

Implementation of international humanitarian law: The work of Latin American international humanitarian law committees

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Abstract

Respect for international humanitarian law (IHL) in the battlefield is contingent on the measures undertaken in peacetime. Indeed, satisfactory compliance with IHL rests in the implementation of multiple measures at the domestic level crossing different spheres, including legislative, administrative and educational. In most latitudes, governments and other stakeholders coordinate these measures in what is known as National Committees for the Implementation of International Humanitarian Law. The article addresses the practice of these bodies in Latin America and provides alternatives to enhance their work.

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Introduction

Respect for international humanitarian law (IHL) is contingent on the measures undertaken not only during war but also in peacetime. Commanders cannot abide by IHL if they are not properly instructed during peacetime; museums and cultural sites should display the blue shield to deter attacks during wartime; prosecutions against perpetrators of war crimes cannot take place without an adequate criminal legislation, competent tribunals and so on. Indeed, compliance at the battlefield rests in the implementation of measures crossing multiple spheres, including legislative, administrative and educational.¹ In peacetime, it is essential that governments and other relevant stakeholders coordinate these measures as a *condictio sine qua non* to attain, whenever necessary, the ideal of restraining war.

Article 1 common to the 1949 Geneva Conventions mandates States “to respect and to ensure respect for the present Convention in all circumstances.”² This wording is a reformulation of the principle *pacta sunt servanda*, which commands States to honour in good faith their international commitments.³ According to Jean Pictet, “the Government must of necessity prepare in advance, that is to say in peace-time, the legal, material or other means of ensuring the faithful enforcement of the Convention when the occasion arises.”⁴ In this context, one wonders about the nature and scope of the measures to be taken in order to translate international obligations into domestic actions.

In most latitudes, such measures are run by interministerial committees, generically known as “National Committees for the Implementation of International Humanitarian Law” (NCIHLs). Their core task is to facilitate domestic implementation of IHL by bringing together national authorities with other actors, including the International Committee of the Red Cross (ICRC), National Red Cross and Red Crescent Societies (National Societies) and legal academia. In this regard, the work of NCIHLs is cardinal to assess the status of IHL implementation around the globe.

Despite its importance, the binomial “IHL and implementation” is frequently overshadowed by the rules applicable to combat, particularly in

1 Cristina Pellandini, “Ensuring National Compliance with IHL: The Role and Impact of National IHL Committees”, *International Review of the Red Cross*, Vol. 96, No. 895/896, 2014.

2 Geneva Convention (I) 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) (GC I), Art. 1.

3 Jean Pictet (ed.), *Commentary on the Geneva Conventions of 12 August 1949*, Vol. 3: *Geneva Convention relative to the Treatment of Prisoners of War*, ICRC, Geneva, 1960, p. 18.

4 *Military and Paramilitary Activities in and against Nicaragua Case*, Merits, Judgment, 1986, para. 218.

publications and teaching. The present article pursues two objectives. The first is to facilitate understanding of IHL beyond the battlefield, with specific regard to the practice in Latin America. The second is to contribute to the scholarship dialogue concerning NCIHLs in regional contexts. Specific contextual circumstances and traits of Latin American countries make their practice particularly relevant regarding three categories of IHL implementation policies, namely, the protection of cultural property, capacity building in IHL and other relevant legal frameworks, and legislative measures orbiting armed conflicts.

The sources of information for this text include *inter alia* reports made by the ICRC's Advisory Service on IHL ("the Advisory Service"), public information from governments and the author's professional experiences as an IHL adviser.

National IHL committees

Domestic implementation through NCIHLs was a good practice recommended by a group of experts at the 26th International Conference of the Red Cross and Red Crescent.⁵ These international summits take place every four years and bring governments together with the ICRC and National Societies, in order to find solutions for the existing challenges to humanitarian action. The influential recommendation suggested "the establishment of national committees to advise and assist governments in the implementation and dissemination of IHL, the exchange of information on implementation measures".⁶ Simultaneously, the ICRC responded with the creation of a special unit, namely the Advisory Service, among whose purposes is to partner with NCIHLs pertaining to the binomial "IHL and implementation". Indeed, in support of States' primary responsibility, according to the Statutes of the International Red Cross and Red Crescent Movement, the role of the ICRC includes propelling the understanding, dissemination and development of IHL.⁷ On a regular basis, the Advisory Service, which operates worldwide through ICRC regional delegations, assist governments in their implementation and dissemination efforts. This global network of legal advisers also gathers information and publishes relevant working documents encapsulating experiences and insight from different latitudes. One remarkable tool is their document entitled *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success* ("Guidelines"), the most recent systemization of best practices from NCIHLs, complemented by other

5 ICRC, *Resolution 1, Annex II: Meeting of the Intergovernmental Group of Experts for the Protection of War Victims, Geneva, 23–27 January 1995: Recommendations*, 26th International Conference of the Red Cross and Red Crescent, Geneva, January 1995, available at: <https://www.icrc.org/eng/resources/documents/resolution/26-international-conference-resolution-1-1995.htm> (all internet references were accessed in October 2021).

6 Paul Berman, "The ICRC's Advisory Service on International Humanitarian Law: The Challenge of National Implementation", *International Review of the Red Cross*, Vol. 36, No. 312, May 1996, p. 339.

7 Statutes of the International Red Cross and Red Crescent Movement, Geneva, 1986, Art. 5.2(g).

recommendations.⁸ The advice provided therein stirs from composition and budgetary considerations, to working methods and international cooperation.

Today a total of 116 governments craft their implementation policies through NCIHLs. According to the ICRC database, the first of these entities was created in Germany in 1973, whereas the latest are in Kiribati and Bulgaria during 2019.⁹ There are *sui generis* cases, like Sweden and Poland, which have two entities each that resemble NCIHLs which work in coordination with different governmental agencies.¹⁰

The composition of NCIHLs varies. Traditional formations include the ministries of defence, foreign affairs, interior and justice. Less frequent compositions include other ministries, such as education, health, culture, along with representatives from the legislative and judicial branches. Most NCIHLs allow regional delegations of the ICRC and National Societies to participate, either as members or observers upon invitation. A noteworthy trait of some NCIHLs is the permanent participation of universities or representatives from legal academia. This is particularly relevant since educational commends are a common feature present in the constituting documents of NCIHLs around the world.¹¹

Latin American NCIHLs

NCIHLs are rather recent in the region. Uruguay and Bolivia were the first countries to create them in 1992, whereas the Colombian and Venezuelan are the latest, in 2011 and 2015, respectively.¹² In 2021, a total of twenty countries in the Americas have such committees.¹³

Almost every NCIHL in the region was created through an executive/presidential decree.¹⁴ Such decrees define their integration and mandate. Concerning their integration, Latin American NCIHLs exhibit different schemes

8 ICRC, *National Committee and Similar Entities on International Humanitarian Law: Guidelines for Success*, Geneva, June 2019, available at: <https://www.icrc.org/en/document/national-committees-and-similar-entities-international-humanitarian-law-guidelines-success>. This document supplements two previous guidelines authored by the ICRC's Advisory Service, namely, ICRC Advisory Service on International Humanitarian Law, *Practical Advice to Facilitate the Work of National Committees on International Humanitarian Law*, Geneva, 1997; and ICRC, *Guiding Principles Concerning the Status and Methods of Operation of National Bodies for the Implementation of International Humanitarian Law*, Geneva, 1998.

9 ICRC, *National Committees and Similar Bodies on International Humanitarian Law*, Geneva, 25 January 2021 (Index of National Committees), available at: <https://www.icrc.org/en/document/table-national-committees-and-other-national-bodies-international-humanitarian-law>.

10 See Ministry of Foreign Affairs of the Republic of Poland Legal and Treaty Department, *IV Report on the Implementation and Dissemination of International Humanitarian Law in the Republic of Poland for 2012–2018*, available at: <https://www.gov.pl/attachment/17464f70-4973-4755-9f55-d0e339cf86c2>.

11 For committees with diverse composition, see the cases of Australia, Belgium, Costa Rica, France and Namibia.

12 Index of National Committees, above note 9.

13 *Ibid.*

14 See Argentina, *Executive Decree No. 933/94*, 16 June 1994; Chile, *Decree No. 1229*, 31 August 1994; Costa Rica, *Executive Decree No. 32077-RE*, 21 May 2004; Peru, *Supreme Resolution No. 234-2001-JUS*, 1 June 2001; Mexico, *Presidential Decree*, 12 August 2009.

of composition. Take the cases of Costa Rica and Argentina as examples. Whereas the membership of the former includes ministries, a university, other government branches and civil society, the latter is integrated exclusively by ministries.¹⁵ However, narrow integrations do not necessarily exclude dialogue with other actors. As a matter of fact, NCIHLs composed exclusively by ministries often operate through specialized working groups, which include, upon invitation, active participation from the ICRC in the furtherance of common objectives, academia and other national authorities.

Regarding their mandates, despite some minor variations in language, there are common features that can be summarized in the following terms: (1) reviewing domestic legal frameworks; (2) suggesting accession/ratification of IHL treaties; (3) developing policies to fulfil existing IHL treaty obligations; (4) undertaking dissemination and academic activities; (5) providing legal advice to different branches of government concerning IHL and policy.¹⁶

Having explained what NCIHLs are, how they are formed and their objectives, the following section highlights some successful instances of implementation measures taken by NCIHLs in Latin America.

IHL dissemination and capacity building

Dissemination is a necessary condition for compliance.¹⁷ It represents a corollary species of the obligation spelled out in common Article 1 and consists not only in the provision of information, but also in a substantial educational prerequisite for an effective implementation.¹⁸ In fact, the four Geneva Conventions and other relevant IHL treaties contain express obligations aimed at spreading their regulations among armed forces and civilian population both in times of peace and war.¹⁹ Other conventional obligations consist of integrating IHL into programmes of military instruction and training.²⁰ In sum, dissemination covers

15 Other diverse committees in the region are those from Brazil, Ecuador, Guatemala, whereas Mexico and Peru contemplate permanent membership exclusively to ministries.

16 See Index of National Committees, above note 9.

17 Françoise J. Hampson, "Fighting by the Rules: Instructing the Armed Forces in Humanitarian Law", *International Review of the Red Cross*, No. 269, 1989, p. 113.

18 F. J. Hampson, *ibid.*, p. 114.

19 GC I, Art. 47; Geneva Convention (II) 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), Art. 48; Geneva Convention (III) relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Art. 127; Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Art. 144; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Art. 83; Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978), Art. 19.

20 See Convention for the Protection of Cultural Heritage in the Event of Armed Conflict, 216 UNTS 3511, 14 May 1954 (entered into force 7 August 1956) (1954 Hague Convention), Art. 7.

a wide spectrum of measures that should be tailored based on different recipients' profiles.

Regarding the dissemination of IHL materials among civilians, common regional practices include the organization of IHL courses, seminars with academics and moot courts. As an example, the strategy of the Mexican NCiHL (CIDIH-México) consists of at least two IHL courses on a yearly basis. One is open to all audiences with a mandatory participation from members of the armed forces, whereas the second is directed exclusively at university professors.²¹ Since the first course is intended to supplement regular military training, it addresses the latest developments in IHL. In 2018, for instance, that course included sessions on IHL and cyber operations as well as on urban warfare, two topics identified by the ICRC as challenges to contemporary armed conflicts.²² Similar courses take place on a yearly basis in Peru, Bolivia, Colombia, Costa Rica and Ecuador.²³ The second course undertaken by the CIDIH-México intends to facilitate teaching materials to be further disseminated among students. In this course, university professors get to know the teaching tools developed by the Advisory Service and other departments of the ICRC. Such tools include a digital application, ready-to-use workshops and a syllabus for remote teaching.²⁴ The underlying purpose is to promote the inclusion of IHL in university programmes and help professors in the process.

Collaboration schemes with academia facilitate the organization of periodical activities, not affected by changes in government. In countries like Argentina, Costa Rica, Peru and Ecuador, the ICRC regional delegations maintain partnerships with universities, sometimes through academic cooperation agreements.²⁵ From the author's experience, the reasoning behind partnering with academic institutions is to lean on their infrastructure, network and expertise in conducting educational exercises. One clear example is the creation of the *Anuario Iberoamericano de Derecho Internacional Humanitario*, an annual yearbook edited by the University of La Sabana with the support of the ICRC Delegation in Colombia.²⁶

A second regional good practice is the organization of simulation exercises and moot courts for students. These academic activities demand students to argue from different roles including advocates for a country or advisers for different actors. By participating in moot courts or simulations, students get a better sense of advocacy itself and the concrete application of international rules. Such

21 See ICRC, *Implementing International Humanitarian Law: Report 2018/2019*, Geneva, 2020, p. 38 (Report 2018/2019).

22 See ICRC, "ICRC Report on IHL and the Challenges of Contemporary Armed Conflicts", Geneva, 22 November 2019, available at: <https://www.icrc.org/en/document/icrc-report-ihl-and-challenges-contemporary-armed-conflicts>; Report 2018/2019, *ibid.*, p. 38.

23 See Report 2018/2019, above note 21.

24 All ICRC's tools can be found at ICRC, "Learning and Teaching IHL", available at: <https://www.icrc.org/en/what-we-do/building-respect-ihl/education-outreach>.

25 Report 2018/2019, above note 21, p. 35.

26 ICRC, "Academia lanza el primer anuario iberoamericano de DIH", 19 June 2020, available at: <https://www.icrc.org/es/document/academia-lanza-el-primer-anuario-iberoamericano-de-dih-colombia>.

experiences encourage the emergence of passionate professionals looking forward to building a career in IHL or other international law disciplines. This could be illustrated by the results of a survey conducted among former participants of moot courts and simulations in Mexico. The results were transparent: 95% of them considered their experiences in moot courts and simulations as “highly influential” in their professional careers and 91% regarded them as “essential” for law students. Almost 90% maintained that such experiences increased their job opportunities. Also, 65% declared that they contributed to the discipline with either a thesis or a publication.²⁷

As mentioned above, dissemination efforts should be designed depending on the audience. Concerning IHL training to the military, good practices maintain that exercises for the military should involve real dilemmas which soldiers would encounter in combat. The objective is to familiarize such dilemmas, so they can be lawfully addressed in the battlefield.²⁸ In this regard, the ICRC’s department in charge of relations with Armed Forces has experience conducting training to the military. For instance, the Senior Workshop on International Rules Governing Military Operations (SWIRMO) is an international training programme oriented to military personnel from different countries.

Dissemination and capacity building are never-ending, yet core obligations for IHL implementation. Educational efforts continue to be a solid and cost-effective investment to strengthen respect for IHL. These exercises are ideal spaces for all actors to receive feedback from each other and to partner in the consolidation of regional IHL perspectives. This body of the law evolves mutually with the means and methods of warfare; it is essential to keep weaving the intellectual fabric to support adequate policymaking.

Protection of cultural property

Under treaty and customary IHL, cultural buildings and places of religious importance are protected as civilian objects unless they lose that protection.²⁹ In the same way, it is prohibited to use cultural property for military purposes. The Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (the 1954 Hague Convention) and its two additional protocols envisage a system of protection based on a distinctive emblem: the blue shield and its derivatives. Accordingly, States Parties must prepare, during peacetime, safeguarding measures against foreseeable effects of armed conflicts. Appropriate measures include the signalization of relevant sites, dissemination of the 1954 Hague Convention and bringing the topic of protection of cultural property into military manuals and training.³⁰

27 Survey on file with the author.

28 Elizabeth Stubbins Bates, “Towards Effective Military Training in International Humanitarian Law”, *International Review of the Red Cross*, Vol. 96, No. 895/896, 2014, p. 804.

29 Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law*, Vol. 1: *Rules*, Cambridge University Press, Cambridge, 2005 (ICRC Customary Law Study), Rule 38, available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule38.

The 1954 Hague Convention and its two additional protocols provide three categories of protection: general, special and enhanced. The first two are contained in the 1954 Convention. The general protection only requires the unilateral signalization by the State, and it is designated to identify: (a) cultural property not under special protection; (b) the persons responsible for the duties of control for the execution of the Convention; (c) the personnel engaged in the protection of cultural property; and (d) the identity cards mentioned in the Regulations for the execution of the Convention.³¹

Differently, the regime of special protection demands a process of registration before a third party, namely the International Register of Cultural Property under Special Protection.³² The emblem consists of the blue shield repeated three times in a triangular formation (one shield below). This category of protection was designed for “a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centers containing monuments and other immovable cultural property of very great importance”. In order to be designated as specially protected, the 1954 Hague Convention demands that the cultural property must be “situated at an adequate distance from any large industrial center or from any important military objective constituting a vulnerable point”.³³

The last category of protection, namely enhanced protection, was created by the 1999 Second Protocol and innovated by removing the distance criterion.³⁴ For an object to be listed as property under enhanced protection, the request for inscription shall include a declaration by the State which has control over it, confirming that it will not be used to support military endeavours.³⁵ As a matter of fact, enhanced protection was adopted as a consequence of the criticisms against the 1954 Hague Convention when the Gulf War and the war in the former Yugoslavia witnessed severe instances of destruction and bombardments of monuments, museums and entire historical cities.³⁶ A strong criticism advanced against the previous regime was precisely the requirement of location. Besides the ambiguity of notions such as “adequate distance” and “important military objective”, the distance requirement was hardly met, so the number of sites or buildings specially protected was rather limited.³⁷

30 1954 Hague Convention, Arts 3, 7 and 25.

31 *Ibid.*, Art. 4.

32 *Ibid.*, Arts 16 and 8.

33 *Ibid.*, Art. 8.1(a).

34 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict 1999, 249 UNTS I-3511, 26 March 1999 (entered into force 9 March 2004) (1999 Second Protocol).

35 1999 Second Protocol, Art. 10(c).

36 Jean-Marie Henckaerts, “New Rules for the Protection of Cultural Property in Armed Conflict: The Significance of the Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict”, in María Teresa Dutli, Joanna Bourke Martignoni and Julie Gaudreu (eds), *Protection of Cultural Property in the Event of Armed Conflict: Report on the Meeting of Experts*, ICRC, Geneva, 2002, p. 41.

37 From 1954 to 1999, only Austria, Germany, the Netherlands and the Holy See listed cultural sites. See United Nations Educational, Scientific and Cultural Organization (UNESCO), *International Register of Cultural Property under Special Protection*, 23 July 2015, available at: <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Register2015EN.pdf>.

Latin American heritage is incredibly rich. The region harbours the material and immaterial legacies of ancient civilizations, whose preservation is a priority. Through their NCIHLs, Latin American governments have taken different measures to signal and ensure respect to cultural sites, in accordance with the 1954 Hague Convention and its two protocols. The work of the NCIHLs from El Salvador, Argentina and Mexico offers important references.

The cases of El Salvador and Argentina constitute illustrative instances of signalization under general protection. In this respect, El Salvador has been working intensively since its ratification of the 1954 Hague Convention in 2001. From 2002 to 2013, the NCIHL ran a programme, which consisted of three phases, in order to signal multiple historical buildings throughout the country. To execute this programme, El Salvador received funding and orientation from the United Nations Educational, Scientific and Cultural Organization (UNESCO).³⁸

El Salvador articulated its signalization process in a guide for national authorities. The document lays out a scheme of cooperation between different levels of government in order to institutionalize the process of signalization. Instructive references from the guide include the establishment of a network of local governmental officials through committees aimed at identifying relevant cultural property and to operate their signalization. Also, the guide includes the logistic details involved in placing the blue shield as a plaque or as a pedestal.³⁹ The case of El Salvador illustrates how States can adapt and professionalize their institutions to permanently implement IHL.

For its part, in 2012, Argentina created a working group inside the NCIHL aimed at the identification and signalization of cultural property.⁴⁰ This working group has launched an integral campaign which comprises the signalling of several historical places, including memorials, museums, academic institutions and natural sites. By 2019, a total of fifty sites were exhibiting the blue shield across the country.⁴¹

A noteworthy trait of Argentinian signalization efforts is its diffusion component. Their strategy consisted of a documentary series entitled *Motivados por la historia* (Inspired by history), which focuses on a route of sites to be signalled with the blue shield. The series narrates the journey of an elementary school professor, alongside a group of young enthusiasts, in an expedition in the Crossing of the Andes, a transcendent route for the independence of the region in the 19th century. In the series, experts from the Argentinian NCIHL explain the importance of enhancing compliance of IHL, even in contexts outside of armed conflicts, whereas the professor emphasizes the historical resonance of

38 ICRC, *Implementing International Humanitarian Law: Report 2012/2013*, Geneva, 2013, p. 21 (Report 2012/2013).

39 Celina Ganuza Durán, Mario Guillermo Navarro and Ana Mercedes Salazar, *Guía para la fase inicial del proceso de señalización de los bienes culturales de el salvador, con el emblema de protección en caso de conflicto armado. Convención de la Haya de 1954*, Consejo Nacional para la Cultura y el Arte, CONCULTURA, 2006, available at: <https://www.transparencia.gob.sv/instituciones/capres/documents/254996/download>.

40 Report 2012/2013, above note 38, p. 20.

41 Report 2018/2019, above note 21, p. 32.

the route. The campaign was produced with the support from UNESCO and Google.⁴²

Another good example of this practice is the one of Mexico, which is the only country in the region that has registered cultural property under special protection and is undergoing a process to register cultural sites under enhanced protection. In 2012, a specialized working group within the NCIHL began a process of identification and application for the registration of cultural property under special protection. The working group included technical institutions such as the National Institute of Anthropology and History and the National Institute of Statistics and Geography.⁴³ In February 2015, UNESCO confirmed the registration of nine Mexican archaeological sites in the International Register of Cultural Property under Special Protection.⁴⁴

In addition, in 2020 Mexico began the registration of the National Museum of Anthropology in Mexico City in the List of Cultural Property under Enhanced Protection. To facilitate the process, the Mexican government sought technical and financial support from the Secretariat of the 1954 Hague Convention. In fact, Article 29 of the 1999 Second Protocol envisages a fund to provide financial or other assistance in support of preparatory measures to be taken in peacetime.⁴⁵ In the case of the National Museum of Anthropology, the financial support was employed in the development of a risk management plan to ensure that the pieces and the museum itself are protected against any foreseeable risk.⁴⁶

The historical development of the applicable conventions is instructive for adequate policies. After the adoption of the 1999 Second Protocol and enhanced protection, the older framework of special protection can be considered as not being suitable for most cases. Enhanced protection also entails criminal repression for war crimes against cultural property and it ensures that the domestic legal system provides adequate means of protection. Authorities and officials working on IHL should focus on the registration of relevant property in the List of Cultural Property under Enhanced Protection, which to date contains only twelve sites in six countries.⁴⁷

42 ICRC, *Implementing International Humanitarian Law: Report 2016 and 2017*, p. 29. All episodes from *Motivados por la historia* are available online at: https://www.youtube.com/watch?v=O9lO_t0a1wA.

43 Instituto Nacional de Antropología e Historia (México), *Señalizan nueve sitios arqueológicos mexicanos para protección especial de la UNESCO*, 1 October 2015, available at: <https://inah.gob.mx/boletines/2155-senalizan-nueve-sitios-arqueologicos-mexicanos-para-proteccion-especial-de-la-unesco>.

44 See Mariana Salazar Arborno, “The Work of Mexico’s Interministerial Committee on International Humanitarian Law”, *International Review of the Red Cross*, Vol. 96, No. 895/896, 2014, p. 1057.

45 1999 Second Protocol, Art. 29.

46 See UNESCO, “1954 Convention Second Protocol Committee Emphasizes Protecting Heritage for Peace”, UNESCO Press Release, 5 January 2021, available at: <https://en.unesco.org/news/1954-convention-second-protocol-committee-emphasizes-protecting-heritage-peace>.

47 See UNESCO, *List of Cultural Property under Enhanced Protection*, 2017, available at: http://www.unesco.org/culture/1954convention/pdf/Enhanced-Protection-List-2017_EN.pdf.

Legislative work

Adequate legal frameworks are essential preconditions for compliance. After ratification, States are obliged to take all necessary legislative and administrative steps to ensure full implementation of IHL treaties. For example, the Geneva Conventions contain provisions requiring States to create the necessary legislation “[...] to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches.”⁴⁸ In addition, Customary Rule 158 from the ICRC’s customary law database establishes that States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory.⁴⁹ Moreover, according to the principle of complementarity as defined in the Rome Statute of the International Criminal Court, national judiciaries hold primary jurisdiction to prosecute international crimes, including war crimes.⁵⁰ For all these reasons, it is important that States enact the necessary legislation to allow national authorities to act according to their international obligations: only.⁵¹

According to Dieter Fleck, legislative work for the domestic implementation of IHL can be divided into three categories: (1) laws and regulations providing the application of the Geneva Conventions; (2) legislation to ensure appropriate penal sanctions for grave breaches of IHL; (3) legislative measures to prevent and suppress misuse of the protective emblems.⁵² In addition to that typology, there is also legislation implementing (4) treaties regulating or prohibiting the use of certain weapons. Each of these points can be explained by reference to the work of NCIHLs in Latin America. As mentioned before, the advisory function is a common feature of such committees. This element in their mandates enables them to suggest modifications to national legal architecture.

For instance, the National Committee for the Study and Implementation of International Humanitarian Law from Peru has played an active role in the governmental approach to IHL. This NCIHL has provided recommendations and analysis during the adoption of Law 29166 on the Rules of Use of Force by Armed Forces in National Territory⁵³ and subsequent Legislative Decree 1095.⁵⁴ Both instruments provide the conditions for the use of force during military

48 See GC I, Art. 49; AP I, Art. 85.

49 ICRC Customary Law Study, above note 29, Rule 158.

50 See Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 98 (entered into force 1 July 2002), Arts 1 and 17.

51 Sharon Weill, “Building Respect for IHL through National Courts”, *International Review of the Red Cross*, Vol. 96, No. 895/896, 2014, p. 863.

52 Dieter Fleck, “Implementing International Humanitarian Law: Problems and Priorities”, *International Review of the Red Cross*, No. 281, April 1991.

53 Ley que Regula el Uso de la Fuerza para Miembros de las Fuerzas Armadas dentro del Territorio Nacional [Law Regulating the Use of Force for Members of the Armed Forces within the National Territory], available at: <https://leyes.congreso.gob.pe/Documentos/Leyes/29166.pdf>.

54 Decreto Legislativo que establece reglas de empleo y uso de la fuerza por parte de las Fuerzas Armadas en el territorio nacional N° 1095 [Legislative Decree that Establishes Rules of Employment and Use of Force by the Armed Forces in the National Territory], 2015, available at: <https://www.icnl.org/resources/library/decreto-legislativo-1095-que-establece-reglas-de-empleo-y-uso-de-la-fuerza-por-parte-de-las-fuerzas-armadas-en-el-territorio-nacional>.

operations against armed groups in Peruvian territory. The decree includes notions anchored to IHL, namely, “military objective”, “incidental damage”, “proportionality”, among others. Besides, the same committee promoted the legislation to prohibit child recruitment.⁵⁵

Similarly, the Ecuadorian NCIHL propelled the inclusion of grave breaches to IHL in the national criminal code (Código Orgánico Integral Penal Ecuatoriano).⁵⁶ Consequently, this instrument criminalizes grave violations to IHL and other serious violations of IHL such as the murder of protected persons, use of prohibited weapons, environmental modifications for military purposes, attacks against protected objects and property, among other violations to IHL.⁵⁷

Lastly, regarding the misuse of protected/distinctive emblems, both the Geneva Conventions and customary law prohibit the use of the Red Cross and Red Crescent for purposes unrelated to “the identification of medical and religious personnel, medical units and medical transports, as well as personnel and property of the components of the International Movement of the Red Cross and Red Crescent”.⁵⁸ This rule applies in peacetime as well. Latin American NCIHLs have undertaken the task to assist law making by drafting regulations to ensure respect for distinctive emblems. In the case of Mexico, the NCIHL prepared the initial draft of what later became the Regulation to Implement the Law Concerning the Use and Protection of the Red Cross Name and Emblem, which lays down possible authorized uses of the emblems, which created a system of administrative sanctions in charge of the Ministry of the Interior.⁵⁹ Likewise, Ecuador’s NCIHL presented an initiative to modify Regulations of the Law of Land Transportation, Traffic and Road Safety, in order to set the conditions for use of the Red Cross emblem in private and public ambulances.⁶⁰

Perspectives and final remarks

In December 2019, representatives from different countries met in Geneva for the 33th International Conference of the Red Cross and the Red Crescent Movement. Back then, representatives adopted a resolution entitled “Bringing IHL home: A road map for better national implementation of international humanitarian law”. The resolution calls for strengthening cooperation between NCIHLs on the

55 Tania Elizabeth Arzapalo Villón, “Peru’s National Committee for the Study and Implementation of International Humanitarian Law”, *International Review of the Red Cross*, Vol. 96, No. 895/896, 2014, p. 1066. For other contributions from this NCIHL, see: <https://www.minjus.gob.pe/conadih/#:-:text=La%20Comisi%C3%B3n%20Nacional%20de%20Estudio,y%20desarrollo%20del%20Derecho%20Internacional>.

56 ICRC, *Implementing International Humanitarian Law: Report 2014 and 2015*,

57 Ecuador, Código Orgánico Integral Penal (Comprehensive Organic Criminal Code), Official Registry No. 180, 10 February 2014, Art. 111.

58 ICRC Customary Law Study, above note 29, Rule 59.

59 The law concerning the use and protection of the Red Cross name and emblem is available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LUPDECR.pdf>.

60 Cristina Quijano, Ricardo Ruiz, Camila Roberts and Eduardo Guerrero, “Implementación del Derecho Internacional Humanitario en Ecuador”, *USFQ Law Review*, Vol. 5, No. 1, August 2018, p. 274.

international, regional and cross-regional levels, by attending and actively participating in the universal, regional and other regular meetings of such entities.⁶¹ In the same summit, Ecuador and Peru presented a pledge to promote and strengthen the work of NCIHLs, and the exchange of information among them.⁶²

Furthermore, in February 2021 NCIHLs met online to reflect about the horizons for the implementation of IHL in the region.⁶³ The representatives adopted a declaration recognizing the importance of the measures undertaken so far. Equally, the need to develop more effective methods of international networking was again highlighted.⁶⁴ A strong network of NCIHLs is an accessible alternative to enhance their work and IHL itself.

In addition, the ICRC facilitates interactions between NCHILs around the world through an online community. In this platform, governments can voluntarily share information and engage in discussions about different implementation measures. However, by June 2021 only six Latin American countries were members of the community.

Another effective route to enhance IHL implementation is voluntary reporting. This measure “is intended to help to improve understanding of IHL, and to encourage and inform dialogue on IHL issues both at home and abroad”.⁶⁵ There are many States that issue public reports documenting the multiplicity of measures undertaken during a specific period. The creation of this information produces important materials and references for all actors involved in IHL and policy: academia, governments and civil society. With such elements at hand, States and the ICRC can keep better track of their progress, develop indicators, follow up commitments and define further objectives.

Regarding the measures mentioned in this article, three good practices should be highlighted. Firstly, permanent schemes of partnerships with academic institutions ensure better and far-reaching educational activities. Secondly, UNESCO represents an important ally in the fulfilment of the obligations contained in the 1954 Hague Convention and its two additional protocols. In fact, States can resort to the organization for technical advice and economic

61 ICRC, *Resolution: Bringing IHL Home: A Road Map for Better National Implementation of International Humanitarian Law*, 33IC/19/R1, 33th International Conference of the Red Cross and Red Crescent, Geneva, 9–12 December 2019, available at: https://rcrcconference.org/app/uploads/2019/12/33IC-R1-Bringing-IHL-home_CLEAN_ADOPTED_FINAL-171219.pdf.

62 All pledges presented at the 33th International Conference of the Red Cross and Red Crescent are available at: <https://rcrcconference.org/pledge/pledge-on-promotion-and-strengthening-of-the-work-of-the-national-committees-on-international-humanitarian-law-as-well-as-for-the-exchange-of-information-among-them-promesa-sobre-promocion-y-forta/>.

63 ICRC, “Online Community for National Committees and Similar Entities on IHL”, 28 May 2020, available at: <https://www.icrc.org/en/document/online-community-national-committees-and-similar-bodies-ihl>.

64 ICRC, “Ecuador: Regional Meeting of National Committees on IHL and Other Similar Entities of the Americas”, 24 February 2021, available at: <https://www.icrc.org/en/document/ecuador-americas-regional-meeting-between-national-committees-and-similar-bodies-ihl>.

65 Foreign & Commonwealth Office (United Kingdom), *Voluntary Report on the Implementation of International Humanitarian Law at Domestic Level*, London, 11 March 2019, p. 5, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784696/Voluntary_Report_on_the_Implementation_of_International_Humanitarian_Law_at_Domestic_Level.pdf.

support. Lastly, NCIHLs hold an enormous potential to make legislative improvements. The interplay between human rights law and IHL allows these committees to provide advice and assist policymaking in a variety of topics, including arms control, law enforcement and criminal law.

In conclusion, the successful implementation of IHL is the product of specialized machinery of governments. The previous sections illustrate how compliance at the battlefield is prepared in peacetime and the role that NCIHLs play in this equation. The Geneva Conventions and customary IHL require States to institutionalize IHL within the military establishment and government itself. In this sense, the creation of NCIHLs is a testimony of the governmental efforts behind respecting and ensuring respect for IHL in all circumstances. In Latin America and elsewhere, the institutionalization of IHL through NCIHLs has demonstrated to be an effective way to comply with multiple international obligations anchored to IHL and the ideal of limiting the consequences of war.