

# The International Committee of the Red Cross and the implementation of a system to repress breaches of international humanitarian law\*

by **María Teresa Dutli** and  
**Cristina Pellandini**

## 1. Introduction

The fundamental instruments of international humanitarian law are well known. They are principally the four Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as an extensive framework of customary law. These instruments deal with issues of vital importance in times of armed conflict including protection of the wounded, sick and shipwrecked, prisoners of war and civilian internees, as well as the protection of the civilian population as a whole.

International humanitarian law establishes not only the basic rights of the individual, but also contains important mechanisms for guaranteeing observance of these rules. It imposes the obligations necessary to repress any act constituting a serious infringement of personal dignity or a grave threat to the security of the civilian population.

The current spate of armed conflicts and flagrant violations of humanitarian law has revived interest in the sanctions system to ensure greater respect for that law. This system is designed to halt violations and, in particular, to repress grave breaches classified as war crimes.

---

\* Original: French — March 1994.

The punishment of breaches of international humanitarian law has been the subject of several studies.<sup>1</sup> We shall therefore refer only briefly to the obligations of States in this regard. We shall also see how the International Committee of the Red Cross (ICRC) works for the implementation of these obligations, both at the national level and in the context of an international penal tribunal. Indeed, ensuring that breaches are duly prosecuted and do not go unpunished is a matter of constant concern to the ICRC. This is borne out by the steps already taken by the ICRC and those it continues to take to encourage the adoption of national measures for implementation of international humanitarian law, mainly in the form of penal legislation.

## 2. Who is responsible for repressing grave breaches of international humanitarian law?

International humanitarian law deals extensively with the repression of grave breaches committed during international armed conflicts, with the underlying idea that penal sanctions are an integral part of any coherent judicial system and that the threat of sanctions is an element of dissuasion.

Recognition of the individual penal responsibility of persons who commit or order the commission of a grave breach of the humanitarian treaties constitutes a major advance in humanitarian law.<sup>2</sup>

The Geneva Conventions of 1949 and Protocol I additional thereto address two categories of violations: those classified as grave breaches, which States have the obligation to prosecute; and those which States have the sole obligation to halt, no specific procedure having been prescribed for this.

Each Convention contains a list of grave breaches.<sup>3</sup> This list is supplemented in Additional Protocol I,<sup>4</sup> which classifies these breaches as *war crimes*.<sup>5</sup>

---

<sup>1</sup> See, *inter alia*, Yves Sandoz, "Mise en œuvre du droit international humanitaire", in *Les dimensions internationales du droit humanitaire*, IHL-UNESCO, Paris, Pédone, 1986, pp. 229-326. By the same author: "Penal Aspects of International Humanitarian Law", in Cherif Bassiouni, (ed.), *International Criminal Law*, Vol. 1, New York, 1986. Also Richard Baxter, "The Municipal and International Law Basis of Jurisdiction over War Crimes", in the *British Yearbook of International Law*, Vol. 28, 1951.

<sup>2</sup> Articles 49, 50, 129 and 146 common to the Geneva Convention.

<sup>3</sup> Articles 50, 51, 130 and 147 common to the Geneva Conventions.

<sup>4</sup> Articles 11, paragraph 4 and 85, paragraphs 3 and 4.

<sup>5</sup> Article 85, paragraph 5.

In the repression of grave breaches of international humanitarian law, the principal role — and hence the responsibility — rests with the parties to the conflict and the other Contracting Parties. In other words, the maxim *aut judicare aut dedere* must be applied. If grave breaches are committed, a Contracting Party has the choice of bringing the perpetrators before its courts or to “hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case”.<sup>6</sup> The obligation to repress grave breaches is independent of the nationality of the person committing them and of the place where they are committed, pursuant to the principle of *universal penal jurisdiction*. This principle places all States party to the humanitarian treaties under an absolute obligation to repress such breaches effectively; only their universal repression can ensure real respect for humanitarian law. This principle may not be circumvented, even by agreement among the parties concerned.<sup>7</sup>

To that end, the Geneva Conventions specifically lay down the obligation to prescribe *effective penal sanctions* under national legislation.<sup>8</sup> Thus, while international humanitarian law qualifies those acts constituting war crimes, it is left to national jurisdictions to determine the sanctions to be imposed.

### **3. The repression of violations of international humanitarian law not qualified as war crimes**

Persons committing violations of the rules applicable in international armed conflicts other than those qualified as grave breaches are not deemed to have international penal responsibility.<sup>9</sup>

---

<sup>6</sup> See footnote 2.

<sup>7</sup> Articles 51, 52, 131 and 148 common to the Geneva Conventions.

<sup>8</sup> See footnote 2.

<sup>9</sup> These other violations may be defined as conduct contrary to the instruments of international humanitarian law which is of a serious nature but which is not included as such in the list of “grave breaches”.

It is not necessary to have in mind exactly what conduct could fall under this definition to be able nevertheless to distinguish three categories that qualify:

- isolated instances of conduct, not included amongst the grave breaches, but nevertheless of a serious nature;
- conduct which is not included amongst the grave breaches, but which takes on a serious nature because of the frequency of the individual acts committed or because of the systematic repetition thereof or because of circumstances;

The various duties which stem from the principle *pacta sunt servanda* — reaffirmed in Article 1 common to the four Geneva Conventions and recalling the obligation of States “to respect and to ensure respect for the present Convention[s] in all circumstances” — can help to establish an international penal responsibility for other violations of international humanitarian law.<sup>10</sup> In the absence of such an international norm, it would nevertheless be advisable, in order to stop those other violations not considered under international humanitarian law as war crimes, for domestic legislation or regulations to prescribe suitable means to restore a situation in conformity with the law, all the more so as violations of rules applicable to internal conflicts are essentially the same as those considered as war crimes when they occur in international conflicts.<sup>11</sup> At the present stage of development of international law, only such internal mechanisms could make it possible to ensure effective respect for humanitarian law in all circumstances.

Moreover, it would be desirable for national mechanisms to complement the provisions of international humanitarian law in such a way as to accord victims full compensation for damages caused them. Indeed, it is not enough to punish those responsible for such acts; victims should also be effectively compensated for the injury suffered. This crucial issue as well is not completely settled under international humanitarian law,<sup>12</sup> and calls for complementary measures which at present can be adopted only internally.

In contrast, the provisions of international humanitarian law concerning the observance of judicial guarantees are highly developed.<sup>13</sup> In this connection, no derogation from the fundamental guarantees enshrined in domestic legislation should be tolerated merely because the acts are

---

— “global” violations, for example, acts whereby a particular situation, a territory or a whole category of persons or objects is withdrawn from the application of the Conventions or the Protocol.

See *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, M. Nijhoff/ICRC, Geneva, 1987, paras 3591 and 3592.

<sup>10</sup> Denise Plattner, “The penal repression of violations of international humanitarian law applicable in non-international armed conflicts”, *JRRC*, No. 278, September-October 1990, p. 419.

<sup>11</sup> See Article 3 common to the Geneva Conventions and Article 4 of Protocol II.

<sup>12</sup> The question of compensation for injury suffered in international conflicts is dealt with in Articles 51, 52, 131 and 148 common to the Geneva Conventions and in Article 91 of Protocol I.

<sup>13</sup> See mainly Article 75 of Protocol I and Article 6 of Protocol II.

committed in a time of armed conflict. These guarantees should be supplemented, where necessary, so as to conform to the provisions of humanitarian law.

#### 4. Universal penal jurisdiction for the prosecution of war crimes?

It is to be regretted that despite the detailed regulations on the repression of war crimes contained in the international humanitarian law treaties, the system of universal penal jurisdiction has not really been implemented by States and, as a result, it has not been possible to repress these crimes effectively. Other mechanisms — which must be matched by the political will of States if they are to work — have recently been created and should buttress the existing system.

International humanitarian law makes no provision for an international tribunal to prosecute war crimes, as do other instruments of international law,<sup>14</sup> but does not rule it out either. Such powers could be conferred by an agreement among States in the form of an international treaty of universal scope, or by a decision of the Security Council. This has been the case for the “*international tribunal [...] for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991*”.<sup>15</sup>

The ICRC considers the establishment of this tribunal as an important step towards effective compliance with the obligation to punish war crimes. It should be only the first step towards the setting up of a permanent international penal tribunal.<sup>16</sup> This has been borne out by the considerable headway made in the work of the International Law Commission, which has drawn up a draft Statute for a future International Tribunal<sup>17</sup> and submitted it to the Sixth Committee (legal) during the forty-

---

<sup>14</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Article VI and the Convention on the Suppression and Punishment of the Crime of Apartheid, Article V.

<sup>15</sup> Security Council Resolutions 808 (1993) and 827 (1993).

<sup>16</sup> Report on the Protection of War Victims submitted by the ICRC to the International Conference for the Protection of War Victims, held in Geneva under the auspices of the Government of Switzerland from 30 August to 1 September 1993, ICRC, Geneva, June 1993, para. 4.2.2. Report reproduced in *IRRC*, No. 296, September-October 1993, pp. 391-445.

<sup>17</sup> Report of the International Law Commission to the forty-eighth Session of the General Assembly of the United Nations, doc. A/48/10.

eighth session of the General Assembly of the United Nations (1993). This draft Statute complements, *inter alia*, Article 22 (“war crimes of exceptional gravity”) of the draft Code of Crimes against the Peace and Security of Mankind.<sup>18</sup> It is therefore to be hoped that more effective measures to prevent and punish crimes committed against countless victims, especially in internal conflicts, will be available in the near future.

## **5. Role of the International Committee of the Red Cross in the event of violations of international humanitarian law**

The ICRC has devoted considerable effort to ensuring respect for the rights of victims of war. This concern is in keeping with its mandate to “work for the faithful application of humanitarian law applicable in armed conflicts and to take cognizance of any complaints based on alleged breaches of that law”.<sup>19</sup>

In this connection, mention must be made of the ICRC’s efforts to disseminate the principles and rules of international humanitarian law. Promoting knowledge of this law in peacetime is imperative, as it will be respected only if it is familiar to those who are expected to abide by it and apply it. This knowledge is indispensable if violations are to be avoided.<sup>20</sup> It must be matched at the national level by the adoption, in peacetime, of measures of a legislative, regulatory and practical character to implement international humanitarian law. Here again, the ICRC has devoted considerable effort to attaining this goal.<sup>21</sup>

The adaptation of national laws, both to take into account the provisions of international law for the repression of war crimes and to ensure

---

<sup>18</sup> Report of the International Law Commission to the forty-fourth Session of the General Assembly of the United Nations, doc. A/44/10.

<sup>19</sup> See Article 5, para. 2, (c) of the Statutes of the International Red Cross and Red Crescent Movement.

<sup>20</sup> The obligation to disseminate the law appears in Articles 47, 48, 127 and 144 common to the Geneva Conventions, in Article 83 of Protocol I and in Article 19 of Protocol II.

<sup>21</sup> See, *inter alia*, “National measures to implement international humanitarian law”, Resolution V of the 25th International Conference (Geneva, 1986); “Written representations by the International Committee of the Red Cross”, ICRC, Geneva, October 1991; “Implementation of international humanitarian law - national measures”, ICRC, Geneva, 1991, doc. C.I/4.1/1.

compensation for victims, is indispensable for effective observance of humanitarian law. There must be real determination by parties to conflict to repress grave offences and to put an end to all other violations.

In the discharge of its duties, the ICRC often comes face to face with situations in which international humanitarian law is being violated.

In accordance with the role conferred upon it, the ICRC must act in response to infringements of international humanitarian law observed by its delegates and seek to induce the parties to conflict to apply and respect the rules of the humanitarian treaties they have signed. The ICRC must also bring its influence to bear on other Contracting States so that they comply with their responsibilities under Article I common to the Conventions and take steps *vis-à-vis* the parties to conflict to "ensure respect" for these Conventions.

ICRC delegates are in constant touch with all the parties to any given conflict in the course of their activities (visits to prisoners, protection and assistance for the civilian populations affected). They protest directly to the competent authorities against any persecution they have observed, bringing to their attention any practices that are inadmissible under international humanitarian law so that they may put an end to them.

This function differs from that of the police or the courts which are responsible for enforcing the law and for bringing to justice those who violate it. International humanitarian law assigns that task to the Contracting States.

As a general rule, steps taken by the ICRC are confidential: the ICRC promises the *de jure* or *de facto* authorities allowing it to work and according it access to victims that it will not divulge publicly what its delegates hear or see in the performance of their duties, especially when visiting places of detention. The authorities should not, however, count on a conspiratorial silence by the institution in the event of grave, repeated violations and when these authorities, having been apprised of an infringement, fail to take appropriate remedial action. In some cases the ICRC may renounce its confidentiality, in accordance with guidelines it has set itself and made public.<sup>22</sup> The interests of the victims are its paramount

---

<sup>22</sup> See, "Action by the ICRC in the event of breaches of international humanitarian law", *IRRC*, No. 221, March-April 1981, pp. 76-83.

The ICRC reserves the right to make public statements concerning violations of international humanitarian law if the following conditions are fulfilled:

- the violations are major and repeated;
- the steps taken confidentially have not succeeded in putting an end to the violations;

consideration; they determine its decision to denounce publicly certain violations it has witnessed.

Occasionally, however, the ICRC is requested to transmit to a party to a conflict (or to its National Red Cross or Red Crescent Society) complaints about international humanitarian law violations voiced by another party to the conflict (or by its National Red Cross or Red Crescent Society). In that case, the ICRC complies with the request only if there is no other channel of communication and a neutral intermediary between the parties is therefore required. It does not transmit complaints from third parties (governments, governmental or non-governmental organizations, private persons, etc.). As a general rule, the ICRC does not make public the complaints it receives.<sup>23</sup>

## **6. The ICRC's approach to inquiries or judicial proceedings instituted against persons presumed guilty of breaches of international humanitarian law<sup>24</sup>**

On account of its role as a neutral and independent intermediary between belligerents and given the nature of its activities, the ICRC (or any of its staff) may be requested to participate in inquiries or legal proceedings instituted against persons presumed responsible for violations

- 
- such publicity is in the interest of the persons or populations affected or threatened;
  - the ICRC delegates have witnessed the violations with their own eyes, or the existence and extent of those breaches have been established by reliable and verifiable sources.

The purpose of public representations is to say what the ICRC is doing in a specific situation, to raise awareness and sometimes to remind the States concerned of their responsibilities under IHL. They may take various forms (solemn appeal, public statement, press release, etc.) and may be addressed to the State involved, to all parties to a conflict or to the community of States as a whole, or even to public opinion as a means of pressure that may have an effect on the State or States concerned.

The ICRC has issued many appeals to belligerent parties and public declarations, for example, in the context of conflicts in the former Yugoslavia; see in this regard ICRC declarations and press releases.

<sup>23</sup> See footnote 22.

<sup>24</sup> The present article does not examine the role that the ICRC could be called upon to play with respect to judicial guarantees when it assumes, *de jure* or *de facto*, the functions incumbent on a Protecting Power. In this regard, see: Hans Peter Gasser, "Respect for fundamental humanitarian guarantees in time of armed conflict — The part played by ICRC delegates", *IRRC*, No. 287, March-April 1992, pp. 121-142.

of international humanitarian law.<sup>25</sup> In such cases it is called upon to furnish information or give evidence concerning facts related to its activities.

Such requests may come from different sources. Judicial bodies, whether national or international, competent to investigate, institute proceedings in respect of or to judge violations of international humanitarian law may request information from the ICRC or even summon the institution or one of its delegates to give evidence about facts or events linked to its activities. The defendants may also have an interest in the ICRC, or a delegate with whom they are acquainted, giving evidence for the defence. Finally, victims or plaintiffs may ask for evidence to be given for the prosecution.

This problem is not new to the ICRC. In the countries where it is working, it is often called upon to take note of violations of international humanitarian law, to establish the veracity of alleged violations or to give evidence in court.<sup>26</sup>

### **6.1 The mandate given to the ICRC by the community of States: first and foremost an operational role**

The ICRC has been mandated by the States party to the Geneva Conventions of 1949 — thus by virtually all the States — to provide protection and assistance to the military and civilian victims of armed conflicts. This mandate is confirmed in the Statutes of the International Red Cross and Red Crescent Movement and hence extends to situations of internal unrest as well.<sup>27</sup> These instruments assign a number of powers and functions to the ICRC, such as visiting prisoners,<sup>28</sup> or assuming the duties incumbent on a Protecting Power when none has been designated;<sup>29</sup> under the terms of these instruments, the ICRC may also take humanitarian initiatives.<sup>30</sup> The specific role of the ICRC as a neutral and inde-

---

<sup>25</sup> For example, those brought by the *ad hoc* International Tribunal set up by the United Nations Security Council with a view to “prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace”. See footnote 15.

<sup>26</sup> See footnote 22.

<sup>27</sup> Article 5, para. 2, c), d) and e) of the Statutes of the International Red Cross and Red Crescent Movement.

<sup>28</sup> Article 126 of the Third Convention and Article 143 of the Fourth Convention.

<sup>29</sup> Articles 10/10/10/11, para. 3 common to the Conventions.

<sup>30</sup> Articles 9/9/9/10 and Article 3, para. 2 common to the Conventions, Article 5, para. 3 of the Statutes.

pendent intermediary between belligerents very often has a distinctly operational character; its primary mission is, for considerations of humanity, to protect and assist victims during hostilities and to improve their circumstances as far as possible.

To the ICRC, *providing protection and assistance* means not only contacting the warring parties and calling for the rules and principles of international humanitarian law to be respected and applied, but also being present in the midst of the fighting. This presence takes the form mainly of visits to prisoners, tracing missing persons, restoring contact between and reuniting members of families separated by war and caring for the wounded and the sick, as well as taking in and distributing food, clothing and other items essential to the survival of the affected populations.<sup>31</sup>

To carry out its mandate, the ICRC must have access to victims from the very onset of hostilities. It must also receive minimum guarantees of security for its staff working in the field. The cooperation of governments and parties to the conflict is therefore indispensable. It stems from the credibility of the ICRC and the trust placed in it, these in turn being based on the institution's independence from all political authorities, on its strict adherence to the principles of humanity, neutrality and impartiality and on the discretion with which it works. The ICRC strives, in particular, to establish and maintain continuous dialogue with its partners on the basis of this confidentiality.

In this way it often gains access to victims which the authorities and the parties to the conflict might have denied without this relationship of trust. But that also means that the ICRC must keep its distance from all pressure groups, be they political, media-based or of any other kind.

## **6.2 Compatibility between the mandate of the ICRC and the giving of evidence (or transmission of information) concerning action taken or facts confirmed by ICRC delegates in the performance of their duties**

The ICRC must do its utmost to safeguard its operational capacity. In the interest of the victims whom it is intended to assist, it must refrain from taking any action or adopting any attitude that could compromise or hamper its work.

The ICRC has always displayed great reserve with respect to cooperating with inquiries or judicial proceedings instituted to repress vi-

---

<sup>31</sup> See J.-L. Blondel, "Assistance to protected persons", *IRRC*, No. 260, September-October 1987, pp. 451-468.

olations of international humanitarian law, whether such procedures are initiated by a national authority or an international body.

It may not therefore participate in inquiries into alleged violations of international humanitarian law, considering the often controversial nature of such allegations and its interest in remaining outside all controversy, be it political in nature or associated with the hostilities.<sup>32</sup> Nevertheless, it may intervene if it is entrusted in advance with such a mandate by means of an agreement, or if all the parties concerned have expressly requested it to do so. Furthermore, it may not participate in setting up a commission of inquiry, except under the conditions outlined above. In such a case, it will confine itself to providing its good offices so as to facilitate the choice of persons from outside its ranks qualified to serve on such a commission; it will furthermore do so only if this entails no risk of making its activities in favour of victims more difficult, if not impossible, or of jeopardizing its reputation as an impartial and neutral institution.<sup>33</sup>

The ICRC therefore declines requests, whether made directly or through one of its staff, to give evidence in court concerning facts linked to its work in the countries where it is present. This reserve is generally respected by governments.

The ICRC has furthermore set itself strict guidelines on the transmission of information regarding its activities to authorities other than those directly concerned. It agrees to supply only information that it has made public.

Inquiries and legal proceedings are aimed at establishing penal responsibility; they should logically lead to the conviction or acquittal of the accused. In either case the result will be difficult to accept for one or several of the parties involved. ICRC participation in any guise whatsoever could be a sensitive matter, as it could be construed as taking sides. It would also entail the risk of subsequent rejection of the ICRC.<sup>34</sup> Lastly, it is equally difficult to reconcile with the institution's undertaking of discretion *vis-à-vis* the parties to the conflict.

---

<sup>32</sup> Pursuant to the principle of neutrality, the ICRC "may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature". The strict observance of this principle by the ICRC is a *sine qua non* for it to be able to pursue its humanitarian activities under optimum conditions in cases of armed conflict or disturbances.

<sup>33</sup> See footnote 22.

<sup>34</sup> Such participation is furthermore excluded when the ICRC is engaged in proceedings in the course of its duties as a substitute for a Protecting Power, especially as a neutral observer; Article 99 *ff.* of the Third Geneva Convention and Article 71 *ff.* of the Fourth Convention; see footnote 24.

There is consequently a danger that the giving of evidence by the ICRC or by its delegates in inquiries or judicial proceedings (notably those instituted against persons presumed responsible for grave breaches of international humanitarian law) might hinder the accomplishment of its mission as defined in the instruments of humanitarian law, for by doing so, the ICRC would be breaking its pledge of discretion, both in respect of the parties to the conflict and of the victims themselves, thereby undermining the confidence placed in it. As a result, the institution might be refused access to victims of present or future conflicts, and the safety of those it is trying to help and of the personnel working under its responsibility would obviously be compromised.

Whether it takes steps on its own initiative to put an end to confirmed breaches of international humanitarian law or its cooperation is requested in inquiries (or judicial proceedings) instituted to repress such breaches, the ICRC's approach will be guided by one overriding consideration: the interests of the victims.<sup>35</sup>

### **6.3 Immunity from the obligation to give evidence, an indispensable prerogative for the ICRC to discharge its mandate**

Since the ICRC must abstain at all times from any action that might prevent it from carrying out its humanitarian mission, compelling it to take such action would run counter to the very mandate entrusted to it by the community of States. It must be assumed that in adopting the Conventions of 1949 and their Additional Protocols of 1977, States intended to provide the ICRC with the means and the prerogatives needed to perform the functions assigned to it under these instruments.

Under public international law and in State practice, the ICRC is now acknowledged to have a functional international legal personality.<sup>36</sup> The international community confirmed this status on 16 October 1990 when it granted the ICRC observer status in the General Assembly of the United Nations.<sup>37</sup>

---

<sup>35</sup> See footnote 22.

<sup>36</sup> See, by way of example, Julio A. Barberis, "El Comité Internacional de la Cruz Roja como sujeto del derecho de gentes" in Christophe Swinarski (ed.), *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet*, Geneva-The Hague, ICRC/Nijhoff 1984, pp. 635-641; Christian Dominicé, "La personnalité juridique internationale du CICR", *idem*, pp. 663-673; Paul Reuter, "La personnalité juridique internationale du Comité international de la Croix-Rouge", *idem*, pp. 783-791.

<sup>37</sup> The granting of observer status to the ICRC in consideration of the special role and mandates conferred upon it by the Geneva Conventions of 1949, resolution A/45/6 of the United Nations General Assembly, adopted during its forty-fifth session at its thirty-first plenary meeting, on 16 October 1990. General Assembly, Official Records: 45th Session, Supplement No. 49 (A/45/49).

Immunity of jurisdiction is an essential prerogative of this status in that it guarantees the ICRC the requisite independence for fulfilling its mandate. In the situations addressed by the Conventions, such immunity should cover exemption from the giving of evidence concerning action by the ICRC or its delegates or facts that have come to their knowledge in the performance of their duties. This is of particular importance in view of the guidelines for ICRC action that are outlined above.

Delegates and other ICRC staff may therefore not be compelled either to furnish information on matters deemed confidential or to give evidence. This applies to all situations covered by the international humanitarian law treaties, whether international or non-international armed conflicts.

Furthermore, in many countries where the ICRC is active, similar immunity for situations not covered by international humanitarian law is stipulated in a headquarters agreement concluded between the ICRC and the authorities,<sup>38</sup> or is tacitly accorded to the ICRC by the latter.

#### **6.4 The situation of other components of the International Red Cross and Red Crescent Movement**

The other components of the International Red Cross and Red Crescent Movement — National Red Cross or Red Crescent Societies and the International Federation of Red Cross and Red Crescent Societies (hereinafter “the Federation”) — are in a different situation from that of the ICRC, but one which also merits special attention.

The primary purpose of Red Cross and Red Crescent Societies in times of conflict is to assist the armed forces’ medical services in caring for the war-wounded, regardless of their origin. Under the Movement’s Statutes (ratified by the community of States party to the Geneva Conventions of 1949 at International Conferences of the Red Cross and Red Crescent), the mandate of the Federation is to assist the National Societies in their humanitarian activities and, in certain cases, to bring help to victims of conflicts in accordance with agreements concluded with the ICRC.<sup>39</sup> Therefore the Federation, too, may be called upon to take care of victims of conflict such as refugees or persons who have fled conflict zones.

---

<sup>38</sup> The ICRC has hitherto concluded headquarters agreements in 49 countries.

<sup>39</sup> See Article 6 of the Movement’s Statutes, in particular, para. 3 and para. 4, d) and i), as well as the Agreement between the ICRC and the League (Federation) of 20 October 1989.

The staff and volunteers of Red Cross and Red Crescent Societies of countries in conflict may also be direct witnesses of serious violations of international humanitarian law, whereas Federation and National Society staff carrying out their work outside conflict areas may be confronted with allegations of such violations.

The obligation to give evidence, if maintained for members of National Societies or delegates of the Federation, could be detrimental to their activities as well, as they too, like those of the ICRC, are governed by the Fundamental Principles of the Movement, in particular those of humanity, neutrality and impartiality.<sup>40</sup>

For the reasons stated above, the resulting loss of confidence would certainly not be without impact on the activities of the ICRC, above all in terms of access to the victims whom the Movement is endeavouring to help.

It is well known that in times of armed conflict, feelings run high and tension and animosity are the order of the day. Any sensitive matter of public interest will obviously spark controversy that will serve as propaganda for one or other party to the conflict. The conflicts in the former Yugoslavia, highly politicized and exacerbated by the media, are a striking example of this. In such situations, the Red Cross and Red Crescent Societies should be even more strict in their adherence to the Fundamental Principles. It is all too easy to imagine the pressures brought to bear on them by their governments and by the various bodies of public opinion in their respective countries; they must keep relations smooth with each side because of the support they receive and need. In such circumstances, the interests of victims and the long-term credibility of the National Societies and the Movement dictate avoidance (albeit unpopular) of any controversy unrelated to the mission of the Red Cross or the Red Crescent.

This approach must also be adopted with regard to any proceedings instituted to repress violations of international humanitarian law. Any participation in such proceedings, notably by giving evidence, may well be construed as taking sides and arouse suspicion and hostility towards the International Red Cross and Red Crescent Movement as a whole.

---

<sup>40</sup> Fundamental Principles adopted in 1965 and ratified by the States party to the Geneva Conventions of 1949, and at the 25th International Conference of the Red Cross and Red Crescent in 1986.

## 7. Conclusions

The States party to the Geneva Conventions have undertaken to terminate violations thereof and to repress grave breaches qualified as "war crimes".

The responsibility for ensuring compliance with this law rests first and foremost with the States themselves. They must therefore, in peacetime, adopt the penal measures necessary to sanction any act contrary to the commitments given and must also ensure that these obligations are known to all who will be required to implement them. To be effective, such legislative measures must be matched by real determination on the part of the authorities to apply them.

It is therefore encouraging to note that participants at the International Conference for the Protection of War Victims, held in Geneva from 30 August to 1 September 1993, have committed themselves to this approach. In the Final Declaration adopted by this meeting, they reiterated their firm intention to ensure that war crimes "are duly prosecuted and do not go unpunished".

For the ICRC as guardian of international humanitarian law, the main task here is to help States fulfil their obligations. It welcomes and supports their efforts to do so, and will join in those efforts to the extent allowed by its mandate to protect and assist the victims of armed conflicts.

**María Teresa Dutli** obtained her lawyer's diploma from the Law Faculty of the National University of Buenos Aires in 1979 and practiced with a law firm in Buenos Aires from 1979 to 1982. She holds a doctorate in political science from the University of Geneva (Graduate Institute of International Studies, 1989), has been a member of the ICRC's Legal Division since 1988 and has published the following articles in the *IRRC*: "Captured child combatants" (No. 278, September-October 1990) and "Implementation of international humanitarian law — Activities of qualified personnel in peacetime" (No. 292, January-February 1993).

**Cristina Pellandini** holds a law degree from the University of Bern (Switzerland) as well as a lawyer's diploma. She went on mission for the ICRC as a delegate in Argentina, Chile and El Salvador between 1985 and 1987, in Northern Ireland in 1988 and in the Philippines from 1991 to 1992. From 1987 to 1988 she was a member of the Legal Division as delegate/legal adviser. Ms Pellandini has been a member of the ICRC's Division for Principles and Relations with the Movement since 1993.