



REF.: ISMLLW 749 N E 5

QUESTIONNAIRE FOR THE PRAGUE CONGRESS

**THE CHALLENGES IN THE IMPLEMENTATION OF
INTERNATIONAL HUMANITARIAN LAW**

Introduction

The 20th Congress of the International Society for Military Law and the Law of War in the spring of 2015 in Prague, Czech Republic, will deal with the challenges in the implementation of international humanitarian law (IHL). In September 2013 the outlines for a questionnaire on this subject were discussed in a special workshop¹. The meaning of “Implementation” in this respect is not just the legal obligation to formally implement the Treaty law into national laws, but particularly the compliance to the rules. In the introduction of the workshop it was stressed that “*it does not matter how well the rules are written if there is no one to implement them and obey them*”. The greatest problem with IHL does not lie in insufficient rules, but in the lacking or defectiveness of their implementation. During the workshop three facets to implementation were identified: prevention, control and repression. From these three angles a wide variety of derivative and related subjects were discussed, such as: imperfect implementation, international criminal law, lessons to be learned from other areas of law, the Swiss ICRC initiative, responsibilities for countries not directly involved in the armed conflict, non-state actors, and shaping of a ‘*legal conscience*’ (‘red light example’). The questions of this questionnaire are derived from this workshop, and reflect the most, but not all, applicable subjects. The list of questions is deliberately kept limited to enhance participation.

The overall aim of the questionnaire is to collect the views and information of and from Countries from around the world in contribution to the international dialogue, understanding and improvement of the implementation of IHL. The International Society for Military Law and the Law of War’s National Groups are invited to coordinate with their national authorities. National Groups that respond to this questionnaire are requested to indicate which of the responses reflect their own views and which reflect those of their Country (as perceived by them). If a Country prefers not to take a public position on the occasion of the questionnaire/Congress on one or more of the questions, it is invited to answer the specific question(s) by marking: “No public position on the occasion of this questionnaire/Congress” and to go to the next question. Alternatively legal advisors/respondents may also provide their (collective or personal) opinion, in the case there is not a formal “national position” (for whatever reason). Replies of any kind or to only some of the questions can still be very helpful in preparing the Congress and are therefore also welcomed.

Please note: Parallel to this questionnaire the Chairman of the Society’s Committee for General Affairs has distributed a questionnaire on “Military orders, military superiors and military subordinates” for the session of that Committee, which will also take place at the 2015 Congress. That questionnaire is in preparation of that specific Committee-session during the Congress and should not be confused with the plenary subject on “The Challenges in the Implementation of International Humanitarian Law” and subsequently, this questionnaire.

Imperfect Implementation

1. Do you agree that there are three facets to implementation: prevention, control, and repression?
Please explain if you disagree or would like to comment on this statement.

¹ The Workshop Report: The Challenges in the Implementation of International Humanitarian Law, 23 September 2013, is published on www.ismllw.org under ‘previous events’.

2. Even though several mechanisms such as the International Fact-Finding Commission, the Protecting Powers, and the inquiry procedure are available, most of them have not been used recently, and some of them never at all. Why is this the case in your view?
3. States frequently claim that what is occurring is not an armed conflict, but merely a police operation, riot control, or a domestic counter-terrorism operation. What should be done to tackle the challenge which arises when States deny that IHL is applicable to a particular situation, in particular in the case of a non-international armed conflict?
4. Currently there are a little more than 100 national committees set up to advise and assist governments in the implementation of IHL. Should the international community consider making the establishment of such a national committee a legal or soft law obligation? What role and composition should such national committees have in your opinion?
5. How could the implementation of IHL by State armed forces be improved in your view?
6. To what extent and how should the national justice sector be trained in IHL?

Progress Through International Criminal Law

7. While some might say that the fight against impunity with the activities of the ICC, ICTY, ICTR and other specialized tribunals is proving to be quite successful, in the field of reparation and compensation not much progress has been made. Should reparation for victims be implemented at the national and/or international level? Please explain.

Lessons Learned from Other Areas of Law

8. How could IHL benefit from what international human rights law compliance mechanisms have accomplished?
9. How could the Geneva Conventions legal regime learn from other international treaties on the subject of institutional development, like conferences/assemblies of States Parties to conduct periodic reviews? For example, from environmental treaties, the Chemical Weapons Convention, the Convention on the Protection of Cultural Property in Armed Conflict, etc.
10. What (if any) are the potential complementary roles of the International Fact-Finding Commission on the one hand and the Human Rights Council on the other hand?

Specific Responsibilities for States Not Directly Involved in an Ongoing Armed Conflict

11. Is there an (emerging) norm that States that fund and support armed opposition must ensure that those armed groups that benefit from their money and their arms, conduct their hostilities in line with IHL? Compare for instance art. 6 para 3 and art. 7 of the Arms Trade Treaty adopted by the UN General Assembly in April 2013 on arms transfers and the risk of arms being used in violation of IHL.

Non-State Actors

12. How should one deal with armed opposition groups which are ignorant of the law?
13. Is it a problem that some armed opposition groups are designated as terrorist organizations? Please explain.