

Letter from the ICRC to the UN

concerning an inquiry into the
alleged use of chemical weapons

We print below the full text of a letter which the ICRC wrote on 19 June 1981 to the United Nations in reply to an inquiry dated 1 May 1981 pursuant to the UN General Assembly Resolution No. 35/144 C. The resolution requested the Secretary-General to carry out, with the assistance of qualified medical and technical experts, an impartial investigation regarding the alleged use of chemical weapons and to assess the extent of the damage caused by the use of such weapons.

An excerpt from the ICRC's letter to the UN was published before, in an annex to the UN Secretary-General's Report on chemical and bacteriological (biological) weapons (document UN A/36/613 of 20 November 1981).

LETTER FROM THE ICRC

The President of the ICRC has transmitted me your letter of 1 May 1981, concerning Resolution 35/144 C, and has asked me to send you our reply which I now have the honour to do.

1. The ICRC and chemical and bacteriological weapons

The original goal of the ICRC, which remains tragically topical today, is to limit the suffering brought about by armed conflicts. The ICRC was thus at the origin of the 1949 Conventions and their additional Protocols of 1977, those treaties of humanitarian law which aim to protect at all times those not taking part, or no longer taking part, in the fighting (the wounded, shipwrecked, prisoners or civilians) against the effects of war. The efforts made by the ICRC with a view to prohibiting or restricting the use of certain indiscriminate or particularly cruel weapons should be considered as a logical complement to the Geneva law, since these efforts are also primarily aimed to alleviate the plight of the victims of conflicts.

As far back as 6 February 1918, the ICRC launched an *Appeal against the use of poisonous gases* to the belligerents. In this appeal, the ICRC raised its voice strongly against the use of poisonous or asphyxiating gas, this « barbarous innovation which science strives to perfect, in other words to make ever more murderous and refined in cruelty ». It realized, moreover, that this was the start of a very dangerous development: « This will turn into a race for the cruellest and deadliest processes. »

In the period between the two World Wars, the ICRC, with the backing of the entire Red Cross movement, constantly concerned itself with the problem of chemical warfare, both in promoting defence measures against chemical warfare, and in particular chemical warfare from the air, and in seeking to get chemical weapons banned. Among other things, it set up a Documentation Centre on chemical warfare and convened commissions of experts. It also supported the efforts which culminated in the adoption of the Geneva Protocol of 17 June 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare. It strongly urged States on several occasions to sign and ratify this Protocol. The International Red Cross Conferences, furthermore, have strongly condemned chemical warfare, and *International Review of the Red Cross* has published a number of articles on the subject which even developed into a regular column.

It therefore follows that the allegations concerning the use of chemical weapons, as well as the investigation decided upon by the United Nations, can hardly leave the ICRC indifferent.

2. The ICRC and requests for inquiries

The ICRC has made its position known regarding requests for inquiries as long ago as 1939, in a message addressed to the belligerents of the Second World War (see the *Report of the ICRC on its Activities during the Second World War*, Vol 1, p. 16).

This position has been reiterated on several occasions since, the last being in *International Review of the Red Cross*, (No 221, March-April 1981). It can be resumed as follows:

The ICRC can only co-operate in an inquiry either by virtue of a mandate conferred on it in advance by an international treaty, or by the *ad hoc* agreement of all parties concerned. However, it will never constitute itself as a commission of inquiry. It will confine itself to choosing, from outside its own organization, persons qualified to take part in such a commission.

Furthermore, the ICRC will not participate if the inquiry procedure fails to guarantee complete impartiality and does not give the parties the means to put forward their points of view. It must also receive the assurance that no communication to the public concerning a request for an inquiry or an inquiry itself will be made without its consent.

The ICRC will not in principle take part in the institution of a commission of inquiry, under the conditions outlined above, unless this inquiry is concerned with breaches of the Geneva Conventions or their additional Protocols. Under no circumstances will it take part if this would incur any risk of making its traditional activities on behalf of war victims more difficult, if not impossible, or of compromising its reputation for impartiality and neutrality.

3. The ICRC and violations of international humanitarian law

The primary aim of the ICRC is to assist and protect victims to the best of its ability. In the case of a war, it seeks first and foremost to establish contact with the authorities of the parties involved in the conflict in order that they grant access to the victims and subsequently agree, if necessary, to improve the living conditions and treatment of these victims, with a varying degree of assistance from the ICRC. The role of ICRC delegates is thus, first and foremost, to contribute directly to the protection and assistance of the victims; it is not to keep account of possible violations, especially in such a delicate area as the conduct of hostilities. Because of this, the ICRC does not have any specific reports on the weapons and combat methods used in the armed conflicts in which it intervenes. The ICRC is not, however, indifferent to violations of international humanitarian law, of which it considers itself the guardian. It will take all appropriate steps to stop or prevent such violations. As a general rule, these steps remain confidential, but the ICRC reserves the right to publicly take position on violations of international humanitarian law if all the following conditions are met:

- these violations are important and repeated;
- the steps taken confidentially have not succeeded in stopping the violations;
- such publicity is in the interests of the persons or populations affected or endangered;
- the delegates have been direct witnesses to these violations, or the existence and extent of the violations have been established by means of reliable and verifiable sources.

The ICRC does not in principle express its opinion on the use of certain weapons or means of combat. However, it does not rule out the possibility of taking steps and, if necessary, making itself heard if it considers that the fact of resorting to a weapon or a method of warfare, or of threatening to resort to it, would aggravate the situation to an exceptionally serious degree. To do this, it must however have reliable and verifiable facts in its possession (See *International Review of the Red Cross*, No 221, March-April 1981).

If the ICRC should happen to go spontaneously to ascertain, *a posteriori*, the result of a violation of international humanitarian law, it only does so if it considers that the presence of its delegates on the spot will facilitate the accomplishment of its humanitarian tasks, especially if it is necessary to evaluate the victims' needs with a view to helping them. Moreover, it will not send a delegation there unless it can reasonably hope that its presence will not be used to political ends.

4. The ICRC and Resolution 35/144 C

If resolution 35/144 C specifically mentions the ICRC as a result of a communication from the International Committee to the press on 6 May 1980, we would like to make the following points. Having received from its delegation in Bangkok samples taken at the frontier between Thailand and Kampuchea from patients suspected of having been victims of poison gas, the ICRC sent the samples to a scientific laboratory for analysis. The analyses carried out by the laboratory did not establish the presence of poison gas in the sample submitted to them. As the affair had become known, the ICRC deemed it preferable to issue a press release to avoid any unfounded rumours on the subject.

However, it is impossible to draw any general conclusions from this analysis which was only concerned with one particular case; one cannot therefore claim, on this basis alone, that poison gases were or were not used in the frontier region mentioned above.

5. Conclusions

The nature of the work of the ICRC and the extent of its commitments in the conflicts following the Second World War do not give it sufficient information to conclude that chemical weapons have or have not been used. The only fact it can produce — which is certainly not decisive in a general context—is that, in those places where they have been able to work, its delegates have not themselves noted the flagrant and large-scale use chemical weapons.

Finally, we would state that if it was wished to involve the ICRC further in the procedure of a specific inquiry, the ICRC could only accept on the basis of the criteria laid down in the aforesaid document on the violations of international humanitarian law and recalled in this note.

19 June 1981.

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of Doctrine and Law of the ICRC
