

*Permanent Mission of Romania
to the United Nations
New York*

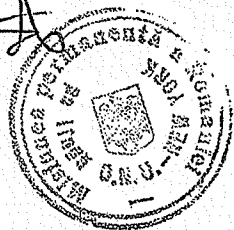


*Mission permanente de la Roumanie
auprès de l'Organisation des Nations Unies
New York*

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The Permanent Mission of Romania to the United Nations presents its compliments to of the Secretary General of the United Nations and, following the Verbal Note LA/COD/2 of 22 January 2007, has the honor submit Romania's report on the internal application of humanitarian law, regarding the two additional protocols of the Geneva Conventions of 1949.

The Permanent Mission of Romania to the United Nations avails itself of this opportunity to renew the Secretary General of the United Nations the assurances of its highest consideration.



New York, 1 October 2008

**To the Secretary General of the United Nations
New York**

Measures undertaken by the Government of Romania in order to disseminate and implement the international humanitarian law

Romania is party to most of the international humanitarian law treaties, including the Geneva Conventions of 1949 and the two Additional Protocols of 1977. Romania has ratified the 1977 Additional Protocols to the Geneva Conventions relating to the protection of victims of armed conflicts through the Decree no. 224/1990, published in the Official Gazette of Romania on 14 May 1990.

Romania withdrew the reservations to the Geneva Conventions (Law no. 277/2002, published in the Official Gazette of Romania no.368 on 31 May 2002) and recognized the competence of the Fact Finding Commission, according to the provisions of article 90 of the Additional Protocol I to the Geneva Conventions (Law no. 27/1995, published in the Official Gazette of Romania no. 77 on 27th April 1995).

The Romanian Constitution recognizes the precedence of international law over national law. According to **Article 11** on International law and national law, Title I General principles, the Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to. Treaties ratified by the Romanian Parliament, according to the law, are part of national law.

Considering that the grave breaches of the provisions of the 1949 Geneva Conventions and the two Additional Protocols of 1977 constitute serious violations of IHL treaties and that the national legal framework of the States Parties to the 1949 Geneva Conventions should include provisions that try and convict individuals which are responsible for these grave breaches, Romania ratified the Rome Statute of the International Criminal Court on **13 March 2002 (Law no.111/2002)** and included in its penal code provisions punishing the breaches of the 1949 Geneva Conventions and the API provisions, such as the misuse of the Red Cross emblem during military operations, the destruction, plunder and appropriateness of cultural goods, genocide, inhuman treatments (taking hostages, deportation, deprive of liberty without legal grounds). Romania considers that the prosecution of individuals for those offences that fall within the International Criminal Court's jurisdiction should be made by taking

into account the complementary principle.

In the process of drafting a new penal code, the Romanian competent authorities have expressed their intention for transcribing the list of offences that falls within the

ratione materiae of the ICC, into penal code, more precisely those crimes which can be qualified under Article 8, Article 6 and Article 7 of the Statute as war crimes, genocide, crimes against humanity.

The API provisions and principles regarding the fundamental guarantees can also be found in the national legislation. Among these provisions and principles we mention :

- promptly informing the arrested, detained or interned person for actions related to the armed conflict in a language that that person understands, of the reasons why these measures have been taken, as well as the obligation of release that person with the minimum delay possible and in any event as soon as the circumstances justifying the taken measure (arrest, detention or internment) have ceased to exist - API article 75 (3)
- Guaranteeing the right to defense, according to API article 75 (4)
- Principle of individual penal responsibility - article 75 (4)(b) API
- The principle of presumed innocence until the guilty of the person charged with an offence is proved, according to law, article 75 (4)(d) API
- The principle **res judicata**, API article 75 (4) (h)
- Principle of respect of human dignity
- The provisions stipulating that some categories of detained and arrested persons shall be separated held in quarters.

In order to comply with the API provisions, especially with the provisions of article 81 and to facilitate the activity of the Red Cross, on the national legislation was adopted the Act no 139 of 29 December 1995 on the National Red Cross Society of Romania.

Also, in order to comply with the provisions of AP I **article 34 (2)** regarding the remains of deceased, Romania concluded *bilateral agreements* with several States, such as the Russian Federation and the Federal Republic of Germany.

The Agreement between the Government of Romania and the Government of the Russian Federation concerning the legal regime of the Romanian military graves situated on the territory of the Russian Federation and the legal regime of the Russian military graves situated on the territory of Romania was signed at Bucharest on 8th November 2005 and ratified on 2006, Law no. 413.

The Agreement between the Government of Romania and the Government of the Federal Republic of Germany concerning the legal regime of the Romanian military graves situated on the territory of the Federal Republic of Germany and the legal regime of the German military graves situated on the territory of Romania was signed at Bonn on 25th June 1996 and ratified on 1997, Law no. 170.

On 15th May 2007, ***the Romanian National Committee on International Humanitarian Law*** was officially launched, in the presence of representatives of the International Committee of the Red Cross Regional Delegation for Central Europe, in the presence of the Committee's members, representatives of the National Red Cross Society, civil society and academic institutions. The legal basis was a decision of the Government of Romania adopted on 29 March 2006 and published in the Official Gazette on 13 April 2006.

The Romanian National Committee on IHL includes representatives of the Ministries of Foreign Affairs, Defense, Justice, Home Affairs and Administration Reform, Public Health, Education, Research and Youth. The Chairmanship is assured on rotating basis among the participating ministries.

The National Committee is an advisory body of the Romanian Government and it is the responsible organ for the implementation of IHL in Romania. Also, the National Committee has the main task of proposing measures for the implementation of International Humanitarian Law at the national level. In order to fulfil its task, the National Committee on IHL elaborated a national Strategy on IHL, which was approved by the Prime-Minister of Romania, through the ***Decision no 298 of 17th December 2007 and published in the Official Gazette no 871.***

The Romanian National Strategy on implementation of international humanitarian law has as purpose the assurance of awareness and compliance with the obligations that Romania must fulfil through the ratification of international treaties in the field of IHL, as well as through the dissemination of IHL relevant provisions within the civil society. The Strategy valorizes the humanitarian traditions of the Romanian people, in particular of the armed forces, as well as the experience gathered by the structures with responsibilities in the IHL field, especially as a consequence of the participation to various international missions.

Among the general and special objectives (goals) included in the national Strategy, we nominate the followings:

- to advise the government on measures to be adopted in order to implement, apply and disseminate international humanitarian law at the national level
- to monitor new developments in international humanitarian law and consider their implications for Romania
- to analyze the main trends within the European Union in the international humanitarian law field, to support the efforts that the States make in order to elaborate a treaty within the United Nations Organization, regulating the weapon trade and to find appropriate measures to apply the European Union Code regulating weapon export; to examine with the other EU Member States the possibility to participate in regional pilot projects for the dissemination of the International Committee of the Red Cross (ICRC) guidelines regarding the internal facilities and the regulation of help in case an international disaster occurs.
- to promote the ratification of and accession to international humanitarian law treaties and the amendment of national legislation to comply with these treaties
- to undertake measures as to impulse the ratification process of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the adoption of an additional distinctive emblem (Protocol 111), and to adopt the adequate legislation for the prevention and repression of the incorrect use of the protective emblems (GI, article 53-54; Gil, article 43-45), as well as to assure the adequate implementation of the International Humanitarian Law international instruments, specially the 1949 Geneva Conventions, the provisions of the Additional Protocol I, Protocol IV to the 1980 Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be excessively injurious or to have indiscriminate effects, Geneva, 10 October 1980.
- to support the activity of the International Fact-Finding Commission
- to contribute to the dissemination of humanitarian law, to analyze national legislation and make proposals for bringing it into line with the requirements of international humanitarian law, to analyze the relationship between

international humanitarian law and the implementation of international sanctions in the event of serious breaches of the rules of international humanitarian law, to protect the cultural property in the event of armed conflict

- to disseminate, teach and popularize humanitarian law and to monitor the dissemination and implementation of international humanitarian law within the armed forces and the other structures with responsibilities in this field, as well as within the civil society.
- > Among the proposed measures to be taken on the national level, in order to disseminate the IHL norms within the armed forces, the Government of Romania nominates the following: integration of the international humanitarian law norms within the military doctrine, the training programs, the educational programs, giving certain dispositions or orders for the armed forces (including gendarmerie troops), that reflect the way in which the Romanian State complies with the international humanitarian law, training of the armed forces members taking part in international missions (including the peacekeeping operations), both during such operations, and prior to such operations, for the application of the international humanitarian law.
- > Among the proposed measures to be taken on the national level in order to disseminate the IHL norms within the civil society the following measures shall be taken: introduction, as an optional study matter, of international humanitarian law in secondary schools of vocational profile such as theological, military, pedagogical; elaboration of an International Law Guide containing fundamental elements of the International humanitarian law practice and customs contextually applied by citizens who, in one way or another, in various capacities or circumstances, come under the incidence of international humanitarian law.
- to cooperate and exchange information with ICRC, with other relevant organizations and with similar National Committees on IHL, which have a similar judicial system as the Romanian one.³

Regarding the Strategy on IHL, Romania informed the ICRC on the publication of the Strategy in the Official Gazette.

Taking into account the fact that Romania has to comply with the obligations resulting from the international treaties to which Romania is Party to, for the implementation of the international humanitarian law within the Romanian Army the following measures have been taken:

- Special training of the legal advisers in order to advise military commanders at the appropriate level on the application of the Geneva Conventions and AP I and II Protocols and on the appropriate instructions on IHL to be given, in due time, to the Romanian armed forces personnel.

- Adoption of specific legislation concerning the participation of the Romanian Armed Forces in joint international missions. **Law no 42 of 15th March 2004** on the participation of the Romanian Armed Forces at missions outside the territory of the Romanian State, published in the Official Gazette of Romania *no. 242 on 1st March 2004*, which in **Article 11 (1)** stipulates that "the transfer of authority is carried out by the Ministry of Defense and represents the action through which the Romanian State hands over the control at the operational and tactical level of its participating forces in a certain mission to the commander or to the foreign commandment that leads/conducts the respective mission

(2) the participants at the mission execute the orders of the Force Commander, according to the established issues at the moment of transfer of authority, by respecting the international law provisions and the rules of engagement.

(3) the Romanian Armed Forces during the fulfilling of the missions outside the territory of the Romanian State, can have over their operational and tactical control, units or sub-units of the Foreign Armed Forces with which cooperate".

Article 12 (1) stipulates that "If the commander of the Romanian detachment/ squad receives from the superior hierarchical authorities of the mission an order that does not comply with the international law provisions or customs of war, the commander shall refuse the execution of the order".

(2) In the case stipulated in paragraph 1, the commander of the Romanian detachment/ squad shall immediately inform the Romanian hierarchically superior authorities and follows their instructions".

According to article 8 (b) of the **Law no. 80/1995** regarding the statute of the military personnel, the execution by the military personnel of the acts, that do not comply with the law, customs of law and international conventions to which Romania is Party to, is forbidden."

- In 1990, in the structure of the General Staff, it was created a legal office for international humanitarian law with the following main tasks: to coordinate the activity of dissemination and application of IHL as an integrating part of the process of forming and improvement of the training of the officers and non-commissioned officers, as well as of the instruction of soldiers and volunteer NCOs, to cooperate with internal, as well as with international governmental and non-governmental institutions with responsibilities and preoccupations in the field of IHL.

- Within the General Staffs of different categories of Armed forces-Romanian land forces, Romanian Air forces, Romanian Naval forces- legal offices and offices for IHL with similar responsibilities to those of the Legal Office for IHL from the General Staff were established. However, these responsibilities, as sphere of influence, are limited to the respective armed forces.

- The establishment in 1993, through the decision of the minister of defense, of the *Center of International Humanitarian Law*, with its headquarters in the city of Ploiesti. The Center has as main tasks to assure the adequate training of IHL instructors and of the personnel that takes part in international missions by organizing courses, seminars, round tables and training sessions, to put into practice the conception of the Romanian Ministry of Defense regarding the implementation of the international humanitarian law norms in the process of training of the Romanian army, to point out the responsibilities of the military structures and of the civil authorities in order to assure the protection of different categories of persons and goods, the integration of the IHL provisions in the legislative military system: doctrines, provisions, regulations, instructions and so on, to inform and to support the personnel of the Ministry of Defense in order to better know the provisions of the international treaties on IHL as to be applicable by the Romanian Armed Forces during military operations.

The Center has its own newsletter "The latest legal news- military law and international humanitarian law", as well as its own website.

- Including the relevant provisions of the international treaties on IHL into the National defense doctrine and the doctrines of different armed forces categories. The Romanian military strategy, which is a basic document of the Romanian Armed Forces, includes strategic concepts such as arms control, enhanced and more operational partnership in order to prepare the Romanian Armed Forces for integration into a collective security environment.

- Appointing of the officers-instructors for IHL in the general staffs of all units until the level of battalion, through the decision/order of the minister of defense.

- Publication of several collections of treaties such as:

- "International Law regarding the conduct of military operations and the statute of some weapons and system of weapons" (The Hague Law- collection of treaties)
- "International Humanitarian Law and the protection of persons in the event of an armed conflict" (The Geneva Law-collection of treaties)

- Publication of general military regulations and regulations of specialty, handbooks and instructions such as:

"IHL-1, Handbook for the instruction of soldiers in international humanitarian law (person, group/branch, platoon, company)"

"IHL-2, The Statute of captured persons"

"IHL-3, Handbook for the instruction of the Army personnel in international humanitarian law.

- the Ministry of Defense concluded in 1998, "The Cooperation Agreement with ICRC on the knowledge of the IHL norms". The Agreement is the legal basis for carrying on/proceeding joint activities.

- The organization of courses, seminars and practical activities for training of IHL advisers and military personnel participating in peacekeeping operations. Between 26 May - 30 May 2008 a course on IHL was organized at the headquarters of the Center of International Humanitarian Law.

We mention that the National Committee on IHL elaborated a list with the main international humanitarian law treaties, legal international law instruments to which Romania is a Party to (Annex).

Romania takes into account the cooperation, valuable exchange of information, expertise, assistance provided by relevant international organizations, national committees on IHL, ICRC and international and regional experts on issues of IHL. Therefore, at the 30th International Conference of the Red Cross and Red Crescent, held in Geneva in November 2007, the Government of Romania made a pledge, in cooperation with the Romanian National Red Cross Society. According to the pledge, the Government of Romania will intensify its efforts in order to ratify Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Adoption of an Additional Distinctive Emblem (Protocol III) of 7 December 2005, as well as to inform the ICRC in due time on the national legislation, practical measures for the promotion, dissemination and implementation of international humanitarian law at the national level (educational institutions, armed forces, civilian population).

Romania considers that a particular attention may be paid on the challenges posed to international humanitarian law by asymmetric warfare, by the issues related to the private military companies such as compliance with international humanitarian law, human rights law, customs of war, rules of engagement and the post conflict situations, in order to assure the compliance with IHL norms, to re-affirm the important role of IHL in armed conflict, to avoid the lack of respect for IHL rules in armed conflict, the consequences of cluster munitions, the misuse and abuse of the recognized emblems (an important role could be played by National Red Cross Societies), combating impunity, assure adequate training for military personnel deployed on international peacekeeping operations, raising awareness of IHL, strengthening the partnership with the ICRC and with national commissions or committees on IHL, utilizing the existing IHL mechanisms.

Bucharest

22 September 2008