

Translated from Spanish

Permanent Mission of Spain to the United Nations

No 458 FP/ot

The Permanent Mission of Spain to the United Nations presents its compliments to the Secretary-General and, in response to Note LA/COD/2 of 9 April 2010 concerning General Assembly resolution 63/125 of 11 December 2008 entitled “Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts”, has the honour to transmit herewith the report of Spain on the status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts and on the measures taken to strengthen the existing body of international humanitarian law, *inter alia*, with respect to its dissemination and full implementation at the national level.

The Permanent Mission of Spain to the United Nations takes this opportunity to convey to the Secretary-General of the United Nations the renewed assurances of its highest consideration.

New York, 5 May 2010

The Secretary-General of the United Nations
New York

Report of Spain on the status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

1. Dissemination

Article 83 of the first Protocol Additional to the Geneva Conventions, adopted on 8 June 1977, sets out the requirement to disseminate knowledge about the obligation to protect victims of armed conflicts. Consequently, our military training includes the dissemination of these provisions.

The Royal Ordinances for the Armed Forces, adopted by Royal Decree No. 96/2009 of 6 February 2009, a compendium of rules that not only regulate military service but also comprise an ethical code governing the conduct of members of the armed forces, were a qualitative leap forward inasmuch as they introduced ethics, and, in particular, international humanitarian law, into military operations. An entire chapter of this code of ethics for all the armed forces is devoted to ethics in operations. That chapter, chapter VI, sets out the obligation to become familiar with, disseminate and apply the content of the international conventions ratified by Spain relative to the amelioration of the condition of the wounded, sick and shipwrecked members of the armed forces, to the treatment of prisoners of war and to the protection of civilian persons, as well as those relative to the protection of cultural property and to prohibitions or restrictions on the use of certain weapons.

In addition, the Ministry of Defence has entered a framework cooperation agreement with the Spanish Red Cross, providing for the implementation of an annual action plan which includes, inter alia, cooperation in the teaching of international humanitarian law by Red Cross personnel in some of the courses mentioned below.

Furthermore, before joining a peacekeeping operation abroad, all members of the Spanish armed forces undergo preparation which emphasizes the precepts of international humanitarian law and includes an analysis of the customs and culture of the deployment area. These are elements of the field manuals distributed to all members of the mission, who also receive a pocket handbook outlining how they should conduct themselves in order to guarantee the protection of victims of armed conflicts.

Regarding military education, the frame of reference for the organization of military education is Act No. 39/2007, of 19 November 2007. Title IV describes education in the armed forces, which is organized as follows:

- Basic military training
- Advanced military training
- Higher studies in national defence

1.1 Basic training for all members of the armed forces

The purpose of basic training is to prepare career members of the armed forces to join the ranks and to train soldiers and sailors for entry into the auxiliary or professional forces.

While they may differ in duration, content and total class hours, all curricula cover basic law, ethics, military law, international relations, maritime law (for navy units and military defence counsel) and aeronautical law (for air force units and military defence counsel), and they all make reference to the Geneva Conventions and their Additional Protocols.

Special mention should be made of the module on the law of armed conflict in the curriculum for defence counsel, which includes both theory and practice components. That training is carried out in cooperation with the Spanish Red Cross Centre for the Study of International Humanitarian Law.

In addition to their regular courses, students can attend seminars, lectures, colloquiums and courses, on such subjects as international humanitarian law, conducted in cooperation with such organizations as the Red Cross, or courses on these subjects and others of interest in the field of national defence taught in conjunction with public universities.

1.2 Advanced military training and higher studies in national defence

The purpose of advanced military training is to prepare professional members of the armed forces for specialized functions and to equip them with the most up-to-date and broadest possible knowledge for the discharge of their duties, including general education and specialized military degrees.

The purpose of higher studies in national defence is to prepare career officers to perform general staff duties and to train them for the rank of brigadier. Higher studies in national defence cover such areas as peace, security, defence and military policy, and are designed not only for professionals in the armed forces but also those in public administration and members of society in general.

Every year the following courses are offered (as part of either advanced military training or higher studies in national defence) and incorporate aspects of the Geneva Conventions and the Additional Protocols:

- Operational military law
- Law of armed conflict for professors of military schools
- Law of armed conflict
- General staff
- Observers for peacekeeping operations
- Peacekeeping operations
- Human resources, higher level
- Civil and military cooperation
- Training for the ranks of major and senior non-commissioned officer in the three services
- Preparation for the unified officers' ranking
- Civil and military cooperation for reservists

2. Application

Spain has applied the Additional Protocols relating to the protection of victims of armed conflicts and taken measures to strengthen the existing body of international humanitarian law, as follows:

The Basic Act on National Defence, the Act on the Military Career and the Royal Ordinances for the Armed Forces comprise a compendium of the ethical principles and rules of conduct that serves as guidelines for all members of the Spanish armed forces.

This body of regulations incorporating the rules of conduct established in the international conventions ratified by Spain and the principles of international humanitarian law is comprehensive and completely up to date, as the relevant implementing legislation — namely, Basic Act No. 5/2005 on National Defence (17 November 2005); Act No. 39/2007 on the Military Career (19 November 2007); and Royal Decree No. 96/2009: “Royal Ordinances for the Armed Forces” (6 February 2009) — was adopted recently.

It is highly significant that the Royal Ordinances for the Armed Forces give precedence to international humanitarian law. Article 11 of the Preliminary Title provides that members of the armed forces “shall conduct themselves in a manner that guarantees respect for individuals, the common good and international law applicable in armed conflicts”.

The framework guaranteeing that members of the armed forces will conduct themselves in accordance with international humanitarian law is constituted by article 55 of the Title on Actions of Commanders, which provides that “no commander ... may issue orders contrary to law or that constitute a crime” and article 56 on Serious Criminal Liability for Crimes against International Humanitarian Law. In addition, article 48 of Title II on Discipline provides that “if orders involve carrying out criminal acts, especially crimes against the Constitution and against protected persons and property in armed conflict, members of the armed forces shall be under no obligation to obey them”.

Article 85 entitled “Principle of Humanity”, contained in Title IV on Operations clearly embodies the spirit of the Geneva Convention and its Additional Protocols, as it provides that “their conduct in any conflict or military operation must conform to the applicable rules of the international treaties on international humanitarian law to which Spain is a party.

That is further developed in Chapter VI on Ethics in Operations, which goes into specific duties under international humanitarian law (art. 106); the protection of the wounded, sick, shipwrecked, prisoners, detainees and civilian population (art. 107); the search for the wounded, sick, shipwrecked and dead (art. 108); the treatment of prisoners or detainees (art. 110); the principle of the distinction between civilians and combatants and between civilian property and military targets (art. 111); the protection of the specially vulnerable population (art. 112); the protection of cultural property (art. 113); and prohibits means and methods of warfare not in conformity with international humanitarian law (art. 114).

Finally, Chapter III on Peacekeeping and Humanitarian Assistance Operations deals with aspects related to the protection of the population (art. 94); the principle

of humanity (art. 95); or respect for the culture and customs peculiar to the deployment area (art. 96).

Members of the armed forces who contravene the aforementioned principles will be punished in accordance with the Military Criminal Code, adopted through Basic Act 13/1985 and amended by Basic Act 3/2002. The Military Criminal Code also gives precedence to “crimes against the laws and customs of war”, described in Title Two of the nine titles in the Book of Crimes. Articles 69 to 78 set out the penalties for violating the principles of international humanitarian law, in order of the seriousness of the acts committed.
