

Respect and development of international humanitarian law

In the course of its meeting on 7 and 8 December 1983 the ICRC General Assembly decided to step up its efforts to promote the respect and development of international humanitarian law and of humanitarian principles.

The reasons for that decision and the projects intended to give it effect are outlined below.

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In humanitarian law, the past fifteen years have been marked by a major effort of the international community to reaffirm and develop international humanitarian law applicable in armed conflicts. This effort has borne fruit. The acceptance, on 8 June 1977, of the two Protocols additional to the Geneva Conventions of 1949, by a diplomatic conference convened specially for that purpose, brought written international humanitarian law as close as appears possible today to meeting the principal humanitarian requirements arising in present-day armed conflicts. At the present time, major new developments hardly seem possible.

It must be acknowledged, however, that respect for international humanitarian law in armed conflicts has not kept pace with the development of the written law. There is on the contrary a distinct increase in violations by belligerents of even the most basic rules.

This profoundly disturbing situation is clearly due to a deterioration of the international climate, manifested by growing tendency to resort to force, both between States and within States. At the same time, we are forced to recognize that many governments are tempted to regard humanitarian behaviour as secondary, thinking only in terms of their political and security requirements.

The concerns of the ICRC are not limited to armed conflicts; the situation of the victims of internal disturbances and tensions, who are

not protected by international humanitarian law, is also very precarious. Although the ICRC may undertake protective activities in such situations, under the provisions of the Statutes of the International Red Cross and in agreement with the government concerned, there is no legal instrument which adequately covers the victims' needs for protection and guarantees that the fundamental humanitarian principles will be respected.

Faced with increasing recourse to indiscriminate violence, the repeated violations of fundamental humanitarian principles and of international humanitarian law—and even the manipulation of that law for political purposes—the ICRC considers it necessary to increase its efforts to promote respect for and the development of international humanitarian law.

In concrete terms, this means that the ICRC will:

1. Seek appropriate means to strengthen respect for international humanitarian law in times of armed conflict—international or non-international.
2. Encourage States to ratify the Protocols additional to the Geneva Conventions.
3. Study the further development of certain aspects of international humanitarian law.
4. Try to define humanitarian principles applicable in situations not covered by international humanitarian law (internal disturbances or tensions).

The ICRC has set 1986 as its target for working out concrete proposals to this effect. These will be submitted for discussion and proposed for adoption at the Twenty-fifth International Red Cross Conference meeting that year in Geneva, and through the Conference to the international community.

In deciding upon this programme, the ICRC is acting under a mandate assigned to it by Article of the Statutes of the International Red Cross¹. It is also acting in accordance with Resolution VI of the Twenty-fourth International Red Cross Conference (Manila, 1981)², whose substantive section states:

“The Twenty-fourth International Red Cross Conference, ... makes a solemn appeal that the rules of international humanitarian law and the

¹ Text in *International Red Cross Handbook*, 11th ed., 1971, p. 273-280, or 12th ed., 1983, p. 407-413.

² See *International Review of the Red Cross*, November-December 1981, p. 322-323.

universally recognized humanitarian principles be safeguarded at all times and in all circumstances and that the International Committee of the Red Cross be granted all the facilities necessary to discharge the humanitarian mandate confided to it by the international community.”

As it increases its efforts to promote respect for and the development of international humanitarian law, the ICRC notes with satisfaction that various governments, prominent personalities and numerous organizations share its concerns. It hopes to have the benefit of their counsel to the extent to which their specific experience can contribute to the achievement of the objectives in question, and looks forward to cooperating with them, while respecting the special field of competence of each one.

Accordingly, it will consult persons whose political or diplomatic experience promises to make an original, concrete and decisive contribution to the solution of the problems before us, as well as jurists specializing in public international law. The ICRC cannot achieve the objectives it has set for itself unless it has substantial outside support.

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The four objectives chosen by the ICRC will be set forth in greater detail below to show the course of action adopted.

1. *Seek appropriate means to strengthen respect for international humanitarian law in times of armed conflict—international or non-international.*

The ICRC attaches paramount importance to the urgent need to ensure better respect for the international humanitarian law which is now in force. To achieve this objective, it wishes to remind the international community in general and parties to armed conflicts in particular of the conditions and means whereby respect for international humanitarian law can be ensured.

With international humanitarian law as it stands today, the main emphasis should be placed on devising original, innovative ways of using the legal means already in existence to promote and facilitate respect of the law, rather than on proposing new legal instruments and procedures.

Our analysis should therefore cover not only the mechanisms for putting the law into effect, but also and above all the causes of respect—or non-respect—for the law, and the political and sociological factors which encourage, are conducive, or conversely detrimental, to respect for humanitarian obligations.

Thus, among the questions before us are the following: How can we disseminate wider knowledge of the existing instruments of humanitarian law? How can we enhance the credibility of humanitarian law in the face of a certain conception of *realpolitik* on the one hand or a policy totally governed by ideological considerations on the other? How can we induce countries at war, and the whole international community for that matter, to make better use of the existing ways and means to strengthen respect for humanitarian law, such as, for example, Protecting Powers, enquiry procedures in the event of violations of the law, initiatives enabling the ICRC to act, *ad hoc* diplomatic interventions, etc.?

It will be necessary in this analysis to take into account the different categories of responsibilities of the States party to the instruments of humanitarian law, in particular:

1. The obligation of these States to take measures in advance which will enable them, in the event of conflict, to discharge in good faith the obligations imposed by the Conventions.
2. The duty of the Parties to a conflict to respect their obligations in relation to that conflict.
3. The duty of States not involved in a conflict to strive to obtain the respect of the belligerents for the humanitarian conventions. This is explicitly stated in Article 1 common to the Geneva Conventions of 12 August 1949 and the additional Protocol I: "The High Contracting Parties undertake to respect and to *ensure respect* for the present Convention in all circumstances." They may do so through the mechanisms provided for in the Conventions—such as that of Protecting Powers—or by other means such as bilateral diplomatic approaches or multilateral initiatives.

In drawing the attention of political leaders, and through them the governments, to the problem of obtaining greater respect for humanitarian law the ICRC is acting in accordance with Resolution VI of the Manila Conference (quoted above). It is also aware that its action responds to the desires of many governments, which are openly concerned about violations of humanitarian law.

The medium-term objective of the ICRC is to submit to the Twenty-fifth International Red Cross Conference in 1986, concrete proposals designed to strengthen respect for humanitarian law in armed conflicts—international or non-international. In order to elaborate proposals which are both innovative and realistic, it intends to request the assistance of persons outside its own circle and benefit from their experience

in political affairs and diplomacy. These specialists will be asked to express themselves in their personal capacity.

2. *Encourage States to ratify the Protocols additional to the Geneva Conventions.*

To obtain the ratification of the Protocols additional to the Geneva Conventions by a large number of States, with a view to universal acceptance of the new law of 1977, is a second objective. A number of elements in the two Protocols substantially improve the protection of war victims, in particular the protection of the civilian population from attacks and from the effects of hostilities. The advance made in 1977 demands an increased effort of the ICRC to obtain formal acceptance of this new law by the States, a precondition in gaining respect for it.

The fact is that nearly seven years after adoption of the Protocols, 38 States are Parties to Protocol I and 32 States to Protocol II (as at 1 March 1984). Ratifications continue to be registered, slowly but steadily. Thus, the States continue to show their interest in the Protocols, without a halt, but also without giving any priority to their ratification.

During these years, the ICRC has carried out millions in some sixty countries to promote ratification of the Protocols. It will persevere along the same line, concentrating its efforts on obtaining their ratification by at least the world's major powers before the Twenty-fifth International Red Cross Conference in 1986.

3. *Study the further development of certain aspects of international humanitarian law.*

Even though it is most urgent to strengthen respect for the international humanitarian law which is now in force, it is equally important to enter into the study of subjects which may lead to further development of the existing humanitarian instruments. Some domains were not even touched upon in the most recent updating of humanitarian law. In others, technological developments have been so considerable that new solutions are already needed. The ICRC has begun to study a possible development of humanitarian rules governing, among others, the following matters: maritime warfare, neutrality, lawful methods and means of combat, medical transport, improvement of identification and signalling techniques, etc., to mention only some of the situations in which better protection of human beings in times of conflict seems essential. The ICRC intends to approach specialists, and also the governments, for counsel in these fields.

In continuing such work, the ICRC does not in any way call into question the ground gained in international humanitarian law, and the need in particular for ratification of the 1977 Protocols.

The ICRC's intention to undertake this study has already been communicated to the circles concerned; the President of the ICRC referred to it in his speech in New York to the Independent Commission on International Humanitarian Issues (see the *International Review of the Red Cross*, January/February 1984). A paper dealing particularly with this subject was published in the same issue of the Review: "Some Reflections on the Future of International Humanitarian Law" by Hans-Peter Gasser.

4. *Try to define humanitarian principles applicable in situations not covered by international humanitarian law (internal disturbances or tensions).*

While the principal mandate of the ICRC is to help the victims of armed conflicts, it is also empowered to offer its services for victims of situations of violence which are not covered by the instruments of international humanitarian law, namely situations of internal disturbances or tensions. The Statutes of the International Red Cross specifically confer upon it the mandate to exercise its humanitarian activities for the victims of such situations as well (Article VI, paragraphs 5 and 6). Accordingly, in the past two decades, the ICRC has carried out these activities in an increasing number of countries, mainly for the benefit of detainees.

Human rights legislation continues to be applicable when internal disturbances and tensions occur. If force is used in such situations, they are similar to those in which international humanitarian law is applicable. The ICRC has decided to prepare a declaration drawing, of course, on human rights, but also on humanitarian law (particularly with regard to the use of force and control of the rules written in the declaration). Such a declaration will be valid even in situations in which the applicability of international humanitarian law is contested. The ICRC will consult a number of experts before drafting this declaration on humanitarian principles applicable in internal disturbances and tensions, which it may submit as a draft resolution to the Twenty-fifth International Red Cross Conference for discussion and approval.

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