

Implementation of International Humanitarian Law in the OAS Member States

At its 37th regular session (Panama, June 2007), the General Assembly adopted resolution AG/RES. 2293 (XXXVII-O/07), "Promotion of and Respect for International Humanitarian Law", wherein it instructed the Inter-American Juridical Committee to prepare and propose model laws supporting efforts to implement treaty obligations concerning international humanitarian law, on the basis of priority topics identified in consultation with the Member States and the International Committee of the Red Cross, and to present a progress report on this matter prior to the thirty-eighth regular session of the General Assembly.

At the Inter-American Juridical Committee's 71st regular session (Rio de Janeiro, August 2007), Dr. Dante Negro, Director of the Office of International Law, recalled that the Committee on Juridical and Political Affairs (CAJP) currently had this topic under study. He remarked that in the last three years, the topic had taken on great importance because of the mandates instructing the CAJP to hold special meetings to collaborate with the International Committee of the Red Cross and the Office of International Law (OIL). He said that last year, the Office was given a mandate to conduct a course on international humanitarian law, targeted at the personnel of the Permanent Missions and the OAS General Secretariat, all in an attempt to explain concepts and more broadly disseminate the topic within the Organization. Dr. Negro also noted that the mandate given to the Juridical Committee was basically to propose model laws, devoting particular attention to the operative part of the resolution which states that the model laws should be proposed "on the basis of priority topics identified in consultation with the Member States and the International Commission of the Red Cross." He suggested that the Inter-American Juridical Committee might prepare a letter or questionnaire for the Member States to ascertain what they consider to be the priority topics in the realm of international humanitarian law. The letter, he said, could also be sent to the International Committee of the Red Cross. Dr. Negro went on to say that his office had worked on a document on priority issues, which was based on informal conversations with the Red Cross and on the issues that had been raised in other General Assembly resolutions that did not necessarily directly concern the issue of international humanitarian law but that were related to it, such as the following: the International Criminal Court, terrorism, antipersonnel landmines, illicit weapons trafficking, and others. The document prepared by the Office of International Law was circulated. Its title was "Implementation of International Humanitarian Law in the Members States of the OAS: preparation and presentation of model laws" (ODI/doc.08/07).

Dr. Dante Negro also reported on a recent Seminar of Red Cross Committees, held in Mexico City, which discussed the topic of international humanitarian law. Dr. Negro suggested that the Committee might invite some member of the Red Cross to attend the March 2008 session, in order to hold a working meeting, and also in August, when they attend –as they do every year- the Course on International Law. As for the priority that the Red Cross attaches to the development of model laws on the subject, Dr. Negro indicated that in informal talks the Red Cross had expressed its interest in the topic of disappeared persons. He thought, however, that other topics might come up in direct dialogue between the Red Cross and the Committee.

In answer to Dr. Jorge Palacios' question as to the origin of the mandate given to the Inter-American Juridical Committee, Dr. Dante Negro explained that many of the political reasons for the mandate were unknown, but it was the Mexican Delegation that had proposed the mandate. Political motivation aside, Dr. Negro pointed out that many of the international treaties on the subject do not elaborate upon all the possible aspects in detail, and leave that job to domestic laws. He noted that a State need not adopt a model law in its entirety; it might adopt those provisions that are not at variance with its constitution and adapt them to fit the circumstances and needs of its domestic law.

Dr. Antonio Fidel Pérez observed that it might be useful to know which States were interested in the topic. He also noted that there was great confusion between human rights and humanitarian law. On this point Dr. Dante Negro commented that once each year the CAJP holds a special meeting on the topic; the next will be held in January 2008. He suggested that one of the rapporteurs for the topic might attend the meeting and that the Juridical Committee could ask the Member States about what they consider to be the priority issues where model laws are most needed.

Dr. Ricardo Seitenfus suggested that terrorism and forced disappearance be selected as the subjects of the model legislation to be developed. He observed that all the amnesty laws adopted in some of the Member States would have to be taken into account.

Dr. Eduardo Vio Grossi felt it was important to get at what the Inter-American Juridical Committee understands by international humanitarian law and to consult the Member States and the Red Cross in order to get a better idea of what the priority issues were. The Committee's report, he said, would have to take into account which treaties were in force and what obligations were undertaken in those treaties that require implementing legislation.

Dr. Antonio Fidel Pérez suggested that the Secretariat put together a table of the conventions on international humanitarian law and their status of ratification, so as to enable the Committee to ascertain where any vacuum in this area might be.

The Chairman of the Inter-American Juridical Committee, Dr. Jean-Paul Hubert, suggested that two letters be sent: one to the Permanent Council and another to the Red Cross, requesting some guidance as to the Member States' priority issues.

In the end, the Inter-American Juridical Committee did not adopt a resolution on the matter. It named the following as rapporteurs for the topic: Drs. Ana Elizabeth Villalta Vizcarra, Ricardo Seitenfus and Jorge Palacios Treviño.