

HUMANITARIAN POLICY AND OPERATIONAL ACTIVITIES

The ICRC's responsibilities
in connection with the Middle East conflict

by Yves Sandoz

In its January-February 1991 issue, the *Review* informed its readers of the successive representations made by the ICRC from the outbreak of the Middle East conflict both to the States party to the conflict and to the other States to remind them of their obligations under the Geneva Conventions. In particular, the ICRC sent a *note verbale* on 14 December 1990 to the 164 States party to the Conventions, together with a *Memorandum on the applicability of international humanitarian law*, and launched appeals to the belligerent States on 17 January and 1 and 24 February 1991.

These messages, which reflected the evolving nature of the conflict, were intended not only to remind the States of their duties and obligations under international humanitarian law (IHL), but also — in particular the appeal of 1 February — to bring about a better understanding of the ICRC's various responsibilities in its capacity as a neutral, impartial and independent humanitarian institution and pursuant to its mandate to promote and ensure respect for IHL.

It would be useful now to take a closer look at these responsibilities and various aspects thereof.

The ICRC's responsibilities, on the basis of which it takes action and makes its opinion known, can be divided into three main categories:

- as a moral authority;
- its operational activities in situations of armed conflict;
- as an expert on IHL.

1. The ICRC's moral authority

Through its activities the ICRC has undeniably acquired a certain moral authority. Some people think that it should make greater use of this authority, in particular by acting as a mediator or taking positions on various international issues, such as it did, for example, by voicing concern about the use of atomic weapons in Hiroshima and Nagasaki.

This moral authority has enabled the ICRC, together with the International Red Cross and Red Crescent Movement as a whole, actively to promote peace and draw attention to the horrors of war. The fact that armed conflict leaves a trail of devastation even where IHL is applied has frequently been pointed out by the Movement. The ICRC in particular has denounced, for example in its appeal of 1 February, the intolerable suffering brought about by war, and will continue to do so. Its responsibility in this respect has also led it to deplore the international community's failure to achieve peaceful solutions. Indeed, whether or not IHL is respected, war always implies such a failure, as recognized by the UN in the present context.

It should clearly be established, however, that to deplore the use of force is not tantamount to *condemning* recourse to it on this occasion. Neither the ICRC nor the Movement as a whole are pacifist in the strict sense of being opposed to all forms of armed violence. Would it have been preferable not to use force against Kuwait's occupiers? Could that force have been used differently? Was force absolutely necessary to free Kuwait? These are questions on which the ICRC, by virtue of its principle of neutrality and, concomitantly, to preserve its ability to act as a neutral institution and intermediary, need not and moreover *must not* take a position. Bitterness at the outbreak of war should not be construed as an automatic condemnation of the belligerents.

The main concern put forward by the ICRC in its appeal of 1 February, namely that "the law of war [...] might be swept aside", stems from moral rather than legal considerations. It was prompted by the perceptible tendency in certain statements to "barter" with that law and, above all, by the fear of an escalation of the means and methods of warfare used, in particular by recourse to chemical or nuclear weapons.

In speaking of a potential "tragedy even greater than the use of force" were the law of war to be swept aside and such means used, the ICRC again took an implicitly moral stand. Its concern focused on the untold devastation that such an escalation would wreak upon the civilian population and the environment, the deep rift it would almost

inevitably create between the Arab world and the western countries and the resultant barrier of incomprehension that would bar the way to negotiated solutions to the region's problems.

It is important also to remember that respect for IHL, in addition to its immediate importance for conflict victims, is a key factor in paving the way for the reconciliation of the belligerent parties. The role of the International Red Cross and Red Crescent Movement, in particular that of the ICRC, in ensuring respect for IHL is therefore considered by the Movement as one of its major contributions to peace.¹

2. The ICRC's operational activities in situations of armed conflict

Although the ICRC did not make an explicit offer of services in its appeal of 1 February, by calling for respect for IHL it nevertheless implicitly asked to be allowed to carry out its mandate under that law.

As already mentioned, the appeal did not denounce any violations of humanitarian law. This is in keeping with the fact that the role adopted by the ICRC in the field of IHL is that of an expert rather than a court.

The ICRC's activities in situations of armed conflict are of course governed by IHL, which lays down its specific duties and recognized right of initiative. However the institution's *objective* is not primarily of a legal nature. Its primary aim is not to stand in judgment, but to ensure the best possible application of IHL.

In principle therefore the ICRC does not publicly denounce breaches of IHL unless two conditions are met, namely that those breaches have been ascertained by the ICRC itself and that its representations to the parties to the conflict have been of no avail.² In short, its objective first and foremost is to alleviate the suffering of victims in tangible ways and preserve its operational capacity, not to keep a systematic public record on respect for IHL. It does not and in no way aspires to act as a court.

¹ See the "Message to the World Community: Through Humanity to Peace" issued by the Second World Red Cross and Red Crescent Conference on Peace (Aaland/Stockholm, 2-7 September 1984) in *IRRC*, No. 243, November-December 1984, pp. 335-338.

² See "Action by the ICRC in the event of breaches of international humanitarian law", *IRRC*, No. 221, March-April 1981, pp. 76-83.

3. The ICRC as an expert on international humanitarian law

The ICRC drafts IHL, ensures its promotion, explains it in its *Commentaries* on the Geneva Conventions and Protocols, helps to disseminate it and paves the way for its development. Acknowledgement of the ICRC's very extensive role in this connection is based on the confidence placed in the ICRC's expertise in this field. Any mention of IHL by the ICRC is thus endorsed by its own credibility.

The ICRC undoubtedly has a responsibility, in its capacity as an expert on the subject, to answer any questions it is asked about IHL. It thus recently provided detailed explanations on various legal aspects of the Middle East conflict.³ However the role of expert that it has agreed to play must not be confused with the positions it adopts in specific situations. Thus to proclaim that torturing prisoners is prohibited is not tantamount to inferring that prisoners actually have been tortured in a specific instance.

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³ See *IRRC*, No. 280, January-February 1991, pp. 28-30.