

# **The ICRC and International Humanitarian Issues<sup>1</sup>**

**by Alexandre Hay**

I am glad to have the opportunity to address such a gathering of eminent personalities concerned with the increasingly grave humanitarian problems of our time.

The International Committee of the Red Cross (ICRC) has, for the last 120 years, served the cause of humanity in a world torn by conflicts.

In 1864, a year after the ICRC was founded, the Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, the first multilateral humanitarian law treaty, established a legal basis for ICRC activities and brought about the recognition of the Red Cross movement by the States.

From ten articles in 1864 to some six hundred today, humanitarian law has made progress and ICRC activities have developed along with it, the one promoting the other.

The 1864 Convention afforded protection only to the wounded and sick soldiers of armies in the field; after the naval battle of Tsushima, it was adapted in 1907 to sea warfare.

After the First War, in the course of which the ICRC assisted and protected hundreds of thousands of prisoners of war, a new convention formally extended ICRC protection to prisoners of war.

The tragic experiences of the Spanish Civil War and of the Second World War led to a recasting of the Geneva Conventions in 1949 and widened their scope in two ways. There were.

1. four Conventions, which still constitute the basis of current humanitarian law in force in international armed conflicts;

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<sup>1</sup> Speech by the ICRC President to the Independent Commission on International Humanitarian Issues, New York, 12 November 1983.

- the First Convention, affording protection to wounded and sick soldiers;
  - the Second, affording protection to shipwrecked members of armed forces;
  - the Third, dealing with prisoners of war;
  - the Fourth, a new one, dealing with civilians; and there was
2. article 3 common to the four Conventions, a kind of small Convention in itself, affording protection to victims of non-international armed conflicts.

The war in Algeria, the war in Viet Nam, and all the armed struggles for independence showed both the practical value and also the limits of the four 1949 Conventions. Its achievements, and also the obstacles it encountered in helping the victims of these conflicts, led the ICRC to convene, in 1971 and 1972, two conferences of government experts to examine proposals for updating humanitarian law.

In 1977, a Diplomatic Conference, presided over by Federal Councillor Graber, who is also a member of this Independent Commission, adopted two Protocols additional to the 1949 Conventions: Protocol I affording protection to the victims of international armed conflicts and Protocol II protecting the victims of non-international armed conflicts. These two Protocols brought fundamental innovations in the field of contemporary humanitarian law: protection of civilians against the effects of hostilities, classification of wars of national liberation as international armed conflicts, extension of protection to combatants in guerrilla warfare.

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Emmanuel Mounier said that “Law is always a precarious attempt to subjugate force to reason and to turn it towards love”. He added: “But it is also a struggle.”

This struggle is fought by the ICRC mainly in the field, in the heat of conflicts, alongside the victims of such conflicts. Today, the ICRC maintains about thirty delegations in the world, with 400 delegates, who are active in some 70 countries, with regular and special annual budgets of the order of a hundred million dollars (one third for the regular budget and two thirds for specially financed activities), serving primarily for the protection of, but also for assistance to, a growing number of victims of armed conflicts and internal troubles and tensions.

The Geneva Conventions of 1949 and the Protocol I of 1977 provide for the following safeguards to ensure the rights of the victims of armed conflicts:

- the primary responsibility of the party States;
- The institution of the Protecting Power; the role of the ICRC in assistance and protection and, in the field of assistance, that of the Red Cross and Red Crescent movement;
- the role of the United Nations;
- the establishment of an International Fact-Finding Commission;
- the procedures of enquiry, (art. 52 of Convention I, 53 of Convention II, 132 of Convention III and 149 of Convention IV).

According to article 1 common to the 1949 Conventions and to Protocol I, “The High Contracting Parties undertake to respect and to ensure respect for the Conventions and Protocols in all circumstances.” The *party States* therefore have a dual responsibility, that of applying the stipulated provisions themselves, as well as a collective responsibility for ensuring their respect by other States even though no formal procedure for doing so has been stipulated.

The *Protecting Power* is a State, neutral or non-party to the conflict, which, nominated by one party to the conflict and accepted by the opposing party, is prepared to undertake the task of safeguarding the interests of the party to the conflict which nominated it. Its role basically is to supervise the condition of prisoners of war and interned civilians, parallel to ICRC’s activities in this domain.

Since 1949, a Protecting Power (Switzerland) was appointed in the following cases only: in the Suez conflict in 1956, the Goa conflict in 1961 and the war between India and Pakistan in 1971-1972, although in the latter case the mandate of Switzerland was not understood in the same way by both parties.

The role of the *International Committee of the Red Cross*, in accordance with the 1949 Geneva Conventions and the 1977 Protocols is, generally speaking, to serve as a neutral intermediary between parties to conflicts in order to bring protection and assistance to the victims. More specifically, this entails the following activities:

- to visit and interview without witness prisoners of war (Article 126 of the Third Convention) and detained or interned civilians (Articles 76 and 143 of the Fourth Convention);
- to provide aid to the populations of occupied territories (Articles 59 and 61 of the Fourth Convention);

- to look for missing persons and transmit family messages to prisoners of war (Article 123 of the Third Convention) and to civilians (Article 140 of the Fourth Convention);
- to offer its services in the establishment of hospital zones and localities (Article 23 of the First Convention) and security zones and localities (Article 14 of the Fourth Convention);
- to receive requests for aid from protected persons (Article 30 of the Fourth Convention);
- to exercise its right of initiative; this means that it may ask the parties to a conflict to agree to its discharging other humanitarian functions in the event of non-international armed conflicts (Article 3 common to the four Geneva Conventions of 1949) and international armed conflicts (Article 9 of the First, Second and Third Conventions, and Article 10 of the Fourth Convention);
- to act, wherever necessary, as a substitute for the Protecting Power.

The assistance of the *Red Cross in general*, and, in particular, of the National Societies and their federation, the League, is defined by a general clause in Protocol I, Article 81.

The role of the *United Nations* is mentioned in Article 89 of Protocol I: “In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter.”

The facultative formation of an *International Fact-Finding Commission* was introduced, on a proposal by Sweden, in Article 90 of Protocol I. This Commission shall be convened when twenty High Contracting Parties have agreed to accept its competence.

All in all, it can be said that the international community today has an updated body of international law applicable in case of armed conflicts, together with the procedures for its implementation.

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It should however be pointed out that as this law has been developed, and the number of its implementation procedures increased, the number of obstacles to its implementation has also increased.

In the worsening international climate there is a growing tendency to resort to force, both between and within States, increasing the number of conflicts as well as the number of victims.

Confronted with the present crises, governments are tempted to think only in the short term, to reject everything that does not fit in with immediate interests, and to relegate humanitarian considerations to a place behind what they consider to be the imperatives of politics and security.

This refusal to implement humanitarian law defies the whole international community (the States, the legal system, the organizations) and inflicts intolerable suffering on the victims of conflicts.

In 1981, at the 24th International Red Cross Conference in Manila, I said how concerned the ICRC was at the escalation of indiscriminate violence, the repeated violation of basic humanitarian principles, the politicization of humanitarian law and the arms race in a starving world.<sup>1</sup>

The International Red Cross Conference adopted two resolutions (Resolutions IV and VI) reminding all parties to conflicts of their humanitarian obligations. The first of these two resolutions deplored the fact that the ICRC had been refused access to captured combatants and civilian detainees in the armed conflicts of Western Sahara, Ogaden and Afghanistan. It was no coincidence that these three situations were mixed conflicts, being both internal and international, whose legal status had political implications liable to jeopardize humanitarian action for the victims of the conflicts.

Two years after Manila, these refusals still stand, except in the case of Ogaden, and the list, regrettably, is not complete. It would be remiss of me not to remind you of the ICRC appeal last May to the whole international community as well as to Iraq and Iran concerning our activities in those two warring countries. Nor should I omit our repeated approaches to Israel to secure its recognition of the applicability of the Fourth Convention to the occupied territories and to ensure respect of the Convention in all areas.

Besides operating in situations of armed conflict, the ICRC, with the consent of the governments concerned, visits persons detained as a result of internal troubles and tensions. Since the end of the Second World War, the ICRC has visited more than 300,000 detainees in eighty countries.

But in numerous situations which are not covered by the 1949 Geneva Conventions and their 1977 Protocols, the ICRC was not allowed access to persons detained as a result of serious troubles.

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<sup>1</sup> See the address by the ICRC President at the opening meeting of the Twenty-fourth International Red Cross Conference, in *International Review of the Red Cross*, January-February 1982.

As the initiator of the Red Cross movement and of humanitarian law, the ICRC works unceasingly to help innocent victims of conflicts and to foster the humanitarian spirit in action and in law.

Over the last few years, the ICRC has seen its activities expand despite certain setbacks, and has also witnessed an increased need for all kinds of support to undertake operations wherever possible and to overcome obstacles.

On the outbreak of the armed conflict between Iraq and Iran, the ICRC reminded both parties of the applicability of the Geneva Conventions. It set up or strengthened its delegations in Baghdad and Teheran and maintained a constant dialogue with the authorities. Prompted by the numerous difficulties we came up against, I myself carried out several missions to both Baghdad and Teheran in order to meet the leaders of both countries. Since these discreet steps proved insufficient, the ICRC launched a public appeal to the two parties and to all the States bound by the Geneva Conventions.

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On a general level, the ICRC has for several months been in touch with several governments and independent specialists on the matter of monitoring the application of humanitarian law and its underlying principles.

In 1984, the ICRC will step up these expert consultations and will pursue them further in 1985 and 1986. The aim should be to foster awareness of this problem, having in mind the 25th International Red Cross Conference in Geneva in 1986.

To this end, the ICRC would gladly continue its discussions with the Independent Commission or those of its members who are best informed on this subject.

The purpose of these discussions should be to agree with these specialists and politicians on ways of:

- a) improving knowledge of and respect for humanitarian law, not only in military circles, but also and above all among politicians in positions of authority;
- b) drawing the attention of parties to conflicts, and all the States bound by the Geneva Conventions to the existence in the Conventions and Protocols of procedures for their application (including the institution of Protecting Powers) and encouraging them to make use of such procedures to implement humanitarian law.

Even though this renewed affirmation of existing law and the procedures for its application is a matter of urgent concern and high priority, it should not exclude new developments.

As a matter of fact, several areas were left untouched when humanitarian law was recently supplemented. The ICRC has begun to consider improving the humanitarian rules governing, amongst other things, the following problems: sea warfare, neutrality, lawful methods and means of combat, medical transport, etc., to mention only a few areas where better protection of human beings in times of conflict seems to us to be necessary. In the near future, the ICRC will approach experts and States for consultations on these various topics.

The situation of the individual caught up in violence in a State, violence that ranges from simple internal tensions to more serious internal disturbance, is a cause of deep concern to the ICRC. A suggestion was made recently to draft a declaration of basic and inalienable rights applicable to cases of collective violence within States, in situations that would not already be covered by humanitarian law. The ICRC considers this idea worth pursuing and intends to examine it during its consultations with experts.

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The main questions I would like to put to you today are these: how should one go about stimulating this awareness of humanitarian values among political leaders? How should one foster the humanitarian spirit in politics? How can one demonstrate that in every political situation there are humanitarian aspects which one ignores at one's peril?

We, who are every day confronted with the victims' plight, would be grateful should you be able, with your command of political affairs, to conceive of ways and means to promote the acceptance and application of humanitarian law and its principles among political leaders and to bring awareness to public opinion.

With your experience and standing, you have access to the highest political leaders and you can urge:

- a) the speedy ratification of the Additional Protocols, which are a basic supplement to humanitarian law in its main areas such as the protection of civilians against hostilities;
- b) a better knowledge of the existing instruments of humanitarian law;
- c) the faithful application of these instruments in all circumstances, and full co-operation with existing humanitarian organizations;

- d) a better use of the institutions and procedures provided for in existing statutory law: collective responsibility of the States party to the Conventions, Protecting Power, Fact-Finding Commission.

We should not forget that there are also questions of mediation between parties to conflicts, between States or within States, nor should we forget limited but especially acute problems, such as that of missing or stateless persons.

The ideal would obviously be to reach the stage where humanitarian principles would be such a matter of course that there would be no need for humanitarian institutions or law. But we are still a long way from achieving this.

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Many other problems ought to be mentioned, many tragic and admirable cases reported. We could speak of them far longer.

For the moment, I would like to conclude with the wish that we may all continue to do our share for humanity wherever we may be of most service, supporting each other and restoring a little peace and solidarity to a world that so sorely needs it.

**Alexandre Hay**  
*President of the ICRC*

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