

DOES INTERNATIONAL HUMANITARIAN LAW PLAY ANY ROLE IN DEMILITARIZED COUNTRIES? A POLICY ANALYSIS OF COSTA RICA AND PANAMA

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Resumen

Este artículo revisa el papel del Derecho Internacional Humanitario (DIH) en países desmilitarizados con un estudio de caso de Costa Rica y Panamá, dos países pequeños centroamericanos que han abolido constitucionalmente sus ejércitos. El documento aborda la cuestión sobre si un país que no tiene un ejército regular puede ser respetuoso y apoyar el desarrollo de las normas internacionales que rigen los conflictos armados. A través de una revisión detallada de organismos nacionales y legislación de ambos países, los resultados permiten concluir que la falta de ejércitos regulares o fuerzas militares no es un argumento convincente a desobedecer e ignorar las normas del derecho internacional humanitario.

Palabras clave: derecho internacional humanitario, la desmilitarización, las fuerzas armadas, Costa Rica, Panamá.

Abstract

This article reviews the role of International Humanitarian Law (IHL) in demilitarized countries with a case study of Costa Rica and Panama, two small Central American countries that have constitutionally abolished their armies. The paper addresses the question of whether a country that has not a regular army can in fact be respectful and supportive of the international rules governing armed conflicts. Through a detailed review of national bodies and legislation in both countries, the findings allow the author to conclude that the lack of regular armies or military

forces is not a convincing argument to disobey and ignore the norms of IHL.

Key words: International humanitarian law, demilitarization, armed forces, Costa Rica, Panama.

1. FOREWORD

A particular and deep study on international humanitarian law and modern States that have no regular army or armed forces is almost nonexistent. Indeed, scholars and research institutes worldwide have traditionally focused their attention on those countries that certainly do have military forces, their expenditures, geopolitical role and so forth. Moreover, there is no such thing as an accurate “list” of countries without armies.

Nevertheless, today there is a reference of about thirty modern States that have either formally suppressed their national military forces, or have never had regular (or significant) military forces. This list of countries without armies is not quite clear though. Within this small group of demilitarized countries, one may find countries whose constitution clearly states that the army simply does not exist, for example Costa Rica and Panama, countries whose sovereignty as State is not quite known (Sealand & Marshall Islands) and micro-States such as San Marino and Andorra which have no or little say in security or international issues.

On one hand most of these countries do not have large populations and, in

fact, a large number of them are Small Island States located in the Pacific Ocean and in the Caribbean.

Costa Rica and Panama on the contrary have not only constitutionally abolished their armies, but also have significant population and full international recognition as sovereign States, with stable economies and political institutions. Although realistically speaking both nations have little say on the international arena, they are active participants in global affairs.

INTRODUCTION

The study of International Humanitarian Law (IHL) implies an inexorable relationship between armed conflict and armed forces, either formal such as the Canadian Navy or irregular belligerent groups like the Colombian paramilitary forces.

For many decades, the systematic study of the application of International Humanitarian Law has been restricted to the analysis of the State practice in relation to armed conflicts and the involvement of its regular armed forces –army- in them. There is a lack of doctrine concerning the role played by IHL in those countries without any military force in the formal sense.

Similarly -and as expected- humanitarian field work of international institutions such as the International Committee of the Red Cross (ICRC), have focused primarily on those regions of

the world where an armed conflict has taken place (ICRC, 2007).

In this sense one might question the importance of such rules in countries that do not have regular armies, since the origin of modern international humanitarian law actually is associated with the existence of armies and other forms of armed forces.

The States of Costa Rica and Panama have two characteristics in common: both have ratified most international treaties on IHL and, unlike their Latin American neighbors, have no standing armies or military forces.

In the case of Costa Rica, the process of abolishing the national army was the result of a short civil war that occurred in the mid-twentieth century, which was triggered by alleged electoral fraud and political tensions in 1948.

In Panama, the elimination of the army responded to a completely different logic. The U.S. invasion of that country in 1989 led a political process that ended with a gradual elimination of the armed forces, which did materialized in 1994 through a constitutional amendment.

While the process of demilitarization in both countries responded to a totally different series of historical and political events, this has not stopped these States in cooperating with international organizations such as the ICRC and the United Nations (UN) and ratifying major international treaties.

According to statistics from the International Committee of the Red Cross, Costa Rica and Panama are two of the four countries in Latin America that have ratified most treaties of IHL¹ (ICRC, 2009).

Also unlike many other countries, both Costa Rica and Panama have maintained strong advocacy work towards a real integration of IHL norms into their legal systems such as the repression of war crimes (criminal codes), genocide, crimes against humanity, and the promotion of IHL.

In the particular case of the International Criminal Court (ICC), both countries have not only agreed to be part of its Statute of creation since 1998, but have consistently urged the international community to engage in it and with the norms of IHL. It is no coincidence that one of the judges of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and currently a judge at the ICC is a Costa Rican jurist.

In addition, both countries have used their participation in major multilateral forums like the General Assembly of the United Nations to express publicly its position on IHL and the implementation of its imperatives.

This article will consider all the factors mentioned above to understand why a demilitarized country would or would not be able to be to promote the observance and compliance of IHL norms. To answer this question the paper will address the importance given by public authorities to IHL norms in Costa Rica and Panama.

2. THE DEMILITARIZATION PROCESSES IN COSTA RICA AND PANAMA

The civil war and the abolishment of the army in Costa Rica

The abolition of the army in Costa Rica dates back to the tense political atmosphere that existed in the country during the presidential elections in 1948. The polls showed that the candidate, Otilio Ulate, had defeated Rafael A. Calderón, who had previously served as President of the Republic in the period 1940-1944. However, the Congress, dominated by supporters of the latter, did not accept the legitimacy of the results and canceled the elections.

After several days of political uncertainty and isolated acts of violence perpetrated by supporters of both presidential candidates, José M. Figueres, a character hitherto unknown in the country's political life, saw his opportunity to take the power and start a revolution.

In March of that year, Figueres took up arms against the national army, initiating what Costa Rican historians remember as the "civil war of 48". The internal armed conflict lasted five weeks and cost the lives of about two thousand people. This short civil war is undoubtedly the worst incident of political violence that Costa Rica has experienced and the bloodiest event in the twentieth century (Stanley, 2008).

This was the only one of three breaks to the Costa Rica's constitutional order

during the twentieth 2 century that led to a civil war. Since then, Costa Rica has never suffered an internal armed conflict, nor participated in international armed conflicts.

The *National Liberation Army* (Ejército de liberación nacional) led by Figueres, defeated the Costa Rican army, taking the country's power through an *Interim Governing Board* (Junta provisoria de poder). Later, Otilio Ulate and José María Figueres would sign the pact known as the "Ulate-Figueres Pact", through which Figueres would remain legally in power for eighteen months to achieve a peaceful transition and to give away the power to Ulate, who was democratically elected President of the Republic months earlier.

This famous Pact allowed Figueres to remain in power for a short period of time without any kind of Legislature or Congress to join him. Nevertheless, at the end of the political transition, he gave the Presidency of the country to Ulate, as they had agreed eighteen months before.

During the government of the *Interim Governing Board* throughout 1948, one of the most significant changes that took place was the constitutional abolition of the army. Figueres not only dissolved the national army but achieved the final disappearance of it from the country's political spectrum. This constitutional prohibition warned Figueres's successors and opponents of taking the power through the arms or through coup d'état.

It is important to emphasize that at the end of the revolution, the national army defeated by Figueres was in total disarray and lacked war materials. The few weapons they had were useless and the national army was seen rather as a mockery of an army and not a true military force (Cerdas and Vargas, 1988).

The Constitutional Assembly of 1949

After the political events that led to the outbreak of the short civil war in 1948, the Board of the provisional government called general elections for a Constitutional Assembly, which would aim to draft and adopt a new Constitution for the country.

In the short period between May 8 1948, when the Governing Board took power and October 31 1949, when the National Constitutional Assembly finally approved the abolition of the army and incorporated it as a precept of the current political Constitution, several events at the practical and legal level would lead to the final disposal that would definitely abolish the army in Costa Rica (Ibid, 1988). In accordance with article 12 of the 1949 Constitution (p.2):

“[T]he Army as a permanent institution is abolished. For the oversight and preservation of public order, there will be the necessary police forces”.

The constitutional delegates Beidrute and Facio formulated the following arguments in favor of the 1949 decision to abolish the army:

“[I]n our opinion, the illegality of war as an instrument of national and international policy, and having accepted by all countries of the Continent the binding arbitration to resolve international conflicts, Costa Rica, happily lacking of any military tradition and observing the serious damage that militarism has produced in almost all our countries without any compensating benefit, we thought that there is no reason to maintain an army” (As quoted by Obregón, 2008).

This argument denoted on one hand the confidence in continental peaceful mechanisms for the settlement of disputes and the weak militarist tradition of Costa Rica, as well as the intention to avoid future negative experiences that had happened in other countries in the region.

There were many other factors that decisively influenced the decision to abolish the national army at that time, including the political instability in Central America and the Caribbean, the contradictions within the army factions and the majority sector of the ruling coalition (Chinchilla & Rico, 1997).

The abolishment of the army in Costa Rica is also a novel form of unilateral disarmament³, since there was no international pressure from any State to force the country in opting for the elimination of its army, but rather a response to a domestic political situation.

After this historic decision, in the coming years several military quarters were closed and the military ranks were removed, as well as the military-style

uniforms that were still used by some civilian police departments.

However it is important to emphasize the fact that by the end of 1948, the national army was reduced to a few hundred men who had no real military training and who held office as a result of political appointments, rather than skills needed.

Indeed, since the time of the Spanish colonialism in America, Costa Rica has never had a consolidated army. Cleto González argues that the country had no arms nor munitions of war, disciplined troops, real military ranks or trade with which to acquire the material means of armed resistance (Cerdas & Vargas, 1988).

Even though the abolition of the army in Costa Rica is a major highlight in the national democratic political history, one cannot argue that this event marks the end of an era of militarization, since from the time of the independence from the Spanish Crown, the military tradition in Costa Rica had been very weak compared with its Latin American counterparts.

The abolition of the army in Panama: from General Noriega to the U.S. military intervention in 1989

Unlike the abolition of the army in Costa Rica, the removal of military forces in Panama responded directly to the military intervention of a third country. After the U.S. military invasion in 1989, a process of gradual

demilitarization and withdrawal of military forces started in Panama.

In this regard, Professor David Castro (2006) argues that unlike Costa Rica where the abolition of the army was the product of a great national patriotic pact involving active and decisive participation of all actors and social sectors affected by a sterile civil war, in Panama the abolition of its army was the result of agreements and political alliances in a political environment exacerbated by post-traumatic impact of the invasion and the presence of foreign military troops in the country⁴.

The abolition of the army in Panama has a clear link with General Manuel Antonio Noriega, who from 1983 assumed the State's power through the Panamanian military forces. Thus, since 1986 the allegations of corruption and abuse of power were steadily piling up against Noriega, who was presumed to control the entire State apparatus. This situation would trigger protests and then a series of coups attempts in the years after his rise to power.

In 1988 two U.S. federal courts accused Noriega of drug trafficking, which a year later would be one of the main reasons used by the U.S to invade Panama.

In May 1989, the presidential elections were annulled when the opposition candidate Guillermo Endara won the election according to official polls. The annulment of the elections triggered a series of social protests throughout the country. In December

of the same year, the United States invaded Panama.

Among the factors that determined the U.S. invasion, is the fact that General Noriega had charges pending in courts in the United States and also allegedly had no intention of respecting the bilateral agreements on the Panama Canal with its North American partners. Moreover, the U.S. government argued that the interests of U.S. citizens were in danger under a government headed by General Noriega.

While the U.S. invasion was a unilateral act and had no regional diplomatic support, it is important to note that days before the invasion, Noriega had declared war against the U.S. (Noriega & Eisner, 1997). Since this incident in 1989, Panama has not returned to declare war against any country in the world.

The constitutional abolition of the army in Panama

Once the U.S. military intervention finished, the country's political instability, coupled with the pressure of American troops based in Panamanian territory, were creating an appropriate political scenario towards the decision of abolishing the national army. As Arias (2001) argues, the democratization of the country and then the abolishment of its army, was accomplished through the trauma of the American invasion of December 20, 1989.

In 1990, the new government headed by Guillermo Endara promulgated several Executive Decrees towards

the abolishment of the army. The Executive Decree No.38 of February 10 1990 organized the police forces and started a new distribution of the public security functions.

Little by little, various units attached to the military structure were demilitarized, such as the military health battalion, whose medical staff later became part of the Ministry of Health, and the military chaplains of the Catholic Church, whose military ranks were eliminated. Asvat (1997) summarized the political situation of that time as follows:

“[B]oth national government officials and the general public expressed their position to rule out the creation of military forces in the country after the traumatic experiences suffered in Panama (1987-1989). In a decision that can be seen as historic, the national government argued that what the country needed was a new organization of the police and the enforcement of law”.

In this sense, the decision to abolish the army was seen as broadly accepted by all sectors of the Panamanian society, and the creation of an effective security force was seen to be the most accepted alternative. In a speech on February 1, 1990, the Panamanian Vice President Ricardo Arias Calderon, summarized the beginning of the political process that would end with the demilitarization of Panama:

“[W]hat are we trying to do is, in the first place, demilitarize what the Noriega Armed Forces were, which are now over. There will be no more

army in Panama, there will be no more Air Force in Panama, and there will be no more navy in Panama” (Arias 2001:29)

In the same speech, the Vice President Arias acknowledged the wisdom of the abolition of the army in Costa Rica during the 1940s. However, he pointed out a substantial difference between the two countries in terms of size of the Panamanian army, which was huge, compared to the small armed forces Costa Rica had in 1948.

In 1991, the government sought to transform the Panamanian military into a public security force. By the end of December 1991, the Legislature passed a constitutional reform of 58 articles, including the abolition of the army. On November 15 1992, a national referendum, which according to Panamanian law is required to endorse constitutional reforms, was held but yielded a negative result.

Later, the government of President Ernesto Balladares would endorse a constitutional amendment bill in November 1994 that would enable the removal of the armed forces and their replacement by a civilian police force.

3. LEGAL AND INSTITUTIONAL FRAMEWORK AND THE INTEGRATION OF IHL

IHL in the national legal systems

In Costa Rica and Panama, international legal instruments –including IHL treaties- are signed and ratified by the executive and legislative branch respectively, in order to become part of domestic law. The Ministries of Foreign Affairs of both countries usually take the country’s representation during international negotiations.

In terms of the hierarchy of norms within the legal system of both countries, IHL treaties, like other instruments of international law, rank within their domestic legal system below the constitutional norms, but in a level above the ordinary laws or Bills.

It is interesting to note that the Constitutional Chamber of the Supreme Court of Costa Rica, has interpreted the specific case of international human rights instruments ratified by the country, by giving them a constitutional level. In a judgment in 1995, the Court stated that:

“[T]he human rights instruments in force in Costa Rica, have not only equal hierarchy to the Constitution, but as far as they grant greater rights or guarantees to persons, take precedence over the Constitution” (Sala Constitucional, 1995).

This Court decision is crucial for the interpretation of international human rights law and IHL, because in the hypothetical event of an armed conflict, IHL and human rights norms will play a decisive role as guarantees for the population.

National security organs

As well as the Ministries of Foreign Affairs, the public security forces have some degree of intervention in IHL related matters. Although the main responsibilities of the civil police in both countries can be seen just as to ensure the protection of private property and daily struggles to ordinary and organized crime, there are certain domestic laws regarding the participation of such civil forces in the context of armed conflict.

To understand the nature of the police forces and its operation it is necessary to take into consideration that they have undergone a series of structural changes over the years due to the abolition of the military forces in both countries. For instance, the abolition of the army in Costa Rica created a police which functions of public order, crime prevention, law enforcement and national defense (FLACSO, 2006). In 2001 a new Police Act stated that, the civil police cannot incorporate any sort of ranks of military nature within their classifications.

In the context of an armed conflict and in accordance with the *Law on Protection of the Emblem of the Red Cross and Red Crescent in Costa Rica*, the Ministry of Public Safety and Police

could play a key role during the hostilities. The Article 3 of Law No.8031 (2000: p.1) states that:

“[U]nder the supervision of the Ministry of Interior, Police and Public Safety, it’s medical personnel, both in peacetime and in armed conflict, should wear the emblem of the Red Cross to raise awareness of their health workers, units and medical transports by land, sea and air. Health personnel and religious personnel attached to armed forces and police will wear an armband and an ID provided by the department for the Ministry of Interior and the Police and Public Security (...) The Ministry should disseminate this law among members of the Forces, and educate its staff to respect it”.

This article derives precisely from the provisions contained in the Geneva Conventions, which establish the obligation to protect the emblem of the Red Cross and Red Crescent. Since Costa Rica does not have an army, the term “public forces” is interpreted as the national armed forces, but should not be confused with any sort of military personnel. These public forces are always subordinated to civilian authority under the police legislation.

For the protection of civilian hospitals and other medical units, Article 4 of the same law states that the Ministry of Interior, Police and Public Safety, must approve and monitor the use of the emblem by the civilian medical personnel, hospitals and other civilian medical units, medical civilian transportation and in particular,

transportation and treatment of the wounded, sick and shipwrecked.

The *Police Act* of 1994 and an Executive Decree issued by the Ministry of Police and Security in 2004 set up the general operation guide for the country's security forces in the event of an internal armed conflict. The Executive Decree No. 32177 (2004) states that the reserve forces should cooperate with the security forces, government institutions and other entities in case of calamity or natural disaster, mass events, conflagrations and civil commotion.

Although the reference is not explicit, this is the only legal provision that indicates some degree of participation of certain factions of the Costa Rica's police in the context of internal hostilities. The term conflagration may be interpreted in this sense as hostility, conflict or struggle.

The *Police Act* also contains two provisions that have been interpreted by experts as legal opportunities for the involvement of the security forces in the context of an armed conflict. Article 8 of this law states that the police must "prevent potential violations of the territorial integrity of the Republic" (Ley de Policía, 1994).

Other provisions of the same Bill concerned with the proper conduct of public security forces, states that under any circumstance, i.e. in the event of war and other emergencies, there is no justification of impunity for torture or other cruel, inhuman or degrading treatment. This law raises the possi-

bility of war as a scenario in which the police should behave in accordance with the requirements set up by IHL rules.

In Panama, the organization of police forces and public security has gone through a similar reorganization to that of Costa Rican police forces. Between 1990 and 1994, the government turned the army into a militarized police with air and maritime bodies. After this process, the *Maritime National Service* replaced the Navy, and the old Air Force was replaced by the *National Air Service*.

Recently, the Government of Panama presented a draft reform of the security forces, which seeks to unite the air and maritime police in a new border control unit. Panamanian law on police and national security is very similar to that of Costa Rica. Under the *Organic Police Law* of Panama, the only reference to the involvement of its security forces in a stage of armed conflict reads "the police participation and in defending the territorial integrity shall be governed by the rules contained in the Constitution ..." (Law No.18, 1997).

As the legal provision in place in Costa Rica, this article is capable of being interpreted in the context of an international armed conflict, where the Panamanian police forces have an obligation to defend the State's territorial integrity. However, there is no explicit reference to the context of internal armed conflict, which might also occur in Panama.

National Societies of the Red Cross

Just as the State authorities have a crucial role in the adaptation of IHL norms into the national legal system, the national societies of the Red Cross in both, Costa Rica and Panama, play a central role in terms of implementation of the humanitarian principles that have guided the International Movement of Red Cross for decades.

While the national societies of the Red Cross are independent from and auxiliary organs of the state, i.e., they are not State agencies in the strict sense, they are entitled to carry out humanitarian tasks deriving from the treaties on IHL and other Statutes that coordinate and set the tone for action by all national societies worldwide.

Today, the national societies of the Red Cross in Costa Rica and Panama are trained and legally constituted not only to carry out its humanitarian work in the context of armed conflict, but their work is extended in times of natural disasters, internal strife, among others.

In Costa Rica, the national Red Cross society is a non-profit private association founded by an Executive Decree on April 4, 1885. The country's President of that time, Bernardo Soto, foreseeing the approach of a war between the State and other forces in Central America, signed the Executive Decree No.35, creating the Costa Rican Red Cross (Cruz Roja Costarricense, 2008).

Although the reason for which the national Red Cross was established never materialized, this Executive order marked the formal start of the Costa Rican Red Cross society today. Years later, in April 1921, the President of the Republic, Julio Acosta, through the Executive Decree No. 114, not only renewed the idea of having a national committee impartial and neutral in the context of a civil war or international conflict, but also in peacetime. The International Cross and Red Crescent Movement formally recognized the Costa Rican Red Cross in 1922.

While Costa Rica is a demilitarized country, recent legislation has recognized the importance and role of the humanitarian work done by the Costa Rican Red Cross, both in peacetime and wartime, and thus has been established in recent laws regarding its emblem.

The Article 3 of the Act No. 8031 (2001, p.1) states that certain protection for the Red cross emblem in the event of an armed conflict, if it is used by the Costa Rican Red Cross, its personnel, units and transports, or by the Public Security Forces, must be respected and protected.

It is important to notice that the International Committee of the Red Cross (ICRC), had established its regional office (regional delegation) in Costa Rica during the 1980s. In 1984, the ICRC and the State of Costa Rica had signed an international treaty called Acuerdo Sede, which basically allowed the ICRC to accomplish its

humanitarian mission during the Central American civil wars of the 1980s and 1990s.

In Panama, the creation of the national society of the Red Cross has a more recent historical reference, since it wasn't until 1917 when it was created. In its early days of creation, it had few legal powers.

The Panamanian Red Cross was recognized by the ICRC in 1924 and joined the International Federation of Red Cross and National Red Crescent Movement a year later.

However, it was not until 1968 when through the Executive Decree No. 1451, that Panamanian State gives the relevant importance and power necessary to its national Red Cross society, which will have the collaboration in situations of natural disasters and other relief operations among its main functions.

The second article of this Decree provides that the Panamanian Red Cross is conceived as an auxiliary organ of the armed forces. This is a great difference to the statutes of the Costa Rican Red Cross, because unlike this country, in Panama there were still military forces.

The mentioned Executive Decree reaffirms the impartiality and humanitarian nature of the Panamanian Red Cross, although it, makes no distinction between international and internal armed conflict.

Although the Panamanian Red Cross suffered a period of serious instability

before 1992, motivated fuelled by political issues associated with party preferences before and after the U.S. invasion in 1989 (International Federation of Red Cross and Crescent, 2008), it currently has a very clear mission and its activities include the fight against diseases such as HIV-AIDS, relief in natural disasters and assistance to displaced persons on the border to Colombia⁵.

The National Commissions for the Implementation of IHL

Today a majority of the world's States have decided to establish national committees specialized in the implementation of IHL. Generally, these inter-institutional committees integrate among its members State Ministries and other entities that have some degree of participation IHL matters.

In this respect, most of these committees are made up of Ministries of Foreign Affairs, Defense, Justice, Culture, Education and other agencies such as the national societies of Red Cross and Red Crescent and universities. The ICRC (CICR, 2006:34) has recently recorded in their annual reports that in countries where these commissions have been established, relevant measures of national implementation of IHL has taken place.

In Panama, the National Standing Commission for the Implementation of International Humanitarian Law (CNPDIH) has evolved since its inception in 1997, in a fundamental body to advise governments in the process of adoption of national mea-

sures, including legislative measures necessary to incorporate in their legislation the obligations under the 1949 Geneva Conventions and their Additional Protocols of 1977.

This Commission, established by Executive Decree No.159 in 1997, has devoted itself to the modernization of the Panamanian criminal code law, in particular the enforcement of crimes against humanity, the crime of genocide and other general IHL criminal repression.

In this sense, it is important to point out that through a reform of the penal code of Panama in May 2007 supported by the CNPDIH, a chapter on "Crimes Against Persons and Property Protected by International Humanitarian Law" was added to the Panamanian criminal code. Thus, the Republic of Panama today can repress criminal conducts contrary to IHL rules contained in the four 1949 Geneva Conventions, their Additional Protocols of 1977, and other international treaties, such as the Statute of Rome (ICC)⁶.

Among the functions that the CNPDIH has is to make recommendations and propose draft laws to the Executive branch on the measures to be taken to implement the standards contained in the Geneva Conventions of 1949 and the Additional Protocols, to promote and collaborate with the Ministry of Education in developing school and university curricula, and the dissemination of IHL among the society (Decreto Ejecutivo No. 159, 1997).

In recent years, the CNPDIH has also held meetings with different National Commission on IHL in Central America to exchange ideas and best practices in the region. (ICRC, 2005, 24).

In Costa Rica, the creation of such Commission is much more recent, as it was not until 2004 that through an Executive decree, such inter-institutional committee was created. Seven years later than the CNPDIH in Panama.

The creation of this commission in Costa Rica dates back to recommendations that had been raised years ago by both the ICRC and the Organization of American States (OAS). The Costa Rican Ministry of Foreign Affairs at that time, Roberto Tovar, said that the establishment of the Costa Rican Commission for the implementation of International Humanitarian Law (CCDIH) responded to the maximum goals of the State's foreign policy, which are the protection of human rights, refugees and persons in armed conflict.

Like the CNPDIH in Panama, in Costa Rica such a Commission is committed to the incorporation, implementation and dissemination of IHL norms within the society.

It is interesting to point out that for some local media, the creation of this Committee was seen as necessary, since the issues and conflicts in neighboring countries may affect the country, even though Costa Rica does not face a war closely (Kimitch, 2004).

Among the primary functions of the CCDIH is to make recommendations to the Executive branch on the measures to be taken for implementation of the existing international legal provisions on IHL, suggest to the Executive the preparation of draft laws and regulations that allow the State of Costa Rica to meet its international obligations concerning international humanitarian law, to promote, encourage and support the dissemination of IHL in State institutions and society in general, among others (Decreto Ejecutivo No. 32077, 2004).

Since its beginning in 2004, the CCDIH has made several public outreach activities on IHL and have sponsored a reform of the country's criminal code to add a new title on crimes against persons and property protected by IHL norms. However, this is still under the consultation stage at the Costa Rican Legislature.

4. THE ROLE OF IHL IN FOREIGN POLICY

Participation in major international legal instruments on IHL

Both Costa Rica and Panama are two of the countries in Latin America that most IHL international instruments have ratified. For instance, out of the twenty five most relevant IHL related treaties, Costa Rica has ratified them all. The last one was the *United Nations International Convention for the Protection of All Persons from Enforced Disappearance*, ratified by Costa Rica in February 2012.

Panama for its part has not ratified only one instrument, the *Third Additional Protocol of 2005 (Additional Protocol III)* to the Geneva Conventions of 1949.

The numbers above show a very high degree of active participation of both countries and demonstrate a serious political commitment to the progressive development of IHL globally.

But what are the political motivations for the ratification and active participation in most of the instruments on IHL? The answer to this question is complex, since in each country every government has given priority to different topics in their foreign policy during the past six decades, but the reality is that the political approach to the IHL has exceeded partisan differences and political opinions, and has been placed in a very important level within their respective foreign policies.

Moreover, the level of participation of Costa Rica and Panama in the international regime of IHL is not the result of political pressure, especially from countries that are economically and politically stronger, or by countries whose geographical proximity and military power might intimidate both nations to ratify such treaties.

One clear example is the U.S, a country that is not part of a considerable number of international instruments on IHL, including the Statute of Rome that creates the ICC.

It thus shows a high degree of independence from external factors such

as economic or military influence of neighboring countries. A clear example of this was the decision of the former U.S. President, George W. Bush to waive sanctions to Costa Rica and other countries in October 2006 for belonging to the ICC⁷.

This decision represented recognition of Costa Rica as a country committed to the development of the international criminal justice and returned to position Costa Rica as a subject of international aid and security cooperation.

Here it is important to note that Costa Rica is not only one of the founding countries of the ICC since 1998, but during the diplomatic efforts that were undertaken to reverse sanctions against Costa Rica by the U.S., the Ministry of Foreign Affairs, Bruno Stagno, was holding the presidency of the Conference of States Parties to the High Court.

Foreign Policy and Multilateral Diplomacy

The Costa Rican and Panamanian tradition in the progressive development of IHL has been strengthened with the addition of the promotion and defense of the values and pillars of IHL in the diplomacy and foreign policy of both countries, especially in multilateral forums like the United Nations (UN) and the Organization of American States (OAS).

In 2001 for instance, this country was invited along with other countries in the region to participate in a commis-

sion to accompany the peace process in Colombia, where they asked the insurgent forces the respect for human rights of children, civilians and the observance of IHL.

Since the abolition of its army in 1948, Costa Rica's foreign policy has been focused on peaceful settlement of disputes, respect and promotion of human rights and international disarmament. It is a country that has led important international processes, such as the creation of the United Nations High Commissioner for Human Rights in the late 1990s, and the Inter-American Court of Human Rights in the 1970s.

In terms of multilateral diplomacy, this country has maintained consistency over the course of years at the highest multilateral forums such as the General Assembly of the U.N, in which the heads of State or his/her representative have always addressed humanitarian issues and the importance of disarmament in their speeches.

In 2000 for instance, Costa Rica co-sponsored the resolution 55/148 which urges States to accede to the Protocols and the Geneva Conventions and ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

Recently, the administration Arias Sánchez (2006-2010) and his Ministry of Foreign Affairs, Bruno Stagno, has positioned the IHL and international criminal justice at the highest level of

the multilateral diplomacy through a series of resolutions of importance for the development of IHL and international criminal justice⁸, especially in the case of the conflict in Darfur, Sudan⁹.

Costa Rica, since its joining as a non-permanent member of the U.N Security Council in January 2008, had maintained a recurring complaint with the international community of the serious condition of thousands of people forced to flee their homes by fear of violence and the fear of becoming victims of the most heinous war crimes and crimes against humanity in that country. Costa Rican diplomacy has consistently called on the parties to respect and faithfully fulfill their obligations under international law, international humanitarian law and Human Rights (Ministerio de Relaciones Exteriores y Culto, 2009).

In recent years, Costa Rica has also maintained a constant complaint about the lack of action by the international community to pursue crimes against humanity committed in several countries (ibid, p.92).

With regard to hemispheric multilateral diplomacy, recently in 2007, during the OAS General Assembly held in Panama City¹⁰, the Costa Rican delegation held an important performance in the negotiations that addressed issues relating to IHL. Following the performance of Costa Rican diplomats, a resolution was adopted by consensus by the OAS' *Committee on Judicial and Political Affairs* that was then adopted by the OAS General Assembly. The important resolution adopted by

consensus includes all the comments and suggestions made by the Ministry of Foreign Affairs and the Costa Rican National Commission for International Humanitarian Law (Ministerio de Relaciones Exteriores, 2008: 112).

Another recent example of the Costa Rica's foreign policy dynamism with regards IHL is the international initiative led by this country on the adoption of an international treaty to regulate the legal trade of light and small arms, in accordance with existing obligations under international law, IHL and international human rights law. This treaty aims to prevent that some of these guns and war material fall into the hands of persons, countries or organizations that might violate these international standards.

In terms of the promotion of IHL, it is important to note that although Costa Rica has no armed forces, it has hosted several important meetings on IHL. In 2001 for example, held a meeting for government experts on domestic implementation of IHL, along with the ICRC and the OAS. In 2005, Costa Rica and Panama also participated in a relevant meeting with experts and members of national committees for the implementation of IHL about cooperation in the protection of cultural property.

Recently in 2007, under the 30th Anniversary of the Additional Protocols to the Geneva Conventions, the ICRC held a regional meeting of legislators from Mexico and Central America in order to analyze the integration of war crimes into their criminal codes and related IHL provisions.

In the case of Panama, although this country has not maintained a constant leadership over the years in relation to the promotion of international human rights law and IHL as Costa Rica has done, its foreign policy has been very dynamic in the promotion and defense of IHL where the country has held important positions, such as a seat on the U.N Security Council.

Since the abolishment of the Panamanian army in 1994, the various governments of that country have not led relevant initiatives on human rights and IHL. However, it is important to recognize that the Panamanian State has always maintained a positive attitude and cooperation in terms of various resolutions adopted within the UN and OAS of importance for the development of that branch of international law.

With regards the ICC for example, Panama has always shown a great willingness to collaborate with the High Court. Panama is not just one of the founding members of its Rome Statute since 1998, but also has sponsored national candidates and third nation's candidacies to fill judgeships at this important Court.

The most remarkable perhaps was the presentation by Panamanian President Mireya Moscoso, of the candidacy of the Costa Rican jurist Elizabeth Odio in 2002 to fill a vacancy at the High Court, which as a result of that country's support, she was elected for a nine years term.

In another recent occasion, the Government of the Republic of Panama

decided to nominate Judge Graciela Dixon, President of the Supreme Court of Panama, for a position in that Court in 2007, however, the Panamanian judge was not elected. The State of Panama had indicated that this application was due to the interest of that country as a member of the U.N to promote a policy in defense of human rights, IHL and respect for international law principles governing the Rome Statute.

In the UN multilateral system, Panama has recently had a very and dynamic participation when the country took a seat as a nonpermanent member of the U.N Security Council for the period 2007-2008¹¹. When it assumed the rotating presidency of this important body, prompted a series of resolutions about IHL of great significance for international politics.

Since 2007 the permanent representative of Panama to the United Nations, co-sponsored and promoted a series of resolutions on IHL covering a diverse range of topics, from the ad hoc tribunals for the Former Yugoslavia and Rwanda, to the protection of civilians in the context of armed conflict. The following table summarizes some of the most relevant resolutions in which the representative of Panama to the Security Council played an important role:

Table No.1**Panama interventions in the U.N Security Council 2007-2008**

Date	Resolution theme
18/12/2008 y 25/04/2007	The situation in the Middle East including the Palestinian question
12/12/2008 y 10/12/2007	International Tribunals for Rwanda and Yugoslavia
05/12/2008	The situation in Bosnia and Herzegovina
03/12/2008 y 05/12/2007	Reports of the Secretary General on Sudan
03/12/2008	The situation in Chad and Sudan
17/07/2008 y 20/11/2007	Children and Armed Conflict
30/04/2008	Small arms
21/05/2007	The humanitarian situation in the Great Lakes and the Horn of Africa

Source: Based on information from the Permanent Representative of Panama to the United Nations, retrieved on November 4, 2009: www.mire.gob.pa/onu/index_s.html

In the specific case of the violence and humanitarian crisis in Darfur, Sudan, Panama fully supported all the proposals submitted by Costa Rica, when the latter held the temporary presidency of the Security Council.

Panama has also made calls to those countries that have signed the Rome Statute to not only meet their obligations to it, but also to take action in ending the impunity of those responsible for war crimes and crimes against humanity, as well to those countries that have not signed the Rome Statute, to do so.

CONCLUSIONS

As we seen throughout this paper, we may conclude categorically that the rules of international humanitarian law play a major role in the legal and institutional framework of Costa Rica and Panama, even though both countries have no regular standing armed forces or army.

Regardless of the lack of military forces, modern States that have abolished their armies are fully capable of incorporating the rules of IHL within their domestic legal systems. That is, there are no substantial differences on the treatment given to the IHL – institutionally and politically- by countries without an army, in relation to countries that do have armed forces. In this sense, the special relevance that both countries have given to IHL in terms

of multilateral foreign policy confirms the previous finding.

The importance that these States have granted to these norms and the particular tradition of Costa Rica in relation to the promotion of human rights international law is an example for the whole international community, in which almost all countries have regular armed forces.

The adaptation of domestic criminal law in order to fulfill international commitments is also a relevant finding that suggests that for demilitarized countries, IHL is sort of an international guarantee in the event of an armed conflict, either international or internal.

However, from this last point emerges a new hypothesis that will need further research, in terms of whether this international commitment with the principles and norms of IHL by both countries, responds to a sort of “preventive vaccination” in case any of the two countries get involved in an armed conflict, or rather this is just an political exercise in order to gain international recognition and prestige?

In this regard, the Costa Rican tradition in the IHL discussed above, contains elements that may effectively indicate that its international commitment is more likely to gain international recognition as a democratic country that respects the international law and the peaceful resolution of conflicts, rather than proximity of armed confrontation in its territory.

One the other hand, one of the most significant points to highlight, is that IHL has become an integral part of the State’s foreign policy in both countries, i.e. has become an element that transcends partisan politics and the succession of governments.

Both countries have constantly and actively reiterated the importance of IHL promotion in multilateral Forum, such as the General Assembly and Security Council of the U.N and the OAS. Important to point out that even the 2009 *Acuerdo de Asociación* (Association Agreement) signed by Costa Rica and Panama, contains in its preamble a reference point to the importance of IHL in both countries, despite the fact that this is a bilateral commercial instrument.

Furthermore, it was found that the interest and active participation of both countries in promoting IHL, is not the result of international pressure from countries that are economically and politically influential. Two facts in particular proved this hypothesis: a) both countries are part of almost all international instruments on IHL, unlike the major military powers like the United States that is not part of many of these international instruments, and b) the U.S. decision to withdraw the suspension of international security aid to Costa Rica, although the Costa Rican government refused to sign a bilateral agreement on immunity for U.S. soldiers, in case they are required by the ICC.

Finally, although modern studies on international humanitarian law are

based mostly on the analysis of compliance with IHL in countries currently suffering any sort of armed conflict, this paper shows that there is no empirical evidence showing that countries that have no army, cannot or will not stand for the rules of IHL. Costa Rica and Panama are two “models of countries” that despite having constitutionally abolished its military institutions, not only respect and have internally integrated the rules of IHL, but lead major international processes to promote IHL.

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Notas

- 1 Important to notice that Costa Rica ratified the Geneva Conventions of 1949 in October 1969; even though at that time the country had already abolished its army (nine months before the Conventions were even adopted).
- 2 Costa Rica had had only some small and short conflicts when it belonged to the Central American Federation in the nineteenth century. For further information see: FLACSO. (2006). *Reporte sector seguridad en América Latina y el Caribe 2006*. Santiago, Chile: Informe Nacional Costa Rica, Editorial Flacso.
- 3 Costa Rica has been considered for many years the first country in the modern world of constitutionally abolish its army. Further references see: Barbey, C. (2001). *The non-militarization et les pays sans armée: une réalité, Apreda, Flendruz*. Switzerland.
- 4 The estimated number of fatalities as a result of the U.S. invasion was between 220 and 300 persons. Furthermore, the attacks on the Army Command in Panama resulted in about 15000 displaced persons and an estimated 50 deaths (Mendez & Anderson 1990). Other nongovernmental organizations such as Physicians for Human Rights similarly documented a number of civilian deaths at between 200 and 300 people, a disproportionate number compared to the Panamanian armed forces deaths, which were not more than 100 people -although reports of U.S. intelligence reported at least 324 military casualties
- 5 The work of the Panamanian Red Cross society extends to the spare of victims of the internal armed conflict in Colombia, which provides protection through humanitarian assistance to Colombian displaced population in Darien and Kuna Yala.
- 6 At that time of the U.S invasion, the Panamanian national legislation did not repress such criminal conducts in the context of armed conflict.
- 7 Between 2002 and 2004, the United States passed legislation prohibiting military assistance to some countries that had recognized the jurisdiction of the ICC and that had refuse to sing bilateral agreements in order to give immunity to U.S soldiers before that Court.
- 8 Costa Rica has had the Presidency of the Conference of State Parties to the Rome Statute twice by acclamation, that is, by a vote of confidence from the international community.
- 9 In June 2005, the U.N Security Council adopted a presidential statement prompted by Costa Rica to pursue charges of war crimes committed in Sudan.
- 10 Costa Rica has remained in constant activism in past OAS General Assemblies about IHL. In 2001 for example, Costa Rica co-sponsored an important resolution (CP/CAJP-1661) calling on the parties involved in armed conflict to respect the rules of IHL protecting children in armed conflict.
- 11 Panama had been elected non-permanent member of the U.N Security Council in four previous occasions: between 1958-1959, 1972-1973, 1976-1977 and 1982-1983.