



Ministry of Foreign Affairs

INTERNATIONAL HUMANITARIAN LAW AND ITS IMPLEMENTATION IN THE REPUBLIC OF BULGARIA

Review and assessment of the compatibility of
the Bulgarian Law and the national measures for
implementation of International humanitarian law

**Bulgarian Red Cross and Ministry of Foreign Affairs of the
Republic of Bulgaria Publication**

The current edition is a testimony to the joint efforts of the Bulgarian state, academia and the Bulgarian Red Cross, aimed at implementing measures at national level in the field of international humanitarian law (IHL).

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Sofia, Bulgaria,

2021



Dear Ladies and Gentlemen,

The first report “Review and assessment of the compatibility of Bulgarian Law and the national measures for implementation of International humanitarian law (IHL)” was prepared by a working group of experts, representing national authorities, academic fora and international and non-governmental organizations. The report presents a summarized, yet thorough, review of the Bulgarian law’s compliance with the international commitments in the field of International humanitarian law. This report can be used by legislators, experts in international relations, jurists, military servicemen, students and scientific researchers. Together with the Bulgarian Red Cross, we are presenting you the resume of the report, providing the Bulgarian general public with the possibility to enter the specific matter of humanitarian affairs in a more friendly and accessible manner. I completely agree with the Secretary-General of the UN,

who recently shared the metaphor of “the perfect storm” to describe the harsh times endured by the international cooperation, and I would add - by the humanitarian work as well. In this challenging context, in 2020, for the very first time Bulgaria prepared a -comprehensive review on the implementation of International humanitarian law, it gave recommendations for improving the compliance with these norms and took specific steps for their promotion. I express my gratitude to the Bulgarian Red cross for our common work on the Resume of the report and I hope that we will continue our active cooperation in service of International humanitarian law.

Ekaterina Zaharieva, Deputy Prime Minister for the Judiciary Reform and Minister of foreign affairs, 2016- 2021.



Dear Ladies and Gentlemen,

International humanitarian law was created to serve the core humanitarian needs of people, affected by armed conflict, as well as to establish a series of inviolable standards of humanity for the preservation and protection of its fundamental values.

Every four years the States parties to the Geneva Conventions and the International Red Cross Red Crescent Movement, publish the International Humanitarian Law and the Challenges of Contemporary Armed Conflicts Report. The last report, issued in 2019, stressed on the urbanization in war – the new technologies in warfare, the civilian needs in the increasingly protracted conflicts, IHL and the non-state armed groups; counterterrorism measures and IHL; climate, armed conflicts and the environment – promotion and increase of respect for IHL. I am certain that the creation of the National IHL Committee and the completion of the Review of the

Bulgarian legislation, which is the subject of this publication, are the right steps in implementing the extremely serious humanitarian commitment, undertaken with the accession of Bulgaria to the Geneva Conventions of 1949 and with the adoption of Resolution 1 “Returning of IHL at home: Roadmap for better national implementation of IHL” in 2019.

Acad. Hristo Grigorov, D.H.C. - President of the Bulgarian Red Cross

INTERNATIONAL HUMANITARIAN LAW AND ITS IMPLEMENTATION IN THE REPUBLIC OF BULGARIA

REVIEW AND ASSESSMENT OF THE COMPATIBILITY OF THE BULGARIAN LAW WITH THE NATIONAL MEASURES FOR IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW (IHL)

A note to the readers

The current publication is a summarized version of the report “Review and assessment of the compatibility of the Bulgarian Law and the national measures for implementation of International Humanitarian Law”, prepared under the auspices of the National Committee on International Humanitarian Law, chaired by Deputy Prime Minister for Judicial Reform and Minister of Foreign Affairs Ekaterina Zaharieva, 2016-2021.

The report is the first ever thorough and up-to-date review, prepared by the Expert Workgroup of the National Committee, chaired by Ambassador Plamen Bonchev, Director General on Global Affairs with MFA, 2016-2020. It is the outcome of the professional work of a significant number of experts from various areas of public administration and institutions, as well as from the academic fora, all of which bearing different competencies.

The report confirms that International humanitarian law has not lost its relevance, although it was introduced centuries ago, as an applicable law during war and military action. Over the course of time, IHL developed as law, which applies for armed conflicts, both international and non-international.

The dynamic and increasingly challenging international environment, stemming from regional conflicts and their expansion, migration waves and contemporary means of warfare, is changing the standards for the protection of civilians. The importance of special protection for vulnerable groups - children, women, the sick and injured, as well as for journalists, medical and humanitarian staff is growing.

The role of the legislators is increasingly essential in terms of further ratification of international instruments in the area of IHL, and so is becoming the role of the governments – to update their policies in this sensitive area facing new challenges for the preservation of peace and security in the global world, for conflict prevention and resolution. A fact that should also be noted is the expanding role of the armed forces, the police, the humanitarian organizations such as the Red Cross and Red Crescent, the media and the social networks.

The tendency of implementing international humanitarian law together with the international human rights law and International criminal law continues to apply. Statute of limitations does not apply to war crimes, crimes against humanity, genocide and other acts qualified as criminal offences under international treaties. The victims and those affected by military conflicts strive to achieve justice for the suffering experienced by themselves, their loved ones their community and their country.

I still remember the mother, who had been granted witness protection, but gave up on this opportunity, in one of the cases before the Court of Bosnia and Herzegovina, in which I participated as an international judge. The accused was charged with war crimes. This mother was looking for her son and daughter who had disappeared during the 1992-1995 conflict. Her children were detained in a school turned into a prison, under the command of the accused, who personally assured her that they were well and that they would come home tonight. The mother turned to him asking: “My son (MY SON!), where are my children and when will they come home?” This is just part of the evidence of the brutal reality in the world of armed conflicts.

International humanitarian law and its implementation in the national legislations is an enormous international legal obligation of the State. The Republic of Bulgaria has covered the important international standards, with a few negligible exceptions. As it is shown in the Review, the Republic of Bulgaria has ratified the international instruments in this area and they have entered into force. Moreover, under the 1991 Constitution, they are part of the domestic law. The current review also demonstrates that Bulgaria has

incorporated a significant number of measures into the national legislation to ensure the implementation of International humanitarian law.

It has been an honour and a professional pleasure to compile this summarized version of the original text with the purpose to be presented to the wide public and to serve those working in the field of diplomacy, international law, the humanitarian field; and to anyone who is interested and who would like to access up-to-date information concerning International humanitarian law and its implementation in the Republic of Bulgaria.

December, 2020

Assoc. Prof. Dr. Snezhana Botusharova

Member of the Expert Group of the National Committee on International Humanitarian Law

Judge at the European Court of Human Rights (1998-2008)

International Judge at the Court of Bosnia and Herzegovina, War Crimes Chamber (2008-2009)

International Judge at the Constitutional Court of Kosovo (2009-2018)

„3. In these and other conflict situations, international humanitarian law, international human rights law and international refugee law continue to apply and must be respected by all parties and actors in order to ensure effective protection for conflict-affected populations and an effective response to the pandemic....”

67.... Where conflicts cannot be prevented or resolved, it is imperative that collectively, parties to conflict, Member States, the United Nations and civil society, strengthen the protection of civilians. In very basic terms, that means ensuring respect for the law in all circumstances and accountability for serious violations. Tools required to achieve that already exist and are available. What is needed more than ever is the political will and commitment to prioritize the protection of civilians in order to ensure that it becomes a tangible reality for those affected by armed conflict, today and in the future." ¹

Antonio Guterres, UN Secretary-General, Civilian Protection Report to the UNSC,

May 6, 2020

1. INTRODUCTION

The necessity of a Review on the compatibility of the national law and the national measures for implementation of International humanitarian law (IHL) is a common practice in a number of states due to the topicality of the issue. Such a thorough and up-to-date review of the Bulgarian legislation and the national measures for implementation of IHL were practically absent until now. This was due to the fact that the national measures for implementation of IHL are positioned in different sectorial policies and are of the competency of various authorities. As a result of the Review, an assessment was made of the degree of fulfilment of the obligations of the Republic of Bulgaria as a State Party to the IHL treaties, as well as, if necessary, to identify follow-up measures for ensuring compliance of the Bulgarian legislation with these treaties. The report can serve as a foundation for the development of national positions, in the preparation of national reports to international organizations, as well as in assessments made prior to Bulgaria's accession to other conventions, protocols, etc.

II. National mechanisms for the implementation of International humanitarian law

(Authorities, institutions and national mechanisms)

1.1 National Committee on International humanitarian law

National Committees on International humanitarian law exist in 112 states worldwide and in 20 out of 27 Member States of the European Union. Their main functions is to support the State-parties in the implementation of the Geneva Conventions of 1949 and their Additional Protocols. The International Committee of the Red Cross (ICRC) advises and encourages the creation of National Committees on IHL.

The Bulgarian National Committee on IHL (NC on IHL) was created by a Decree of the Council of Ministers No. 35 of February 28, 2019². Among the main responsibilities of the newly established Committee is the enhancement of the coordination between the respective national institutions having competences for the implementation of the national measures related to the IHL.

¹ Report of the UN General Assembly to the UN Security Council "Protection of civilians in armed conflict" S/2020/366/6 May 2020

² Decree of the Council of Ministers No. 35 / 28.02.2019, promulgated, SG, no. 19 of March 5, 2019

The first Chair of the National Committee on IHL is Mrs Ekaterina Zaharieva, Deputy Prime Minister for Judicial Reform and Minister of Foreign Affairs, 2016-2021. The first Deputy Chair is Mr. Atanas Zapryanov, then Deputy Minister of Defense. The respective Deputy Ministers of the Ministry of Justice, the Ministry of Interior, the Ministry of Education and Science, the Ministry of Health, the Ministry of Labor and Social Policy, the Ministry of Culture, the Ministry of Environment and Water, the Ministry of Regional development and Public works, the Ministry of Economy, as well as the chairman of the State Agency for Refugees and the President of the Bulgarian Red cross are the members of the Committee. The representatives of the academic fora, the independent institutions, such as the Ombudsman of the Republic of Bulgaria, the representatives of the non-governmental organizations and international organizations also have an important consultative role in the work of the National Committee.

According to Art. 2 of the Decree of the Council of Ministers, the Committee is a multidisciplinary and interdepartmental body, with advisory role on IHL matters. Its main competencies are: to advise and assist the competent state institutions in the implementation of IHL, including in decision-making; to compile statements and reports on the compliance of national legislation with international IHL treaties, as well as to recommend actions in accordance with the national legislation and the EU guidelines on the promotion of compliance with international humanitarian law; to promote IHL and to participate in various forms of international cooperation.

1.2. Expert working groups within the NC on IHL

Decree No. 35 of the Council of Ministers of February 28, 2019 provided the possibility to establish expert working groups as part of the NC on IHL to bring expert support to the Council's activities on various subjects in the field of IHL. At its first meeting, the NC on IHL decided to set up an **expert working group to review the compliance of Bulgarian legislation with the international treaties in the field of IHL** in areas such as: protection of humanitarian and health personnel, provision of medical care in emergencies, including natural disasters, regulated use of methods and means of war, protection of cultural property, natural environment protection, etc. As a result of the Review, an assessment of the national measures for implementation of IHL, as well as the measures that need to be undertaken to bring national legislation in compliance with international treaties, was conducted. The Expert Working group included a wide range of experts from government agencies, independent institutions, representatives of the academic sphere and the non-governmental sector; as well as other experts with expertise in the field of IHL.

III. Relationship between National Law and International public law

According to Article 5, para. 4 of the 1991 Constitution of the Republic of Bulgaria³, the international treaties, ratified in accordance with the constitutional procedure, promulgated and entered into force for the Republic of Bulgaria, are part of the national law. They take precedence over norms of the domestic legislation that contradict them.

As for the unpromulgated international treaties, Decision No. 7 of the Constitutional Court of the Republic of Bulgaria⁴ rules out that international treaties - ratified and entered into force for the Republic of Bulgaria, but not published in the State Gazette, are not part of the domestic law of the country, unless they have been adopted and ratified before the current Constitution and if the existing ratification procedure at the time did not require promulgation in State Gazette.

According to the cited decision, the existing international treaties under the current Constitution, signed in compliance with the respective legislation of the time and in accordance with the ratification procedure established by it, where promulgation in State Gazette was not obligatory, do become part of the country's domestic legislation, but have no precedence within Art. 5, para. 4 of the 1991 Constitution over the norms of the domestic legislation - such priority is acquired from the moment of promulgation.

3 Constitution of the Republic of Bulgaria, promulgated, SG, iss. 56 of 13.07.1991, in force since 13.07.1991, last. ed. with SG, issue 100 of 18.12.2015

4 Constitutional Court of the Republic of Bulgaria, Interpretative Decision No. 7 (6/92), 2 July 1992

At the same time, as a duty and rights bearer under the IHL, the Republic of Bulgaria must comply with the obligation for diligent observance of the treaty (“pacta sunt servanda”), enshrined in Art. 26 of the Vienna Convention on the Law of Treaties, which states that “Every existing treaty is binding for the parties to it and must be executed in good faith by them.”, and cannot evoke the provisions of the national law as a justification of a non-fulfilment of an international treaty (Art.27 of the Vienna Convention).

IV. National measures for implementation of International humanitarian law

1. Legal framework

1.1. International humanitarian law treaties

The review and assessment cover international IHL instruments, the national legal framework and the measures undertaken on a national level to implement them. The review covers Bulgaria's participation in the following international treaties:

- The 1949 Geneva Conventions and their 1977 Additional Protocols⁵
- The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 and the two additional protocols thereto of 1954 and of 1999
- The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction of 10 April 1972
- The Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques of 10 December 1976
- The 1980 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, and its 5 Protocols
- The Rome Statute of the International Criminal Court, adopted on 17 July 1998;
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 25 May 2000;
- The 2008 Cluster Munitions Convention

To a lesser extent, the review covers The Hague Conventions of 18 October 1907, which are not ratified by the Republic of Bulgaria.

Bulgaria is a State Party to the main treaties related to IHL (see Annex 2). The only significant exception is the International Convention for the Protection of All Persons from Enforced Disappearance, which was signed by the Republic of Bulgaria but is not ratified. Bulgaria has not signed nor ratified the UN Convention against the Recruitment, Use, Financing and Training of Mercenaries. Accordingly, the Criminal Code does not provide for explicit provisions to prosecute mercenaries and enforced disappearances.

1.2 Main political and other commitments related to the implementation of IHL, undertaken by the

⁵ Geneva Convention of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces (First Geneva Convention); Geneva Convention of 12 August 1949 for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked in the Navy (Second Geneva Convention); Geneva Convention of 12 August 1949 concerning the Treatment of Prisoners of War (Third Geneva Convention); Geneva Convention of 12 August 1949 relating to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). Later in the text, they will be referred to as the First, Second, Third, Fourth Geneva Conventions, respectively. Additional Protocol to the Geneva Conventions of 12 August 1949 on the Protection of Victims of International our armed conflict (Protocol I), Geneva, 8 June 1977; Additional Protocol to the Geneva Conventions of 12 August 1949 on the Protection of Victims of Non-International Armed Conflicts (Protocol II), Geneva, 8 June 1977. Hereinafter, they will be referred to as the First and Second Additional protocol.

Republic of Bulgaria

In the recent years, Bulgaria has joined some global initiatives and partnerships related to the implementation of IHL:

A. The Call to Action on Protection from Gender-Based Violence in Emergencies

Bulgaria has joined the Call for Action, an initiative launched by the United Kingdom and Sweden in 2013, in April 2018, during the Bulgarian presidency of the Council of the EU. The Call to Action sets the following three main objectives for protection from gender-based violence in emergencies:

- 1) Creating specialized programs from the beginning of the emergency
- 2) Integrating and implementing actions to reduce the risks of gender-based violence at all levels and in all sectors of humanitarian action
- 3) Integrating of the equality of men and women and the empowerment of women and girls in humanitarian action.

Bulgaria has made the following two voluntary commitments under the adopted Roadmap for the period 2016-2020:

- Systematic inclusion of the topic in official national documents and provision of information on it in various national forums in order to obtain the necessary knowledge to take action for prevention and response to gender-based violence in emergencies;
- Systematic influence for inclusion of the topic in relevant international political processes, initiatives and forums.

In order to fulfil these commitments, the Minister of Foreign Affairs approved a National Action Plan for the implementation of the commitments, undertaken by Bulgaria. The plan contains specific goals and measures carried out mainly by the Ministry of Foreign Affairs, but in close cooperation with other competent state institutions. The National Coordination Mechanism for Human Rights will annually review the implementation of the National Action Plan and will make mandatory recommendations.

B. Charter on inclusion of persons with disabilities in humanitarian action.

In March 2018, Bulgaria joined the **Charter on inclusion of Persons with disabilities in humanitarian action**, adopted during the Istanbul World Humanitarian Summit in May 2016. This is in line with the active policy of the state with regard to the rights of people with disabilities and their protection in the conditions of the unprecedented number of humanitarian crises in the world, where they are particularly vulnerable.

The Charter aims at improving the living conditions of people with disabilities in situations of armed conflict, humanitarian emergencies and natural disasters. In such situations, the humanitarian activities should be adapted to their specific needs and to the challenges that disabled people face when provided with assistance, protection and rehabilitation support.

The Charter also aims at prevent discrimination against people with disabilities and to develop and implement global policies. Although the Charter is not legally binding, it is a strong political commitment for Bulgaria in this area of humanitarian law.

C. National Action Plan on Women, Peace and Security for implementation of the 1325/2000 UN Security Council Resolution

The 1325 UN Security Council Resolution of 2000 is the first international document underlining the important role of women and girls in conflict prevention and resolution, peaceful resolutions, peacebuilding and post-conflict recovery and governance.

In order to achieve the objectives of 1325 Resolution, in 2004 the Security Council called upon States to draw up national plans for its implementation, setting out various aspects of equality between women and men in all areas of peace-building policy, including specific projects and programs.

The encouragement of the active role of women in maintaining international peace and security occupies a crucial place in the foreign policy and in the policy of Bulgaria in the field of security and defence. Within the first Bulgarian presidency of the Council of the EU, the topic was a priority for our country. The Republic of Bulgaria is a co-sponsor of the 1325 Resolution and attaches great importance to issues related to women enjoying equal rights with men in all areas of public policy, economic and social life.

At a meeting of the National Coordination Mechanism for Human Rights in December 2018, a decision was taken, assigning to the Ministry of Foreign Affairs to finalize and submit to the Council of Ministers a draft **National Action Plan on Women, Peace and Security (NAP)** pursuant to the 1325 Resolution.

The Ministry of Foreign Affairs initiated the preparation of the NAP (2020-2025), which was adopted by the Council of Ministers in March 2020. Development and humanitarian aid provided under the development cooperation policy occupy a prominent place in the Plan. The Plan was drawn up in consultation with the Republic of Ireland, one of the leading countries in the implementation of the Women, Peace and Security Agenda.

D. Political Declaration on the Protection of Medical Personnel and Medical Assistance, provided during an armed conflict

After consulting with the members of the National IHL Committee, the Minister of Foreign Affairs announced the accession of the Republic of Bulgaria to the 2017 Political Declaration for the Protection of medical personnel and medical assistance provided during armed conflict.

E. Humanitarian call for action to IHL support

The call for action for support of IHL has been proposed by Germany and France. It contains specific practical measures and actions to support the full implementation of IHL, including through national regulatory measures and their regular analysis. In coordination with the NC on IHL, the Minister of Foreign Affairs of the Republic of Bulgaria stated support for the Humanitarian call during a special event within the General Debate at the opening of the 74th session of the UN General Assembly in September 2019. This call is one of many initiatives undertaken by EU countries as part of their mandate in the Security Council to comply with and promote IHL.

F. Call for Action to strengthen respect for international humanitarian law and principled humanitarian action

During the high-level week at the opening of the 74th session of the UN General Assembly, an Alliance for Multilateralism was established, led by the French and German Foreign Ministers. Bulgaria joined the Alliance, which is a network of like-minded countries, where the intent is to cover a wider range of activities and policies through collective action in order to meet the new challenges and to strengthen international norms and institutions. The **Call for Action to strengthen respect for international humanitarian law and principled humanitarian action** is part of the Alliance's multilateralism initiatives to ensure a world order based on rules, protection of international norms, agreements and institutions when they are under pressure or when their existence or funding is threatened. The Call expresses serious concerns of violations of IHL, including the 1949 Geneva Conventions, and of the adverse effects of modern armed conflict on civilians and other protected persons, as well as on humanitarian action.

The call urges for compliance with IHL, incl. accession to IHL treaties; and support for humanitarian action, based on the principles of humanity, impartiality, neutrality and independence. It emphasizes that it is of the interest of all states, and in particular the parties to an armed conflict, to respect and ensure compliance with international norms for the protection of civilians, including International humanitarian law, International

human rights, International refugee law and relevant Security Council resolutions.

G. Safe School Declaration

The Safe School Declaration is a political intergovernmental agreement, outlining a set of commitments to strengthen protection against attacks and to limit the use of schools and universities for military purposes. It strives to ensure the continuity of safe education during armed conflict. States undertake to collect and/or facilitate the collection of reliable data on attacks and military use of schools and universities; to investigate and prosecute war crimes with regards to education; and to provide assistance to victims. The Republic of Bulgaria ranks among the first countries to approve the "Safe School Declaration" in 2015. Bulgaria has engaged in implementing the "Guidelines for the Protection of Schools and Universities from Military Use in Armed Conflict" enshrined in the Declaration, which sets out the basic principles and rules for achieving its' goals. The guidelines constitute politically binding, voluntary recommendations that aim to provide directions for further reduction of the impact of armed conflict on education.

H. Commemoration of the 70th anniversary of the adoption of the Geneva Conventions

In August 2019, the members of the National IHL Committee commemorated the 70th anniversary of the adoption of the 1949 Geneva Conventions by compiling an agreed communication and publishing on the websites of all institutions. It reflected the great role of the Conventions in the legal protection of certain categories of persons (wounded and sick on the battlefield, prisoners of war, civilians) and sites during armed conflict, as well as the need to comply with IHL norms, to apply mechanisms to seek responsibility for breaches of its provisions and to strengthen measures at international and national level. On a global scale, during the General Debate at the opening of the 74th Session of the UN General Assembly, the ICRC held an event, dedicated to the 70th anniversary of the adoption of the Geneva Conventions.

1.3. The European Union

The 2005 Guidelines (updated in 2009) on promoting compliance with International Humanitarian Law aim to support and strengthen the EU's role in ensuring compliance with IHL and to contribute to a better understanding of the rules and principles of IHL. The Guidelines envisage preparation of regular reports on their implementation at a national level. Such exchange of information provides an overview of the national measures and possible joint initiatives. The EU and EU Member-States make regular statements on IHL and co-sponsor various humanitarian resolutions at the UN bodies and commissions, as well as before other international forums.

1.4. Resolutions and voluntary humanitarian commitments (pledges) from the International Conference of the Red Cross and Red Crescent

The 33rd International Conference of the Red Cross (RC) and the Red Crescent (RC) was held in Geneva from 9 to 12 December 2019 under the slogan "Act today, build the future". At the conference, which convenes every four years, eight resolutions were adopted, setting out guidelines for the development of humanitarian action over the next four years, as well as voluntary pledges related to their implementation⁶, covering important topics for the IHL. Resolution 1 "Returning IHL home: A roadmap for better national implementation of IHL" provides guidance and key practical measures to strengthen national implementation of IHL by States and National Societies (NS).

One of the main **voluntary humanitarian commitments** (pledges) to implement the resolutions, which are coordinated jointly with the European Union and the other Member States, are dedicated to: monitoring, dissemination and implementation of IHL; ratification of IHL instruments, as well as better use of existing mechanisms and procedures at national level; the protection of humanitarian and medical personnel, incl. review of national legislation; the protection of specific vulnerable groups during armed conflicts, disasters

⁶ <https://rcrcconference.org/about/33rd-international-conference/documents/>

and other crises by providing for more effective implementation of existing legislation in this field; digital transformation and its use in activities, related to international humanitarian law. Furthermore, Bulgaria has joined an open voluntary commitment in support of the International Humanitarian Fact-Finding Commission (IHFFC).

In addition, after consulting with the members of the National IHL Committee, Bulgaria joined two open voluntary commitments, related to the protection of the rights of children, affected by armed conflict, as well as to the "Safe School Declaration". Moreover, Bulgaria declared two specific national voluntary commitments dedicated to the National Committee on International Humanitarian Law and to the inclusion of vulnerable persons in all stages of humanitarian activity and their protection in humanitarian emergencies.

2. Protection of certain categories of persons

Protected persons, according to the norms of International humanitarian law, are the wounded, sick, shipwrecked, prisoners of war, internees, medical and religious personnel, journalists and military correspondents.

2.1 Wounded and sick persons. Shipwrecked.

The range of the wounded and sick persons, who are entitled to protection, is indicated in Art. 8 of the First Additional Protocol to the 1949 Geneva Conventions. These persons should be protected in all circumstances, treated humanely and receive to the greatest extent and in the shortest time possible the medical care and attention, which their condition requires, in compliance with medical priorities. Art.11 of the First Additional Protocol explicitly states that such people cannot not be subjected to medical procedures, which do not correspond to their health status. Detailed requirements have been introduced for the identification of all injured, sick and deceased persons.

In Bulgarian legislation, the norms related to the treatment of the sick and wounded during an armed conflict are regulated, first of all, in the Defence and the Armed Forces of the Republic of Bulgaria Act (DAFRB)⁷. Art. 14 stipulates the duty of the Bulgarian state during a war or during martial law to provide protection and care of all persons under its jurisdiction.

DAFRB (Art. 46) also provides for that the Bulgarian Red Cross (BRC) assists the State in preparedness of the population for actions in martial law, military conflicts and disasters and provides first aid at home and abroad to victims of such situations, as well as the duty of, the state organs and of the armed forces, when their involvement is necessary for the protection of the national interest, the life and health of the citizens, to apply other measures which do not contradict the international acts, and to guarantee the protection of human rights in situations of war (Article 123, item 10).

Secondly, the Criminal Code⁸, Art. 410, qualifies as a crime the commission of murder, torture or inhuman treatment, including biological experiments, as well as other damage to the health of the wounded, sick and shipwrecked. The person who issued the order for the execution of these severe atrocities shall also bear criminal responsibility under this article.

2.2. Persons, deprived of their liberty

2.2.1. Prisoners of war

All participants in hostilities and the persons accompanying the armed forces, who are captured by the armed forces of the enemy, in an international armed conflict, acquire the status of **prisoner of war (POW)**, which gives them the right to protection under the Third Geneva Convention of 1949. The Convention prohibits inhuman and degrading treatment of prisoners of war, as well as any form of discrimination based on

⁷ Prom. SG, no. 35 of 12.05.2009, last ed. and ext. SG, no. 38 of 24.04.2020

⁸ Prom. SG, no. 26 of April 2, 1968, last ext. SG, no. 88 of 13.10.2020

race, nationality, religion or political opinion, as well as any acts of repression.

The provisions of the Third Geneva Convention regulate the detention of prisoners of war and their status in a POW camp, imposing relevant prohibitions and granting rights in accordance with established international rules and norms. Any failure to comply with them is a serious violation of IHL.

These rules and norms are reflected in the Bulgarian legislation, in particular in the Criminal Code and the Code of Criminal Procedure (CCP)⁹. For example, according to the Criminal Code (Articles 402-405) it is a criminal act if a person who, while in captivity, being of senior rank, treats with cruelty another prisoner of war; or for procuring benefit for himself or for securing a condescending attitude on behalf of the enemy, performs an act of detriment towards another POW. A person who on the battlefield takes away property from a wounded, a captive or a deceased person with the intention of unlawful appropriation, is also punishable for marauding, if the committed act does not constitute a graver crime.

The Criminal Code classifies as crimes the murder, torture or inhuman treatment, as well as the infliction of severe suffering and damage to the health of prisoners of war. If a prisoner of war is compelled to serve in the armed forces of the enemy state, or is deprived of his right to be tried by a regular court and under a regular procedure, is also classified as a crime under the Criminal Code (Article 411). The criminal responsibility of prisoners of war for crimes, committed by them during their detention, under the jurisdiction of the Bulgarian state is implemented in accordance with the procedure laid down in the CCP.

2.2.2. Civilian internees

The four Geneva Conventions contain rules that regulate the conditions for **detention or internment of various categories of protected persons** (medical and religious personnel, prisoners of war or civilians). International norms require the compliance with certain procedures as a guarantee of the legality of the deprivation of liberty, including immediate provision of information to the detainee about the reasons for the detention or internment in a language understandable to the person; a possibility for review of the imposed measure and short terms for ruling on the appeals. Failure to comply with these rules constitutes a serious violation/grave breach of IHL. Protection is provided by protecting powers or humanitarian organizations, as well as by neutral states or organizations that monitor the implementation of the Conventions.

Civilians may be interned only if they pose threat to the security of the detention force. These measures cannot be applied as a type of punishment, they should be temporary and the internees should be released as soon as the reasons which necessitated the detention cease to exist. In any case, in non-international armed conflict, individuals are under general protection¹⁰, all persons deprived of their liberty in connection with the conflict, should be treated humanely and should also be subject to the absolute prohibitions on murder, torture, inhuman or degrading treatment.

Serious violations against the civilian population are criminalized in Art. 412 of the Criminal Code.

2.3. Protection of women

The Geneva Conventions and the two Additional Protocols protect women as part of the civilian population and as prisoners of war. Although IHL upholds the principle of equality between men and women and prohibits discrimination on grounds of sex, it allows women to be treated differently during deprivation of liberty. When detained, women should be treated with all due respect to their sex, and in every case, they should be treated as favourably as men.

During an armed conflict women are provided with special protection from rape, forced prostitution and against any other form of assault, etc. According to the Rome Statute of the International Criminal Court, rape and sexual violence constitute serious violations of the provisions of the Geneva Conventions and compile criminal elements of war crimes or crimes against humanity.

⁹ Prom. SG, no. 86 of 28.10.2005, last ed. and ext. SG, no. 98 of 17.11.2020

¹⁰ Art. 3 common to the four Geneva Conventions and the Second Additional Protocol.

IHL provides for additional special protection for certain categories of women, such as pregnant and women in labour, mothers with children.

In non-international armed conflict, women enjoy the general protection, provided in all four Geneva Conventions. The Second Protocol explicitly prohibits attacks on the honour and dignity of women as listed in the Fourth Geneva Convention and the First Protocol.

Bulgarian legislation does not provide for special provisions for the protection of women during armed conflict. The general prohibitions of Art. 411 and 412 of the Criminal Code are to be applied in the treatment of women.

2.4. Child protection

IHL provides for general protection for children - as persons who do not take part in hostilities, and special protection as particularly vulnerable persons. In addition, children who take part in hostilities are also protected. The various aspects of the general and special legal protection of children are outlined in the following paragraphs:

- **General protection of children as persons who do not take part in hostilities**

During international armed conflicts, children fall into the category of persons protected by the Fourth Geneva Convention. Under general protection, children benefit from all provisions, relating to the treatment of protected persons, which are rooted in the basic principle of humane treatment, including respect for life, physical and moral integrity, and protection against coercion, corporal punishment, torture, collective punishment and repression.

As members of the civilian population, children are covered by the rules of IHL, related to the conduct of hostilities. These rules, which develop the principles of distinction between civilians and combatants and prohibit attacks on civilians in situations of international armed conflict are contained in the First Additional Protocol of 1977. In the framework of non-international armed conflicts, children are protected by the basic safeguards, related to the treatment of persons who do not take an active part in the hostilities referred to in the common Article 3 of the four Geneva Conventions, under which children have the right to be treated humanely without any violence against them and their dignity.

- **Special protection for children as representatives of the civilian population**

The Fourth Geneva Convention contains a number of provisions for the protection of children, without explicitly underlining the principle of their special protection. The First Additional protocol fills this gap by stipulating that children are subject to special respect and are protected against any form of indecent assault, and the parties to the conflict are obliged to provide them with the care and assistance they need¹¹. The Second Additional Protocol postulates similar provisions for non-international armed conflicts, as in Art. 4, entitled "Fundamental Guarantees", special measures for children are listed.

- **Right to care and assistance**

The right of children to care and assistance is regulated in both situations of international¹² and non-international armed conflicts¹³. Many of the provisions of the Fourth Geneva Convention take into account the specific needs of children, including: ensuring the safe passage of aid, intended for children under fifteen years of age and expectant mothers (Article 23); ensuring the functioning of the institutions, responsible for the care of children by the occupying country in the occupied territory (Article 50); provision of additional food, according to the needs of children under the age of fifteen, who are interned by parties to the conflict for security reasons (Article 89).

11 Art. 77 of the First Additional Protocol

12 Art. 77 of the First Additional Protocol

13 Art. 3-4 of the Second Additional Protocol

- **Right to family life and family reunification**

IHL contains rules to facilitate the reunification of families separated as a result of international and non-international armed conflicts. Family unity is taken into account in various provisions, relating to persons deprived of their liberty. When possible, interned members of the same family are accommodated in the same premises and are given the opportunity for separate accommodation from other internees, as family units. The rules of the First Additional Protocol on detainees with children in their care also originate from the efforts to prevent the separation of mothers and children. Their cases must be treated with the highest priority. The protection of family links is also fundamental during temporary evacuation of children, which is subject to very strict conditions, such as the consent of parents, legal guardians or persons who by law or custom have the primary responsibility to provide care to the children.

In compliance with the principle of the inviolability of life and identity of the child, it is forbidden for the occupying State to change the family or the personal status of the children.

- **Preserving the child's identity**

The Fourth Geneva Convention is an important legal instrument for the protection of the family and through this safeguard - the identity of the child and its elements: values, religion, culture and the traditions in which it was raised. If a child is deprived of parental care or separated from his/her parents, his/ her cultural environment may be affected by the conflict. The parties to the conflict shall in all circumstances ensure that children under the age of fifteen who are orphans or separated from their families may continue to "practice their religion and education"; to the extent possible, their education is "assigned to persons with a similar cultural tradition". Relocation and admission of such children to a neutral country must comply with the same principles. The occupying State will ensure the upbringing and education of children who are orphans or separated from their parents, "if possible by persons of their nationality, language and religion", if "they cannot be properly cared for by a close relative or a friend". Should children need to be evacuated, it is stated that "the education of every child during the period of separation, including his/her religious and moral education as desired by his or her parents, will be provided for with the highest possible degree of "continuity".

- **Education**

IHL, in particular the Fourth Geneva Convention, contains certain general obligations, relating to the education of children in cases of international and non-international armed conflict. The occupying authority must facilitate the proper functioning of all institutions, dedicated to children's education. The detaining state shall ensure the education for interned children and young people who must be allowed to attend school. In the event of armed conflict with no international element, children receive education, including religious and moral education in accordance with the wishes of their parents, or in case they are absent – of the people, responsible for their care.

- **Children, deprived of parental care and separated children**

The Fourth Geneva Convention attaches special importance to the cases of children with deceased parents and to the cases of children, who have been separated from their families. The parties to the conflict are obliged to take the necessary measures to ensure the support and education of children under the age of fifteen, who are orphans or separated from their families as a result of the hostilities, and to ensure that they are not left to fend for themselves.

More than 30 years ago, on November 20, 1989, the UN General Assembly adopted the **Convention on the Rights of the Child**, the first legally binding international convention that affirms the human rights of every child. The Republic of Bulgaria ratified the Convention¹⁴ by decision of The Grand National Assembly of 1991, by which it became part of the domestic law. The commitment of the Bulgarian state continues with the signing and ratification in 2001 of the **Optional Protocol to the Convention on the Rights of the Child**

14 The Convention on the Rights of the Child was ratified by a decision of the Grand National Assembly of April 11, 1991. SG, no. 32 of 23.04.1991 and enters into force on 03.07.1991 and is part of the domestic law.

on the involvement of children in armed conflict.¹⁵

Compulsory military conscription was revoked in Bulgaria on January 1, 2008. Children under the age of eighteen are not allowed to join the Bulgarian army. According to the **Defence and the Armed Forces of the Republic of Bulgaria Act**, military service in Bulgaria is a state service, and the minimum age for entry is 18 years. The normative acts are in compliance with the above-mentioned international acts on the protection of children during armed conflicts.

Bulgaria is also a State Party to the **Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography**, in force for Bulgaria since 2002. **The Declaration on the Protection of Women and Children in Emergency and Armed Conflict** should also be mentioned here as **relevant to IHL**.

Bulgaria has ratified and implements the main international instruments in the field of protection of children's rights and the elimination and prevention of child labour. The main principles and norms of the UN Convention on the Rights of the Child have been introduced in the **Child Protection Act (CPA)**¹⁶ adopted in 2000, which establishes the child protection system in the Republic of Bulgaria, including the types of protection of the rights of children.

Another aspect of child protection is related to the prohibition of provision of weapons to children and their involvement in hostilities. Bulgaria applies the highest standards in its arms export control policy in order to prevent illegal arms trafficking and trade.

The provision of explosives, weapons, ammunition for firearms or pyrotechnics to a person under 18 years of age is criminalized, according to Art. 338, para. 2 of the Criminal Code. The law provides for a more severe punishment when the object of the crime is cluster munitions, antipersonnel mines and other items.

The Criminal Code criminalizes the forms of trafficking of children and sexual exploitation, incl. pornography provided for in the Protocol. A general omission of the Bulgarian legislator with regards to the two protocols is that no extraterritoriality has been foreseen for the prosecution and punishment of such crimes against children.

The fact that Bulgaria has not yet ratified the Optional Protocol to the Convention on the Rights of the Child on Individual Communication can also be identified as a gap in child protection, as the Protocol provides an additional opportunity for protection against violations of IHL.

At present, however, the recruitment and involvement of children in military operations by the army and/or non-state armed groups has not yet been criminalized. No extraterritorial jurisdiction under Art. 4 of the Protocol, which is of recommendatory nature, has been introduced regarding all crimes listed in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

2.5. Refugees

The 1951 Geneva Convention relating to the Status of Refugees and the 1967 New York Protocol, which regulate measures for the protection of these categories of persons, have been ratified by the Republic of Bulgaria in 1992 and they are in force since 1993. The Convention and the Protocol are key legal documents that outline European and national standards in the field of international protection.

The Republic of Bulgaria develops and implements policies and measures in the field of migration and asylum, taking into account the specific situation of persons affected by armed conflict, including women as a distinctive category of persons applying for international protection.

According to the national legislation, the protection provided by the Republic of Bulgaria to foreign citizens

¹⁵ Prom. SG, no. 97 of 13.11.2001, in force since 12.02.2002.

¹⁶ Prom. SG, no. 48 of 13 June 2000, last ed. and ext. SG, no. 99 of 20.11.2020

includes asylum, international protection and temporary protection. The right to asylum is guaranteed by Art. 27 of the Constitution of the Republic of Bulgaria, while the conditions and the procedural order are stipulated in the Asylum and Refugees Act (ARA).¹⁷

A State Agency for Refugees (SAR), has been established under the Council of Ministers, which has special competences in the field of implementation of the state policy for granting international protection in the Republic of Bulgaria. The main competencies of SAR are related to the reception and accommodation of persons, seeking international protection in Bulgaria and to the proceedings for granting international protection.

Particular attention is paid to the special needs of foreigners from vulnerable groups, such as minors, unaccompanied minors, disabled, elderly, pregnant women, single parents of minor children, victims of human trafficking, etc. Children seeking protection on the territory of the Republic of Bulgaria are a priority category within the procedure for granting international protection and the SAR and the Council of Ministers are undertaking measures to secure the best interest of the child, taking into account the specific needs of the child and the principle of non-refoulement.

Pursuant to Art. 28a from the Foreigners in the Republic of Bulgaria Act (FRBA)¹⁸ which is in force from 24.10.2019, an opportunity is introduced for unaccompanied children, and for foreigners under 18 years of age, who had entered the territory of the Republic of Bulgaria accompanied by an adult, but have been abandoned by him/her, under certain conditions to be allowed to reside for a longer period on the territory of the country, until reaching the age of maturity.

2.6. Members of the armed forces

The armed forces are also falling under the scope of IHL. The military component of the defence system includes mainly military formations of the Armed Forces of the Republic of Bulgaria. The non-military component of the system includes the forces and assets of the ministries and departments of the central and territorial administration, the local self-government bodies, etc. One of the main elements of the non-military component is the Ministry of Interior and its functions regarding the defence of the State are determined by the particular model that is applied.

The preparation and implementation of the territorial defence of the country in case of military conflict or military actions - individually or in a coalition format, is a major activity in the field of defence. The control of the territory of the country outside the zone of active military operations in all cases remains a national responsibility.

Art. 123 in the Defence and Armed Forces Act provides for the basic duties of the State authorities and armed forces in cases of declaration of a state of war, martial law or state of emergency, as well as the corresponding measures and actions, such as general mobilization; restriction or prohibition of flights and crossing of the state border; restriction of free movement and access to state institutions, etc. When the protection of the national interest and of the life and health of the citizens requires so, other measures are to be applied, which do not contradict the international treaties, guaranteeing the protection of human rights in the conditions of war.

- **Participation of employees of the Ministry of Interior in missions outside the territory of the Republic of Bulgaria**

Taking joint action in the field of security in peacekeeping operations is becoming increasingly necessary, as the military force is not capable of coping alone with the tasks aiming at conflict prevention or resolution, thus the participation of Ministry of Interior officials in such international missions is required, in accordance with the Ministry of Interior Act (MIA).¹⁹

¹⁷ Prom. SG. no. 54 from 31.05. 2002, in force from 1.12.2002, last ed. and ext. SG. no. 89 of 16.10.2020

¹⁸ Prom. SG, no. 153 of 23.12.1998, last ed. and ext. SG, no. 98 of 17.11.2020

¹⁹ Prom. SG, no. 53 of 27.06.2014, last ed. and ext. SG, no. 85 of 2.10.2020

The Republic of Bulgaria has national rules for the selection of internationally deployed staff corresponding to the requirements of the missions, organized by the EU, UN, OSCE and other international organizations. The participation of Bulgarian units and military specialists in an operation must comply with Bulgarian national interests and must be carried out under the auspices and control of the UN or the OSCE, in accordance with the UN Charter and international law. Such participation aims to prevent conflicts, strengthen peacekeeping actions and maintain or consolidate the achieved peace. It has also to be based on a specific agreement with the Bulgarian government on the conditions for each military operation.

On the other hand, the legal basis for the participation of civil experts having the relevant education and qualification is regulated in the Ordinance on the terms and conditions for participation of civilian specialists from the Republic of Bulgaria in operations and missions of international crisis management organizations outside the territory of Bulgaria²⁰. Missions abroad have a strong and long-term political and national commitment, therefore the State is supposed to organize the selection of appropriate, pre-trained professionals to work in a conflict, ethno-culturally diverse and rapidly changing environment.

2.7 Persons performing medical and religious activities

Medical and religious personnel are categories of persons who are authorized by a belligerent party to serve the victims of war and they are subject to a special protection. The protection and respect provided to this type of personnel includes prohibition on attacking its members or obstructing the performance of their humanitarian functions.²¹ The special protective status of medical and religious staff remains in force even after they fall into the hands of the enemy. The “civil protection” emblem is also protected.

Deliberate targeting on medical buildings, materials, medical units and transport or personnel using the distinctive emblems of the Geneva Conventions is classified as war crime, in accordance with international law under Art. 8 (2), b. (b) (XXIV) of the Rome Statute of the International Criminal Court. Similar conduct corresponds to the elements of the crime defined in Art. 410 of the Criminal Code, which criminalizes the murder or other inhumane treatment of sanitary personnel and the destruction or misappropriation of sanitary materials or installations “in violation of the rules of the International law of war”.

The Criminal Code (Art. 413) criminalizes the improper bearing of the sign of the Red Cross or the Red Crescent or the misuse of a flag or a sign of the Red Cross or the Red Crescent, or of the colours, assigned to the medical evacuation transport.

2.8 Journalists and military correspondents

With regard to *journalists and military correspondents*, their protected status is perceived to overlap with the one of civilians. Military correspondents accredited with the armed forces of the belligerent parties enjoy the rights of prisoners of war²².

Journalists and military correspondents working in an area of armed conflict need real identification, which is done with a special ID badge according to international instruments. There is no such legal framework in the Bulgarian legislation for identification of journalists and military correspondents, working on the territory of international armed conflict. In accordance with its Rules for “Public Relations”, the Ministry of Defence is authorized to provide the media with an opportunity to work during military operations and missions with the participation of military formations or individual servicemen.

In multinational operations (allied, coalition), the accreditation of journalists is carried out by the respective Public Relations structures in the operations command, which determine the number and composition of

²⁰ Adopted by Council of Ministers Decree No. 9 of 20.01.2011, promulgated. SG, no. 9 of 28.01.2011, amended. SG, no. 104 of 29.12.2016.

²¹ Art. 24-26 of the First Geneva Convention; Art. 36 of the Second Geneva Convention; Art. 20 of the Fourth Geneva Convention; Art. 8 and 15 of the First Additional Protocol; Art. 9 of the Second Additional Protocol.

²² See Art. 79, item 1 and item 2 of the First Additional Protocol in connection with Art. 4A, item 4 of the Third Geneva Convention relative to the Treatment of Prisoners of War of 1949.

the accredited media representatives. During a conflict, each accredited journalist acquires a status in accordance with Art. 79 of the First Additional Protocol to the 1949 Geneva Conventions.

3. Protection of certain categories of objects

3.1. Protected areas and sites

3.1.1. Protection of civilian and military hospitals

The obligation to protect civilian and military hospitals derives directly from the provisions of international humanitarian law and includes the obligation to protect medical facilities, which means hospitals (without distinction between civilian and military hospitals) and the prohibition of assault against them, as long as they are not used for hostile actions.²³ In addition, in order to materialize and emphasize the right to a special protection, medical units might be marked with protective emblems provided for in the Geneva Conventions and their additional protocols, such as the emblem of the Red Cross. The use of such emblems must be subject to state control.

There is no provision in International humanitarian law that explicitly obliges states to mark medical facilities with protective identification emblems. At the same time, it has to be emphasized that the prohibition on attacking such establishments is absolute, which means that attacks against them under the excuse of non-use of protective emblems means that they have no right to special protection, are classified as a war crime under Art. 8 (2), b. (b) (XXIV) of the Rome Statute of the International Criminal Court.

In Bulgarian law, the norms related to the protection of civilian and military hospitals during a conflict are regulated in Art. 410, (b) of the Criminal Code.

3.1.2. Sites and areas under special protection

The 1949 Geneva Conventions and the First Additional Protocol provide for the possibility of establishing various types of specially protected sites and areas that cannot be subject to military operations, mainly with regards to international armed conflicts. These include hospital - and safe zones, neutral zones, undefended areas, demilitarized zones²⁴ with their characteristics, particularity and specifics.

3.1.3. Administering Graveyards

The Ministry of Defence implements a policy of assisting the heirs of servicemen who died during or in connection with the performance of military service and has no functions, related to the procedures for conducting funerals of servicemen in peacetime. Military graves and cemeteries in the Republic of Bulgaria are recognized as military monuments according to Art. 4, para. 1 of the Military Monuments Act (MMA)²⁵ and are taken care of by the state and the municipalities. As for the Bulgarian military graves and monuments abroad, in accordance with the MMA, the activities for their exploration, protection, registration, maintenance, restoration and construction are carried out by the Minister of Defence with the assistance of the Minister of Foreign Affairs.

According to Article 226k of the DAFRBA, the expenses for the funeral of a deceased serviceman shall be borne by the Ministry of Defence. Military honours are given with the consent of the relatives of the serviceman. Issues related to the transfer of dead bodies or their remains from abroad to other graves are settled only in cases where bilateral agreements have been drawn up between Bulgaria and the country concerned. Until now, Bulgaria has an agreement regarding military graves only with Hungary.

²³ Art. 27 of the Regulations, annexed to the Convention of 1907 on the Laws and Customs of Land Warfare, Art. 19 of the First Geneva Convention and Art. 12 of the First Additional Protocol.

²⁴ Art. 23 of the First Geneva Convention, Art. 14 of the Fourth Geneva Convention and in the First Additional Protocol. See and the other Geneva Conventions, as well as Art. 59 of the First Additional Protocol.

²⁵ Prom. SG, no. 13 of 8.02.2008, last ed. and ext. SG, issue 62 of 1.08.2017

3.1.4. Restoring family links

Everyone's right to know what has happened to his/her relatives is a fundamental principle that can be derived from the fundamental human rights and International humanitarian law. This is also a guiding principle for restoring family links (RFL) activities of the Red Cross and Red Crescent Movement.

The Red Cross/Red Crescent National Societies (NSs) throughout Europe dedicate a large part of their efforts to re-establishing family links, as for Bulgaria this is regulated in the Bulgarian Red Cross Act (Art. 4, para. 1, item 7).²⁶ In this regard, in order to be able to help the families of missing persons, NSs need to understand how does the system work in their country and who they can turn to for assistance.

In order to raise awareness, promote best practices and improve communication, coordination and cooperation between stakeholders, two international conferences on the management and identification of human remains have been held, with a focus on dead migrants - in Milan (2013) and Barcelona (2015).

Forensic actions are at the core of the issue of deceased migrants and have a strong complementary role for the activities of assisting the living relatives (tracing/RFL). To facilitate this work, a Workgroup on Deceased Migrants and Information on Their Families was set up with the support of the International Committee of the Red Cross, with the Bulgarian Red Cross (BRC) being part of this working group. In 2016, a voluntary humanitarian commitment (pledge) was initiated, signed by many European Red Cross and Red Crescent National Societies, proposing an action plan with one of the priorities being: "mapping the current situation in their country in order to understand in detail the process of how deceased migrants are identified, registered, if and how their families are informed and who is in charge for these tasks".²⁷

This process would also serve as a basis for future development of potential modalities for cooperation between the competent bodies who are responsible, through their own mechanisms, identified as necessary for the fulfilment of their mandate to assist families in finding their (deceased) relatives. The Bulgarian Red Cross is involved in this mapping process, which was completed by the end of 2017.

It is currently known that data on missing persons and unidentified bodies are stored in one central database, including both Bulgarian citizens and foreign nationals.

3.2. Works and installations, containing dangerous forces

IHL provides that facilities containing dangerous forces, in particular dams, dikes and nuclear power plants must not be attacked, even if they are military targets, whenever such an attack could lead to the release of dangerous forces and consequently to serious damage for the civilian population²⁸.

The parties to the conflict may conclude additional agreements to provide further protection to facilities, which contain dangerous forces, and can mark them with a special emblem referred to in Art. 16 of Annex I to the First Additional Protocol.

According to Decree № 181 of the Council of Ministers of 20.07.2009, facilities and establishments containing the dangerous forces (dams, levee and nuclear power plants) referred to in Art. 56 of the First additional protocol of the 1949 Geneva Conventions can be considered as strategic facilities, so their protection is the responsibility of the respective commanders.

In case of emergency, the Armed Forces of the Republic of Bulgaria maintain readiness to provide humanitarian assistance. On the other hand, representatives of the Ministry of Interior, in an interaction with the formations of the Armed Forces of the Republic of Bulgaria, organize the protection of the critical infrastructure sites on the territory of the country. The specific tasks and the composition of forces and means for

26 Prom. SG, no. 87 of 29 September 1995, last ext. SG, no. 60 of 7.07.2020

27 <https://rcrcconference.org/pledge-report/dead-migrants-and-information-to-their-families-2/>

28 Art.56 from the First Additional Protocol and art. 12 from the Second Additional protocol

protection of the critical infrastructure sites²⁹ on the territory of the country, including wartime government management points, are specified in the wartime plans of the Ministry of Interior and the plans of the armed forces.

- **Ministry of Interior's role in the protection of strategic and especially important sites**

Protection of strategic and especially important sites (critical infrastructure) is an activity, in which the role of the Ministry of Interior is essential for the protection of national security nowadays.

The National Security Strategy of the Republic of Bulgaria is a fundamental document for its unified formation, implementation and control by the state institutions, in cooperation with citizens and organizations.

The strategic sites of importance for the national security in the Republic of Bulgaria are administrative, industrial, transport and communication including the activities performed within them. The activity of state bodies and the main sectors of the economy depend on their normal functioning. These sites and activities are determined annually by the Council of Ministers.

Their protection is provided by the competent bodies of the Ministry of Interior and the State Agency for National Security³⁰. Some of them possess characteristics, according to which they can be classified in more than one of the above mentioned categories, such as strategic sites of national importance in the energy sector.

The physical protection of the sites is organized by the central and regional directorates of the Ministry of Interior. The Gendarmerie Directorate, as a structure of General Directorate of the National Police has priority function in the implementation of the protection of objects.

- **Forces and resources of the Ministry of Interior for physical protection of sites**

The physical protection of sites is carried out both by the Ministry of Interior and by other state structures, such as the National Security Service (NSS), Security Service of Judiciary at the Ministry of Justice. The security activity in the Republic of Bulgaria is regulated by the Private Security Act³¹, MIA and Republic of Bulgaria Defence and Armed Forces Act.

The Bulgarian army also ensures security of strategic sites and is authorized to participate in counter-terrorism operations, yet only during complicated situation or in a crisis of military nature. In case of a declared "state of emergency", it performs various tasks according to the Military Doctrine of the Republic of Bulgaria and Art 55-57 of the Republic of Bulgaria Defence and Armed Forces Act. The Bulgarian Army carries out its activities in the form of preventive dissemination of information and humanitarian campaigns³².

3.3. Protection of Cultural property during armed conflict

Protection of **cultural property is of great importance for the cultural heritage of every nation, as well as for the international community**. It includes, regardless of their origin and owner, movable or immovable property, such as monuments of architecture, art or history, religious or secular, archaeological places; works of art, scientific collections or important collections of books, archival materials or reproductions of valuables, buildings - museums, libraries, historical archives, etc.

29 See: Disaster Protection Act, prom. SG, no. 102 of 19.12.2006, last ed. and ext. SG, no. 60 of 7.07.2020; Decree No. 181 of the Council of Ministers of 2009, prom. SG, no. 59 of 2009; Ordinance on the procedure, manner and competent authorities for the establishment of critical infrastructures and their sites and risk assessment, adopted by Council of Ministers, No. 256 of 17.10.2012

30 See Council of ministers Decree No. 181, prom. SG, no. 59 of 28.07.2009, State Agency for National Security Act, Art. 43-45, ext. SG, no. 38 of 18.05.2012, MIA, amended. and ext. SG, no. 44 of 12.06.2012

31 Prom. SG, no. 10 from 30.01.2018, in force from 31.03.2018, last ed. SG, no. 69 of 4.08.2020

32 See National Defense Strategy until 2020, adopted by Decision No. 239 of the Council of Ministers of 14.04.2011.

International legal protection is contained mainly in the 1954 Convention for Protection of Cultural Property in the Event of Armed Conflict; First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and in the 1999 Second Protocol to the 1954 Hague Convention. Art. 38, Art. 53 and Art. 85 of First Additional Protocol and Art. 16 of Second Additional Protocol of Geneva Conventions (1949).

The protection of cultural property is defined by **their preserving and respectful treatment** from states, both during peacetime and armed conflict, by refraining from any act of hostility against them, by preventing any acts of theft, robbery or embezzlement of cultural property values in any form, as well as any acts of vandalism. The protection is provided after their registration in the **International Register of Cultural Property under Special Protection** in accordance with the procedure provided for this purpose. All parties are obliged to ensure protection of cultural objects.

Enhanced protection of cultural property supposes that national legislation treats these objects as highly valuable, as well as that the party concerned does not use cultural property to disguise military infrastructure and has made a declaration to that effect. Finally, the **Committee for Protection of Cultural Property during armed conflict** must have registered the particular site in the International List of Cultural Property under Enhanced Protection.

Bulgaria is State Party to the abovementioned international treaties, they have been ratified in various periods after their adoption and they are in force in Bulgaria.

3.4. Natural environment

In IHL, the natural environment has the characteristics of a civilian object and enjoys both general protection and specific protection during armed conflicts. The legal regulations under the First Additional Protocol provide for that soldiers should not attack natural environment (unless it is a military target) or destroy it (unless imperatively demanded by the necessities of war). This protection includes prohibition of using methods or means of warfare which are intended or could cause damage to the natural environment and thus harm the health or survival of the population.

Bulgaria is State Party of the Convention on the Prohibition of Military or any Hostile Use of Environmental Modification Techniques of 10 December 1976³³.

In the national legislation, the matter related to the measures and restrictions regarding certain categories of objects in a state of war or emergency, including critical infrastructure, are regulated in the Defence and Armed Forces of the Republic of Bulgaria Act (Article 123, paragraph 8 and paragraph 10). According to its provisions, under certain conditions, the state authorities control those objects, and when it becomes necessary to protect the national interest, life or health of citizens, they can apply other measures that do not contradict international acts, guaranteeing the protection of human rights.

In the recent years, there has been a tendency towards interconnecting the climate change issues with armed conflicts, stating the climate as a cause for their occurrence, while at the same climate change effects can increase the vulnerability of people who rely on natural resources for their survival³⁴. However, there is no consensus or specific international or national legislation on this issue.

4. Measures to ensure the identification of protected sites

4.1. Protection of the Red Cross and Red Crescent name and emblem

The distinctive emblem depicting red Cross on a white background was adopted in 1863 and is formed

³³ Signed by Bulgaria on 18.05.1977; ratified by Decree No. 1045 of the State Council of 25.05.1978, SG, issue 43 of 1978, in force since 5.10.1978, promulgated. SG, no. 22 of 16.03.1979

³⁴ <https://www.icrc.org/en/document/icrc-un-security-council-double-impact-climate-change-armed-conflict-harms-peoples-ability-cope>

by reversing the colours of the Swiss flag³⁵. The main purpose of the emblem is to ensure protection to the injured during armed conflict and to the persons providing assistance to them on the battlefield. Islamic countries use the alternative Red Crescent emblem on a white background, adopted in 1929³⁶.

There are two legal uses of the emblem: protective - particularly during armed conflict; and indicative - in peace time, to designate persons or objects, associated with the International Red Cross and the Red Crescent Movement.

The rules for the use of the emblem are contained in the 1949 Geneva Conventions and the 1977 Additional Protocols, as well as in the Regulations on the Use of the Emblem of RC/RC by the National Societies, adopted by the Movement's Council of Delegates in 1991. In 2005, the additional distinctive emblem - Red Crystal on a white background was adopted, whose use is regulated by the Third Additional Protocol to the Geneva Conventions.

Any misuse of the emblem reduces its protective value and undermines the effectiveness of humanitarian assistance. Misuse of the emblem is prohibited and all countries, who have signed the Geneva Conventions and their additional protocols, have committed to ensure misuse prevention, deterrence and sanctioning in their national legislation.

According to Article 8, par. 1 of the Bulgarian Red Cross Act, the Bulgarian Red Cross has the exclusive right to use the Red Cross name and emblem. In war time, acts related to the unauthorized use of the "sign of the Red Cross" under Art. 413 of the Criminal Code constitute crimes against the laws and customs of conducting war.

5. Structures for protection and assistance

5.1. National Red Cross/Red Crescent Societies

The conditions for establishing and recognizing a national society are stipulated by the Statutes of the International Movement of the Red Cross and Red Crescent (Article 4), which has been adopted by the countries, who have signed the 1949 Geneva Conventions and their Additional Protocols.

According to the Bulgarian Red Cross Act "the Bulgarian Red Cross is the only National Red Cross Society in Bulgaria." The legal framework is supplemented by a number of other laws that determine its functions and powers, such as Republic of Bulgaria Defence and Armed Forces Act (Art. 46), Disaster Protection Act³⁷ (Art. 22), Asylum and Refugees Act.

The Bulgarian Red Cross (BRC) is a non-profit legal entity, whose organizational and legal form is an Association, registered in accordance with the relevant national legal order.

The BRC, as part of the International Red Cross and the Red Crescent Movement, is led by its seven fundamental principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality. Based on its network of over 18,000 volunteers in the country, the BRC provides assistance to vulnerable people in Bulgaria without distinguishing between nationality or race, sex, social status, religious beliefs or political views and has a special mandate for activities during crises, natural or manmade disasters.

Through training programs and activities for the benefit of the society, the BRC contributes in many humanitarian causes, such as protecting the health and lives of people, and ensuring respect for human dignity.

5.2. Civil protection

Civil protection aims to protect the civilian population in order to reduce the losses, damage and suffering

35 By virtue of art.38 of the First 1949 Geneva Convention

36 Ibid, art.38, sec.2

37 Prom. SG, no. 102 of 19.12.2006, last ed. and ext. SG, no. 60 of 7.07.2020

caused by the methods and means of war. It also serves as a precaution in the event of an attack, indicated in the First Additional Protocol of 1977 to the Geneva Conventions of 1949 and the Fourth Geneva Convention, which gives civil protection organizations the right to perform their duties under foreign occupation, in all situations of international armed or even unarmed conflict, according to the Second Additional Protocol.

IHL defines civil protection according to the tasks performed, not according to the organizations that perform these tasks. Citizens involved in the work of civil protection must be respected and protected and cannot be attacked.

The international legal obligation of the States is to ensure that peacetime structures are recognizable in wartime, as well as that all persons involved in civil protection are aware of the norms of international humanitarian law and their obligations. States should control the use of the international distinctive emblem of civil defence and prevent any abuse by adopting appropriate punitive law provisions.

The concepts introduced in the Bulgarian legislation, which in their substance correspond to “civil protection” and “civil protection services”, are respectively the “Civil Protection” and the “Unified Rescue System”, which are regulated by the Disaster Protection Act in case of a danger to the population or in case of disasters, as well as during war, introduction of martial law, or state of emergency.

- **Structures and activities of the Ministry of Interior related to migrants**

Migration crises are a topical issue in IHL. The present conditions require new approaches and relevant tools. In recent years, Bulgaria has been gradually and steadily transforming from emigration country, through a transit country and finally, to a country, pulling immigration.

The control of the migrant waves, the transport corridors, as well as the places for deployment of NATO forces, etc. are tasks of the bodies of the General Directorate “Border Police”. The armed forces, if necessary, provide assistance and for such joint operations, a general operational plan is developed with defined objectives, structures, tasks and responsibilities.

For the activities related to migrants, a Migration Directorate (MD) was established in 2004 as a specialized body within the structure of the Ministry of Interior for regulation of migration processes and for the administrative control over the residence of foreign citizens in the Republic of Bulgaria.

The Foreigners in the Republic of Bulgaria Act stipulates the criteria, determining the persons to be considered foreigners and their status. The foreigners, residing in the Republic of Bulgaria legally, have all rights and obligations, in accordance with the Bulgarian laws and the ratified international treaties to which Bulgaria is a State Party, with the exception of those rights, requiring Bulgarian citizenship.

The procedure for temporary accommodation, stay and dismissal from the special homes for temporary accommodation of foreigners is regulated by Ordinance I3-1201 of June 1, 2010³⁸. The generally accepted norms for protection of human rights and the ratified international treaties are applied to those accommodated in the special centres.

The Representation of the United Nations High Commissioner for Refugees (UNHCR) in Bulgaria is an important partner of the Migration Directorate by the Memorandum of Understanding regarding the terms of mutual cooperation and coordination, signed in 2017. Another main partner is the International Organization for Migration (IOM), which has a permanent office, based in Sofia, and carries out activities to motivate and implement voluntary return of foreigners to their countries of origin or to other third countries.

The Bulgarian Red Cross is providing significant humanitarian support to people, accommodated in the special homes for temporary accommodation of foreigners. The Bulgarian Helsinki Committee provides free legal advice and legal support, while the Assistance Centre for Torture Survivors – ACET provides psychosocial counselling. Caritas Bulgaria regularly conducts educational courses for children and adults.

38 Ordinance I3-1201 of June 1, 2010, promulgated. SG, issue 45 of June 15, 2010

5.3. National Information Bureaux (Tracing Service and Restoring Family Links)

The national information bureaux are Red Cross and Red Crescent structures. Their role, in situations of international armed conflict or occupation, is to collect and store information about detained foreign nationals, to transmit this information to the Central Tracing Agency and the ICRC, and to respond to inquiries about these people. The existence of these offices in peacetime is beneficial for their work during conflict.

The activities defined by the 1949 Geneva Conventions and the 1977 Additional Protocols are aiming to collect, store and transmit information for the identification of prisoners of war, internees, wounded, sick or dead, as well as other individuals who have been granted protection; transmission of family messages; search for missing people; restoring family links (RFL).

Every four years, during the International Conferences (IC) of the Red Cross and Red Crescent, states call for actions and recommendations, incl. in the field of RFL³⁹.

The national legal framework for the above-mentioned competences of the Bulgarian Red Cross (BRC) is stipulated in the BRC Act (Article 4, paragraph 1, item 7).

6. Regulated use of methods and means for conducting military actions

6.1. Arm treaties adopted by Bulgaria

The Republic of Bulgaria is an active participant in all international legal tools in the field of **disarmament, non-proliferation and arms control**, whose main objectives include compliance with international obligations arising in particular from the UN Security Council, the EU and the OSCE, as well as respecting IHL and human rights.

The implementation of the Convention Prohibiting Chemical Weapons, the Convention on the Prohibition of the Development, Production and Stockpiling of Chemical, biological and toxic weapons and their destruction, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction and the Convention on Cluster Munitions constitutes a priority for the country.

In order to fulfil our country's obligations under the above-mentioned conventions the Law on the Prohibition of Chemical Weapons and on the Control of Toxic Chemical Substances and Their Precursors and the Law on the Implementation of the Convention on Cluster Munitions and the Convention on the Prohibition of the Use, Storage, Production and Transfer of anti-personnel mines and their destruction have been adopted⁴⁰. Their approbation is an indicator for the serious commitment of the Republic of Bulgaria in this particular field of IHL.

Respect for human rights and IHL has a prominent role in weapons export control and dual-use items and technologies. An evidence of Bulgaria's commitment is the adoption of another piece of legislation – the Export Control of Defence-Related Products and Dual-Use Products and Technologies Act⁴¹.

6.2. Military operations planning

During missions and operations of the Bulgarian Army abroad, the national legislation, the UN Charter, the

39 See for example: Resolution 11 of the 24th IC, Manila, 1981; Resolutions 15 and 16 of the 25th IC, Geneva, 1986; Resolution 2a of the 26th IC, Geneva, 1995; Resolution 1 of the 28th IC, Geneva, 2003; Resolution 4 of the 33rd IC, Geneva, 2019.

40 Law on the Prohibition of Chemical Weapons and on the Control of Toxic Chemical Substances and Their Precursors, prom. SG, no. 8 of 28.01.2000, last ed. and ext. SG, no. 63 from August 9, 2019, in force from August 9, 2019; Law on the implementation of The Convention on Cluster Munitions and the Convention on the Prohibition of the Use, Stockpiling and Production and the transfer of anti-personnel mines and their destruction, prom. SG, no. 95 of 8.12.2015, last ed. and ext. SG, no. 98 of 13.12.2019, in force since 13.12.2019.

41 Law on Export Control of Defence Related Products and Dual-Use Products and Technologies, prom. SG, no. 26 from 29.03.2011, in force from 30.06.2012, last. ed. and ext. SG, no. 63 of August 9, 2019, in force since August 9, 2019.

international treaties adopted by the Republic of Bulgaria, as well as the principles and norms of IHL are being followed. For each operation, the Chief of Defence issues rules on the use of force according to the Law on Defence and the Armed Forces of the Republic of Bulgaria.

The Doctrine for joint determination and defeat of objectives was adopted and approved by Order of the Minister of Defence of the Republic of Bulgaria №OX-744/25.10.2013. Its essence lies in the correct selection of targets and systems, or a combination of systems, for relevant response, taking into account the operational features. It is mandatory that the rules on the use of force are sanctioned by the high-level political and military management.

In all cases, the use of military force shall be controlled and restricted to such an extent that it is justified, proportionate and necessary to achieve legally justified military objectives.

The performed analyses serve as a foundation for the adoption of alternative methods of warfare, using non-lethal means to impact the set targets.

6.3. Emerging military technologies and International humanitarian law challenges

Nowadays, NATO and the EU are facing a number of challenges, which require modification and adaptation to the dynamically changing security environment. NATO's military superiority can hardly be secured without new modern defence technologies, as well as without the planning, preparation and conduct of contemporary military operations.

A number of modern weapon systems have autonomous characteristics. The progress in the field of artificial intelligence has the potential to lead to significant changes in the dynamics of future armed conflicts and to affect the balance of power and relations between countries. At the same time, the autonomy of the weapons systems raises a number of humanitarian, moral and ethical issues, and in 2014 the topic was discussed during The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, seeking balance between military necessity and humanitarian considerations.

In 2018 and 2019, the discussions of the abovementioned issues, together with the active participation of Bulgaria, have significantly contributed to improving the common understanding on topics related to the applicability of international humanitarian law and they are still on the agenda for 2020-2021.

6.4. Humanitarian impact of the use of explosive weapons against military targets in densely populated areas

IHL regulates the basic obligation of belligerent parties during an armed conflict that all human beings must be treated humanely, including those fighting on the enemy side, without assessing the motive and legality of the military actions. The Geneva Conventions indicate explicitly that any person who is not a combatant or is no longer taking an active part in the hostilities, has the right to protection and must be treated humanely.

The altered nature of contemporary armed conflicts is reflected in the growth in their number, duration and complexity, which leads to an increased threat and severe consequences for the civilian population. This requires compliance with the provisions of IHL, incl. the application of accountability mechanisms for IHL violations; strengthening the implementation measures not only at international, but also at national level.

The topics as the use of explosive weapons in populated areas and the need for action to support IHL are becoming increasingly important. Concerns expressed during various international forums about the significant humanitarian damage caused by the use of explosive weapons indicate the need to take relevant measures and actions to ensure compliance with IHL to protect civilians and civilian infrastructure.

6.5. Protection of civilians in hostilities from use of explosive weapons in populated areas (EWIPA)

In terms of the commitment made to respect and guarantee IHL, to promote compliance with IHL instruments, including the Additional Protocols to the Geneva Conventions and to support humanitarian actions,

the Ministry of Defence also welcomed that Republic of Bulgaria has joined the Humanitarian Call for Action in Support of IHL, initiated by Germany and France.

In October 2019, the Vienna Conference on Protecting Civilians was held. Representatives of 133 countries, international organizations and civil society took part, agreeing to start negotiations on a political declaration on the use of EWIPA to ensure compliance with IHL and protection of civilians during armed conflicts.

The generally accepted opinion is that the existing IHL provides the required legal framework to address the challenges caused by the changing nature of armed conflicts nowadays. However, there are differing views on how the IHL should be applied. This necessitates a longer negotiation process in order to develop an acceptable draft political declaration.

The relevance and responsibilities related to the protection of the civilian population and the civilian infrastructure set a requirement for our country to actively engage in the initiatives and negotiation processes on the topic, given its complexity.

6.6. Regulated use of methods and means of warfare

IHL stipulates the basic obligation of combatants during an armed conflict for humane treatment for each individual, including those fighting on the enemy site. In addition, the use of certain methods and means of conducting hostilities is regulated. Priority for Bulgaria in this area is the implementation of the Convention Prohibiting Chemical Weapon, the Convention on the Prohibition of the Development, Production and Stockpiling of Chemical Weapons bacteriological (biological) and toxic weapons and their destruction, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their destruction and the Convention on Cluster Munitions.

A fundamental principle in these conventions is the respect for IHL and human rights. In fulfilling the obligations of our country under the abovementioned conventions, relevant laws have been adopted.

- **Interaction between the Ministry of Interior and the Ministry of Defence in martial law or during war**

The interaction between the Ministry of Defence (MoD) and the Ministry of Interior (MoI) in martial law and during war is organized by coordinating their shared tasks and actions in the implementation of strategic plans, plans for operations of the armed forces and plans for operational use of the forces of the Ministry of Interior.

When declaring martial law or a state of war, the Ministry of Interior, in coordination with the Ministry of Defence, sends coordination and interaction groups to the headquarters of the Supreme Command and the Joint Force Command.

The two ministries coordinate the order and routes for evacuation outside the area of the military operation, and the Ministry of Interior assists the armed forces to ensure this activity⁴².

- **Interaction on security and protection of the state border**

During martial law or a state of war, the structures of the General Directorate of Border Police and the armed forces coordinate their actions to ensure the protection of the country border and the deployment of military formations in the border area to protect the sovereignty and the territorial integrity of the country.

The order and the methods for the state border protection, outside the zone of the military operation, shall be determined by the Minister of Interior in coordination with the Commander-in-Chief of the Armed Forces according to the Law for Ministry of Interior (art. 87-89).

42 Art. 27-30 of Instruction № m-3 of July 18, 2011 for interaction between the Ministry of Defense and the Ministry of Interior.

- **Interaction on counter – landing, sabotage and counter-intelligence groups and terrorist groups**

The tasks of fighting against landings, sabotage and counter-intelligence and terrorist groups and other formations of organized resistance are performed by conducting joined operations and actions by the structures of the Ministry of Interior and the military formations of the armed forces. The command and control bodies of the armed forces provide the Ministry of Interior with information on the places, time of deployment and the composition of the enemy's landings inside and outside the area of the military operation.

The Ministry of Interior provides to the Ministry of Defence information on the formation and actions of terrorist groups and other formations of organized resistance on the territory of the country. The fight against sabotage and intelligence groups and terrorist groups in the area of the military operation is conducted by the armed forces in cooperation with the MoI, and outside the area of the military operation - by the MoI in cooperation with military units of the armed forces⁴³.

- **Use of weapons by police authorities according to the Ministry of Interior Act**

The use of weapons by the police is regulated mainly in the Ministry of Interior Act. Under this law, police authorities may use a weapon only when it is absolutely necessary, namely: in the event of an armed attack or a threat with a weapon; during release of hostages and abductees; after a warning when detaining a person who is committing or having committed a crime, if one resists or tries to escape; after a warning to prevent the escape of a person, who in accordance with the relevant procedure, has been detained for committing a crime; when taking measures to ensure personal safety.

When using a weapon, the police authorities are obliged to undertake everything possible to preserve the life of the person whom it is pointed against and not to put in danger the life and health of others.

The police shall cease the use of a weapon immediately after its legitimate purpose has been achieved. After having resorted to the use of a weapon, the police organs should prepare a report.

7. International humanitarian law violations

According to Art. 85, item 5 of the First Additional Protocol, all serious violations of IHL must be considered as war crimes. Breaches of IHL are qualified as grave in: Art. 50 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in land-based combat Operations, Art. 51 of the Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked by the Armed Forces in combat Operations at Sea, Art. 130 of the Geneva Convention relative to the Treatment of Prisoners of War, Art. 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and in Art. 85 in connection with Art. 11 of the First Additional Protocol. The First Additional Protocol regulates the protection of victims of international armed conflict.

Serious violations of IHL under the First Additional Protocol are wilful acts causing death, grievous body harm or serious damage to health when attacking civilian population or civilians; launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects; launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects; making non-defended localities and demilitarized zones the object of attack; making a person the object of attack in the knowledge that he is hors de combat; the perfidious use of the distinctive emblem of the red cross, red crescent or other protective signs.

The international tools listed above also regulate other acts that are considered as crimes when committed wilfully and contradict international law of war. Any party involved in an international armed conflict which violates IHL provisions, is obliged to pay a reparation and bears responsibility for all actions performed by members of its armed forces.

43 Art. 35-36 of Instruction № m-3 of July 18, 2011 for interaction between the Ministry of Defense and the Ministry of Interior.

Serious violations of the international rules for conducting military operations are considered as crimes and are regulated in Art. 410 - 415, art 419 in the Criminal Code. The criminal provisions provide for various types of attacks on the wounded, sick, shipwrecked and sanitary personnel (Article 410, item "a"), sanitary materials or installations (Article 410, item "b"), prisoners of war (Article 411), civilian population (Art. 412, items "a", "b", "c", "d", "e") and civil property (Art. 412, item. "f"), the emblem of the Red Cross/Red Crescent and the distinctive colour of the vehicles for sanitary evacuation (art. 413), the cultural property (art. 414). The use of nuclear, chemical, bacteriological, biological or toxic weapons or illicit resources and ways of warfare are also qualified as a crime (art. 415). The subject of the crimes can be a serviceman or any criminally responsible civilian. According to Art. 419, the Criminal Code envisions a punishment for the one who knowingly allows his subordinate to commit a crime against peace and humanity - including crimes against the laws and customs of war.

The Bulgarian Criminal Code is applicable to serious violations of IHL, both during an international armed conflict and during an armed conflict of a non-international nature, as the provisions of the Criminal Code do not distinguish between these two hypotheses. In stipulating the offenses, the terminology used in the Geneva Conventions and the Rome Statute of the International Criminal Court was followed. Only the deliberate intent is constituent element of the criminal offence.

Crimes such as turning non-defended localities or demilitarized zone into an object of attack; obstruction of repatriation of prisoners of war or interned civilians, committing murder, torture, inhuman treatment (including biological experiments) and causing severe suffering, mutilation or other damage to the health of religious personnel of the enemy are not included in the Criminal Code.

The statute of limitations does not apply to crimes against peace and humanity. The Convention on the Non-Application of the Statute of Limitations in Respect of War Crimes and Crimes against humanity has acquired significant international legal importance and it was ratified by Bulgaria on April 10, 1969 by Decree № 344 of the then Presidium of the National Assembly, and entered into force for Bulgaria from 11.11.1970. The Criminal Code of Bulgaria (Art. 79, para. 2) included already in 1968 the provision that the criminal prosecution and execution of punishments for crimes against peace and humanity are not covered by the statute of limitations.

The current Constitution of Bulgaria retained in Art. 31, par.7 the existing situation for non-application of the statute of limitations regarding the above criminal acts.

Art. 85, par.2 and Art. 88a, par. 5 of the Criminal Code introduces substantive Law unconditional prohibition for the rehabilitation of a person convicted of a crime against peace and humanity, including a crime against the laws and customs of war. Thus, according to the current Bulgarian law, it will not be possible to annul the conviction of war criminals under Art. 410 - 415 of the Criminal Code and the consequences that arise from the conviction itself. Yet, the Criminal Code does not exclude the legal possibility of granting amnesty for war crimes.

Although not all IHL violations are classified as grave, EU Member States are required to adequately counteract all other violations of the conventions.

Currently, only the Law on the Bulgarian Red Cross contains administrative and punitive provisions on specific IHL issues with regards to the protection of the emblem of the Red Cross.

8. Other IHL implementation measures

8.1. Translation of IHL treaties

Each State Party to the Geneva Conventions and the First Additional Protocol, is obliged to provide to the other State Parties official translations, as well as the official translations of the laws and regulations which it may adopt to ensure the application of the said international agreements. The Republic of Bulgaria has provided, through the Swiss Federal Council, an official translation of the Geneva Conventions and the Additional Protocols in 2016.

The official translation of the Geneva Conventions and the Additional Protocols thereto was published in the State Gazette in 2014⁴⁴.

The official translations of other IHL agreements, to which the Republic of Bulgaria is a State Party, have been published in the State Gazette, as more detailed information is contained in Annex 2.

8.2. Dissemination and teaching

Each of the international instruments contains an obligation to ensure their proper dissemination and teaching. The States' duty is, both in peacetime and in times of armed conflict, to communicate the provisions of international agreements as widely as possible to the countries concerned and include their study in various programs.

Fulfilling its statutory obligations and under the Bulgarian Red Cross (BRC) Act, the BRC in its capacity as a National Society, provides and distributes manuals, brochures, videos and other specialized materials and periodically conducts courses and seminars on IHL and international human rights for various audiences. The BRC also systematically supports the efforts of the Bulgarian government and international organizations for dissemination, implementation and improvement of the existing international humanitarian law provisions, for the establishment of national implementation mechanisms and media campaigns on the numerous cases of violations worldwide.

As part of the efforts to disseminate and popularise IHL, the BRC has launched a process of expanding the university network of law faculties to hold targeted events in the field of IHL.

RECOMMENDATIONS

Recommendation of the Ministry of Foreign Affairs:

It would be appropriate to consider the ratification of IHL treaties, which the Republic of Bulgaria has already signed. In addition, based on an analysis by the competent authorities, the accession to those multilateral IHL instruments which Bulgaria has not yet acceded to could be considered.

Recommendations of the Bulgarian Red Cross:

Recommendation: A parallel approach should be drawn with the National Plan for Women, Peace and Security and common methods can be integrated with regards to the protection of women.

Recommendation: To initiate changes in the Ordinance on the uniform state requirements for acquiring higher education in the specialty "law" and professional qualification "lawyer", in which the study of International Humanitarian Law should be included as a compulsory or facultative discipline in the curriculum of all Law Schools. Also, the proposed changes can encourage student mobility and exchange of teachers, as well as the teaching of the IHL to foreign students in Bulgaria under exchange programs, incl. under Erasmus + program.

Recommendation: To take into account the exclusively humanitarian nature of the implementation of RFL activities, which implies assistance from public institutions, incl. in the exchange of information on the destiny of the missing, in a spirit of cooperation and understanding of the specific mandate. It is important to note that Bulgaria, as a State Party to the Geneva Convention and a participant in the International Conferences of the Red Cross and Red Crescent, should report on the progress of the newly adopted resolution 4 (https://rcrcconference.org/app/uploads/2019/12/33IC-R4-RFL-_CLEAN_ADOPTED_en.pdf) during the 33rd International Conference, held in December 2019. States committed to support the activity of restoring family links, incl. by unimpeded transfer of personal data.

Recommendation: In order to solve the issue of missing and deceased migrants, cooperation with living relatives, are additional components that need to be addressed jointly. Reaching out to the families of the deceased and gathering information on the missing, should be encouraged, while ensuring that an appro-

44 Prom. SG, no. 26 of 21.3.2014; SG, no. 27 of 25.03.2014; SG, no. 30 of 01.04.2014

priate medical and legal framework is in place for the identification of deceased migrants and their dignified relocation (including the tracking opportunity).

Recommendation: Further efforts are needed to meet the needs of the families of the deceased. In general, this includes promoting proper procedures for the identification, management of the dead and, if necessary, the collection and transmission of information to national authorities responsible for investigating unidentified bodies provided by families of missing persons in countries of origin, transit and residence. Integrative approaches to interdisciplinary cooperation should also be encouraged (forensics and protection, family reunification) as well as cooperation and the sensibilisation of the relevant authorities.

Recommendation: To increase the penalty in case of violation and develop a mechanism that allows easy identification and report of misuse of the name or emblem of the Red Cross. Qualified constituent elements of a criminal offence involving serious abuses of the Emblem, e.g. during a state of emergency; or abuse with severe consequences for life and health should be introduced in the Criminal Code.

Recommendation: To consider the possibility of adoption by the Republic of Bulgaria of the so-called Emergency travel document, updated by the ICRC as of 1 January 2019. The updated version of the document has been revised to comply with the International Civil Aviation Organization's guidelines on emergency travel documents to facilitate the work of border control authorities. The document is to be issued to persons who: 1) do not have a passport or other recognized travel document; 2) displaced, stateless persons, refugees, asylum seekers or migrants in a particularly vulnerable situation; 3) who cannot return to the country of origin or residence or continue their stay in a country offering temporary or permanent asylum; 4) have the necessary visas and meet the travel requirements.

The ICRC's emergency travel documents are issued only as a last resort when the authorities are not able to provide a document and they are valid only for one-way travel.

Recommendation: To explore the options for centralization of data and information from the municipal registers of deceased people with single common platform, integrating the data on Bulgarian citizens, foreigners, incl. migrants with or without status.

Recommendation: To centralize the available information on the number of unidentified bodies. There is no clear number of unique unmatched DNA profiles, nor data specifically related to migrants. Genetic analysis of unidentified remains has been carried out in Bulgaria since 2000. The police authorities have a unit for missing persons (which deals mainly with cases of Bulgarian citizens). Investigations of unidentified bodies should also be conducted by the police, and cases to be reported and shared across the country.

Recommendation: To review the legal framework related to the protection of the natural environment and resources, in order to transpose the need for protection of natural resources and the population's access to them, in conditions of changing climate, incl. in the event of a conflict (civil, internal, armed).

The effects of climate change can increase people's vulnerability and create additional dynamics in a conflict. Greater compliance with International humanitarian law can help to reduce climate risk for vulnerable communities and the environment itself. IHL clarifies that the natural environment is protected and that civilians rely on natural resources, which are essential for their survival. With proper respect of the IHL principles and rules for the conduct of hostilities, climate risks can be reduced.

Recommendation: To explore the interconnectivity between the Disaster Protection Act and the recommendations on the recognition of the civilian structures during martial law and to use the framework of the National Disaster Protection Program to define specific tasks, to be implemented annually, through the action plans of the Program. Also at the operational level, it should be possible to ensure that the structures of the unified rescue system are familiar with the rules of IHL, including those necessary for the performance of their duties in the event of military conflict, martial law, etc.

Recommendation of University of Plovdiv

Legislative proposals:

1. Ratification by the Republic of Bulgaria of the UN International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, adopted in 1989, in force since 2001.

2. Amendments to the Criminal Code of the Republic of Bulgaria:

A) In Chapter Fourteen "Crimes against Peace and Humanity" to be created Art. 415b with the following draft contents:

(1) The recruitment, training, financing or other support of mercenaries, as well as their use in armed conflict or hostilities, shall be punished by ...

(The individualization of punishment should be considered separately, but should be defined as a grave crime, punishable by more than 5 years of imprisonment).

(2) The same act committed in the exercise of official position or towards a minor shall be punished by

(3) A person who has participated as a mercenary in an armed conflict or military action shall be punished by ...

(4) For an act, committed repeatedly, the punishment shall be respectively: under para. 1 ...; under para. 2 ..., under para. 3 ...

B) In Art. 93, item 32 shall be added:

"Mercenary" is a person who participates in an armed conflict or military action for the purpose of receiving material remuneration and is not a citizen of the state participating in the armed conflict or military action, who does not live permanently on its territory and is not a person, sent by another state for performance of official duties.

ANNEX 1: List of quoted laws and other normative acts of the Republic of Bulgaria

- Constitution of the Republic of Bulgaria, prom. SG, no. 56 of 13.07.1991, in force since 13.07.1991, last ed. and ext. SG, issue 100 of 18.12.2015
- Bulgarian Red Cross Act, prom. SG, no. 87, 29.09.1995, last ext. SG, issue 60 of 7.07.2020
- Military Monuments Act, vol. SG, issue 13 of 8.02.2008, last ed. and ext. SG, no. 62 dated August 1, 2017
- State Agency for National Security Act, prom. SG, issue 109 of 20.12.2007, last amended. SG, no. 99 of 17.12.2019
- Export Control of Defence-related products and Dual-Use Products and Technologies Act from 29.03.2011, in force from 30.06.2012, last. ed. and ext. SG, no. 63 of August 9, 2019, in force since August 9, 2019.
- Law on the Prohibition of Chemical Weapons and on the Control of Toxic Chemical Substances and Their Precursors, prom. SG, no. 8 of 28.01.2000, last ed. and ext. SG, no. 63 dated August 9, 2019
- Child Protection Act, prom. SG, issue 48 of 13.06.2000, last ed. and ext. SG, issue 58 of 23.07.2019
- Disaster Protection Act, prom. SG, issue 102 of 19.12.2006, last ed. and ext. no. 60 of 7.07.2020
- Law on the Implementation on Cluster Munitions and the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, prom. SG, no. 95 of 8.12.2015, last ed. and ext. SG, no. 98 of 13.12.2019
- Ministry of Interior Act, prom. SG, issue 53 of 27.06.2014, last ed. and ext. SG, no. 85 of 2.10.2020
- Defence and the Armed Forces of the Republic of Bulgaria Act, prom. SG, no. 35 of 12 May 2009, last ed. and ext. SG, issue 38 of 24.04.2020

- Asylum and Refugees Act, prom. SG, no. 54 from 31.05. 2002, in force from 1.12.2002, last ed. and ext. SG, no. 89 of 16.10.2020
- Private Security Activity Act, prom. SG, no. 10 from 30.01.2018, in force from 31.03.2018, last ed. SG, no. 69 of 4.08.2020
- Foreigners in the Republic of Bulgaria Act, prom. SG, no. 153 of 23.12.1998, last ed. SG, no. 98 of 17.11.2020
- Criminal Code, prom. SG, no. 26 of April 2, 1968, last ext. SG, no. 88 of 13.10.2020
- Code of Criminal Procedure, prom. SG, no. 86 of 28.10.2005, in force since 29.04.2006, last ed. and ext. SG, no. 98 of 17.11.2020
- Decree № 181 of the Council of Ministers of 2009, promulgated. SG, no. 59 of 28.07.2009; ext. SG, no. 9 from 29.01.2019
- Decree of the Council of Ministers №35 / 28.02.2019, prom. SG, no. 19 of March 5, 2019
- Instruction №I-1201 on the procedure for temporary accommodation of foreigners, on the organization and activity of special homes for temporary accommodation of foreigners from 1.06.2010, prom. SG, no. 45 from June 15, 2010
- Ordinance on the procedure, manner and competent authorities for establishing critical infrastructures and their sites and risk assessment for them, adopted by Council of Ministers № 256 of 17.10.2012, prom. SG, issue 81 of 23.10.2012
- Doctrine of the Armed Forces of the Republic of Bulgaria (November 2017, Order of the Minister of Defence No. OH-1244 / 04.12.2017 and National Defence Strategy adopted by Decision № 239 of the Council of Ministers of 14.04.2011 valid until the end of 2020

ANNEX 2: Participation of the Republic of Bulgaria in International IHL treaties and Acts

Convention for the Peaceful Settlement of International Disputes, adopted in The Hague on July 29, 1899 Depository - The Netherlands. In force since September 4, 1900

Convention with respect to the Laws and Customs of War on Land, ratified by Bulgaria on September 4, 1900

Declaration concerning the Prohibition of the Use of Projectiles with the Sole Object to Spread Asphyxiating Poisonous Gases, ratified by Bulgaria on September 4, 1900

Declaration concerning the Prohibition of the Use of Bullets which can Easily Expand or Change their Form inside the Human Body such as Bullets with a Hard Covering which does not Completely Cover the Core, or containing Indentations ratified by Bulgaria September 4, 1900

Final Act of the Second International Peace Conference, The Hague, 18 October 1907, signed by Bulgaria on 18.10.1907

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Mines, Booby Traps and Other Devices, Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons, Geneva, October 10, 1980. Depository - UN. In force since 2.12.1983 ratified with Decree № 1493/14.06.1982; SG no. 48/1982 Ratif. document dep. on October 15, 1982. Text - UN Treaties collection, vol. 1342, p. 137, № 22495. Translation into Bulgarian, available in MFA.

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Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, March 26, 1999. Depository - UNESCO. Effective since March 9, 2004 ratified with a law of the National Assembly of March 29, 2000; SG no. 30/2000 Ratif. document dep. on June 14, 2000. Text published in SG no. 25 / 24.03.2017

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Convention on Cluster Munitions, Dublin, 30 May 2008. Depositary - United Nations. Opened for signature in Oslo on 3 December 2008. Effective from 1 August 2010, for Bulgaria from 1.10.2011 ratified with a law of the National Assembly of February 10, 2011; SG no.16/22.02.2011 Ratif. document dep. on April 6, 2011. Text published in SG no. 75 / 27.09.2011

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