

Romania, Voluntary Report

This case discusses the 2021 Romanian voluntary report on the implementation of international humanitarian law at domestic level and how it fits within the process of implementation of IHL.

Acknowledgments

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. ROMANIA'S VOLUNTARY REPORT ON THE IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW AT DOMESTIC LEVEL

[Source: Voluntary Report on the Implementation of International Humanitarian Law at Domestic Level, 2021; available at http://mmediu.gov.ro/app/webroot/uploads/files/raport%20DIU_ENG.pdf.]

I. Introduction

[1] Romania is committed to defend an international system based on inclusive multilateralism and widely accepted rules designed to ensure peace, stability, respect for universal human rights and strengthening the rule of law.

[2] As mentioned in the 2020-2024 Governing Programme, the promotion of and strict compliance with international law remains one of three pillars of Romania's foreign policy. [...]

[3] Romania believes that respecting international humanitarian law (IHL) is both a moral and strategic imperative. In today's world faced with an unprecedented number of conflicts, the significance of this set of

norms aimed at limiting the effects of war and protecting civilians is greater than ever.

[4] Originally designed for the classic war between sovereign states, the adequacy of international humanitarian law in contemporary armed conflict has been under scrutiny in recent years. However, current violations of IHL are not a proof of a lack of relevance of this body of law, but, in many instances, a consequence of deliberate acts of non-compliance.

[5] While there is wide agreement on the importance of preserving existing standards of protection provided by IHL, the new conflict patterns involving non-state actors operating across borders, the urbanization of warfare, the use of new technologies, the privatization of security and the volatile distinction between armed conflict and criminal activities have prompted discussions with the view to examining and better adjusting the application of IHL to the new operational realities.

[6] Romania shares the view that the four Geneva Conventions and their Additional Protocols, as well as other relevant international treaties have stood the test of time and must continue to regulate the conduct of hostilities, while supporting efforts meant to clarify any legal dilemmas and promote adequate solutions to specific operational problems.

[7] In accordance with article 1 common to the four Geneva Conventions, states are under obligation to “respect and ensure respect” for these conventions in all circumstances.

[8] Such efforts are to be carried out both in wartime, by ensuring that parties to an armed conflict comply with the law, and in peacetime, by undertaking preventive measures and dissemination activities.

[9] Romania is eager to further work towards consolidating respect for IHL at the international and regional levels, through various initiatives meant to foster dialogue and cooperation in this field, as well as at the national level, through the adoption and enforcement of legislative, administrative and practical measures.

[10] Spreading knowledge of IHL as widely as possible is one of the most effective means of supporting its effective implementation. These actions should not be limited to the armed forces, but they should target competent governmental authorities, policy makers and the general population, given the need to integrate the goal of IHL compliance in other relevant national policies, as well as to respond to the increased attention given to this topic against the constant display of the effects of war and violence in everyday news.

[11] The National Commission on International Humanitarian Law (The Commission) is an interinstitutional body with the role of monitoring national implementation of IHL and encouraging the dissemination of its norms and principles.

[12] This voluntary national report on the implementation of IHL at domestic level, elaborated under the

coordination of the Commission, is meant to give an overall picture of Romania's actions in this area and further raise awareness about IHL in an accessible way to anyone interested in such matters, including the public.

[13] The exercise was also aimed at stimulating inter-institutional cooperation and helping national authorities to identify any institutional and normative gaps and, consequently, to improve the coherence and effectiveness of actions in this field.

[14] Contrary to most other branches of international law, the core IHL treaties have a limited number of mechanisms to ensure compliance with its norms and lack a mandatory reporting system on national implementation. Therefore, national voluntary reports could prove an important self-assessing tool in support of strengthening compliance with IHL and further stimulating dialogue on IHL issues both in the domestic and global arena.

II. Policy instruments and achievements at the domestic and international levels

1. Relevant treaties in the area of international humanitarian law (IHL) to which Romania is a party

[...]

2. The National Commission on International Humanitarian Law (the Commission)

[15] The effectiveness of IHL depends primarily on the national implementation. In peacetime, this is mainly achieved through disseminating IHL as widely as possible and incorporating IHL into the national legal order. Necessary structures can be put in place to oversee activities in this area and facilitate inter-institutional coordination, while IHL should be considered as part of the political agenda.

[...]

[16] The Commission is responsible for monitoring the fulfillment of Romania's obligations under the relevant treaties, as well as for identifying the most adequate means of implementing IHL at the national level. This is achieved by way of making recommendations on specific measures to be adopted, such as amending legislation or encouraging ratification of new legal instruments, as well as, should the case be, by issuing advisory opinions on IHL matters to the decision making authorities. At the same time, it promotes IHL through the activities of the institutions represented in this structure and supports the organization of various meetings (e.g. two international seminars dedicated to fostering cooperation with the ICC) and training courses. By tradition, the Commission is one of the partners involved in the annual organization of the IHL and Refugee Law Competition for university students.

[...]

3. The National Strategy for the Application of International Humanitarian Law (the Strategy)

[17] Another significant achievement was represented by the adoption of the first ever National Strategy for the application of IHL in 2007, which sets out general and specific objectives in support of ensuring respect for IHL and spreading knowledge of these norms both domestically and internationally. [...]

[...]

[18] The general objectives envisaged by the Strategy are as follows:

Monitoring the relevant developments at the global level regarding conventions in the field of international humanitarian law, with the goal to ratify, as appropriate, those to which Romania is not a party;

Incorporating the norms of international humanitarian law in the Romanian legislation; Disseminating and spreading knowledge of the norms of international humanitarian law;

Implementing the norms of international humanitarian law;

Actively participating in international meetings in the field of international humanitarian law and in drafting new instruments and norms, if needed;

Monitoring the respect of commitments taken by Romania in this area and reporting in due time cases of violations of norms of international humanitarian law to the competent authorities, as well as indicating the appropriate remedial actions based on proposals from line ministries;

Promoting international cooperation, including with other national commissions on international humanitarian law.

The general objectives are complemented by specific ones, namely:

Disseminating the norms of international humanitarian law within the Armed Forces and all other national structures with responsibilities in this field, as well as within the civil society;

Achieving an efficient communication and an optimal information flow on IHL-related topics;

Developing the relationship of the National Commission on International Humanitarian

Law with the national authorities;

Adopting measures regarding the protection of cultural property in case of armed conflict;

Providing adequate protection to civilians, women, children and disadvantaged persons in case of armed conflict;

Striving to ensure adequate resources to achieve the objectives set out by the Strategy;

Undertaking actions in support of promoting the international humanitarian law.

[...]

4. International Humanitarian Law Day in Romania (14 May)

[19] The importance devoted to the dissemination of IHL and the contribution of the Commission to this end are illustrated by the adoption of Law no. 177 of 2013 through which the 14th of May was declared, upon the initiative of the Commission, as “International Humanitarian Law Day in Romania”.

[...]

5. International Criminal Court (ICC) and international criminal justice

[20] The Geneva Conventions and the Additional Protocol I state that grave breaches of IHL must be punished. Legal consequences of violations of IHL are not limited to those under the law of State responsibility. The persons committing such crimes are subject to individual criminal responsibility.

[21] By encouraging the national prosecution of war crimes and, more significantly, by establishing international bodies such as the ICC and the ad-hoc international criminal tribunals, the international community has placed an increased focus on the repression of serious violations of IHL.

[22] Under the Rome Statute of the International Criminal Court, serious violations of IHL and grave breaches of the Geneva Conventions are classified as war crimes. More specifically, the Statute codified the well-established body of war crimes committed in armed conflicts. Thus, not all breaches of IHL fall within the jurisdiction of the Court, given that the less serious violations do not qualify as war crimes.

[...]

6. Resettlement activities

[23] Armed conflicts remain a major cause of forced displacement. Given the complexity of today’s warfare, the reality of the multifaceted interactions between humanitarian law, refugee law, and human rights law

cannot be overlooked in the context of ensuring the most effective protection for some of the most vulnerable victims of violence.

[...]

[24] The National Committee for Refugee Resettlement, a consultative body composed

of representatives from the Ministry of Internal Affairs and the Ministry of Foreign

Affairs, makes annual recommendations as regards the countries of asylum and refugee groups that the Romanian resettlement programme should focus on for the coming year. The Committee bases its recommendations on several aspects, including the UNHCR's projected global resettlement needs, Romania's foreign policy and the joint resettlement priorities of the European Union. The recommendations are submitted for approval to the minister of interior and the minister of foreign affairs.

[25] Romania has also contributed to the global resettlement efforts through the establishment of an Emergency Transit Center (ETC) in Timisoara in 2008, following a Tri-Partite Agreement between the Romanian Government, the International Organization for Migration and the United Nations High Commissioner for Refugees (UNHCR). The ETC can accommodate up to 200 refugees who for reasons of security urgently need to be evacuated from a country of asylum, but have not yet been accepted for resettlement to a third country. The selection missions, orientation sessions and medical examinations of the resettlement countries can thus be conducted in the best possible conditions.

7. Other actions and initiatives at the regional and international levels

[26] a) Romania has been a constant supporter of initiatives aimed at strengthening compliance with IHL at the international level, such as "the Geneva intergovernmental consultation process" co-facilitated by Switzerland and the International Committee of the Red Cross (ICRC). It will continue to plead in favour of a non-politicized space for regular intergovernmental dialogue on topics of common interest in this field.

[27] b) Romania has used the momentum offered by the sessions of the International Conference of the Red Cross and Red Crescent (IC) to reaffirm its voluntary commitment to strengthen compliance, promotion, dissemination and implementation of international humanitarian law, through the common pledges by the EU and its Member States. [...]

[28] c) Furthermore, Romania supported the preparation of annual reports on the EU Guidelines on promoting compliance with IHL as a means of better disseminating knowledge of the European Union's work in this field and helping to improve the coherence and effectiveness of its efforts.

[...]

[29] d) Complementary to efforts in the global arena, Romania tried to seize the opportunities for regional dialogue as important avenues to foster observance of IHL through providing context-specific solutions.

[30] On 13 October 2006, the Commission organised an extraordinary meeting with the National Advisory Committee on Coordinating the Application of International Humanitarian Law in the Republic of Moldova with the view to allowing for an exchange of information on the activity and added value of these inter-institutional mechanisms, as well as on useful means of widening the knowledge about IHL, especially in schools.

[...]

[31] Participants agreed on the need to develop the regional dialogue on IHL as a way of boosting the impact of national mechanisms and processes, as well as expressed availability to contribute to establishing and maintaining a network of IHL focal points in the region with the purpose of exchanging information, experiences, best practices and possibly even identifying means of contributing collectively to strengthening IHL compliance at a more general level.

[32] e) [...]

[33] On September 27-28, 2018, the Romanian Ministry of Foreign Affairs and the Public Ministry, together with the Auschwitz Institute for Peace and Reconciliation, launched the National Expert Network on Genocide Prevention and Multidisciplinary Research on Mass Graves. This project was aimed at bringing together and enhancing the knowledge of Romanian experts involved in criminal investigations, police and forensics work, criminology, pathology, anthropology and history. At the same time, the initiative was meant to contribute to the international efforts in the area of investigating and prosecuting the most serious crimes under international law, by creating the possibility to lend the national expertise in the field, as needed.

In the period 2017-2019, the Ministry of Foreign Affairs and the Public Ministry organised a series of national and regional seminars on the subject of genocide and mass atrocities that helped stimulate inter-institutional cooperation, consolidate relevant expertise and raise awareness about the importance of IHL.

8. The Romanian Red Cross Society

[34] The Romanian Red Cross was established on 4 July 1876 and has been continuously operating since then. The Romanian Red Cross is the only humanitarian institution in the country that has clear duties as auxiliary to the public authorities, especially in the field of prevention and intervention in case of disaster.

[...]

[35] At the same time, promoting IHL within the general public, in particular young people, remains at the core of the work of this institution. Consequently, one of the priorities of the Romanian Red Cross is to consolidate its role as an important provider of education in the area of IHL.

[36] The Romanian Red Cross has a rich history of collaboration with the Romanian public authorities in delivering social, health and educational services, according to its mission. According to Art. 11 (i) of Law no. 139/1995, it can conclude protocols of cooperation and elaborate action programmes together with other competent entities, institutions or ministries. The National Society can also be invited as an observer to meetings of the National Commission on IHL where topics of common interest are discussed.

III. Dissemination, Training and Awareness Raising Activities

1. The personnel of the Ministry of National Defence

[37] The Ministry of National Defence, through its specialized structures, gives special attention to the dissemination of the rules of international humanitarian law within the armed forces, in accordance with the specific objective set out in the National Strategy.

[38] This goal is achieved through:

- a) the integration of the IHL norms into the military doctrine, training and educational programmes;
- b) the issuance of orders or instructions for the armed forces in compliance with Romania's obligations under the IHL.

[39] Therefore, consolidating knowledge about IHL is part of the continuous professional training of the Romanian Armed Forces, the curricula of military educational establishments/ institutions, as well as of the planning and conduct of domestic or international military operations.

[40] To this end, the Ministry of National Defence has taken the following concrete measures:

[41] creating an organizational framework to carry out the activity of integrating the norms of international humanitarian law into the training process of the armed forces composed of:

[...]

[42] organising relevant training and educational courses by the Center for International Humanitarian Law and the "Carol I" National Defence University:

[...]

[43] encouraging the attendance of relevant training courses abroad, especially at the International Institute of Humanitarian Law in Sanremo and the Royal Higher Institute of Defence in Brussels;

[44] introducing a course on international humanitarian law into the military institutions' curricula, in accordance with Article 83 of the Additional Protocol I to the Geneva Conventions of 1949;

[45] introducing humanitarian law topics into various training programs of military units;

[46] creating scenario-based training sessions that require understanding the norms of humanitarian law;

[47] introducing IHL in the training programmes for the military personnel participating to military operations/missions abroad;

[48] developing and disseminating manuals on international humanitarian law for the training of military personnel, as well as translating and editing specialized works by the ICRC;

[49] cooperating with governmental institutions and non-governmental organizations in the area of promotion and application of international humanitarian law.

2. The law enforcement and judicial personnel

[50] International Humanitarian Law was included in the curriculum and in the training programmes of the educational institutions belonging to the Ministry of Internal Affairs such as the "Alexandru Ioan Cuza" Police Academy in Bucharest, the "Vasile Lascăr" School for Police Agents in Câmpina and the "Septimiu Mureșan" School for Police agents in Cluj-Napoca.

[51] At the same time, the personnel of the Ministry of Internal Affairs participating in peacekeeping, military or civilian operations/missions under the umbrella of UN, NATO, EU or OSCE receive specialized training in the field of IHL. Moreover, the training of the personnel of the General Inspectorate for Immigration also includes IHL.

[...]

3. Teaching international humanitarian law in schools

[52] The Romanian authorities share the view that teaching about IHL as early as possible in the education process has the potential to instill the respect for peace, tolerance, multiculturalism and foster the civic conscience necessary for a healthy society.

[...]

[53] As regards the integration of IHL notions in the school curriculum, the following pathways have been pursued:

- the inclusion of relevant information in the textbooks of other socio-humanistic disciplines, such as Sociology, Philosophy, Social Studies;
- the inclusion of elements from the ICRC's handbook "Exploring humanitarian law" in the curriculum of the existing optional course "Human Rights";
- the elaboration and approval of the curriculum for the optional course "International Humanitarian Law", as part of the national offer of optional courses for high school with the duration of one school year (MER recommended the inclusion of this optional course within their educational offer upon the school's decision, starting with the school year 2011-2012);
- the use of information from the ICRC's handbook "Exploring Humanitarian Law" in extracurricular school activities with a minimum number of 10 hours.

Concerning the training of teachers, the following measures have been taken:

- the organization of training sessions for teachers who have previously trained other teachers of socio-humanistic sciences and history; this activity was also attended by history teachers interested in addressing issues of international humanitarian law;
- the organization of two training sessions for school inspectors for socio-humanistic sciences;
- the organization of three training sessions for interested teachers;

[...]

[54] In 2018, the Commission discussed the situation of the IHL courses in the regular university curricula and recommended, through the Ministry of Education and in full respect of the principle of university autonomy, maintaining and further developing the teaching of IHL in universities, given the continuous relevance of this subject and the need for national specialists in this area.

4. Other relevant activities

[55] The celebration of the International Humanitarian Law Day in Romania (the 14th of May) is used as an

opportunity to further raise awareness about the importance of IHL. In order to mark this anniversary, a series of events are organized annually by the competent authorities and the Romanian Red Cross.

[...]

IV. Domestic Jurisdiction over Violations of International Humanitarian Law and International Criminal Law

1. Legal basis for the prosecution and punishment of violations of international humanitarian law

[56] Under international law, both States and individuals can be held accountable in different ways for violations of IHL.

[57] The state responsibility requires inter alia implementation of the obligations to search for and prosecute those who have committed grave breaches of the Geneva Conventions, as well as the perpetrators of all serious violations of IHL. Moreover, all States Parties to the Geneva Conventions must cooperate in the search for and prosecution of those who commit such violations.

[58] By Decree no. 183/1954, Romania ratified all four Conventions for the protection of war victims, adopted in Geneva on August 12, 1949. The reservations to the Geneva Conventions introduced in the above-mentioned Decree were withdrawn through the Law no. 277/2002. In addition, through the Decree no. 224/1990, Romania ratified the first and the second Additional Protocols to the Geneva Conventions (1977).

[59] Moreover, by Law no. 111/2002, Romania ratified the Statute of the International Criminal Court (ICC), adopted in Rome on July 17, 1998. Under the Statute, serious violations of IHL and grave breaches of the Geneva Conventions are classified as war crimes and their perpetrators must be held individually responsible. For the purposes of Art. 87 par. 1, letter a) of the Statute, the Ministry of Justice was notified as the Romanian central authority designated to receive the requests of the ICC, to send them without delay for resolution to the competent Romanian judicial bodies and to communicate the required documents to the Court.

[60] The national criminal law that enables Romania to prosecute serious violations of international humanitarian law is the Criminal Code (Law no. 286/2009, as subsequently amended and supplemented).

2. Legal basis for the prosecution and punishment of war crimes, crimes against humanity and genocide

[61] Title XII (Art. 438-444) of the Criminal Code incriminates the crime of genocide, crimes against humanity and war crimes (war crimes against individuals, war crimes against property and other rights, war crimes against humanitarian operations and insignia, use of forbidden methods in combat operations, use of forbidden means in combat operations). The latter are incriminated both in the context of an international and

non-international armed conflict. The attempt to commit these crimes is also punishable (Art. 445). [...]

[62] According to Art. 153 par. (2) letter a) of the Criminal Code, the statute of limitation does not remove the criminal liability in case of genocide, crimes against humanity and war crimes, irrespective of the date when they were perpetrated.

[63] The breaches of IHL are subject to the principle of universality of the criminal law. Thus, according to Art. 11 of the Criminal Code, the Romanian criminal law also applies to other violations than those stipulated in Art. 106 (which provides for the principle of reality of the criminal law), if they were committed outside the Romanian territory by a foreign citizen or a stateless person who is located voluntarily on the Romanian territory, in the following cases:

[64] a) an offense was committed that the Romanian State has undertaken to repress on the basis of an international treaty, irrespective of whether it is incriminated by the criminal law of the State on whose territory it was committed;

[65] b) extradition or surrender of the perpetrator has been requested and denied.

3. Institutions in place for the prosecution of breaches of international humanitarian law

[66] For violations of IHL, it is mandatory that the criminal investigation be conducted by a prosecutor, according to Art. 56 par. (3) letter a) of the Criminal Procedure Code (CPC), with subsequent amendments and additions. The Prosecutor's Office attached to the Court of Appeal is competent to conduct the criminal investigation in cases of genocide, crimes against humanity and war crimes. The Military Prosecutor's Office attached to the Military Court of Appeal in Bucharest carries out the criminal investigation for violations of IHL committed by the Armed Forces service members.

[67] As regards the courts' competences, the Criminal Procedure Code (CPC) provides, in Art. 38 par. (1) letter a), that the court of appeal examines in first instance the crimes set out by the Criminal Code under Art. 438 – 445. Moreover, according to Art. 39 par. (1) letter a) of the CPC, the military court of appeal is competent to examine in the first instance the crimes set out by the Criminal Code under Art. 438 – 445, committed by Armed Forces service members.

[68] The prosecutors' offices initiated a series of investigations into alleged crimes of genocide, crimes against humanity and war crimes [...]

4. Extradition to other States or surrender to the International Criminal Court of persons charged with war crimes, crimes against humanity or genocide

[69] As a principle matter, the domestic law allows for the extradition of persons charged with war crimes,

crimes against humanity or genocide to another state, as well as for the surrender of these persons to an international criminal court. However, there is no practice in the implementation of these provisions up to now.

[70] Thus, according to Art. 19 of the Constitution:

- no Romanian citizen shall be extradited or expelled from Romania;
- by exemption from the provisions of paragraph (1), Romanian citizens may be extradited based on the international agreements Romania is a party to, according to the law and on a mutual basis;
- aliens and stateless persons may be extradited only in compliance with an international convention or on the basis of reciprocity;
- expulsion or extradition shall be ruled by the court.

[71] Furthermore, according to Art. 14 of the Criminal Code:

- extradition may be granted or requested on the basis of an international treaty to which Romania is a party or on the basis of reciprocity, under the conditions set out by law;
- as regards the member states of the European Union, the surrender or extradition of a person is granted or requested under the conditions set out by law;
- the surrender of a person to an international criminal court is granted under the conditions set out by law.

[72] As mentioned above, the competent national authorities have prepared a draft law on cooperation with the International Criminal Court (ICC) and initiated the formal approval procedure. In accordance with the Rome Statute, the ICC is complementary to the national criminal jurisdiction, meaning that the Court may exercise jurisdiction where the state is unable or unwilling genuinely to carry out the investigations or prosecutions.

V. PROTECTIONS

1. Protection of schools and educational facilities

[73] Continued access to safe education can help protect children and youth from the impact of armed conflict and contribute to building stronger, more resilient communities.

[74] The 2015 Safe Schools Declaration is a non-legally binding intergovernmental document that allows

states to reiterate support for the protection and continuation of education in wartime. The Declaration describes the immediate and long-term consequences of attacks on education and military use of schools and universities for students, teachers, and communities living in situations of armed conflict, highlighting the importance of putting in place key mechanisms, instruments, and initiatives that contribute to protecting education.

[75] By joining the Declaration, States commit to use the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, which offer practical guidance to deter the military use of schools and universities and to mitigate the impact of this practice on students' safety and education. These Guidelines, the result of several years of consultations with governments, armed forces, and international organizations, do not create new international legal obligations, drawing on existing practice to better safeguard the civilian character of educational facilities.

[76] By endorsing this document on 24 May 2017, Romania reconfirmed the importance attached to the continuation of education in emergencies and to the integration of the IHL obligations on which the Declaration and the corresponding Guidelines are based into relevant domestic policies, military doctrines and manuals. Moreover, Romania became part of the core group of countries led by Argentina and Norway that work to promote the endorsement of the Declaration worldwide and encourage governments to put their commitments into practice. More than half of the United Nations members have now joined the Safe Schools Declaration, which represents an important milestone in the global movement to protect learning at all levels during armed conflict.

2. Protection of the environment

[77] The right of every person to a healthy environment is recognized in Art. 35 of the Romanian Constitution, whilst the exercise of this right is regulated by the relevant national legislation. Moreover, as an EU Member State, Romania transposes and implements the European Union's environmental law and policies.

[...]

[78] Armed conflicts can cause severe and long-lasting damage to the environment. The obligations regarding the protection of the environment in the context of armed conflicts are set out in the conventions and protocols in the field of IHL to which Romania is a party.

[79] While the domestic legislation does not contain additional provisions with explicit reference to the situation of environmental protection during armed conflicts, several normative acts in the field of environmental protection, including specific legislation on environmental damage, can be applied to a wide range of exceptional situations with impact on the health of the population.

[80] Furthermore, the status of forces agreements to which Romania is a party include provisions with regard to the protection of the environment.

3. Protection of cultural property

[81] Cultural property (historical monuments, archaeological sites and mobile heritage) is protected by the national law.

[82] At the same time, Romania is party to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999, which focus on the protection of cultural property both in peacetime and wartime. [...]

[83] Consequently, Romania has adopted a number of preparatory measures in order to protect cultural property in the event of armed conflict, such as:

[...]

[84] At the same time, by Decision no. 1222/2005, the Government established a centralized procedure for carrying out and organizing the evacuation, including of cultural and patrimonial goods, in case of imminent armed conflict. In support of implementing this Decision, the authorities elaborated the Methodology for organizing and carrying out the evacuation activities of persons, goods, documents and materials containing classified information in situations of armed conflict. [...]

[85] Moreover, one of the specific objectives of the Romanian National Strategy on the Application of International Humanitarian Law refers to the adoption of measures in order to protect cultural property in the event of armed conflict, such as:

[...]

[86] The marking of cultural property is a preparatory measure taken during peacetime to protect cultural property against the foreseeable effects of an armed conflict. In accordance with Art. 6 of the 1954 Hague Convention on the Protection and Conservation of the Cultural Heritage, cultural property may bear a distinctive emblem to facilitate its identification. Its efficiency was proven in practice.

[87] Currently, in Romania, in the absence of explicit provisions, the marking with a protective symbol does not constitute a legal obligation for the owners / administrators of cultural properties.

[...]

[88] Romania has also adopted specific criminal law provisions in the field of protection of cultural property. Thus, Art. 443 par. (1) letter h) of the Criminal Code incriminates as war crime the use of cultural assets protected as such by the international humanitarian law, especially historic monuments, buildings devoted to religious worship, education, art or science, to launch an attack on the enemy side by military means.

VI. Means and methods of warfare

1. Weapons forbidden by law

[89] Given its objective of limiting the suffering caused by armed conflict, the international humanitarian law addresses both the behaviour of combatants and the choice of means and methods of warfare, including weapons.

[90] Thus, IHL contains the basic principles and rules governing the choice of weapons and prohibits and restricts the employment of certain weapons which cause useless suffering, indiscriminating or disproportional effects.

[91] Romania is party to the majority of international treaties in this area, including the following:

[...]

2. Arms trade

[92] By Law no. 32/2014, Romania ratified the Arms Trade Treaty adopted in New York on 2 April 2013, the most important legal instrument elaborated under the aegis of the United Nations in the field of international trade with conventional weapons, munitions and their component parts.

[93] The treaty requires states to refuse to authorise the export of arms if there is an overriding risk that the arms could be used to commit or facilitate a serious violation of human rights law or international humanitarian law.

[94] Consequently, the Romanian Government put in place a regime for the control of exports, imports and other operations with military products by adopting the Government Emergency Ordinance no. 158/1999.

[95] The Ministry of Foreign Affairs, through the Department for Export Controls, is the national authority in the field of export and import controls for military and dual use items and is responsible for the implementation of the governmental policy in this area.

VII. WAY AHEAD

[...]

[96] Romania remains committed to work to ensure compliance with IHL at all levels, heartened by the continued relevance of this body of law for the protection of civilians and the preservation of human dignity in times of armed conflict.

[97] Based on its national experience, Romania will further advocate for the establishment of national IHL committees with the task to monitor and help improve domestic implementation of IHL, as well as to promote knowledge about these norms.

[98] Along these lines, Romania has engaged in the preparation of this voluntary report as another means of increasing awareness about the importance of IHL within the national political-administrative system and within the public opinion.

[99] Romania will continue to be an active supporter of the mandate and well-functioning of the International Criminal Court, whose activity represents an essential contribution in the fight against impunity for the most serious crimes and will be a constant promoter of existing and future international legal instruments meant to consolidate further international humanitarian law.

Discussion

1. What is a voluntary report on the domestic implementation of IHL? Why do states publish them? How are they useful? What would change if every State published a national report similar to that of Romania? Should States parties to an armed conflict include in such reports equally information on their actual respect of IHL rules applicable in armed conflicts? Is the drafting of a voluntary report an obligation under the Geneva Conventions? Should the report only address IHL issues?

2. What is the role of National Committees regarding voluntary reports? Can the ICRC help states draft their voluntary reports?

3. (*Paras [39]-[57]*)

1. 1. How can this report help with the national implementation of IHL in Romania? How do “Dissemination, Training and awareness raising activities” help with national implementation of IHL?
2. (*Paras [7]-[11]*) Can you give concrete examples of actions aiming at respecting and ensuring respect for IHL during peacetime? What measures may be taken during wartime?
3. (*Para. [19]*) How do you think introducing an IHL national day contributes to dissemination of and/or respect for IHL?

4.
 1. 1. (*Paras [4]-[6]*) Do you agree that: “current violations of IHL are not a proof of a lack of relevance of this body of law, but, in many instances, a consequence of deliberate acts of non-compliance.”?
 2. (*Para [14] and [26]*) Since “IHL treaties have a limited number of mechanisms to ensure compliance with its norms” what existing judicial or quasi-judicial international bodies can take on this role? Is it relevant and efficient to rely on such bodies? Why does IHL lack a reporting mechanism?
 3. How can domestic courts help with the implementation of IHL?
5. (*Paras [10]-[14]*) What need is there for national implementation measures? Are these measures a requirement under the Geneva Conventions? If the State is also party to one or both of the Protocols? (GC I-IV, Common Arts 47/48/127/144; PI, Art. 83; PII, Art. 19)
6. (*Paras [34]-[38]*) What is the role played by National Red Cross or Red Crescent Societies in disseminating and ensuring respect for IHL? Why and how should IHL be taught in schools?
7. (*Paras [23]-[25]*) How do IHL and International Refugee Law interplay?
8. (*Paras [61]-[65]*) Is it an obligation for countries to criminalise genocide, crimes against humanity and war crimes in their domestic law? Would they be violating an international obligation if they did not do so? Must they foresee universal jurisdiction over war crimes? May Romania limit such universal jurisdiction to persons voluntarily present in Romania? Does this limit imply that a POW detained by Romania could not be prosecuted for war crimes? (GC I, Art. 49, GC II, Art. 50, GC III, Arts 85 and 129; GC IV, Art. 156)
9. (*Paras [69]-[72]*) How does extradition help strive war crimes?
10. (*Paras [73]-[76]*) Can declarations and guidelines help ensure respect for IHL even if they are not binding?
11. (*Paras [77]-[80]*) Why is it important to protect the environment in armed conflicts? How could it affect a country? Is the “right of every person to a healthy environment” found in the Romanian Constitution enough to ensure respect for IHL rules on the protection of the environment in armed conflicts? (P I, Art. 55; CIHL, Rules 44 and 45)
12. (*Paras [84]-[88]*) What solutions does Romania propose for the protection of cultural heritage? Would an emblem used to mark cultural properties help? Is it mandatory to use such an emblem? Would it have the same effect as the red cross emblem? Could the red cross emblem be used to mark these properties? (Convention for the protection of cultural property in the event of armed conflict, Art. 17)
13. (*Paras [89]-[91]*) How does Romania help restrict the use of certain means and methods of warfare?

