

## REPORTS AND DOCUMENTS

# Peru's National Committee for the Study and Implementation of International Humanitarian Law

**Tania Elizabeth Arzapalo Villón**

Tania Elizabeth Arzapalo Villón is Executive International Humanitarian Law Adviser at the Directorate-General for Human Rights, under the Ministry of Justice and Human Rights in Peru. She holds a law degree from the National University of San Marcos in Lima.

### Abstract

*Implementation of international humanitarian law (IHL) in national legislation is necessary to promote compliance with IHL in the event of an armed conflict. Owing to its consultative and interdepartmental nature, the National Committee for the Study and Implementation of International Humanitarian Law (CONADIH) plays a strategic role in promoting its implementation in Peru. To fulfil that role more effectively, CONADIH was strengthened during a structural internal reform of the Peruvian Ministry of Justice and Human Rights (MINJUS), where its presidency lies. Two of the crucial steps to that end were that the presidency fell under a higher authority within the Ministry and the creation of a governing body with decision-making powers regarding IHL and international human rights law, thus leading to the incorporation of IHL into a broad range of public policies.*

**Keywords:** national IHL committees, implementation of IHL, public policies.



## Constitutional framework for IHL treaties in Peru

Peru is a party to most international humanitarian law (IHL) treaties, including the four Geneva Conventions of 1949<sup>1</sup> and their two Additional Protocols of 1977.<sup>2</sup> It has also ratified the International Convention for the Protection of All Persons from Enforced Disappearance<sup>3</sup> and the Convention on Cluster Munitions.<sup>4</sup>

In accordance with the Political Constitution of Peru, all treaties ratified by the State and in force are part of domestic law.<sup>5</sup> Although the Constitution does not specifically mention IHL treaties or the rights that derive therefrom, Article 55 stipulates that such treaties are part of domestic law provided they have been ratified by Peru and are in force.<sup>6</sup> Moreover, in accordance with the “open rights clause” set out in Article 3,<sup>7</sup> the Constitution does not exclude rights deriving from Peru’s IHL obligations, on the grounds that they are based on the principle of human dignity. It can therefore be affirmed that IHL and human rights treaties ratified by Peru are part of the country’s domestic legislation and that the rights set forth in those treaties are recognized by the Constitution.<sup>8</sup>

- 1 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950); Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950); Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950). Approved by Peru through Legislative Resolution No. 12412 of 31 October 1955, promulgated on 5 November 1955, and in force since 15 August 1956.
- 2 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts of 8 June 1977, 1125 UNTS 3 (entered into force 7 December 1978); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts of 8 June 1977, 1125 UNTS 609 (entered into force 7 December 1987). Approved by Peru through Legislative Resolution No. 25029 of 31 May 1989, promulgated on 1 June 1989 and in force since 14 January 1990.
- 3 Congress of the Republic, Legislative Resolution No. 29894 approving the International Convention for the Protection of All Persons from Enforced Disappearance, *El Peruano* (Official Gazette), 6 February 2012. Supreme Decree No. 040-2012-RE ratifying the International Convention for the Protection of All Persons from Enforced Disappearance, *El Peruano* (Official Gazette), 16 August 2012. In force since 26 October 2012.
- 4 Congress of the Republic, Legislative Resolution No. 29843 approving the Convention on Cluster Munitions, *El Peruano* (Official Gazette), 16 March 2012. Supreme Decree No. 021-2012-RE ratifying the Convention on Cluster Munitions, *El Peruano* (Official Gazette), 26 April 2012. In force since 1 March 2013.
- 5 Political Constitution of Peru, *El Peruano* (Official Gazette), 30 December 1993, Art. 55: “Treaties ratified by the State and in force are part of domestic law”.
- 6 Political Constitution of Peru, above note 5.
- 7 *Genaro Villegas Namuche*, Constitutional Court, Exp. No. 2488-2002-HC/TC, para. 12, available at: [www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html](http://www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html) (all internet references were accessed on 21 June 2014). Political Constitution of Peru, above note 5, Art. 3: “The list of rights set out hereinafter does not exclude further rights guaranteed by the Constitution or other rights of a similar nature or those based on human dignity or on the principles of the sovereignty of the people, the democratic rule of law and the republican form of government.”
- 8 In one of its rulings, the Constitutional Court also states that international human rights law is part of domestic law. See *Bar Association of Arequipa et al.*, Constitutional Court, Exp. No. 0025-2005-PI/TC and Exp. No. 0026-2005-PI/TC, 24 April 2006, para. 25, available at: [www.tc.gob.pe/jurisprudencia/2006/00025-2005-AI%2000026-2005-AI.html](http://www.tc.gob.pe/jurisprudencia/2006/00025-2005-AI%2000026-2005-AI.html).

In its Fourth Final and Transitory Provision, the Constitution also stipulates that the rules governing the rights and liberties recognized therein should be interpreted in accordance with the Universal Declaration of Human Rights<sup>9</sup> and with the relevant international treaties and agreements ratified by Peru. Article V of the Preliminary Title of the Constitutional Procedural Code further supports this interpretation of the law.<sup>10</sup> It is precisely these considerations that underpin the rulings of the Constitutional Court, stressing the need to investigate and punish alleged perpetrators of grave breaches of IHL and international human rights law, which are defined as crimes under international law.<sup>11</sup>

The Constitution and Peruvian legislation thus consistently establish that the country's obligations under IHL and human rights law are part of domestic law. Similarly, the rights and liberties guaranteed by the Constitution and domestic legislation should be interpreted in light of the relevant instruments of international law, as recognized in various decisions handed down by the Constitutional Court.

Given that IHL treaties are part of national law, it is the country's duty to implement and apply the content of such treaties; this facilitates the fulfilment of the CONADIH's objectives in the sense that it has to provide advice to the Executive Power to adopt and develop public policies taking into consideration IHL, based on the legal obligation to do so.

## Establishment of the National Committee for the Study and Implementation of IHL

The National Committee for the Study and Implementation of International Humanitarian Law (Comisión Nacional de Estudio y Aplicación del Derecho Internacional Humanitario, CONADIH) was set up in 2001, pursuant to Supreme

9 Political Constitution of Peru, above note 5, Fourth Final and Transitory Provision.

10 Congress of the Republic, Constitutional Procedural Code, Act No. 28237, *El Peruano* (Official Gazette), 31 May 2004, Art. V of the Preliminary Title: "The nature and scope of the constitutional rights protected by the procedures set out in this Code should be interpreted in accordance with the Universal Declaration of Human Rights, with human rights treaties, and with the decisions handed down by the international human rights tribunals set up under the treaties to which Peru is a party."

11 Constitutional Court, Exp. No. 00002-2008-PI/TC, 9 September 2009, para. 70, available at: [www.tc.gob.pe/jurisprudencia/2009/00002-2008-AI.html](http://www.tc.gob.pe/jurisprudencia/2009/00002-2008-AI.html); Constitutional Court, legal proceedings on unconstitutionality, No. 00021-2009-PI/TC, 5 November 2009, para. 6, available at: [www.tc.gob.pe/jurisprudencia/2009/00021-2009-AI%20Resolucion.html](http://www.tc.gob.pe/jurisprudencia/2009/00021-2009-AI%20Resolucion.html); Constitutional Court, Exp. No. 679-2005-PA/TC, 2 March 2007, paras 30–31, available at: [www.tc.gob.pe/jurisprudencia/2007/00679-2005-AA.html](http://www.tc.gob.pe/jurisprudencia/2007/00679-2005-AA.html); Constitutional Court, Jurisdictional Plenary, No. 0022-2004-AI/TC, 12 August 2005, para. 52, available at: [www.tc.gob.pe/jurisprudencia/2005/00022-2004-AI.html](http://www.tc.gob.pe/jurisprudencia/2005/00022-2004-AI.html); Constitutional Court, Exp. No. 4677-2005-PHC/TC, 12 August 2005, paras 9–15, 18–22, available at: [www.tc.gob.pe/jurisprudencia/2006/04677-2005-HC.html](http://www.tc.gob.pe/jurisprudencia/2006/04677-2005-HC.html); Constitutional Court, Exp. No. 0275-2005-PHC/TC, 9 February 2005, paras 3–5, available at: [www.tc.gob.pe/jurisprudencia/2005/00275-2005-HC.html](http://www.tc.gob.pe/jurisprudencia/2005/00275-2005-HC.html); Constitutional Court, Exp. No. 2310-2004-HC/TC, 21 June 2004, para. 4, available at: [www.tc.gob.pe/jurisprudencia/2006/02310-2004-HC.html](http://www.tc.gob.pe/jurisprudencia/2006/02310-2004-HC.html); Constitutional Court, Exp. No. 2798-04-HC/TC, 9 December 2004, paras 6, 14–17, available at: [www.tc.gob.pe/jurisprudencia/2005/02798-2004-HC.html](http://www.tc.gob.pe/jurisprudencia/2005/02798-2004-HC.html).

Resolution No. 234-2001-JUS, in order to promote the implementation of IHL treaties in Peru. CONADIH is an interdepartmental consultative body within the executive branch of government.<sup>12</sup> Its role is to conduct studies on and make recommendations for compliance with and development of IHL, monitor compliance with the provisions of IHL, and spread knowledge of the rules and principles of IHL.<sup>13</sup>

The following were appointed as full members of CONADIH at its founding: the then Ministry of Justice, now the Ministry of Justice and Human Rights, which holds CONADIH's chairmanship and is in charge of its Technical Secretariat; the Ministry for Foreign Affairs, which holds its vice-chairmanship; the Ministry of Defence; and the Ministry of the Interior. The Office of the Ombudsman, the Office of the National Human Rights Coordinator, and the International Committee of the Red Cross (ICRC) were appointed as observers. Pursuant to Supreme Resolution No. 062-2008-JUS,<sup>14</sup> the Ministry of Education subsequently became a full member and the Congress of the Republic became an observer. The director for human rights, also the executive secretary of the National Human Rights Council,<sup>15</sup> serves as CONADIH's chairman and head of its Technical Secretariat. The Secretariat is tasked with providing assessment services and technical and operational support.

In 2012, as part of the Ministry of Justice's reorganization,<sup>16</sup> it was put in charge of all matters pertaining to human rights law.<sup>17</sup> In order to discharge this mandate, it set up a Vice-Ministry for Human Rights and Access to Justice in charge of formulating, coordinating, carrying out and monitoring policies.<sup>18</sup> In particular, the Vice-Ministry is in charge of approving guidelines for the dissemination and promotion of international humanitarian and human rights law at the national level.<sup>19</sup> The Vice-Ministry includes, among other bodies, the Directorate-General for Human Rights, which is tasked with drafting, proposing, directing, coordinating, evaluating and monitoring policies, plans and

12 Supreme Resolution No. 234-2001-JUS, Art. 1, establishing the National Committee for the Study and Implementation of International Humanitarian Law, *El Peruano* (Official Gazette), 2 June 2001. The regulations for the Committee were approved through Ministerial Resolution No. 240-2001-JUS.

13 Supreme Resolution No. 234-2001-JUS, Art. 3.

14 Supreme Resolution No. 062-2008-JUS modifying the composition of the National Committee for the Study and Implementation of International Humanitarian Law, *El Peruano* (Official Gazette), 24 April 2008, Art. 1.

15 The National Human Rights Council, set up in 1986, is an interdepartmental body whose purpose is to give opinions to and provide assessments for the executive branch of government on the development of public policies, programmes, projects, plans of action and strategies in the field of human rights, in particular under the National Human Rights Plan. Supreme Decree No. 011-2012-JUS, Art. 136.

16 The reorganization of the Ministry of Justice followed the approval of Act No. 29809 on the Organization and Role of the Ministry of Justice and Human Rights, *El Peruano* (Official Gazette), 8 November 2011, and Supreme Decree No. 011-2012-JUS establishing its related regulations, *El Peruano* (Official Gazette), 20 April 2012.

17 Act No. 29809, Art. 4(a).

18 Act No. 29809, Art. 12(a).

19 Supreme Decree No. 011-2012-JUS, Art. 16(h), which stipulates that the Vice-Ministry shall "approve guidelines for the dissemination and promotion of international humanitarian law and human rights law, at the national level".

programmes for the protection and promotion of these bodies of law that could even affect and/or influence other government ministries and sectors.<sup>20</sup>

During this reorganization, the Vice-Ministry was entrusted with the chairmanship of CONADIH (which previously fell under the director of human rights, who worked under the Vice-Ministry) and the Technical Secretariat was placed under the recently created Directorate-General for Human Rights. Since the Vice-Ministry has a broader scope of influence than the Directorates and a stronger political capacity to influence policy-making decisions within the Ministry, CONADIH was also asked to render opinions and advise the executive branch of government on the development of public policies, programmes, projects, plans of action and transversal strategies relating to IHL. Thus, CONADIH not only plays the role of advising the executive branch on IHL, but also has the power to intervene directly through the implementation of public policies. This reorganization provided CONADIH with a broader field of action than it had under the resolution through which it was first set up. The fact that its Technical Secretariat comes under the responsibility of the Directorate-General for Human Rights, which is the main body in charge of promoting and protecting IHL and human rights law, has also enabled CONADIH to obtain additional financial and human resources to support its work.

## CONADIH's main activities

CONADIH has been entrusted with three main tasks. These can be summarized as adoption and implementation of IHL obligations, IHL dissemination, and further developing the law.

### Adoption and implementation of IHL obligations

CONADIH focuses on two strategic aims. The first is to ensure that the provisions of IHL treaties become part of the Peruvian legal order; the second is to promote the implementation of those treaties through measures taken at the national level. In order to meet these objectives, CONADIH has listed the national measures related to IHL that should be adopted as a guide to contribute to the monitoring of the following topics. They are (not necessarily in order of importance): institutionalized protection for individuals; protection of property; means and methods of warfare; investigation and prosecution of IHL violations; and IHL training and dissemination.

With regard to its first aim, CONADIH is endeavouring to promote the ratification by Peru of Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Protective Emblem (Protocol III), of 8 December 2005 (AP III).<sup>21</sup> To this end, it has endorsed a

20 Supreme Decree No. 011-2012-JUS, Arts 114, 115(a).

21 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005, 2404 UNTS 261 (entered into force 14 January 2007).

report drawn up by its Technical Secretariat detailing the conditions to be met for such ratification. It has also recommended that the report be submitted to Peru's Congress through appropriate channels, and has urged the government to take the necessary steps for such ratification.

As for the second aim – namely, to promote the implementation of IHL treaties – CONADIH has already (i) set up a working group to analyze and identify the provisions of international law protecting cultural property that should be incorporated into domestic law, prioritize those provisions, and develop and propose measures to that end; (ii) drafted legislation amending Peru's Criminal Code and its Code on Children and Adolescents in order to provide for punishment for the recruitment and enlistment of persons under the age of 18 by State armed forces, armed groups and private military or security companies; (iii) carried out a technical study on questionable legal aspects of Act No. 29166,<sup>22</sup> which lays down rules on the use of force by military personnel on Peruvian territory, and related regulations; and (iv) studied the possibility of incorporating specific provisions protecting cultural property during armed conflict into Act No. 28296, which lays down general rules on Peru's cultural heritage,<sup>23</sup> and its regulations approved through Supreme Decree No. 011-2006-ED.<sup>24</sup>

## IHL training and dissemination

Moreover, CONADIH has developed and promoted the teaching and dissemination of IHL. It has, for instance, organized an annual Miguel Grau IHL training course for the past nine years.<sup>25</sup> The course is designed by CONADIH's Technical Secretariat with support from the ICRC and has a duration of one week, with

22 Congress of the Republic, Act No. 29166, *El Peruano* (Official Gazette), 20 December 2007, Repealed. This Act lays down the rules governing the use of force by military personnel on Peruvian territory. Act No. 29166 was amended as a result of legal proceedings, detailed in Exp. No. 00002-2008-PI/TC, that led the Constitutional Court to rule that certain provisions of the Act were unconstitutional. See Constitutional Court, Jurisdictional Plenary, 9 September 2009, available at: [www.tc.gov.pe/jurisprudencia/2009/00002-2008-AI.html](http://www.tc.gov.pe/jurisprudencia/2009/00002-2008-AI.html).

23 Congress of the Republic, Act No. 28296, General Law on the Cultural Heritage of the Nation, *El Peruano* (Official Gazette), 22 July 2004, Title 1, Chapter 2, "Regime Governing Property Deemed to Be Part of the Nation's Cultural Heritage", Art. 26.

24 Ministry of Education, Supreme Decree No. 011-2006-ED, approving the Regulations for Act No. 28296, General Law on the Cultural Heritage of the Nation, *El Peruano* (Official Gazette), 1 June 2006, Chapter 1, "General Provisions", Art. 7; Chapter 8, "Protection for Cultural Property During Armed Conflict".

25 In memory of the actions taken by Admiral Miguel Grau Seminari, who was commander of the Peruvian warship *Huascár* during the War of the Pacific between Peru and Chile (1879–1883). The battle of Iquique pitted the *Huascár* against the Chilean warship *Esmeralda*, commanded by Arturo Prat. Although Admiral Grau sank the *Esmeralda*, he ordered the rescue of the surviving crew from the waters and wrote a letter of condolence to Captain Prat's widow, Carmela Carvajal, praising the conduct of her husband. He also sent her some of her husband's personal effects, including his sword. Soon thereafter, States adopted the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field (22 August 1864), the Hague Convention with Respect to the Laws and Customs of War on Land (29 July 1899) and the Hague Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864 (29 July 1899). Miguel Grau applied the principles and rules of IHL before he had any knowledge of the existence of the latter convention.

national and international speakers tackling both general and specific IHL subjects; these are chosen in relation to the national context and humanitarian concerns that need to be addressed in an interdisciplinary manner.

The aim of this course is to promote and facilitate IHL training for public-sector employees such as government staff, legal experts, military personnel and members of the national police force, as well as representatives of the Office of the Ombudsman and members of civil society involved in implementing IHL.

In 2012, the first Miguel Grau IHL course outside of Lima was held in Ayacucho, and a roundtable was held on the jurisprudence of the International Criminal Court and the protection of children in armed conflict, using the *Lubanga* case as an example. The second and third courses took place during 2014 in the Ancash and Cusco regions.

The focus of the ninth Miguel Grau course, held in 2014, was protection for civilians during armed conflict. For the first time since the course was launched in 2006, participants were able to participate in an online course for three weeks before attending live classes. During the distance-learning phase of the training, teachers supervised their work online, provided them with reading material and assessed their work in order to select those who would be invited to attend classes in person. The distance-learning phase of the training enabled participants to better prepare for the on-site phase by improving their basic knowledge of IHL.<sup>26</sup>

Other activities recently undertaken on CONADIH's initiative include the international workshop "International Standards on the Use of Force", which took place in Lima in November 2014; the first "macro-regional" course on IHL, with the participation of the Peruvian northern regions of Piura, Tumbes, Lambayeque, Cajamarca and Trujillo, held in Piura in 2013; and a course on the protection of cultural property in armed conflict, which was held in Lima at the end of 2013.

CONADIH has also issued publications and prepared teaching materials, such as compilations of international IHL instruments and of national measures for the implementation of IHL in Peru, to be used in its training and dissemination activities.

The dissemination activities and preparation of teaching materials have allowed CONADIH to position itself as a reference organization on IHL-related issues and international standards on the use of force in other situations of violence before national authorities outside of the Ministry of Justice. It has also sensitized some decision-makers that have participated in one of the above-mentioned activities to take IHL into consideration when designing and promoting public policy.

One of the examples of this strengthened relationship between IHL, CONADIH and other national authorities has been the recently approved National Plan for Education in Fundamental Rights and Duties, which was approved on 12 December 2014 through Supreme Decree No. 010-2014-JUS and

26 The Miguel Grau Course on International Humanitarian Law was taught online during the first three weeks. See the website of the course, available at: [www.minjus.gob.pe/actividades-institucionales-y-eventos/curso-de-derecho-internacional-humanitario-miguel-grau-se-desarrollara-de-manera-virtual-en-su-primera-etapa/](http://www.minjus.gob.pe/actividades-institucionales-y-eventos/curso-de-derecho-internacional-humanitario-miguel-grau-se-desarrollara-de-manera-virtual-en-su-primera-etapa/).

will apply until 2021. It involves and obliges different sectors, such as the Ministries of Education, Defence and the Interior, and demands specific actions to be created for each of them so as to include training on IHL and international human rights law into all the existing levels and institutions of public education.

### Further developing the law

CONADIH and the Directorate-General for Human Rights have submitted various reports and other documents to the United Nations and the Organization of American States (OAS), including: (i) a report concerning the resolution adopted by the OAS General Assembly in 2013 on “Promotion of and Respect for International Humanitarian Law”;<sup>27</sup> (ii) a report responding to a request for follow-up on the work of the 31st International Conference of the Red Cross and Red Crescent; and (iii) a report concerning the resolution adopted by the OAS General Assembly in 2011 on “Persons Who Have Disappeared and Assistance to Members of Their Families”.<sup>28</sup>

Moreover, CONADIH took part in the Continental Conference of National Committees for the Implementation of International Humanitarian Law of the Americas held in San Jose, Costa Rica, from 10 to 12 August 2013. CONADIH also participated in the fourth and fifth Mariscal Antonio José de Sucre IHL course, organized by the National IHL Committee of Ecuador in Quito and in Guayaquil, respectively, on “Humanitarian Needs in Armed Conflict and in Situations of Violence Falling Below that Threshold” (14 to 16 November 2012) and “IHL Applicable in Armed conflict at Sea and on Waterways” (31 July to 3 August 2013). Most recently, CONADIH participated in the Augusto Ramírez Ocampo IHL course held in Bogota, Colombia, from 7 to 10 October 2014.

Both the elaboration of reports and the participation in international activities have served as a means for CONADIH to gain a broader picture of the level of compliance of the State with the dispositions contained in IHL treaties, and to create and strengthen its dialogue and exchange of experience with other actors working toward the implementation of IHL, both at the national and international levels.

## Identification of good practices conducive to strengthening CONADIH

The effort to strengthen CONADIH was motivated by the need to promote the development of its activities from within the Ministry of Justice and Human Rights, which had the competence to directly implement IHL, among other

27 OAS, General Assembly, AG/RES 2795 (XLIII-O/13), 5 June 2013, paras 8 and 11, available at: [www.oas.org/consejo/sp/AG/AG43ordinaria.asp](http://www.oas.org/consejo/sp/AG/AG43ordinaria.asp).

28 OAS, General Assembly, AG/RES 2651 (XLIII-O/11), 7 June 2011, available at: [www.oas.org/consejo/sp/AG/Documentos/AG05445S05.doc](http://www.oas.org/consejo/sp/AG/Documentos/AG05445S05.doc).

matters. This competence fell under the Directorate-General of Human Rights and includes the permanent provision of technical assistance, thus ensuring the continuity of the Committee. The building up and strengthening of CONADIH, which has been ongoing since 2001, is the responsibility of all its members. However, the lead role is played by the Ministry of Justice, which, as we have seen, holds the chairmanship and is in charge of the Technical Secretariat.

In that capacity, one of the first steps taken by the Ministry of Justice to strengthen CONADIH was to ascertain and then upgrade its legal status. In 2012, on the basis of Organic Law of the Executive Power No. 29158,<sup>29</sup> among other legislation in force, the Ministry of Justice defined CONADIH as a permanent interdepartmental committee whose tasks were to provide follow-up, monitoring and technical information, now with its presidency falling under the Vice-Ministry of Human Rights and Access to Justice. On the other hand, the Directorate-General for Human Rights – with decision-making powers regarding IHL – was entrusted with CONADIH's Technical Secretariat. This link reinforces the position of IHL not only within the Ministry but before other national organs.

The second step was to incorporate CONADIH into the internal management procedures of the Ministry of Justice so that human and financial resources could be earmarked for its work. From 2004 to 2011, CONADIH received international support pursuant to a cooperation agreement entered into with the German Development Service, now the German Agency for International Cooperation (Gesellschaft für Internationale Zusammenarbeit, GIZ), which operates in Peru. The GIZ had lines of action and interests which intersected at the time with the need to strengthen the implementation of IHL in Peru. This agreement brought in the human and financial resources needed to produce publications and undertake training and dissemination activities, since the two first persons hired to work as personnel dedicated solely to CONADIH's activities at the Ministry of Justice were financed by the GIZ.

Cooperation mechanisms established through inter-agency agreements have also provided CONADIH with considerable support for its activities. It has thus established ties with, among others, the Ministry of Defence, the Lima Bar Association and the German Red Cross.

CONADIH has three observer members: the Ombudsman's Office, the National Coordinator of Human Rights and the ICRC. As an observer member of CONADIH, the ICRC can render opinions on legislative initiatives promoted or commented on by CONADIH and offer technical advice for the design and implementation of CONADIH's activities; through its delegation for Bolivia, Ecuador and Peru, it has made an essential and lasting contribution to the process of organizing and strengthening CONADIH and to the development of its activities, not only helping technically but also financing diverse aspects of the

29 In accordance with Organic Law of the Executive Power No. 29158, *El Peruano* (Official Gazette), 20 December 2007, Art. 36(3), permanent interdepartmental committees are established by Supreme Decree and approved by the president of the Council of Ministers and the heads of the departments concerned, and their internal regulations are approved by ministerial resolution.

organization process, including the invitation of international experts. In that respect, the ICRC is considered a key partner for the promotion of IHL in Peru.

## Impact

CONADIH, which has received a broad mandate, has been encouraged by the growing number of measures taken to promote the implementation of IHL since it was set up fourteen years ago. One example of such measures is the National Human Rights Plan (2014–2016), approved by Supreme Decree No. 005-2014-JUS, which involved CONADIH and the Directorate-General for Human Rights and includes the following provisions: (i) promote the ratification of IHL treaties, (ii) implement IHL treaties through normative measures, (iii) consolidate comprehensive and decentralized IHL training programmes for members of the armed forces and the national police of Peru, and (iv) encourage the introduction of IHL training courses in the curricula of universities and other institutions of higher learning.<sup>30</sup> Another is the National Plan of Action for Children and Adolescents (2012–2021), approved by Supreme Decree No. 001-2012-MIMP, which includes the aim of ensuring that those concerned cooperate to eliminate the voluntary or forced enlistment of children and adolescents in internal conflict, a goal known as “outcome 23”.<sup>31</sup> This bill was presented by CONADIH and is now part of the broader National Penal Code bill which aims to replace said Code entirely. A third measure is the National Action Plan against Trafficking in Persons (2011–2016), approved through Supreme Decree No. 004-2011-IN, which covers, among other things, forced recruitment by armed groups.<sup>32</sup>

Ministerial protocols adopted on specific topics include a set of technical guidelines on psychosocial support for the families of missing persons, which were approved through Ministerial Resolution No. 299-2012/MINSA.<sup>33</sup> These guidelines offer methodological tools to help medical personnel assist individuals, families and communities affected by the disappearance of persons in connection with the violence that plagued the country from 1980 to 2000.

CONADIH’s strategic partners include the National Commission against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives

30 Ministry of Justice and Human Rights, “Approved National Human Rights Plan (2014–2016)”, *El Peruano* (Official Gazette), 5 July 2014, available at: [www.minjus.gob.pe/wp-content/uploads/2014/07/DS-005-2014-JUS-Aprobacion\\_PNDH.pdf](http://www.minjus.gob.pe/wp-content/uploads/2014/07/DS-005-2014-JUS-Aprobacion_PNDH.pdf).

31 Ministry for Women and Vulnerable Populations, Supreme Decree approving the National Plan of Action for Children and Adolescents (PNAIA 2012–2021) and establishing an interdepartmental committee tasked with its implementation, Supreme Decree No. 001-2012-MIMP, *El Peruano* (Official Gazette), 14 April 2012, pp. 90–91, available at: [www.mimp.gob.pe/webs/mimp/pnaia/pdf/Documento\\_PNAIA.pdf](http://www.mimp.gob.pe/webs/mimp/pnaia/pdf/Documento_PNAIA.pdf).

32 Ministry of the Interior, Supreme Decree No. 004-2011-IN, approving the National Plan against Trafficking in Persons (2011–2016), *El Peruano* (Official Gazette), 19 October 2011, pp. 19, 25, available at: <http://spij.minjus.gob.pe/Graficos/Peru/2011/octubre/19/DS-004-2011-IN.pdf>. In accordance with this document: “Although Act No. 28950 makes no specific mention of forced recruitment, this practice is covered by the National Plan, which takes a broad approach to the defence of human rights and victims of trafficking.”

33 Ministry of Health, Report No. 121-2013-DSM/DGSP/MINSA, Official Communication No. 2156-2013-DGSP/MINSA, General Directorate of Health, 12 August 2013.

and Other Related Materials (CONATIAF),<sup>34</sup> the Peruvian Centre for Action against Anti-personnel Mines (CONTRAMINAS)<sup>35</sup> and the National Council for the Prohibition of Chemical Weapons (CONAPAQ).<sup>36</sup> Although these agencies do not have specific IHL expertise, their tasks are related to this field. CONADIH offers technical support to these institutions both through written opinions and through direct participation in meetings in which IHL related matters are discussed. Act No. 27741 lays down the obligation to systematically teach and disseminate the provisions of the Political Constitution, human rights law and IHL at all levels of the civil and military educational system and in all universities and other institutions of higher learning.<sup>37</sup> This obligation was reiterated by the Ministry of Defence,<sup>38</sup> the Joint Command of the Armed Forces<sup>39</sup> and the

- 34 CONATIAF was set up through Ministerial Resolution No. 134-2007-PCM, *El Peruano* (Official Gazette), 9 May 2007, and its regulations were approved through Ministerial Resolution No. 0186, 11 February 2009. It is made up of the Ministries of Foreign Affairs, Defence, the Interior, and Justice and Production, the Office of the Public Prosecutor, the National Directorate of Intelligence and the National Superintendency of Tax Administration. The purpose of CONATIAF is to coordinate interdepartmental action for the implementation of plans and programmes – whether adopted by the United Nations, the OAS, the Andean Community or other international forums, or through bilateral agendas – that are conducive to promoting cooperation and the exchange of information and experiences among States in order to prevent, hinder, combat, eradicate or eliminate the manufacturing of and trafficking in illicit firearms, ammunition, explosives and other related materials throughout the national territory.
- 35 CONTRAMINAS was set up through Supreme Decree No. 113-2002-RE, *El Peruano* (Official Gazette), 13 December 2002, and its regulations were approved through Supreme Decree No. 051-2005-RE, *El Peruano* (Official Gazette), 2 July 2005. It is made up of the Ministries of Foreign Affairs, Defence, the Interior, and Education and Health, and the National Council for the Integration of Persons with Disabilities. It draws up government policies for action against anti-personnel mines in Peru and monitors compliance with the Convention on the Prohibition of Anti-personnel Mines.
- 36 CONAPAQ was set up through Act No. 26672, *El Peruano* (Official Gazette), 13 December 2002. It has been accepted by the Ministries of Foreign Affairs (which chairs it), Production, the Interior, Defence, and Justice and Health, the Office of the Public Prosecutor, the National Superintendency of Tax Administration and the National Society of Industries. It acts as the “National Authority” referred to in Article VII(4) of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction.
- 37 Congress of the Republic, Act No. 27741 establishing an educational policy on human rights law and setting up a national plan for its teaching and dissemination, *El Peruano* (Official Gazette), 29 May 2002.
- 38 The Act on the Organization and Role of the Ministry of Defence stipulates that this ministry is specifically in charge of “ensuring that compulsory instruction in fundamental rights and constitutional procedures be provided in all training centres for its staff”. IHL and human rights law are taught in several training centres, including the Centre for National Studies and the Centre for IHL and Human Rights Law. These centres are in charge of organizing and implementing training programmes for the armed forces and for civil servants at the national and local levels. Article 14 of the above-mentioned Act stipulates that the planning, preparation, coordination and conduct of military operations and actions must take place in compliance with IHL and human rights law. Executive Power, Legislative Decree No. 1134 approving the Law on the Organization and Role of the Ministry of Defence, *El Peruano* (Official Gazette), 10 December 2012, Art. 6(19); Ministry of Defence, Regulations for the Organization and Role of the Ministry of Defence, Supreme Decree No. 001-2011-DE, *El Peruano* (Official Gazette), 3 March 2011, Arts 66, 67.
- 39 One of the tasks of the chief of staff of the Joint Command of the Armed Forces is to “see to the dissemination and implementation of the provisions of human rights law and international humanitarian law applicable at the national and international levels, including those set out in the treaties to which Peru is a party”. Executive Power, Legislative Decree of the Chief of Staff of the Armed Forces, Legislative Decree No. 1136, *El Peruano* (Official Gazette), 10 December 2012, Art. 7(28).

Ministry of the Interior.<sup>40</sup> Pursuant to the aforesaid Act, the Directorate-General for Human Rights and CONADIH are working on a national plan for providing instruction in human rights law and IHL.

Lastly, the mechanisms set up by the United Nations pursuant to Resolution A/RES/65/29 on the “Status of the Protocols Additional to the Geneva Conventions of 1949 and Relating to the Protection of Victims of Armed Conflicts”<sup>41</sup> and those set up by the OAS pursuant to the resolutions taken by its General Assembly on “Promotion of and Respect for International Humanitarian Law”,<sup>42</sup> among others, have helped to assess the extent to which Peru has implemented the provisions of IHL and to identify what still remains to be done.

## Conclusions

Peru has adopted various measures for the implementation of IHL at the national level, most of which have been drafted and presented to legislative actors by CONADIH. Where this has not been the case, CONADIH has commented on proposed measures and adopted a position – which thus became that of its members as well – on IHL-related matters. These measures are designed not only to fulfil CONADIH’s international obligations under the IHL treaties to which it is a party but also to encourage government forces to ensure respect for IHL at the national level, including compliance with the obligation to protect persons who are not or are no longer taking part in armed conflict.

Thanks to its interdepartmental nature, CONADIH has been able to consolidate its role as a technical IHL resource within the executive branch of government by undertaking, in coordination with all its members, activities that have a direct impact on the implementation of IHL. CONADIH and its constituent parts have thus become the main channel for promoting the implementation of IHL in Peru. Even when its members are able to act independently of CONADIH for the promotion of IHL in matters related to their exclusive competences, the inter-sectoral body facilitates dialogue and the adoption of a common position in matters that concern more than one member. This process has benefited considerably from the support and advice provided by the ICRC.

40 Directive No. 02-2009-DIREDDUD-PNP-SUBDACA/SEC: “Rules for promoting the teaching and dissemination of international humanitarian law, as it applies to police duties, among the national police forces of Peru.” Ministry of the Interior, approved through Directorial Resolution No. 2105-2009-DIREDDUD PNP/SDACA, 30 December 2009.

41 UNGA Res. A/RES/65/29, 6 December 2010, available at: [www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/65/29&Lang=S](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/29&Lang=S).

42 OAS, General Assembly, AG/RES 2795 (XLIII-O-13), AG/RES 2575 (XL-O/10), AG/RES 2507 (XXXIX-O/09), AG/RES 2293 (XXXVII-O/07), AG/RES 2226 (XXXVI-O/06), AG/RES 2127 (XXXV-O/05), AG/RES 2052 (XXXIV-O/04), AG/RES 1904 (XXXII-O/02), AG/RES 1771 (XXXI-O/01), AG/RES 1706 (XXX-O/00), AG/RES 16195 (XXIX-O/99), “Promotion and Respect for International Humanitarian Law”; AG/RES 1565 (XXVIII-O/98), AG/RES 1408 (XXVI-O/96), AG/RES 1335 (XXV-O/95), “Respect for International Humanitarian Law”.

Incorporating IHL into public policies in peacetime, and thus taking preventive action, is a major challenge. How well this challenge is met no doubt depends on the nature and structure of national IHL committees and on the degree to which they are provided with the means to achieve their aims. CONADIH has positioned itself as the technical body regarding IHL; its activities, such as the Miguel Grau course, now constitute a coveted introductory and interdisciplinary training space for public servants. However, there is still a need to further position the topics covered by CONADIH before political authorities in decision-making positions and to continue promoting the ratification of IHL treaties as well as implementing those to which Peru is already a party.