

Translated from French

**French Republic
Ministry of Foreign and European Affairs**

**United Nations and International Organizations Affairs Directorate
Subdirectorates for human rights and humanitarian and social affairs**

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Paris, 5 August 2008

Report of France to the United Nations Secretary-General

Pursuant to resolution 61/30 of the United Nations General Assembly on Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts

Paragraph 11 of the resolution:

11. *Requests* the Secretary-General to submit to the General Assembly at its sixty-third session a report on the status of the Additional Protocols relating to the protection of victims of armed conflicts, as well as on 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, based on information received from Member States and the International Committee of the Red Cross.

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France

[Original: French]
[5 August 2008]

I. The conventional instruments of international humanitarian law (1949 Geneva Conventions and Additional Protocols thereto)

A. Signature, ratification and accession

The four 1949 Geneva Conventions entered into force in France on 28 June 1951.

The Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977 was ratified by France on 11 April 2001.

The Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977 was ratified by France on 24 February 1984.

France is currently undertaking the process of ratifying the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). (The draft ratification legislation is under consideration by Parliament).

B. Implementation

As part of the implementation of international humanitarian law, it is customary for the Government of France, alone or in conjunction with the Red Cross Society, to make commitments at the International Conference of the Red Cross and Red Crescent held every four years. At the thirtieth Conference, which was held in Geneva from 26 to 30 November 2007, the Government of France, together with the French Red Cross, undertook to ratify Protocol III of 8 December 2005 and to enhance protection under domestic law for the emblems recognized by the Geneva Conventions and the Additional Protocols thereto.

With respect to the enhancement of protection for emblems, article 433-14, paragraph 2, of the Criminal Code criminalizes the use of a document establishing an official capacity or an insignia regulated by public authority. The term “insignia” may be taken to mean the emblems of the health services of armies and the national societies officially authorized to assist them. The condition of “regulation by public authority” is satisfied by incorporating into the national legal order conditions for the use of the emblems defined by duly ratified international instruments. However, the constituent elements of article 433-14, paragraph 2, of the Criminal Code are not sufficient to fully meet the objectives of protection for the emblems of the International Red Cross and Red Crescent Movement (namely, the Red Cross, the Red Crescent and the Red Crystal). French legislation is therefore currently being amended with a view to better protecting the emblems of the International Red Cross and Red Crescent Movement.

Pursuant to article 122 of the Third Geneva Convention of 1949, France undertook, at the aforementioned thirtieth Conference, to create a National Information Bureau (NIB). Article 122 stipulates that, upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. During times of armed conflict, this Bureau is responsible for communicating information on prisoners of war to its Government through the International Committee of the Red Cross (ICRC) Central Tracing Agency (CTA). The Minister of Defence of France is currently putting that commitment into effect, and a working group for the establishment of NIB has already been created. The aim of France is to identify without delay the organization, responsibilities and modus operandi of NIB so that it can be immediately effective whenever it needs to become operational. The ultimate goal is to provide, particularly to families, information on detained persons.

C. Customary international humanitarian law

France considers that the most widely recognized humanitarian principles, which often feature in treaty law (for example, common article 3 of the 1949 Geneva Conventions), are of a customary nature and that every State should therefore respect them as such. Nevertheless, France notes that some uncertainty remains as to the determination of the content and precise scope of these customary principles. In that regard, France has taken note of the ICRC study on customary humanitarian law. In its view, this study constitutes a useful doctrinal work which, however, could not be used as such against States.

D. Other initiatives

1. Protection of civilians

Concerned by the impact of armed conflict on civilian populations, France took the initiative of drawing up resolution 1674 (2006) concerning the protection of civilians in armed conflict, which was adopted unanimously by the United Nations Security Council on 28 April 2006. France believes it is essential to end the impunity of those who violate international humanitarian law. Resolution 1674 (2006) reaffirms the principle of the responsibility to protect and provides a legal and political framework establishing the full legitimacy of the Security Council to intervene to put an end to massive human rights violations.

France welcomes the deployment in Chad and the Central African Republic of the European Union-led peacekeeping force (EUFOR), which has a clear mandate to protect civilians. It also supports the activities of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) in the Sudan. France attaches particular importance to the integration of civilian protection into United Nations peacekeeping operation mandates and to the effective mainstreaming of such protection into various United Nations activities. France supports the establishment of an informal expert group on the protection of civilians within the United Nations Security Council. France also supports the role of the United Nations Office for the Coordination of Humanitarian Affairs in respect of protection for civilians,

particularly the preparation of a specific report on this issue, annexed to the annual report of the Secretary-General of the United Nations.

2. The fight against enforced disappearances

France played a major role in drawing up the International Convention for the Protection of All Persons from Enforced Disappearance adopted on 20 December 2006. It initiated the process and chaired the ad hoc committee responsible for formulating the text of the Convention. The commitment of the Government of France to the ratification process for the Convention demonstrates its determination to set an example with respect to the implementation of this instrument. On 8 July 2008, Parliament authorized the Government to ratify the Convention. The instrument of ratification will shortly be deposited with the Secretary-General of the United Nations in the near future.

French legislation is currently being amended with a view to making it possible to:

- Create specific provisions criminalizing forced disappearance in time of peace. (It should be noted that the criminalization of such acts in the context of armed conflict is already provided for in the draft law bringing French legislation into line with the Statute of the International Criminal Court.);
- Incriminate passive complicity (to hold hierarchical superiors criminally responsible);
- Establish a long statute of limitations proportionate to the extreme gravity of this crime, and longer than that of general law;
- Widen the competence criteria of the French courts (by introducing a quasi-universal competence clause similar to that applicable to torture and other cruel, inhuman and degrading treatment, terrorism and traffic in nuclear materials), and extend trial options when extradition is not possible.

E. Dissemination of the provisions of international humanitarian law in the French armed forces

Under articles 82 and 83 of Protocol I to the Geneva Conventions, States Parties are obliged to implement and disseminate international humanitarian law so that it may become known to the armed forces and to the civilian population, who assume responsibilities in respect of its application. For that purpose, States must provide legal advisers to advise commanders and ensure that appropriate instruction is given to the armed forces.¹ States Parties also undertake, in time of peace as in

¹ Article 82 of Additional Protocol I of 1977: “The High Contracting Parties at all times, and the Parties to the conflict in time of armed conflict, shall ensure that legal advisers are available, when necessary, to advise military commanders at the appropriate level on the application of the Conventions and this Protocol and on the appropriate instruction to be given to the armed forces on this subject.”

time of armed conflict, to disseminate international humanitarian law as widely as possible.²

France meets this obligation to disseminate international humanitarian law in a number of ways. Within the Ministry of Defence, the Office of the Law of Armed Conflicts is responsible for such dissemination and has produced several teaching documents, including a manual on the law of armed conflicts and an interactive CD-ROM on international humanitarian law. With the Chief of Staff of the Armed Forces, the Office is involved in training legal advisers, whose duty is to advise the Command at both the planning stage and in the conduct of operations. These advisers are also involved in disseminating the law of armed conflicts within the services of the Ministry of Defence in time of peace. Furthermore, every introductory military training course includes instruction in the law of armed conflicts. Training courses may be taken at the International Institute of Humanitarian Law in San Remo (Italy), or at the North Atlantic Treaty Organization (NATO) School in Oberammergau (Germany). These training courses complement the course organized each year for the Ministry of Defence by the legal affairs management and the Chief of Staff of the Armed Forces.

French law recalls the obligations imposed upon the military to respect and be familiar with international humanitarian law. Article D.4122-2 of the Defence Code recalls that military commanders “may not order any acts to be carried out that are inconsistent with the law, the rules of international law applicable to armed conflict or international conventions”. Article D.4122-3 of the same Code reminds subordinates that they must refuse to carry out orders that are clearly incompatible with the law on armed conflicts. Articles D.4122-7 to D.4122-11 of the Defence Code also recall the obligation to respect the rules of international law applicable to armed conflict. This last article, in particular, provides that “every soldier must be trained in, be aware of and respect the rules of international law applicable to armed conflict”.

F. Raising public awareness

The Government of France fully recognizes the status of and role played by the French Red Cross as an auxiliary to the public authorities, as provided for in the Statutes of the International Red Cross and Red Crescent Movement and as reaffirmed in various resolutions of the Movement at its international conferences. France fully endorses the thirtieth Conference resolution on the specific nature of the International Red Cross and Red Crescent Movement in action and partnerships and the role of National Societies as auxiliaries to the public authorities in the humanitarian field, as well as the resolution on the reaffirmation and implementation of international humanitarian law.

² Article 83 of Additional Protocol I of 1977: (1) “The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the Conventions and this Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction and to encourage the study thereof by the civilian population, so that those instruments may become known to the armed forces and to the civilian population.”

² “Any military or civilian authorities who, in time of armed conflict, assume responsibilities in respect of the application of the Conventions and this Protocol shall be full acquainted with the text thereof.”

The National Consultative Commission on Human Rights (NCCHR) is a French national institution for the promotion of human rights and international humanitarian law which provides the Government of France with advice and proposals on these issues. Pursuant to Act No. 2007-292 of 5 March 2007 relating to NCCHR and decree No. 2007-1137 of 26 July 2007 on the composition and operation of NCCHR, the Commission plays the role of a national agency responsible for advising the authorities on the implementation, dissemination and development of international humanitarian law. The Commission has established a working group on instruction in international humanitarian law with a view to including such law in educational curriculums.

II. Protection of cultural property during armed conflict (Convention of 14 May 1954 and Additional Protocols thereto)

A. Signature and ratification

The Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 was ratified by France on 7 June 1957.

The First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, adopted on the same day, was ratified by France on 7 June 1957.

The Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, adopted on 26 March 1999, entered into force on 9 March 2004. As at 25 March 2008, 48 States had ratified the Protocol. France has not signed this Protocol.

B. Implementation

The purpose of the 1954 Convention is to introduce national and international measures to ensure, in time of peace, the protection of cultural property in the event of armed conflict. To that end, the Convention establishes two levels of protection — general and special.

General protection is accorded to all types of cultural property, irrespective of its nature, geographical location or monetary value.³ This legal regime is provided for by the development of national measures that the States Parties “consider appropriate”.⁴ By its Act of 31 December 1913 on historic monuments, codified in the Heritage Code by the Order dated 20 February 2004,⁵ France has developed a set of legal rules which enable it to identify property that should be protected on the grounds of its historic, artistic or archaeological interest, irrespective of a context of armed conflict. French law establishes two types of protection: classification as historic monuments (imprescriptible property which is subject to an export ban), and inclusion in the supplementary inventory (a precautionary measure which gives rise to a reporting obligation on the part of the owner when, for example, he intends to

³ Article 1 of the Convention.

⁴ Article 3 of the Convention.

⁵ Order No. 2004-178 of 20 February 2004, article L. 621-1 et seq. of the Heritage Code.

convert the property).

The special protection granted by the Convention is more comprehensive and is applied to a limited number of objects of cultural property. It covers refuges intended to shelter movable cultural property in the event of armed conflict, centres containing monuments and other immovable cultural property of very great importance. The request for special protection must be submitted to the Director-General of the United Nations Educational, Scientific and Cultural Organization (UNESCO) by the authorities of the State where this property is located. All sites and refuges under special protection are listed in the “International Register of Cultural Property under Special Protection” maintained by UNESCO.⁶ To date, France has not entered any sites in this Register. France is considering compiling an individual inventory for the implementation of the Convention, since the current national inventory appears to be too broad.

France does not currently use the distinctive emblems proposed by the Convention to protect cultural property.

With regard to criminal penalties under French criminal law, article L.322-2 of the Criminal Code establishes that the destruction, degradation or deterioration of another person’s property “shall be punished by three years of imprisonment and a fine of 45,000 euros, when the property [...] is [...] a listed or registered building or movable object [...]”. Article L.322-16 of the Code of Military Justice provides that “any person, whether military or non-military, who in time of war, in the area of operations of a force or formation, in violation of the laws and customs of war, unduly uses the distinctive markings and emblems established by international conventions to ensure respect for the persons, property and locations protected by these conventions, shall be punished by five years of imprisonment”. The draft law on the incorporation of the Rome Statute of the International Criminal Court will strengthen the criminalization of damage to immovable cultural property.

With regard to dissemination, the Ministry of Defence has developed teaching materials on the protection of cultural property by the military during field operations.

Regarding the First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954, the protection of cultural property from exportation has long been under special protection in France, owing to its potential value in preserving and enriching the cultural, artistic, historic or archaeological heritage of France. In particular, France complies with Council Regulation (EEC) No. 3911/92 of 9 December 1992, which harmonizes the rules for monitoring the export of cultural property to third countries for all member States. The Central Office for Combating Trafficking in Cultural Property (OCBC), attached to the Ministry of the Interior and acting as a central authority, is responsible for implementing claims and restitution procedures as well as protective measures which apply to national treasures that have illegally left the territory of one member State for the territory of another member State. The obligation of restitution provided for by the 1954 Convention is implemented by taking legal action to claim full ownership before the French courts.

⁶ Article 12 of the Regulations for the Execution of the Convention.

III. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict of 25 May 2000

A. Signature and ratification

France has been a party to the Convention on the Rights of the Child of 20 November 1989 since 7 August 1990 and to its Optional Protocol of 25 May 2000 since 5 February 2003.

B. Implementation

The 1989 Convention prohibits the use and any form of recruitment of children under the age of 15 years, while the Protocol thereto of 2000 prohibits the forced recruitment and use in armed conflict of children under the age of 18 years. The voluntary recruitment of children under the age of 18 years is also prohibited. France respects the prohibition of the forced recruitment of children under the age of 18 years and, moreover, has issued a reservation to article 1 of the Protocol in order to establish 17 years as the minimum age for voluntary recruitment. The ratification of the Optional Protocol by France demonstrates its strong commitment to promoting and protecting the rights of the child. Having also ratified the Statute of the International Criminal Court, France has recognized the prohibition to recruit children under the age of 15 years in armed conflicts.

C. Other initiatives

France initiated three of the six major resolutions adopted by the United Nations Security Council between 1999 and 2005 to combat the phenomenon of child soldiers. Resolution 1612 (2005) established a Working Group of the Security Council, which is presided over by France. The activities of this Working Group have led to the demobilization of several thousand child soldiers throughout the world, the release and reintegration of child soldiers in Côte d'Ivoire and Chad, and an end to the use of child soldiers by the Sudan Liberation Army/Minawi faction and the Karen of Myanmar.

With the full support of France, the European Union has made the issue of children in armed conflict one of its main human rights priorities. Indeed, the European Union adopted guidelines on children in armed conflict in 2003, followed by a plan of action in 2005. In 2008, France has also actively participated with Slovenia and Italy in updating the guidelines to include more countries.

France has taken the initiative, in cooperation with the United Nations Children's Fund (UNICEF), to organize several international conferences on the issue of children in armed conflict. Under the joint chairmanship of the Minister for Foreign Affairs, Mr. Bernard Kouchner, and the Director-General of UNICEF, France held a ministerial conference in Paris on 5 and 6 February 2007 on the theme, "Free Children from War". During the conference 59 countries endorsed the Paris Commitments, a political document aimed at strengthening efforts to combat the phenomenon of child soldiers (for the disarmament, demobilization and

reintegration of all categories of children associated with armed groups). To follow up the Paris conference, France and UNICEF also organized a ministerial meeting on 1 October 2007 in New York, chaired by Ms. Rama Yade, Secretary of State for Foreign Affairs and Human Rights, which helped to garner the support of more countries for the Paris Commitments. At the ministerial level, France will co-chair the first forum to monitor the Paris Commitments in autumn 2008.

IV. Other treaties on international humanitarian law relating to the protection of victims in armed conflict

1. Protocol V on Explosive Remnants of War dated 28 November 2003 to the Convention on Conventional Weapons of 10 October 1980

A. Signature, ratification and accession

Adopted by consensus on 28 November 2003 in Geneva and entering into force on 30 October 2006, Protocol V on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980 complements and strengthens the regime to protect civilian populations from the effects of explosive remnants of war. France was among the first 25 States to have ratified Protocol V and actively supports its universalization. This instrument proposes specific and effective solutions to combat a problem that has a direct impact on civilian populations.

B. Implementation

The general framework for the implementation of Protocol V on Explosive Remnants of War to the 1980 Convention was adopted during the first conference of States Parties in November 2007. It comprises a mechanism for national reports (the first was submitted by France in April 2008), procedures for information exchange and a new mechanism for assistance and cooperation. Informal expert meetings have also been convened to help clarify the implementation modalities relating to clearance, cooperation and assistance, information exchange, preventive measures and assistance to victims. France now attaches great importance to the swift and effective implementation of Protocol V.

2. The Convention of 18 September 1997 on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction

A. Signature, ratification and accession

Having ratified the Ottawa Convention on 23 July 1998, France supports the universal ratification of this Convention. At the interface of disarmament, international humanitarian law and development assistance, the Ottawa Convention is strictly applied only to mines designed for anti-personnel use. Based on a rationale for total prohibition, its first set of measures cover the prohibition of the use, stockpiling, production and transfer of anti-personnel mines, while a second set

cover international cooperation and assistance in different areas of humanitarian mine clearance. France was the first of the five permanent members of the Security Council to ratify the Ottawa Convention, in July 1998.

B. Implementation

France has fulfilled its commitments under the Ottawa Convention in an exemplary manner, including by adopting the Act of 8 July 1998, establishing a National Commission for the Elimination of Anti-Personnel Mines, and by completing operations for the destruction of stockpiles by December 1999. The First Review Conference of the Ottawa Convention, held in Nairobi in December 2004, saw the adoption of an action plan — a political document designed to guide the implementation of the Convention by the States Parties until 2009 (the date of the next Review Conference) with respect to universalization, the destruction of stockpiles, mine clearance, assistance to victims and international cooperation and assistance. France is also implementing a national mine action strategy. The Liaison Committee on Mine Action (CLAM) comprises 25 participants (administrations, non-governmental organizations and enterprises) and is aimed at strengthening French supplies in post-conflict contexts in order to combat mines.

3. The Oslo process on cluster munitions

The Dublin Conference of May 2008 concluded a process launched in February 2007 in Oslo by 46 countries, including France. One hundred and eleven countries participated in the negotiations, including 21 observer States, and more than 100 representatives of international organizations and non-governmental organizations were in attendance. The Dublin Conference allowed a consensus to be reached on a treaty prohibiting all cluster munitions that cause unacceptable harm to civilian populations. The treaty also made significant progress in matters related to mine clearance and assistance to victims. It gives States parties to the 1980 Convention on Certain Conventional Weapons the opportunity to take part in joint operations with States not parties to the Convention.

Even prior to the entry into force of the treaty, France decided to destroy almost all of its stockpiles. While the major military Powers (the United States of America, the Russian Federation, the People's Republic of China and Brazil) did not participate in the Dublin Conference, the success of the negotiations to be concluded in November 2008 through the parallel process under the 1980 Convention on Certain Conventional Weapons, to which these States are parties, will enable them to join the common effort to address the humanitarian impact of cluster munitions. France is fully committed to the success of these negotiations.

V. The Rome Statute of the International Criminal Court

A. Signature and ratification

France signed the Rome Statute of the International Criminal Court on 18 July 1998 — i.e. one day after the adoption of the text. France deposited its instrument of ratification on 9 June 2000 and the Rome Statute entered into force on 1 July 2002. France was the twelfth State to ratify the Rome Statute. At the time of its signature

of the Rome Statute, France availed itself of the provisions of article 124 of the Statute, which allow a State to declare that, for a period of seven years after the entry into force of this Statute for the State concerned, it does not accept the jurisdiction of the Court with respect to war crimes committed on its territory or by its nationals. However, France renounced the provisions of this declaration ahead of schedule with effect from 15 June 2008, i.e. more than one year before the normal termination date of 1 July 2009.

B. Implementation

As part of the first phase designed to bring French law into line with the Statute of the International Criminal Court, Act No. 2002-268 of 26 February 2002 established the framework for cooperation between France and the Court. By this Act France amended its Code of Criminal Procedure in order to provide the conditions for mutual legal assistance and the modalities for the arrest and transfer of persons wanted by the International Criminal Court, as well as for the enforcement of prison sentences or compensation measures pronounced by the Court. More specifically, the International Criminal Court has submitted several requests for assistance to the French authorities in recent years, including requests for logistical support (the provision of experts and support from our armed forces on the ground in the conduct of certain investigations), requests for the reporting of information and ad hoc requests for protected witnesses to be admitted to French territory. On this last point, a review has also been initiated to consider whether France might sign a general agreement on the relocation of protected witnesses.

Act No. 2003-1367 of 31 December 2003 authorized the approval of the Agreement on Privileges and Immunities of the International Criminal Court, signed in New York on 9 September 2002. France was the fourth State to sign this Agreement.

A second phase to bring French law into line with the Statute of the International Criminal Court is currently under discussion in Parliament. A draft law to amend the Criminal Code, the Code of Military Justice and the Act of 29 July 1881 on freedom of the press will supplement the provisions that are currently applicable to genocide and crimes against humanity. This draft law will also lead to the creation of a new chapter of the Criminal Code dealing with war crimes and offences which are currently prosecuted on the basis of incriminations under general law. A review is also being conducted in France on extraterritorial jurisdiction for crimes that fall under the jurisdiction of the International Criminal Court, although none of the provisions of the Rome Statute require the enforcement of such jurisdiction.

VI. The ad hoc international criminal tribunals

1. The International Criminal Tribunal for Rwanda (ICTR)

Act No. 96-432 of 22 May 1996, adapting French legislation to the provisions of United Nations Security Council resolution 955 (1994) of 8 November 1994 establishing ICTR, allows our courts to judge persons suspected of having committed one of the crimes identified in the Statute of the Tribunal, when these

persons are in French territory. On that basis, ICTR contacted the French authorities in order to refer the cases of two accused persons to the French courts. France agreed to the prosecution of Father Wenceslas Munyeshyaka and former prefect Laurent Bucyibaruta. The subject of an arrest warrant, sub-prefect Dominique Ntawukuriryayo, was also extradited to ICTR by France at the start of June 2008. Since the establishment of the Tribunal, France has consistently cooperated with ICTR not only for the identification and tracing of witnesses in French territory, the collection of testimonies and evidence and the shipment of documents, but also for the arrest and transfer of indictees. On 14 March 2003, France concluded an agreement with the United Nations on the enforcement of prison sentences imposed by ICTR within French territory.

2. The International Criminal Tribunal for the Former Yugoslavia (ICTY)

France has a general obligation of cooperation with ICTY under the terms of the provisions of the Statute annexed to Security Council resolutions 808 (1993) of 22 February 1993 and 827 (1993) of 25 May 1993. French officials have given testimony on numerous occasions since the establishment of the Tribunal. An agreement was signed with ICTY on 5 February 1999 to allow protected witnesses to be admitted to French territory. On 25 February 2000 France also signed an agreement with the United Nations on the enforcement of sentences imposed by ICTY. Several persons convicted by the Tribunal are currently serving their sentences in French prisons.
