

# National Measures to Implement International Humanitarian Law

## *STEPS TAKEN BY THE ICRC*

Like any body of law, international humanitarian law (IHL) was intended not as a series of abstract precepts, but as a set of specific rules governing real situations. This is reaffirmed in Article 1 common to the Four Geneva Conventions of 1949, which lays down the obligation for the High Contracting Parties to respect and ensure respect for these treaties in all circumstances.

The widespread acceptance of the 1949 Geneva Conventions, to which 166 States are party, and of their Additional Protocols I and II of 1977, to which 100 and 90 States, respectively, are party, shows the importance attached to them by the international community. The ICRC is nevertheless aware that these treaties cannot be fully respected unless the States adopt measures at the national level to guarantee that they are actually implemented. Such measures range from the incorporation of the treaty provisions into the national legislation, in accordance with the legal system of each State, to the adoption of the legislative, administrative or practical measures necessary for their full implementation.

Pursuant to its recognized responsibility in the field of IHL, as laid down in the treaties, in the Statutes of the International Red Cross and Red Crescent Movement and in its own Statutes, the ICRC has regularly reminded the States of the importance in general of adopting national measures to implement IHL, and has particularly emphasized the need to do so in certain fields.<sup>1</sup>

---

<sup>1</sup> See reports entitled "Respect of the Geneva Conventions – Measures taken to repress violations" (Vols. 1 and 2) submitted by the ICRC to the 20th International Conference of the Red Cross (Vienna, 1965) and to the 21st International Conference of the Red Cross (Istanbul, 1969), respectively. On other occasions, the ICRC has also gathered information on the measures taken by the States to protect the Red Cross and Red Crescent emblem and name.

Since much remains to be done in this respect, the ICRC submitted a working paper to the 25th International Conference of the Red Cross (Geneva, October 1986) and proposed a draft resolution, which was combined with another draft resolution and adopted by consensus by the Conference as Resolution V entitled "National measures to implement international humanitarian law". The resolution essentially reminds the States party to the Geneva Conventions and their Additional Protocols of their obligation to adopt national measures to implement IHL and to keep one another informed in this respect through the depositary, invites National Societies to assist their own governments in fulfilling this obligation, appeals to governments and National Societies to inform the ICRC of the measures taken or under consideration and requests the ICRC to gather and assess the said information and to report regularly to future International Conferences.

As a follow-up to that resolution, on 28 April 1988 the ICRC wrote to the governments of the States party to the 1949 Geneva Conventions and to their National Societies asking for details of national measures. Very few replies were received and a year later it sent them a second circular, together with an *interim report* (see below) describing the outcome of its efforts to obtain information and summarizing the salient points and shortcomings of the replies received. This new appeal elicited replies from some of the States that had not yet answered and further details from others.

The ICRC attaches great importance to the adoption of national measures to implement IHL. It therefore does not intend to confine its efforts to written requests, but plans to use every available means to remind the States of their obligation and to assist them in fulfilling it.

In this spirit the ICRC organized, in co-operation with the Bulgarian Red Cross and the International Institute of Humanitarian Law, a first regional seminar on the subject. The seminar, which was held from 20 to 22 September 1990 in Sofia and was attended by representatives of the governments and the National Societies of 11 European countries, provided an initial opportunity for participants to share their experience. The report on the proceedings of the seminar appears in this issue of the *Review* (p. 223). In view of the success of this initial seminar, similar meetings will be organized in other regions, in conjunction with other initiatives at the national level.

The ICRC nevertheless considers it essential to obtain the opinions of the States party as to how it might best assist them in adopting national measures to implement IHL. On 18 January 1991, in the absence of any proposals to that effect from the States, it sent them

a reminder together with a document containing suggestions received from various other quarters.

The ICRC will submit to the forthcoming International Conference of the Red Cross and Red Crescent (Budapest, November 1991) a report summarizing and assessing all the replies received and presenting its conclusions on the subject.

\* \* \*

### **INTERIM REPORT**

*On 28 April 1988, as a follow-up to Resolution V of the 25th International Conference of the Red Cross (Geneva, October 1986), entitled "National measures to implement international humanitarian law", the International Committee of the Red Cross contacted the States party to the 1949 Geneva Conventions and, where appropriate, to one or both of the 1977 Additional Protocols, as well as the National Red Cross and Red Crescent Societies, to obtain any information on legislative and practical measures they had taken or intended to take in peacetime to facilitate the effective implementation of international humanitarian law in time of armed conflict.*

*Resolution V, which reaffirms that the very applicability of the treaties of international humanitarian law depends largely on the adoption of appropriate national legislation:*

- urges the States party to fulfil their obligation to adopt or supplement the relevant national legislation, as well as to inform one another of the measures taken or under consideration for this purpose;*
- invites the National Societies to assist and co-operate with their own governments in fulfilling their obligation in this respect;*
- appeals to governments and National Societies to give the ICRC their full support and the information to enable it to follow up the progress achieved;*
- requests the ICRC to gather and assess the said information and to report regularly to the International Conferences of the Red Cross and Red Crescent on the follow-up to the resolution.*

*All the documents sent to the governments and National Societies were published in the March-April 1988 issue of the International*

Review of the Red Cross (No. 263) to ensure that they were as widely read as possible.

The ICRC asked the States and the National Societies to inform it within a period of six months about the national measures they had taken or intended to take. Over one year later, the ICRC regrets to note that it has received very few answers.

In answer to the 160 letters sent to governments, the ICRC had received only 26 replies by 30 June 1989.\* Eleven of the replies came from States which are party to the 1949 Geneva Conventions only, namely: Brazil, Canada, Egypt, Germany (Dem. Rep.), Germany (Fed. Rep.), Haiti, Ireland, Israel, Nicaragua, Portugal and the United States. Twelve other\* replies came from States which are party to both Protocols (Austria, Belgium, Burkina Faso, Denmark, the Holy See, Italy, Jordan, the Netherlands, New Zealand, Sweden, Switzerland and Uruguay). Two States party only to Additional Protocol I (Cuba and Mexico), and one State party only to Additional Protocol II (Philippines) also replied.

Some of the States mentioned above simply acknowledged receipt of the ICRC's letter, others indicated that an interministerial committee had been set up to study the follow-up to be given to Resolution V. Only a few gave any substantial information.

The ICRC received replies from the following 15 National Red Cross and Red Crescent Societies\*: Australia, Austria, Canada, Czechoslovakia, Egypt, France, Germany (Dem. Rep.), Germany (Fed. Rep.), Hungary, Italy, Jordan, Libya, the Netherlands, the United Kingdom and the United States. All these replies were substantive; some were preliminary, others definitive.

In analysing the replies, the ICRC observed that in a number of ways they did not correspond to the Memorandum and Indicative List it had sent with the letter on 28 April 1988:

- some contained no information on the relationship between international law and the internal law of each State;
- some made no mention of exchanges of information, through the depositary, on national measures of implementation taken by the States party;

---

\* (Editor's note) In addition, the Republic of Korea and the Botswana Red Cross Society answered the ICRC's letter of 28 April 1988 on 6 and 7 September 1988, respectively. Therefore the ICRC had in fact received, as at 30 June 1989, replies from 27 States, 13 of which were States party also to the Additional Protocols, and from 16 National Societies.

- *the measures were at times listed in an order which differed from that in the Memorandum and the Indicative List, making it difficult, and in some cases impossible, to analyse the replies;*
- *in some replies, the list of measures taken or intended concerned implementation of only the Geneva Conventions or only the Additional Protocols, even when the States concerned were party to all the treaties;*
- *often no reference was made to statutes, rules or decisions incorporating international humanitarian law into internal legislation;*
- *there were often no excerpts of statutes, rules or decrees in the country's official language, nor copies of translations into one of the working languages of the International Conference of the Red Cross and Red Crescent;*
- *some replies contained no opinions or suggestions on how the ICRC could be more useful to the States in implementing international humanitarian law, for example by setting up an ad hoc documentation centre;*
- *the replies were sometimes presented in a way which made it impossible, when the time came, to transmit or publish the contents thereof separately from the correspondence with the ICRC;*
- *there was often no indication as to the person in charge of the matter.*

*As regards the National Red Cross and Red Crescent Societies, the ICRC wishes to specify the special role assigned to them by Resolution V: to participate in the representations made by the ICRC to government authorities in order to promote the adoption of legislative and practical measures in time of peace.*

*To do this, the National Societies could:*

- *make one person responsible for the matter within each National Society;*
- *ask the government to set up an interministerial committee to study the matter, if such a committee does not already exist;*
- *appoint a representative to sit on the committee;*
- *make sure that the government informs the ICRC and the States party to the treaties on international humanitarian law if such a committee is set up and about any measures taken, under consideration or intended;*

- *assist the government in drafting its answers, perhaps by helping to translate relevant legislation into one of the languages of the International Conference of the Red Cross and Red Crescent.*

*The purpose of this Interim Report is to provide information on the replies received to the ICRC's letter of 28 April 1988, on the implementation of international humanitarian law.*

*The mandate conferred on the ICRC by the States, in particular in Resolution V, demonstrates the importance the international community attaches to national measures to implement international humanitarian law, which should be adopted immediately following ratification of or accession to the treaties in question.*

*For the ICRC to be able to fulfil its obligation in this regard, the States must provide it with precise and comprehensive information – accompanied by copies of the relevant texts – on all legislative, administrative and practical measures taken or being drawn up, and if possible also on all those being considered.*

*Given its mandate to ensure the application of humanitarian law, the ICRC must stress the fact that it will not be able to submit a substantive report to the next International Conference of the Red Cross and Red Crescent – and above all will not be able to provide any useful services to States in the long term – unless the States entirely fulfil their obligations relative to the implementation of the Conventions and, as appropriate, the Additional Protocols.*

*Geneva, 15 August 1989*

---