

## 35th Round Table on Current Issues of International Humanitarian Law

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### Experiences with National Implementation - Case: Venezuela

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Latin America could be considered one of the continental areas where administrative and political instabilities lead to the manifestation of various adverse conditions that not only endanger national security but also the implementation of public policies conducive to ensuring peace and quality of life as its own governance.

In this regard, the region over the years has been characterized by the following conditions

1. Militaristic path of not so old data: Virtually all countries lived railway dictatorships during the first half of the 20th century
2. A wide range of proliferation of paramilitary and irregular armed groups
3. Corruption
4. Currently a growing expansion of organized crime in all its aspects.

All this has led to the situation that in many of these countries public security policies are considered insufficient to the demonstration of violence and the categorization of certain type of criminal conducts that because of its repetition and spectrum make it difficult to consider them as common criminal behaviour.

The Bolivarian Republic of Venezuela is one of these cases. By the year 2010, the Institute of Coexistence and Citizen Security Research wrote the following report:

“In Public Safety matter, during the first quarter violence intensified during weekends, registering extremely high data related to homicides; evidence of presence of criminal networks involved in complex crimes materialized each day more in rates of robbery and theft, especially in shipments of chemicals and medicines in national ports. As a response of this delictive phenomena on March 1st the Bicentennial Security Device was applied and counted with a significant investment of human and economic resources to attack the delinquency problem in the country, mainly on a perspective of containment and control” ([www.incosec.sumospace.com](http://www.incosec.sumospace.com))

According to this, the Device was an operative method applied all around the country where policy as well as National Security Guards executed efforts on inspection, capture, inquiries and any other activity intended to dismantle organized gangs and common delinquency. All these comes along with a range of irregular situations occurred during the last year related to penitentiary system; in this sense, public administration has been confronting strikes, manifestations, irregular groups confrontations prison riots where armament has been seized.

However, this has led the country to the creation and appliance of instruments related to the creation, recognition and operability of private security groups in order to decentralize and delegate surveillance and national prevention systems.

In order to understand how Bolivarian Republic of Venezuela operates we must make reference to the National Constitution; the Constitution of the Bolivarian Republic of Venezuela. According to our Constitutional structure, in 1999 during the change of the text a new title was introduced receiving the name of “National Security” and in it you find the basis of comprehensive development and its defence is responsibility of natural and juridical people inside the geographical space. All these terms are contained in the following articles.

*Article 322: National security is an essential competence and responsibility of the State, based on the overall development of the latter, and its defence is the responsibility of all Venezuelans, as well as of all public and private law natural and juridical persons within the geographical limits of Venezuela.*

*Article 324: Only the State shall be permitted to possess and use weapons of war; any such weapons which now exist or are manufactures in or imported into the country shall become the property of the Republic, without compensation or proceedings. The National Armed Forces shall be the institution of competence to regulate and control, in accordance with the pertinent legislation, the manufacture, importing, exporting, storage, transit, registration, control, inspection, marketing, possession and use or other weapons, munitions and explosives.*

*Article 325: The National Executive reserves the right to classify and control disclosure of matters directly relating to the planning and execution of operations concerning national security, on such terms as may be established by law.*

As we may see, private security companies, private military companies, or any type of organisms which may operate inside the Republic are submitted not only to the Constitution but to any other instrument related to the National Armed Forces. However, we may find a contradiction in these articles when we watch that article 321 expressly informs that defence is responsibility of all Venezuelan of public and private law. One of the most obvious threats inside national security is which are the limits of this responsibility related to defence.

Also within Chapter II, Title VII we may find an important topic and it is the Principles of National Security. This is written in Article 326

*Article 326: National security is based on shared responsibility between the State and civil society to implement the principles of independence, democracy, equality, peace, freedom, justice, solidarity, promotion and conservation of the environment and affirmation of human rights, as well as on that of progressively meeting the individual and collective needs of Venezuelans\*, based on a sustainable and productive development policy providing full coverage for the national community. The principle of shared responsibility applies to the economic, social, political, cultural, geographical, environmental and military spheres.*

This article is extremely important especially when we can extract the following topics:

First of all, there is a special recognition constitutionally speaking of civil society in national security but it is directed to the implement of principles which are related to human rights and international human rights as we can see.

Second it is the final phrase where the military sphere is included on the share responsibility of national security and the obedience of the principles related to human rights.

In Article 332 we can find the Civilian Security Organs

*Article 332: The National Executive, in accordance with law, to maintain, and restore public order; protect citizens, homes and families; support the decisions of the competent authorities and ensure the peaceful enjoyment of constitutional guarantees and rights, shall organize:*

- (1) A uniformed national police corps.*
- (2) A scientific, criminal and criminological investigation corps.*
- (3) A civilian fire department and emergency management corps.*
- (4) A civil defence and disaster management organization.*

*Organs of civilian security are of civil nature and shall respect human dignity and human rights, without discrimination of any kind. The functions of the civilian security organs constitute a concurrent competence with those of the States and Municipalities, on the terms established in this Constitution and the Law*

So, in this case we find that as well as number 3 and number 4 we find the reference of organizations and corps. Whatsoever, this is an article that can be widely interpreted specially according to these emergency management corps.

As an example: during the years 2002 and 2003 in the Bolivarian Republic of Venezuela an emergency management corp called “Reservists”, started to operate which were partially private security military corps created by the Executive in order to prevent social implosions.

Analysing all the Articles related to National Security we could conclude that:

- In many of them we can observe a dichotomy in its content in one hand because the Constitution claims that national security is an exclusive matter of the state so this could suppose that we are in front of the obligatory need of the establishment and functioning of public policies but private and public, natural and juridical persons are mentioned; so we could as well understand that security in the nation is a matter of joint policies.
- In the other hand we find that all topics related to public safety, national security and the appliance of any type of system related to it has a Constitutional range in all the aspects of human rights and international human rights principles and values
- Also, especially in article 332 we can observe the transcendence inside a constitutional article of principles like dignity, human rights, non-discrimination and obviously the existence of organizations related to citizen security for topics related exclusively to civil protection and disaster management.

Summarizing, Bolivarian Republic of Venezuela has made an effort and an important advance when it establishes human rights and international human rights principles in a constitutional range because it binds not only the state in its public affairs but also society to obey and accomplish them under penalty of unconstitutional behaviour

Related to other rules, the only regulation Bolivarian Republic of Venezuela besides the constitution is the Number 070 Resolution of Rules of Performance in Private Escort. This Resolution is attributed to the Ministry of Population Power of Intern Affaires and Justice and its duty is to dictate prevention, control and mitigation plans and programs on criminal activities.

In the case of this resolution, the major reason is the state’s need to assign material and human resources to organisms and institution in Civil Prevention and Security watching itself in the need to regulate escort and custody services that are performed by civilians. These

citizens must have been inside the military service and have specific restrictions regarding the carrying of weapons and its exhibit.

As a consequence of all these matters on September 30th 2004 also created what it is known as the “Pilot of City Security” at the Metropolitan District of Caracas. This plan had the mission of planning and executing preventive measures of effective control to counteract crime situations. 1800 officers of different police corps, private security corps and 1200 National Guard Officers were incorporated. Still, there was a key point in this case and it is the following “ During the performance of this action plans no discrimination was set regarding criminal types, committing models, geographical locations or source of records and data base”

This is a very delicate point, because many innocent civilians not only were arrested but were murdered, tortured or disappeared during confrontations with security corps. Besides that, data related to weapon traffic were placed over the discussion table of national security.

However, there was a step forward and it had to do with the design, development and implement of control instruments which were applied as social surveys in order to set a data base on victims. This instrument collects information related to:

- General conditions of life and habitability
- Public Services
- Household census
- Institutions and Organizations cooperating in the region

All these allowed also setting a record where information as homicides, rapes, traffic, drug dealing, kidnap and recruitment were analysed.

Now, if we must evaluate the effectiveness of rules and measures related to National Security and International Human Rights in the country we must refer to the Criminologist and Criminal Law expert Luis Gerardo Gabaldón who has analysed the security context in Venezuela establishing the following indicators.

Between 1990 and 2000 crime rate increased from 13% to 33% and in 2002 it raised 21% having as a result a crime rate of 54% by 2004.

Related to crimes in civilians as rape, the decrease was only 16% by 2009 while kidnap and traffic increased to 75%. This statistic is the general data because according to the report only 34% reports the crime while 54% doesn't trust the security corps, neither public nor private corps.

On the other hand, the performance of security corps, violence and citizen security between 2003 and 2004 police execution 87% of death cases in confrontations between

civilians and the corps. 9% of them are claimed responsibility of National Army and by 2006 death because confrontations with regional police corps were 42.3% remaining until while mortal victims in hands of security corps is 20.7% by 2010.

The author indicates that the expansion of the presence of policy security corps and the alliance with the private security organizations are not necessarily helpful or effective regarding control of violence and safety seeks.

So, we must ask ourselves. Have rules, policies, practices and principles been effective for prevention and restore of security in the Bolivarian Republic of Venezuela related to these joint security corps or institutions?

No. One of the reasons is the lack of information related to the recognition of International Humanitarian Law. The performing of humanitarian institutions in Venezuela are subject to state regulations directly and you can observe certain distrust from public forces and organs. Initially mistrust on private sector makes the appliance of any security or contingency plan suffer limitations more from bureaucracy performance than rules themselves.

Secondly there is a misperception regarding humanitarian matters and interests and of course certain apathy when it comes to implementation of humanitarian plans.

Third, corruption has led general population not to trust any type of security system neither the state nor private corps specially because impunity where responsibility for committed crimes against civilians are ignored or justify with the call of duty.

Finally, rules and instruments establishing ethics, values and principles in international humanitarian law – besides the constitution- are recognized or promoted sending the population to ignorance and indifference.

## **Recommendations**

After analysing the behaviour of security and international humanitarian law in Venezuela, we propose the following recommendations

- *The existence of instruments of control and inspection on the performance of security forces from both public and private indicators based on transparency, respect and citizen guarantees and humanitarian values*
- *The existence of recruitment systems where direct measurement criterias applied related to performance in environments where public safety is at stake in order to not incur in bureaucratic measures which prevail cronyism or irregular mechanisms.*

- *The creation of training programs in the field of international humanitarian law in all its aspects, these programs must be dictated by the agents of humanitarian institutions and must be directed not only to law enforcement but to the general administration and the population*
- *The development of comprehensive training programs for citizens on International Humanitarian Law. This would imply a change in the legislation related to education in all its aspects in order to approve the inclusion of topics related to international humanitarian values presentation along with feasible projects by the student population.*
- *The recognition of the active participation of civil society (NGOs, foundations, associations) and the establishment of legal instruments that allow humanitarian work in a more effective*
- *The review and modification of the internal norms regarding criminal liability for committing crimes involving humanitarian citizenship.*

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