–June 2014”, *International Review of the Red Cross*, Vol. 96, No. 895/896, 2014.

On 19 September 2014, the Swiss Federal Council approved amendments to the internal regulation of the Interdepartmental Committee on International Humanitarian Law.

The amended regulation, in its Article 1.1, expands participation in the work of the Committee to other departments of the federal administration than those initially composing the Committee. In addition, according to its Article 3.3*bis*, the Swiss Red Cross and the ICRC are entitled to attend all sessions of the Committee, while they were previously admitted to only one session per year.

## **Tunisia**

*Decree No. 2014-4555, modifying Decree No. 2014-2887 establishing Criminal Chambers Specialized in Transitional Justice*<sup>19</sup>

On 29 December 2014, the head of government of Tunisia passed a decree establishing Criminal Chambers specialized in Transitional Justice within the Tribunal of First Instance of Tunis, Sfax, Gafsa, Gabés, Sousse, Le Kef, Bizerte, Kasserine and Sidi Bouzid, as listed in the first paragraph of Article 1.

This decree modifies a previous decree of 8 August 2014 by adding the city of Sfax to the list and by suppressing the second paragraph of Article 1, which stated that the dispositions of the decree were not applicable to the Tribunal of First Instance of Tunis 2, Sousse 2 and Sfax 2.

The creation of such chambers was provided for in the Organic Law Establishing and Organizing Transitional Justice of 2013.<sup>20</sup> Article 8 of the law specifies that these specialized chambers are competent to adjudicate cases related to gross violations of human rights as specified in international agreements ratified by Tunisia and in this law, such as deliberate killing, rape and any other form of sexual violence, torture, enforced disappearance, and execution without fair trial guarantees.

## **B. Case law**

The following section lists, in alphabetical order by country, relevant domestic jurisprudence related to IHL and released during the period under review (July–December 2014). Countries covered are Italy, South Africa and the United Kingdom.

19 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=CADD922EF4026E2AC1257EB90033CC5A&action=openDocument&xp\\_countrySelected=TN&xp\\_topicSelected=GVAL-992BU6&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=CADD922EF4026E2AC1257EB90033CC5A&action=openDocument&xp_countrySelected=TN&xp_topicSelected=GVAL-992BU6&from=state).

20 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=E65641E6572650FAC1257D2D0056813E&action=openDocument&xp\\_countrySelected=TN&xp\\_topicSelected=GVAL-992BUG&from=state&SessionID=DNYUTHMTFW](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=E65641E6572650FAC1257D2D0056813E&action=openDocument&xp_countrySelected=TN&xp_topicSelected=GVAL-992BUG&from=state&SessionID=DNYUTHMTFW).

## Italy

*Case No. 238/2014, Constitutional Court*<sup>21</sup>

**Keywords:** immunity, constitution.

On 22 October 2014, the Italian Constitutional Court declared unconstitutional certain norms adopted by the Italian legislature in order to comply with the judgment of the International Court of Justice (ICJ) on jurisdictional immunities of the State, *Germany v. Italy; Greece Intervening*, General List No. 143, 3 February 2012.<sup>22</sup>

The Italian Parliament had introduced Article 3 of Law No. 5/2013 relating to the ratification of the UN Convention on Jurisdictional Immunities in order to comply with the ICJ judgment of 3 February 2012. This article requires the national judge to comply with the rulings by which the ICJ excluded certain conducts of a foreign State from civil jurisdiction. The Court stated that the article requires Italian courts to deny their jurisdiction in the examination for damages for crimes against humanity committed by a foreign State in Italian territory, without other forms of judicial redress for the fundamental rights violated. Hence it concluded that Article 3 of the law is unconstitutional as it runs counter to the fundamental principle of judicial protection of fundamental rights guaranteed by Articles 2 and 24 of the Italian Constitution.<sup>23</sup>

The Court also declared that Article 1 of the Law of Adaptation No. 848/1957 (the law on ratification of the UN Charter) is unconstitutional, “so far as it concerns the execution of Article 94 of the United Nations Charter, exclusively to the extent that it obliges Italian courts to comply with the Judgment of the ICJ of 3 February 2012 which requires them to decline their jurisdiction in case of acts of a foreign State constituting war crimes and crimes against humanity, in breach of inviolable human rights”.<sup>24</sup> Nevertheless, the Court made it clear that the rest of the Law of Adaptation No. 848/1957 continues to be indisputably in full force and effect.

Lastly, the Court stated that insofar as the international law concerning State immunity from the civil jurisdiction of other States includes acts violating international law and fundamental human rights, it could not be deemed to exist in the Italian legal order since it conflicts with the latter’s basic constitutional principles.

21 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=19B0BCFA4FD773A9C1257EBB002A1315&action=openDocument&xp\\_countrySelected=IT&xp\\_topicSelected=GVAL-992BUA&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=19B0BCFA4FD773A9C1257EBB002A1315&action=openDocument&xp_countrySelected=IT&xp_topicSelected=GVAL-992BUA&from=state).

22 Available at: [www.icj-cij.org/docket/files/143/16883.pdf](http://www.icj-cij.org/docket/files/143/16883.pdf).

23 The Court recalled in this judgment (Constitutional Court of Italy, Case No. 238/2014, Judgment, 22 October 2014, para. 3.4) that: “The first [Article 2] is the substantive provision, in the fundamental principles of the Constitutional Charter, that safeguards the inviolability of fundamental human rights, including – this is crucial in the present case – human dignity. The second [Article 24] is a safeguard of human dignity as well, as it protects the right of access to justice for individuals in order to invoke their inviolable right[s].”

24 Constitutional Court of Italy, Case No. 238/2014, Judgment, 22 October 2014, para. 4.1.

## South Africa

*Case No. CCT 02/14: National Commissioner of the South African Police Service v. Southern African Human Rights Litigation Centre and Another, Constitutional Court*<sup>25</sup>

**Keywords:** universal jurisdiction, torture, customary international law.

On 30 October 2014, the Constitutional Court of South Africa ruled that the South African Police Service (SAPS) had the duty to investigate crimes against humanity that were allegedly committed in the territory of Zimbabwe in 2007. This ruling marked the end of a number of court decisions on the issue, meaning that the SAPS has been ordered by the highest court in South Africa to investigate, in the territory of South Africa, the alleged crimes against humanity committed in Zimbabwe.

The process began in March 2008, when the Southern Africa Litigation Centre (SALC) submitted a dossier to the National Prosecuting Authority of South Africa, documenting alleged torture committed by and against nationals of Zimbabwe in the territory of Zimbabwe. In June 2009, the acting national commissioner of the SAPS informed the SALC that it did not intend to initiate an investigation.

The SALC and a human rights organization called the Zimbabwe Exiles' Forum applied to the North Gauteng High Court for an order reviewing and setting aside the decision not to investigate. In May 2012, the High Court concluded that the decision refusing to initiate an investigation was unlawful and ordered it to be reviewed and set aside.<sup>26</sup>

Thereafter, the national commissioner of the SAPS sought leave to appeal the decision to the Supreme Court of Appeal, which upheld the High Court's decision.<sup>27</sup>

The national commissioner of the SAPS then sought leave to appeal to the Constitutional Court, the highest court in South Africa, seeking clarity on the extent to which the Constitution imposes a duty on the SAPS to investigate crimes against humanity allegedly committed in Zimbabwe by and against Zimbabweans.

The Constitutional Court granted leave to appeal. In 2014 the Constitutional Court held that the decision of the SAPS not to investigate was unlawful. The Court stated that under the SAPS Act, the Constitution of the

25 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=DA2A60D91013C49AC1257E930049C0FA&action=openDocument&xp\\_countrySelected=ZA&xp\\_topicSelected=GVAL-992BU6&from=state&SessionID=E4X03EOS8M](http://www.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=DA2A60D91013C49AC1257E930049C0FA&action=openDocument&xp_countrySelected=ZA&xp_topicSelected=GVAL-992BU6&from=state&SessionID=E4X03EOS8M).

26 For further information regarding this decision, please consult "What's New in Law and Case Law across the World? Biannual Update on National Legislation Implementing Humanitarian Law and Relevant Case Law, January–June 2012", *International Review of the Red Cross*, Vol. 84, No. 887, 2012, p. 1160, available at: [www.icrc.org/eng/assets/files/review/2012/irrc-887-national-implementation.pdf](http://www.icrc.org/eng/assets/files/review/2012/irrc-887-national-implementation.pdf).

27 For further information regarding this decision, please consult "What's New in Law and Case Law around the World? Biannual Update on National Implementation of International Humanitarian Law, July–December 2013", *International Review of the Red Cross*, Vol. 96, No. 893, 2014, p. 391, available at: [www.icrc.org/en/international-review/article/whats-new-law-and-case-law-around-world-0](http://www.icrc.org/en/international-review/article/whats-new-law-and-case-law-around-world-0).

Republic of South Africa and the Implementation of the Rome Statute of the International Criminal Court Act,<sup>28</sup> the SAPS had a legal duty to investigate crimes against humanity allegedly committed in the territory of Zimbabwe. It added that the crime of torture had been domesticated into South African law and is prohibited as it is a peremptory norm of customary international law, which itself is law in South Africa unless it is inconsistent with the Constitution or an Act of Parliament.

The Court further listed limitations to the exercise of universal jurisdiction in investigating international crimes, including the fact that the country in which the crimes occurred is unwilling or unable to investigate, and the practicability of an investigation. The Constitutional Court stated that an investigation within the South African territory did not “offend against the principle of non-intervention and there is no evidence that Zimbabwe has launched any investigation or has indicated that it is willing to do so”,<sup>29</sup> therefore permitting the South African authorities to do so. The Court also added that the anticipated presence of a suspect in South Africa is not a prerequisite to trigger an investigation but is only one of the factors to consider in the determination of whether an investigation would be practicable and reasonable. It added that, in the present instance, “there is a reasonable possibility that the SAPS will gather evidence that may satisfy the elements of the crime of torture allegedly committed in Zimbabwe”.<sup>30</sup>

The Court thus dismissed the appeal and ordered that the SAPS investigate the complaint.

## United Kingdom

*Case No. CO/11360/2012: FF v. Director of Public Prosecutions, High Court of Justice*<sup>31</sup>

**Keywords:** immunity, torture.

On 7 October 2014, the High Court of Justice of England and Wales handed down a decision ordering that the decision issued by the Director of Public Prosecutions for England and Wales (DPP) be quashed. The decision related to the possible opening of an investigation regarding alleged actions of Prince Nasser bin Hamad Al Khalifa of the Kingdom of Bahrain and the question of his immunity from prosecutions over torture claims.

28 Available at: [www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=BA5EFD75C6814503C1256E37004D89D8&action=openDocument&xp\\_countrySelected=ZA&xp\\_topicSelected=GVAL-992BU6&from=state](http://www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=BA5EFD75C6814503C1256E37004D89D8&action=openDocument&xp_countrySelected=ZA&xp_topicSelected=GVAL-992BU6&from=state).

29 Constitutional Court of South Africa, *National Commissioner of the South African Police Service v. Southern African Human Rights Litigation Centre and Another*, Case No. CCT 02/14, Judgment, 30 October 2014, para. 78.

30 *Ibid.*

31 Available at: <http://blog.cps.gov.uk/2014/10/statement-on-prince-nasser-of-bahrain-and-immunity-from-prosecution.html>.

In 2011, FF, a Bahraini citizen who was granted asylum in the United Kingdom, took part in political protests in Bahrain. FF made allegations that Prince Nasser was directly involved in the torture of individuals in a prison in Bahrain. In July 2012 the European Centre for Constitutional and Human Rights, appearing as an interested party, prepared a case containing evidence allegedly implicating Prince Nasser in the torture of detained prisoners in Bahrain. The case was submitted to the British police.

In August 2012, the Crown Prosecution Service for England and Wales (CPS) indicated that Prince Nasser would enjoy personal immunity under section 20 of the State of Immunity Act 1978 since he was a member of the Bahraini royal household. It added that, additionally or alternatively, Prince Nasser would enjoy functional immunity pursuant to section 1 of the same act in relation to any conduct in his role as Commander of the Royal Guard.

In September 2012, following a request for review of the CPS's decision, the CPS Special Crime and Counter Terrorism Division indicated that Prince Nasser did not enjoy personal immunity under section 20 of the State of Immunity Act 1978, as his household was independent from that of his father, the King of Bahrain. It however maintained that according to section 1 of the same Act, it was likely that Prince Nasser would enjoy functional immunity for his position as Commander of the Royal Guard.

In October 2012, FF sought judicial review against the CPS's decision. He notably cited the *Pinochet III* case,<sup>32</sup> in which the House of Lords rejected Pinochet's claim to immunity in respect of charges of torture. This case, FF argued, supported his contention that public officials of foreign States have no functional immunity from criminal process in relation to the international crime of torture.

The case was fixed for hearing on 7 October 2014. However, before the case was heard in the High Court of England and Wales, the DPP sent a letter stating that it no longer maintained that Prince Nasser could be entitled to functional immunity. It also accepted that, given the evidence before it, Prince Nasser would not benefit from personal immunity.

Therefore, on 7 October 2014, the decision that Prince Nasser would be entitled to immunity was quashed by the High Court of Justice of England and Wales.

32 House of Lords, *R v. Bow Street Magistrate and Ors, Ex Parte Pinochet Ugarte* (3), [2001] 1 AC 147, Judgment, 24 March 1999.