What’s new in law and case law around the world?

Biannual update on national implementation of international humanitarian law *
January–June 2014

The biannual update on national legislation and case law is an important tool in 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 International Committee of the Red Cross (ICRC), to the development of national committees for the implementation of IHL or 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;1 (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 in the ICRC Advisory Service on International Humanitarian Law, based on information provided by regional legal advisers.
Relevant ICRC regional events

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

Of particular interest was the 5th South Asia Regional Conference on IHL co-organized by the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs of the Government of Nepal and the ICRC, which took place from 7 to 10 April 2014 in Kathmandu, Nepal. This was the first thematic regional conference organized in the South Asia region. It gathered senior government officials, members of Parliament, members of the armed forces and police, academics and ICRC experts from Afghanistan, Bangladesh, Bhutan, Iran, Nepal, the Maldives, Pakistan and Sri Lanka. The conference dealt with topics such as sexual violence in armed conflict, post-conflict situations, transitional justice and IHL. The conference resulted in an external report.2

Another event of interest was the 2nd Regional Seminar on National Implementation of IHL, co-organized by the ICRC Nairobi Regional Delegation, Kenya’s State Law Office (Department of Justice) and the Kenyan national IHL committee, which took place from 16 to 19 June in Naivasha, Kenya. The seminar brought together governmental officials and members of national IHL committees from Djibouti, Ethiopia, Eritrea, Kenya, Somalia, South Africa, Tanzania and Uganda. The aim of the seminar was to discuss the work of the ICRC and IHL domestic implementation in East Africa, such as the challenges to the promotion of the Arms Trade Treaty (ATT) in Africa; domestic implementation of weapons treaties in East Africa and the Horn of Africa; contemporary issues and challenges with regards to multinational forces and IHL; private military and security companies, counterterrorism operations and IHL; as well as national, regional and international perspectives on repression of violations of IHL and the ICRC’s tools for facilitating national implementation of IHL. The seminar resulted in the adoption of new suggestions and recommendations to promote national implementation of IHL in the region. The event also proved to be a platform for engaging bilaterally on issues and topics of common concern with representatives from authorities of the respective countries.

Update on national IHL committees

Another way in which the Advisory Service facilitates the domestic implementation of IHL is through direct support of the national IHL committees or similar bodies – interministerial or inter-institutional – which advise the governments of their

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 (all internet references were accessed in December 2014).
2 Fifth South Asia Conference on IHL, Sexual Violence and Armed Conflict, report, 8–10 April 2014.
respective countries on all matters related to IHL. Such committees *inter alia* promote ratification of or accession to IHL treaties, make proposals for the harmonization of domestic legislation with the provisions of these treaties, promote dissemination of IHL knowledge and participate in the formulation of the State’s position regarding matters related to IHL. There were 107 national IHL committees across the world in June 2014, including four new committees in Bahrain, Bangladesh, Iraq and Slovenia.

**Bahrain**

On 15 May 2014, the Bahrain IHL Committee was established as a result of Royal Decree No. 39.

The main function of the national committee is to implement and apply IHL and to develop the kingdom’s policies, strategies and plans on IHL. One of its mandates is to conduct research and studies in IHL and issue publications relating to the principles of IHL and how to apply them. The committee has the task of exchanging expertise with national, regional and international IHL committees and enhancing cooperation with the ICRC.

The committee is composed of representatives of the Bahrain Defence Force’s Military Judiciary, the Interior Ministry’s General Directorate of Civil Defence, the Foreign Ministry, the Education Ministry, the Health Ministry, the Information Affairs Authority, the National Institution for Human Rights, the University of Bahrain and the Bahrain Red Crescent Society. It is chaired by the Ministry of Justice, Islamic Affairs and Endowments.

**Bangladesh**

On 12 June 2014, the Prime Minister of Bangladesh approved the decision adopted in an interministerial meeting in October 2013 to establish a national committee for IHL.

The national committee’s functions include the assessment of the sufficiency and implementation of IHL treaties to which Bangladesh is party, and recommendations on the drafting of legislation and administrative instructions. It also has a mandate to promote incorporation of IHL in academic circles and civil society and to advise on and encourage the organization of seminars, training sessions, research, etc. The committee is also entitled to recommend action in connection with Bangladeshis imprisoned abroad and foreigners detained in the country.

The committee is composed of representatives of the Cabinet Secretariat, the Prime Minister’s Office, the Ministry of Defence, the Ministry of Home Affairs, the Ministry of Law, Justice and Parliamentary Affairs, the Ministry of Cultural Affairs, the Ministry of Education, the Ministry of Health and Family Welfare, the Ministry of Women and Children’s Affairs, members of the Armed
Forces Division and the Bangladesh Red Crescent Society. It is chaired by the Foreign Secretary.

**Iraq**

On 14 April 2014, the Permanent National Committee for IHL of Iraq was established as a result of Government Order No. 38.

The committee is considered the main reference organization for IHL. Its main function is to design plans and programmes for promoting and implementing IHL principles at the national level.

The committee is composed of representatives of the High Commission for Human Rights, the Ministry of Human Rights, the Ministry of Defence, the Ministry of Foreign Affairs, the Ministry of the Interior, the General Secretariat for the Council of Ministers and the Iraqi Red Crescent Society. It is chaired by the assistant director-general and head of the International Agreements Division, General Secretariat for the Council of Ministers.

**Slovenia**

On 27 May 2014, the Permanent Coordination Group for IHL was established by the Government of the Republic of Slovenia as a result of Decision No. 02401-7/2014/4. This Coordination Group replaces the previously existing national body for IHL.

The Coordination Group has the task of monitoring, fostering, shaping, coordinating and overseeing activities concerning implementation of and respect for IHL by the Republic of Slovenia. It focuses on the implementation of Slovenia’s commitments in the field of IHL, in particular the Geneva Conventions of 1949 and their Additional Protocols. The Coordination Group is also in charge of disseminating knowledge of IHL at the national level. One of its mandates is to propose to competent ministries the ratification and incorporation into national legislation of relevant IHL treaties to which Slovenia is not a State party.

The Coordination Group is composed of representatives of the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of the Interior, the Ministry of Culture, the Ministry of Education, Science and Sport, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Health, the Ministry of Justice, the Ministry of Agriculture and the Environment, the General Staff of the Slovenian Armed Forces, and the Slovenian Administration for Civil Protection and Disaster Relief. Representatives of the National Education Institute, the Faculty of Law of Ljubljana University and the Slovenian Red Cross are also invited to attend the sessions of the Coordination Group. It is chaired by a representative of the Ministry of Foreign Affairs.
Update on the accession and ratification of IHL and other related international instruments

Universal participation in IHL treaties is a first vital step toward the respect for life and human dignity in situations of armed conflict and therefore is 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. In particular, there has been notable adherence to the ATT. Indeed, as of June 2014 forty-one States had ratified the ATT. According to its Article 22, the treaty will enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depositary.

The Advisory Service also supports adherence to other international treaties that are considered to be of relevance for the protection of persons during armed conflicts, such as the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of all Persons from Enforced Disappearance, *inter alia*.

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

### Ratifications and accessions, January–June 2014

<table>
<thead>
<tr>
<th>Conventions</th>
<th>States</th>
<th>Ratification/accession date</th>
<th>Number of parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1949 Geneva Conventions I–IV</td>
<td>Palestine</td>
<td>2 April 2014</td>
<td>196</td>
</tr>
<tr>
<td>1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and Their Destruction</td>
<td>Myanmar</td>
<td>12 January 2014</td>
<td>171</td>
</tr>
</tbody>
</table>

3 To view the full list of IHL-related treaties, please visit the ICRC Treaty Database, *Treaties and States Parties to Such Treaties*, available at: www.icrc.org/ihl.

4 Editor’s note: The ATT entered into force on 24 December 2014.
<table>
<thead>
<tr>
<th>Conventions</th>
<th>States</th>
<th>Ratification/accession date</th>
<th>Number of parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1977 Additional Protocol I to the Geneva Conventions</td>
<td>Palestine</td>
<td>2 April 2014</td>
<td>174</td>
</tr>
<tr>
<td>1977 Additional Protocol I to the Geneva Conventions – Declaration Article 90</td>
<td>Malawi</td>
<td>10 January 2014</td>
<td>76</td>
</tr>
<tr>
<td></td>
<td>Saint-Kitts-et-Nevis</td>
<td>17 April 2014</td>
<td></td>
</tr>
<tr>
<td>1989 Convention on the Rights of the Child</td>
<td>Palestine</td>
<td>2 April 2014</td>
<td>194</td>
</tr>
<tr>
<td></td>
<td>Estonia</td>
<td>12 February 2014</td>
<td>156</td>
</tr>
<tr>
<td></td>
<td>Palestine</td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ethiopia</td>
<td>14 May 2014</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Lithuania</td>
<td>20 January 2014</td>
<td>72</td>
</tr>
<tr>
<td></td>
<td>Greece</td>
<td>11 February 2014</td>
<td></td>
</tr>
<tr>
<td>2002 Optional Protocol to the Convention against Torture</td>
<td>Portugal</td>
<td>22 April 2014</td>
<td>67</td>
</tr>
<tr>
<td>2005 Additional Protocol III to the Geneva Conventions</td>
<td>Portugal</td>
<td>27 January 2014</td>
<td>42</td>
</tr>
<tr>
<td>2006 Convention against Enforced Disappearances</td>
<td>Costa Rica</td>
<td>14 January 2014</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Belgium</td>
<td>30 May 2014</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Norway</td>
<td>12 February 2014</td>
<td>41</td>
</tr>
<tr>
<td>2013 Arms Trade Treaty</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
What’s new in law and case law around the world? January–June 2014

(Cont.)

<table>
<thead>
<tr>
<th>Conventions</th>
<th>States</th>
<th>Ratification/accession date</th>
<th>Number of parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>The former Yugoslav Republic of Macedonia</td>
<td></td>
<td>6 March 2014</td>
<td></td>
</tr>
<tr>
<td>Albania</td>
<td></td>
<td>19 March 2014</td>
<td></td>
</tr>
<tr>
<td>Bulgaria</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>El Salvador</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Estonia</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Finland</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Hungary</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td>2 April 2014</td>
<td></td>
</tr>
<tr>
<td>Japan</td>
<td></td>
<td>9 May 2014</td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td></td>
<td>3 June 2014</td>
<td></td>
</tr>
<tr>
<td>Australia</td>
<td></td>
<td>3 June 2014</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td></td>
<td>3 June 2014</td>
<td></td>
</tr>
<tr>
<td>Burkina Faso</td>
<td></td>
<td>3 June 2014</td>
<td></td>
</tr>
<tr>
<td>Jamaica</td>
<td></td>
<td>3 June 2014</td>
<td></td>
</tr>
</tbody>
</table>
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 first 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 repression of torture, the prevention of recruitment of child soldiers, the concept of universal jurisdiction, enforced disappearances, and criminal repression and disciplinary sanction 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 IHL National Implementation Database.5

A. Legislation

The following section presents, in alphabetical order by country, the domestic legislation adopted during the period under review (January–June 2014). Countries covered are Burkina Faso, Chad, Colombia, the Democratic Republic of the Congo, Ecuador, Jordan, Mexico, Spain, Sweden and Switzerland.

**Burkina Faso**

**Law No. 022 on Prevention and Repression of Torture and Similar Practices**6

---

On 27 May 2014, the National Assembly of Burkina Faso adopted a law on the prevention and repression of torture and similar practices.

The law provides for a definition of the crime of torture similar to the one in the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment and excludes the justifications of exceptional circumstances or orders from a superior officer or a public authority.

An independent national preventive mechanism is established by the law in order to visit places of detention and to regularly assess the treatment of persons deprived of their liberty. According to Article 23 of the law, the mechanism may make recommendations to the relevant authorities as well as submit proposals and observations concerning existing or draft legislation.

**Chad**

*Presidential Ordinance No. 001/PR/2014 on Child Soldiers*[^7]

On 4 February 2014, the president of the Republic of Chad adopted an ordinance prohibiting and repressing the recruitment and use of children in armed conflicts.

This ordinance prohibits the participation and involvement of children in an armed conflict as well as their recruitment in any group or armed forces.

The ordinance further provides for imprisonment and fines for persons that have recruited or facilitated the recruitment or use of children in the armed forces or in armed groups.

**Colombia**

*Law No. 1719 on Access to Justice and Other Matters for Victims of Sexual Violence and Especially of Sexual Violence Related to the Armed Conflict*[^8]

On 3 June 2014 the Parliament of Colombia adopted a law providing access to justice for victims of sexual violence, in particular in relation to the armed conflict. The law expands the definition of sexual violence against protected persons as defined by IHL by including crimes such as forced prostitution, sterilization, pregnancy, abortion and nudity.

According to Article 15 of the law, sexual violence can constitute a crime against humanity, and when this is the case, the judicial authorities have the obligation to qualify it as such. In its Article 16, the law also states that there is no statute of limitations for war crimes, crimes against humanity or genocide.


When sexual violence constitutes a crime against humanity, it is therefore not subject to any statute of limitations.

The law adopts a multifaceted approach to responding to the needs of victims of sexual violence. For example, Chapter 4 of the law provides for psychosocial support and for free medical attention for victims. In addition, pursuant to Article 20 of the law, military courts do not have jurisdiction over crimes of sexual violence.

**Democratic Republic of the Congo**

*Law No. 14/006 on Amnesties for Insurrectional Acts, Acts of War and Political Offences*[^9]

On 11 February 2014, the president of the Democratic Republic of the Congo signed a law granting amnesty for insurrectional acts, acts of war and political offences committed on the territory of the Democratic Republic of the Congo from 18 February 2008 to 20 December 2013. This law was adopted as a part of a peacebuilding process, in particular in the eastern part of the country, and for the purpose of supporting the Kampala peace process between the government and the M23 armed group.

The amnesty law applies to every Congolese national who perpetrated, co-perpetrated or was an accomplice to the perpetration of insurrectional acts, acts of war or political offences as defined in Article 3 of the law. It specifically excludes from its scope of application, *inter alia*, the crime of genocide, crimes against humanity, war crimes, terrorism, offences of torture, cruel, inhuman or degrading treatment, rape and other sexual violence, the use, conscription or recruitment of child soldiers and other grave, massive and egregious violations of human rights. Similarly, this law shall not affect civil compensation and other entitlements and expenses owed to victims.

In addition, applicants for amnesty must undertake in writing that they will not commit the acts for which they are granted amnesty again. If they do, the amnesty will be withdrawn and the author of the crime is barred from benefiting from any amnesty in the future.

**Ecuador**

*Organic Integral Criminal Code*[^10]

On 28 January 2014, the National Assembly of Ecuador adopted a new Criminal Code establishing the crimes, procedure and execution of sentences under the


Ecuadorian legal criminal system, including those related to violations of IHL, crimes against humanity, genocide and aggression.

In particular, in its Title 4, Chapter 1, the entirety of Section 4 (Articles 111 to 139) deals with crimes against persons and objects protected by IHL in both international and non-international armed conflicts.

In Article 88, the Criminal Code includes the crime of aggression as defined in Article 8 bis of the Rome Statute, which was added in 2010 following the Kampala revision conference.

**Jordan**

*Law No. 20 of 2014 Amending Law No. 23 of 2006 on the Formation of Military Courts*

On 1 June 2014, Law No. 20 of 2014 Amending Law No. 23 of 2006 on the Formation of Military Courts was published in the *Official Gazette*.

Article 5 of the new law states that military courts are composed of military judges only, while according to the previous law they could be composed either of military judges or military officers. Article 13 adds that any matter related to the judicial system is addressed under a special regulation for military judges’ service. A special fund to support these judges is created by Article 15 of the law.

In addition, Article 9 provides that military courts have jurisdiction over persons accused of committing genocide, crimes against humanity, war crimes and the crime of aggression in accordance with the provisions of the Rome Statute, whether these persons are military or “civilian fighters” (meaning any civilians who have participated in the hostilities). Furthermore, the Military Criminal Code of Jordan, in its Article 44, punishes war crimes committed by civilians.

**Mexico**

*Regulation on the Use and Protection of the Red Cross Emblem*¹¹

On 19 March 2014, the president of the United Mexican States approved this regulation pursuant to the Law on the Use and Protection of the Red Cross and Red Crescent Emblems of 2007.¹²

The regulation 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, verification of documents, and issuance and delivery of the identity card and armlet. It establishes the way that protected persons should be identified. It also provides for the procedure that has to be followed by these persons to benefit from the protection of the emblem in case of armed conflict.

In addition, chapter 4 develops the legal procedure for the competent authority to identify and impose sanctions for the misuse of the emblem both in time of peace and during armed conflict.

*Decree Approving the Withdrawal of the Express Reservation Made by the Government of the United Mexican States to the Inter-American Convention on Forced Disappearance of Persons of 9 June 1994*


Article IX of the Convention states that the alleged perpetrators of the acts constituting forced disappearance of persons may only be tried by the competent ordinary jurisdictions in each State, excluding any special tribunal, in particular military tribunals.

The withdrawal of this reservation is derived from the commitments adopted by Mexico following its second evaluation within the UN Universal Periodic Review mechanism and is one of the measures undertaken to comply with the decision adopted by the Inter-American Court of Human Rights in the *Radilla Pacheco v. Mexico* case, which specifically considered the reservation invalid.

**Spain**

*Organic Law 1/2014 Modifying Organic Law 6/1985, of the Judicial Power, on Universal Jurisdiction*

On 13 March 2014, Organic Law 1/2014 Modifying Organic Law 6/1985 of 1 July 1985, of the Judicial Power, on Universal Jurisdiction was promulgated. This new law expands the list of crimes covered by universal jurisdiction but restricts the application of universal jurisdiction by Spanish courts.

On the one hand, the law extends the list of crimes over which Spanish courts have jurisdiction by including crimes against persons and property protected in the case of armed conflict (including war crimes, whether or not not
they are drawn from customary international law), crimes of torture and enforced disappearances. Crimes against humanity, crimes of genocide, terrorism, piracy and unlawful seizure of aircraft, remain under the Spanish courts’ jurisdiction. As for the crime of trafficking or illegal immigration of people, it is replaced by the crime of human trafficking.

On the other hand, for each type of crime, the text introduces conditions restricting the jurisdiction of the Spanish courts. Pursuant to Article 23.4(a) of the law, for proceedings to be initiated in cases of genocide, crimes against humanity or war crimes, the text requires the alleged perpetrator to be a Spanish national, a foreigner who habitually resides in Spain or a foreigner who happens to be in Spain and whom the Spanish authorities have refused to extradite (in accordance with the principle of aut judicare aut dedere). According to Articles 23.4(b) and (c) of the law, the Spanish courts shall have jurisdiction for crimes of torture and enforced disappearance if the alleged perpetrator is a Spanish citizen or the victim is a Spanish citizen at the time the act was committed and the alleged perpetrator is on Spanish territory. However, Article 23.4(p) of the law states that for any other offences for which prosecution is imposed by a treaty to which Spain is a party, or other regulatory acts of an international organization of which Spain is a member, Spanish courts have jurisdiction in the conditions determined therein.

The new Section 6 introduces an additional restriction, eliminating the possibility of “acusaciones populares” (the ability under Spanish law for civil society in a third-party capacity to press charges) for all these crimes. Crimes under this law shall only be prosecuted if the prosecutor or the victim has lodged a complaint.

The transitory provision of the law also establishes that all cases pending at the time of its entry into force should be dismissed if they do not comply with the new requirements. The law entered into force on 15 March 2014.

**Sweden**

Act of 28 May 2014 on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes

On 28 May 2014, the Swedish Parliament issued an Act on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes.

This new law clearly defines these crimes. It incorporates crimes against humanity as offences in domestic law, whereas they were previously not a classification under Swedish law. For most war crimes, the law does not distinguish according to whether they were committed in situations of international or non-international armed conflicts. However, it does provide for

certain specific war crimes committed in international armed conflict and provides Swedish courts with the possibility of exercising universal jurisdiction for these crimes. Sections 13–15 of the law provide for superior responsibility for acts of subordinates. In Sections 1 to 11, it harmonizes penalties and sentencing. Moreover, the law does not contain any statute of limitations for these international crimes.

**Switzerland**

**Federal Law No. 520.3 on the Protection of Cultural Property in the Event of Armed Conflict, Natural Disaster or Emergency**  
On 20 June 2014, the Federal Assembly of the Swiss Confederation adopted a law on the protection of cultural property in the event of armed conflict, natural disaster or emergency, leading to a complete revision of the Federal Law of 6 October 1966 on the Protection of Cultural Property in the Event of Armed Conflict. This new law expands the scope of protection by including protection of cultural property in situations of natural disaster or emergency.

The federal law implements the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, notably by providing for a “safe haven” in its Section 6, for movable cultural property when such property is threatened on the territory of the State on which it is located.

Pursuant to Article 8 of the law, it will be possible to file applications to UNESCO to obtain “enhanced protection” for cultural property of national importance. Such protection implies that the “[p]arties to a conflict shall ensure the immunity of cultural property under enhanced protection by refraining from making such property the object of attack from any use of the property or its immediate surroundings in support of military action” (see Article 11 of the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict).

**C. Case law**

The following section lists, in alphabetical order by country, relevant domestic jurisprudence related to IHL and released during the period under review (January–June 2014). Countries covered are Bosnia and Herzegovina, Canada, the Democratic Republic of the Congo, France, Germany, Nepal, Spain, Switzerland and the United Kingdom.

---

17 Available at: www.icrc.org/applic/ihl/ihl-nat.nsf/implementingLaws.xsp?documentId=E140B33CFB0E302AC1257E6C002F3696&action=openDocument&xp_countrySelected=CH&xp_topicSelected=GVAL-992BU7&from=state&SessionID=E1KT11S5T5}.
Bosnia and Herzegovina

Case No. S1 1 K 014267 13 Krž: Mirko Pekez; Case No. S1 1 K 014267 13 Kžk: Mirko (Špire) Pekez and Milorad Savić; Second Instance Verdicts, Court of Bosnia and Herzegovina, Section I for War Crimes, Appellate Division

Keywords: former Yugoslavia, war crimes, European Convention for the Protection of Human Rights and Fundamental Freedoms.

On 15 April 2008, the Court of Bosnia and Herzegovina concluded that Mirko (Špire) Pekez, Mirko (Mile) Pekez and Milorad Savić were guilty of war crimes against civilians under the Criminal Code of Bosnia and Herzegovina. The accused were found guilty of participation in the killing of twenty-three and wounding of four Bosniak civilians during the war in Bosnia and Herzegovina. Mirko (Mile) Pekez was sentenced to a long-term prison sentence of twenty-nine years, while Mirko (Špire) Pekez and Milorad Savić were sentenced to a long-term prison sentence of twenty-one years each.

On 29 September 2008, the Appellate Panel of Section I for War Crimes of the Court of Bosnia and Herzegovina upheld the first-instance verdict for the accused, Mirko (Mile) Pekez. Within the same judgement the Appellate Panel revoked the first-instance verdict for the second and the third accused, Mirko (Špire) Pekez and Milorad Savić, and ordered a retrial before the Appellate Panel.

On 5 May 2009, the Appellate Panel of Section I found Mirko (Špire) Pekez and Milorad Savić guilty of war crimes against civilians. Mirko (Špire) Pekez was sentenced to fourteen years’ imprisonment while Milorad Savić was sentenced to a long-term prison sentence of twenty-one years.

On 22 October 2013, following the decision of the European Court of Human Rights in the Maktouf-Damjanovic v. BiH case of 13 July 2013, the Constitutional Court of Bosnia and Herzegovina upheld the appeal by Mirko (Mile) Pekez and established that there had been a violation of the appellant’s right stemming from Article 7(1) of the European Convention for the Protection of Human Rights (ECHR), which provides that “[n]o one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed”. The Court revoked the second-instance judgements of the Court of Bosnia and Herzegovina of 29 September 2008 and of 5 May 2009. The Constitutional Court ordered the Court of Bosnia and Herzegovina to render a new decision in accordance with Article 7(1) of the ECHR in expedited proceedings.

On 16 December 2013, the Appellate Panel partially granted the appeal of defence counsel for Mirko (Mile) Pekez and modified the trial verdict with regard to the legal qualification of the criminal offence and the sanction imposed. The accused was found guilty of war crimes against civilians in violation of Article 142(1) of the Criminal Code of the Socialist Federal Republic of Yugoslavia and was sentenced to twenty years’ imprisonment. The judgement was sent down on 17 January 2014.

On 18 December 2013, the Appellate Panel found Mirko (Špire) Pekez and Milorad Savić guilty of war crimes against civilians in violation of Article 142(1) of the Criminal Code of the Socialist Federal Republic of Yugoslavia. Pekez received a prison sentence of ten years and Savić received a prison sentence of fifteen years. The judgement was sent down on 24 January 2014.

Canada

Case No. 500-10-004416-093: Désiré Munyaneza, Quebec Court of Appeals

Keywords: Rwanda, universal jurisdiction, customary international law.

On 7 May 2014, the Court of Appeal of Québec upheld the conviction of Désiré Munyaneza, for seven counts of genocide, crimes against humanity and war crimes committed during the 1994 Rwandan genocide, thereby affirming the universal jurisdiction of the Canadian Courts over these crimes.

On 22 May 2009, Désiré Munyaneza was convicted under the Crimes against Humanity and War Crimes Act 2000 of Canada and was sentenced to life imprisonment. An appeal was filed, alleging inter alia that the acts charged of intentional killing, acts of sexual violence and pillage did not constitute war crimes according to international law or, in the alternative, according to Canadian law, in force at the time of their commission.

The Court of Appeal of Québec stated that in 1994 war crimes comprised serious acts such as murder and rape, and acts of sexual violence constituting serious harm to the integrity and dignity of victims, that were committed during the non-international armed conflict in Rwanda, and that pillage was a war crime according to customary international law when committed in the context of a non-international armed conflict. The Court referred to common Article 3 of the four Geneva Conventions of 1949, Additional Protocol II of 1977, the Nuremburg Charter and the 1907 Hague Convention IV, as well as the case law of the International Criminal Tribunals, in reaching its conclusion.

The Court confirmed Canadian courts’ jurisdiction over acts which constituted crimes under international law at the time and in the place of their commission.

commission (paragraphs 20–55). It considered that the Act, at most, is retrospective in effect but not retroactive.

**Democratic Republic of the Congo**

*Case No. R.P 003/2013 and RMP 0372/BMM/2013: “Minova”, Operational Military Court in North Kivu*

**Keywords:** Uganda, amnesties.

On 5 May 2014, the Operational Military Court in North Kivu delivered its judgement regarding thirty-nine FARDC members.

In November 2012, during fights to control Goma, mass rapes and other violations of human rights committed in Minova and surrounding areas were reported. Thirty-nine members of the loyalist forces of the Democratic Republic of the Congo were tried.

In its judgement, in addition to the criminal military code, the Court applied directly the Rome Statute and specifically Articles 8, 25, 68 and 77, and found that war crimes of rape, pillage and murder had been committed in a non-international armed conflict.

Of the thirty-nine defendants, thirteen officers were acquitted because the Court could not establish their responsibility as commanders. Twenty-five of the defendants were found guilty of pillage and sentenced to three to twenty years in prison, one was found guilty of murder and sentenced to life imprisonment, and two were found guilty of rape and sentenced to twenty years in prison. One accused was not tried as the Court declared that he was not competent to stand trial. The Operational Military Court’s rules of procedure do not provide for the possibility of an appeal.

**France**

*Case No. 13/0033: Pascal Senyamuhara Safari (alias Pascal Simbikangwa), Criminal Court of Paris*

**Keywords:** Rwanda, genocide, crimes against humanity, universal jurisdiction.

On 14 March 2014, the Criminal Court of Paris convicted Pascal Simbikangwa of genocide and complicity in crimes against humanity committed in Rwanda between April and July 1994. The Court sentenced him to twenty-five years’ imprisonment. Both parties appealed this decision.

Pascal Simbikangwa was the head of Central Intelligence in Rwanda during the 1994 genocide. After the conflict, he lived in Comoros before moving to Mayotte under a false identity. In 2008 he was arrested in Mayotte for producing and selling fake documents and his real identity was discovered. In 2009, the collectif des parties civiles pour le Rwanda filed a complaint against him for genocide and crimes against
humanity. He was transferred to Paris in 2009, after France rejected a request for his extradition submitted by the Rwandan government. This case was referred to the Paris Criminal Court by the special unit created by the tribunal in 2012 to investigate and prosecute crimes against humanity, as well as misdemeanours and crimes of war.

The law of 22 May 1996 on adapting French law to United Nations Security Resolution 955 gives jurisdiction to the French courts to adjudicate facts falling within the competence of the International Criminal Tribunal for Rwanda (ICTR) if the author of these facts is on French territory and if the ICTR decides not to exercise its jurisdiction.

In the present instance, the Criminal Court of Paris referred to the decision of the Appeals Chamber of the ICTR on Prosecutor’s Appeal on Judicial Notice, dated 16 June 2006, in the case of Prosecutor v. Karemera, Nigirumisuye and Nzirorera, to conclude that there was no reasonable doubt about the existence of a genocide and crimes against humanity in Rwanda.

This was the first time that a Rwandan genocide suspect has been tried before a French court. It was also the first time that, in France, a trial based on universal jurisdiction has been held in the presence of the accused.

**Germany**

*Case No. 5-3 StE 4/10-4-3/10: For criminal liability of a former Rwandan mayor accused of involvement in a massacre that was committed in the course of the genocide that took place in Rwanda in 1994, Higher Regional Court of Frankfurt*

**Keywords:** Rwanda, genocide, universal jurisdiction.

On 18 February 2014, the Higher Regional Court of Frankfurt convicted a former Rwandan mayor for aiding and abetting genocide and sentenced him to fourteen years of detention. The mayor of the Muvumba commune in the north of Rwanda during the genocide of 1994 left Rwanda for Germany in 2002, where he was granted refugee status. An international arrest warrant was issued in 2007. He was arrested in 2008 and Germany declined an extradition request made by Rwandan authorities but started an investigation and opened his trial in 2011.

The mayor was accused of inciting Hutu residents to kill Tutsis and of actively participating in the killing of thousands of Tutsis. After a three-year trial, the Higher Regional Court found the accused guilty of aiding and abetting genocide. He was sentenced on the basis of Sections 220a and 6 No. 1 of the German Criminal Code allowing for universal jurisdiction of German courts (now Sections 1 and 6 of the German Code of Crimes against International Law). The accused has filed an appeal of the decision of the Higher Regional Court of Frankfurt.
Nepal

Writ Petition No. 069-WS-0057, Supreme Court of Nepal

Keywords: enforced disappearances, truth and reconciliation commission, amnesties, domestic criminalization of IHRL violations.

On 2 January 2014, the Supreme Court of Nepal ruled that Ordinance 2069, establishing a Commission on Investigation of Disappeared Persons, Truth and Reconciliation, contravened previous Supreme Court judgements, the Interim Constitution of Nepal of 2007 and international law.

Two writ petitions challenged this Ordinance and the Supreme Court issued an order staying the implementation of the Ordinance and ordered the government to issue another Ordinance to ensure that two separate commissions are established, one for investigating enforced disappearances and one tasked with pursuing truth and reconciliation.

In addition, the Supreme Court ordered the amendment of Sections 23, 25 and 29 of the Ordinance, in consultation with a team of proscribed experts. These provisions of the Ordinance were deemed unlawful by the court as they provided the Commission with uncontrolled discretionary powers to grant amnesties, which would not be contingent on victim consent, and a thirty-five-day time-limit for filing criminal charges (following the recommendation of prosecution by the Commission) would be imposed.

The Supreme Court also directed the government to adopt practical and legal measures to criminalize serious human rights violations, promote the spirit of reconciliation, provide reparations to victims and their families, ensure the autonomy and impartiality of the Commission and implement a victim and witness protection programme.

Following this decision, on 25 April 2014, the Parliament of Nepal passed Act 2071 on the Commission on Investigation of Disappeared Persons, Truth and Reconciliation to create the Truth and Reconciliation Commission and the Commission on Investigation into Enforced Disappearances. It is however to be noted that at the time of writing, the Supreme Court of Nepal has granted a petition submitted against some of the provisions of this Act, thereby limiting the discretionary powers accorded by the Act to the two commissions.

Spain

Case No. 27/2007, National Court (High Court), Spain

Keywords: Iraq, universal jurisdiction.

On 17 March 2014, the Spanish National Court refused to apply certain sections of Organic Law 1/2014 modifying Organic Law 6/1985 of 1 July 1985, of the Judicial Power, on universal jurisdiction. It considered that these sections were inconsistent with Spain’s obligations under Geneva Convention IV of 1949.
On 8 April 2003 in Iraq, US Army troops allegedly directed fire against the Palestine Hotel in Baghdad, killing two cameramen including Ezequiel, a Spanish national. Three US military personnel were under an international arrest warrant for crimes against persons and property protected in situations of armed conflict (war crimes), issued by Judge Santiago Pedraz. With the entry into force of Organic Law 1/2014, the question arose as to whether investigations and prosecutions should be pursued.

For proceedings to be initiated in respect to the crime of genocide, crimes against humanity or war crimes, Article 23.4(a) of Organic Law 1/2014 requires the alleged perpetrator to be a Spanish national, a foreigner who habitually resides in Spain or a foreigner who happens to be in Spain and whom the Spanish authorities have refused to extradite. Judge Pedraz ruled that this Article was in contradiction with Article 146 of Geneva Convention IV of 1949 that obliges Spain as a High Contracting Party to prosecute the crime regardless of the perpetrators’ nationalities and wherever they may be. In addition, he found that this Article was in contradiction with Articles 26 and 27 of the Vienna Convention on the Law of Treaties. Judge Pedraz recalled that a domestic rule cannot amend or derogate from a provision of a treaty or an international convention. The Spanish Constitution makes an exception for amendments or derogations provided for in the treaties themselves or in accordance with the general rules of international law, but this does not apply to the present case.

Additionally, Article 23.5 of the Organic Law 1/2014 states that the Spanish courts are required to verify whether an international tribunal, the State where the crimes have been committed or the State of nationality of the suspected person has initiated investigations and prosecutions. Judge Pedraz considered that this Article was in contradiction with Article 146 of Geneva Convention IV of 1949, under which a State may also, “if it prefers, and in accordance with the provisions of its own legislation, hand [the person suspected] over for trial to another High Contracting Party concerned, provided such High Contracting Party concerned has made out a prima facie case”. Judge Pedraz considered that the United States was not a High Contracting Party to Geneva Convention IV of 1949 and that Article 23.5 should not apply.

As recalled earlier, the transitory provision of Organic Law 1/2014 establishes that all cases pending at the time of its entry into force should be dismissed if they do not comply with the new requirements.

Judge Pedraz considered that Articles 23.4(a), 23.5 and the transitory provision of Organic Law 1/2014 should not apply and that therefore, Spanish courts are competent to hear this case.

---

20 Editor’s note: The United States is in fact a party to the Fourth Geneva Convention. For more information about States party to the Convention (IV) relative to the Protection of Civilian Persons in Time of War, see the ICRC database on treaties and States parties to such treaties, available at: www.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=380.
Switzerland

Case No. 4A_41/2014: A._____ SA v. Swiss Red Cross, 1st Civil Court of the Federal Tribunal of Switzerland

Keywords: National Society, emblem protection.

On 20 May 2014, the Federal Tribunal of Switzerland confirmed the ruling of the Commercial Court of Bern ordering A._____ SA to pay most of the Court’s fees as well as the expenses of the parties. In addition, the Commercial Court of Bern ordered the invalidity of the trademark resembling the emblem of the Red Cross and its cancellation.

In 2008, the ICRC raised the attention of the Red Cross National Society of Switzerland, on the use by A._____ SA, to represent its brand, of a sign resembling closely to the emblem of the Red Cross. The negotiations between the Swiss Red Cross and A._____ SA about the use of this sign failed and the case was brought by the National Society to the Commercial Court of Bern.

In 2013, the Commercial Court of Bern rendered its decision, which was appealed by A._____ SA.

In its decision confirming the ruling of the Commercial Court of Bern, the Federal Tribunal of Switzerland notably referred to Article 53 of Geneva Convention I of 1949 and to the Commentaries to the Geneva Conventions.

United Kingdom

Case No. 2014/00049/B5: Regina v. Sergeant Alexander Wayne Blackman and Secretary of State for Defence, Courts-Martial Appeal Court of the United Kingdom

Keywords: Afghanistan, murder.

On 22 May 2014, the Courts-Martial Appeal Court confirmed the ruling of the General Court Martial which found Sergeant Blackman guilty of murder.

The court recalled that on 15 September 2011, during an operation, an Apache helicopter opened fire on a Taliban insurgent. Sergeant Alexander Blackman was sent on patrol with other Royal Marines to undertake a battle damage assessment. They found the Taliban insurgent, who had been seriously wounded and was no longer a threat. After removing his AK47, magazines and a grenade, and putting him out of sight, Sergeant Blackman discharged a 9 mm round into his chest from close range. On 8 November 2013 the Court Martial found Sergeant Blackman guilty of murder and on 6 December 2013 he was


sentenced to life imprisonment with a minimum term of ten years in custody, a reduction to the ranks and dismissal with disgrace from the armed forces.

Sergeant Blackman appealed this decision but the Courts-Martial Appeal Court did not overturn it. It nonetheless reduced his sentence from life imprisonment with a minimum term of ten years to life imprisonment with a minimum term of eight years in prison, concluding that combat stress arising from the nature of the insurgency in Afghanistan and the particular matters affecting him should have been accorded greater weight as a mitigating factor.