

## **In the Red Cross and Red Crescent World**

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*In its issue No. 310 of January-February 1996, the Review published the main texts that emerged from the 26th International Conference of the Red Cross and Red Crescent, held in Geneva from 3 to 7 December 1995. The current issue of the Review contains one of the reports which served as a basis for the work of the International Conference, and particularly of its Commission I, namely the report on the follow-up to the International Conference for the Protection of War Victims (Geneva 1993).*

*In this report, the ICRC explains its position with regard to those of the recommendations — formulated by an Intergovernmental Group of Experts at the request of the 1993 Conference for the Protection of War Victims — that concern it more directly. In addition, the ICRC and the International Federation give an account of what the various components of the International Red Cross and Red Crescent Movement are doing to implement the aforesaid recommendations.*

**26th International Conference of the Red Cross and Red Crescent  
(Geneva, 3 -7 December 1995)**

### **INTERNATIONAL HUMANITARIAN LAW: FROM LAW TO ACTION**

#### **Report on the follow-up to the International Conference for the Protection of War Victims**

Presented by the International Committee of the Red Cross,  
in consultation with the International Federation of the Red Cross  
and Red Crescent\*

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\* Report 95/C.I/2/2 (Geneva 1995)

## Contents

Introduction	195
1. Means of facilitating participation by States in the instruments of international humanitarian law	197
2. Customary rules of international humanitarian law	198
3. Means of providing advisory services to States to support their efforts in the area of implementation of international humanitarian law and dissemination of its rules and principles	201
4. Means of stepping up dissemination of international humanitarian law	205
5. Means whereby the establishment of national committees can encourage the implementation and dissemination of international humanitarian law	209
6. Means of exchanging information on the implementation of international humanitarian law and on dissemination	214
7. Means of increasing respect for international humanitarian law	217
8. Analysis of measures that could ensure universal respect for international humanitarian law	218

## Introduction

The 50 years since the end of the Second World War have been marked by a profusion of armed conflicts that have affected every continent in the world.

Throughout these conflicts, the Geneva Conventions of 12 August 1949 — and in particular Article 3 common to the four Conventions, applicable to non-international armed conflicts — together with the Protocols additional to the Geneva Conventions, adopted on 8 June 1977, have rendered invaluable services by providing legal protection for war victims: the wounded and sick in armed forces in the field; wounded, sick and shipwrecked members of naval forces; prisoners of war and civilians.

Nevertheless, there have also been countless violations of these treaties and of basic humanitarian principles, resulting in suffering and death which might have been avoided had the laws and customs of war been respected. These violations have also made it more difficult to restore peace.

The general opinion is that violations of the humanitarian rules were not due to their inadequacy, but rather to lack of willingness to respect them and, in many cases, to ignorance of their content on the part of both leaders and combatants.

The International Conference for the Protection of War Victims,<sup>1</sup> therefore, did not propose the adoption of new treaty provisions. Instead, in its Final Declaration adopted by consensus on 1 September 1993, the Conference reaffirmed “*the necessity to make the implementation of humanitarian law more effective*”, and called upon the Swiss government “*to convene an open-ended intergovernmental group of experts to study practical means of promoting full respect for and compliance with that law, and to prepare a report for submission to the States and to the next session of the International Conference of the Red Cross and Red Crescent*”.

This group of experts met in Geneva from 23 to 27 January 1995, at the invitation of the Swiss government, and adopted a series of recommendations aimed at enhancing respect for humanitarian law, in particular by means of preventive measures that could ensure better knowledge and more effective implementation of humanitarian rules.

The International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies can only welcome the measures proposed by the experts, as they are convinced that these measures can go a long way towards improving respect for humanitarian law and the protection of war victims. They stand ready to do everything in their power to help implement the experts' recommendations.

It is the responsibility of the Swiss government, which convened and chaired the meeting of experts, to present to the 26th International Conference of the Red Cross and Red Crescent a report on their recommendations.

For its part, the International Committee of the Red Cross wishes to explain its position with regard to the recommendations that concern it more directly.

Furthermore, the ICRC and the International Federation wish to outline how the latter and the National Red Cross and Red Crescent

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<sup>1</sup> The Conference was convened in Geneva from 30 August to 1 September 1993 by the Swiss government in its capacity as depositary of the Geneva Conventions and their Additional Protocols, on the initiative of the ICRC.

Societies are already contributing to the effective implementation of the recommendations that concern them, and their possible future contribution in this regard.

That is the purpose of the present report.

## **1. Means of facilitating participation by States in the instruments of international humanitarian law**

The objective of Recommendation I is the universal acceptance of international humanitarian law. The different recommendations grouped under this point are intended mainly to promote the humanitarian treaties among States so as to encourage ratification or accession.

The ICRC has always considered the promotion of the treaties of international humanitarian law — first and foremost the Geneva Conventions of 1949 and their Additional Protocols of 1977 — to be one of its important tasks, and will continue to carry it out.

The ICRC has interpreted this task as including the duty to provide advice to the authorities of every newly created State with a view to ensuring that it will be bound by the Geneva Conventions of 1949 and their Additional Protocols.

Moreover, acceptance of the Additional Protocols by all States party to the Geneva Conventions must be achieved. The ICRC undertakes to continue its efforts to encourage the competent national authorities to take the necessary decisions. Its legal advisers and its delegates working throughout the world are at the disposal of governments or other contacts to solve with them any legal problems that may arise in that regard.

The ICRC's representations to governments include inviting them, when they ratify (or accede to) Protocol I of 1977, to recognize the competence of the International Fact-Finding Commission provided for in Article 90 of that instrument. It also advises States bound by Protocol I which, upon becoming party to it, did not make the declaration under Article 90, to do so subsequently as provided for in the article.

These steps have been taken in close consultation with the National Red Cross or Red Crescent Societies of the countries concerned, which are in a position to provide useful advice to their respective governments on these matters.

The *International Review of the Red Cross*, a periodical published by the ICRC in the service of the International Red Cross and Red Crescent Movement, provides information from time to time on the status of ratifications or accessions, on declarations made under Article 90 of Protocol I, and on interpretative declarations and reservations made by States.

As may be seen from the ICRC's comments on Recommendation III, the ICRC will endeavour to strengthen the advisory services that National Red Cross or Red Crescent Societies may provide in this regard.

## **2. Customary rules of international humanitarian law**

### **2.1 The invitation to the ICRC**

Recommendation II of the Intergovernmental Group of Experts proposes that "*the ICRC be invited to prepare, with the assistance of experts on IHL representing various geographical regions and different legal systems, and in consultation with experts from governments and international organizations, a report on customary rules of IHL applicable in international and non-international armed conflicts, and to circulate the report to States and competent international bodies*".

### **2.2 The ICRC's objective**

The ICRC is ready to assume this task in order to attain a practical humanitarian objective, that is, to determine what rules are applicable to humanitarian problems that are not covered by treaty provisions, or whose regulation under the treaties can be clarified by practice.

There may be no treaty-based rule governing a problem where no treaty contains such a rule, or when the treaty rule is not applicable in a particular conflict because the State concerned is not bound by the treaty codifying the rule in question.

Knowledge of customary rules is also of vital importance when it comes to determining what rules apply to armed forces operating under the aegis of organizations which are not formally parties to the international humanitarian law treaties, such as the United Nations.

### **2.3 Importance of the report in regard to international armed conflicts**

As far as international armed conflicts are concerned, the question is not of much practical interest in relation to matters governed by the Geneva Conventions of 1949, since 185 States are bound by those treaties.

Admittedly, under the constitutional system of some States, customary rules — in contrast to treaty rules — are directly applicable in domestic law. As explained elsewhere in this report (see pp. 10-13 below), the States party nonetheless have the obligation to enact legislation that ensures the incorporation of international humanitarian law into the domestic legal regime, so that all its rules, and not just those considered as customary, can and must be applied by the executive and judiciary.

Indeed, it would theoretically be very difficult to determine practice and gauge its acceptance in this respect since States, being almost all party to the Geneva Conventions, act either in conformity with or in violation of their treaty obligations. Can such behaviour also form the basis of customary rules?

As for matters governed by Additional Protocol I of 1977, the question is of more practical interest since this treaty has not yet been universally accepted. But considering that there are 137 States party, customary international humanitarian law certainly cannot be determined on the basis of the behaviour of the 54 States that are not yet bound by it. Furthermore, the evolution of international customary law has not been halted by its codification in Protocol I. Quite the contrary, it has been strongly influenced by the drafting of Protocol I and by the behaviour of States vis-à-vis this treaty.

## **2.4 Importance of the report in regard to non-international armed conflicts**

As regards non-international armed conflicts, the rules governing the protection of persons in the power of a party to a conflict have been partially codified in Article 3 common to the Geneva Conventions and in Additional Protocol II, and often do no more than spell out the “hard core” of international human rights law applicable at all times.

The establishment of customary rules will be of particular importance in another area of the law governing non-international armed conflicts, that of the conduct of hostilities. This covers mainly the use of weapons and the protection of civilians from the effects of hostilities.

In the area of the conduct of hostilities, the treaty rules specifically applicable to non-international armed conflicts are in fact very rudimentary and incomplete.

For this reason, knowledge of customary rules will be especially necessary when the ICRC prepares a model manual on the law of armed conflicts for use by armed forces and when governments produce their

national manuals. Indeed, in keeping with the recommendations of the Intergovernmental Group of Experts, these manuals should also cover non-international armed conflicts (see p. 15 below).

It will have to be determined in this regard to what extent a State may use against its own citizens methods and means of combat which it has agreed not to employ against a foreign enemy in an international armed conflict. The potential impact on international customary law of the practice of non-governmental entities involved in non-international armed conflicts and the extent of acceptance they show will also have to be determined. Finally, the question will arise as to the degree to which practices adopted under national law by the parties involved in a non-international conflict reflect acceptance of the tenets of *international* law.

## 2.5 ICRC procedure and consultations

To prepare the report, the ICRC intends initially to ask researchers from different geographical regions to assemble the necessary factual material. Without wishing to opt for one or other of the different theories of international customary law, or attempting to define its two elements — the observance of a general practice and acceptance of this practice as law — the ICRC believes that, to establish a universal custom, the report must encompass all forms of practice and all cases of acceptance of this practice as law: not only the conduct of belligerents, but also the instructions they issue, their legislation, and statements made by their leaders; the reaction of other States at the diplomatic level, within international forums, or in public statements; military manuals; general declarations on law, including resolutions of international organizations; and, lastly, national or international court decisions.

Account needs to be taken of all forms of State practice, so as to permit all States — and not only those embroiled in armed conflict — to contribute to the formation of customary rules.

Basing customary law exclusively on actual conduct in armed conflicts would, moreover, be tantamount to accepting the current inhumane practices as law. Yet at the International Conference for the Protection of War Victims, States rejected such practices unanimously, as does public opinion.

The ICRC will entrust the factual material assembled to experts representing different geographical regions and different legal systems, asking them to draft reports on existing custom in various areas of interna-

tional humanitarian law where such an exercise would meet a priority humanitarian need. These reports will be discussed in 1997 at meetings of experts representing governments, National Societies and their Federation, and international, intergovernmental and non-governmental organizations. On the basis of the experts' reports and of the discussions, the ICRC will summarize the material in a report which, together with any recommendations, will be submitted to States and to the international bodies concerned before the holding of the subsequent International Conference of the Red Cross and Red Crescent.

## **2.6 The fundamental importance of treaty law**

Although the report to be prepared concerns customary law, the ICRC remains convinced of the need for universal participation in the treaties of international humanitarian law and of the necessity to continue the work of codifying this law. It is very difficult to base uniform application of the law, military instruction and the repression of breaches on custom, which by definition is in constant evolution, is still difficult to formulate and is subject to controversy. In the meantime, the report requested of the ICRC should go some way towards improving the protection of victims of armed conflicts.

## **3. Means of providing advisory services to States to support their efforts in the area of implementation of international humanitarian law and dissemination of its rules and principles**

### **3.1 Objectives of Advisory Services on international humanitarian law**

Recommendation III of the Intergovernmental Group of Experts for the Protection of War Victims proposes that:

*“the ICRC, with the assistance of National Societies, the International Federation of Red Cross and Red Crescent Societies (‘the International Federation’) and academic institutions, strengthen its capacity to provide advisory services to States, with their agreement, in their efforts to implement and disseminate IHL”.*

The implementation of international humanitarian law covers very diverse areas, ranging from the need to take legislative measures (laws on the use of the emblem or the repression of war crimes) to other matters of a purely practical nature, such as promoting ways and means of teaching and spreading knowledge of the law.

The Advisory Services address all the measures that States should adopt in peacetime to implement humanitarian law, and is intended to support their efforts to incorporate this law into domestic law. The provisions of humanitarian law that call for the adoption of national measures have already been identified by the ICRC and communicated to States.<sup>2</sup> Some of them should be given priority in order to curb violations of humanitarian law, while others may be envisaged in the longer term. Nevertheless, we cannot limit ourselves to the measures regarded as having priority, as they all go hand in hand. Moreover, an assessment should be made of the needs of each country to ensure that the advisory services provided are tailored to the local context.

The Advisory Services can provide assistance in the following spheres of activity, among others:

- the introduction of instruction in international humanitarian law in official programmes (for the armed forces, etc.);
- the translation of the Geneva Conventions and their Additional Protocols into national languages;
- the incorporation, if necessary, of international humanitarian law into national law;
- the enactment of laws on the emblem and on the repression of war crimes;
- the appointment and training of legal advisers to the armed forces;
- the setting-up of National Information Bureaux.

### **3.2 Establishment of Advisory Services on international humanitarian law**

To comply with the request of the Group of Experts, the ICRC has already set up a unit entitled **Advisory Services on international humanitarian law**. This will underpin the approaches that the institution has been making for some years now to encourage and support States in their efforts with regard to implementation and dissemination of international humanitarian law.<sup>3</sup>

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<sup>2</sup> See, in particular, “National measures to implement international humanitarian law, Resolution V of the 25th International Conference of the Red Cross (Geneva, 1986). Written representations by the ICRC”, ICRC, Geneva, October 1991; “Implementation of international humanitarian law. National measures”, ICRC, Doc. C.I/4.1/1.

<sup>3</sup> See note 2.

By intensifying its activities in this sphere, the ICRC hopes to help bring about greater respect for international humanitarian law and prevent breaches of its provisions. Indeed, it should be recalled that the incorporation of international treaty rules into domestic law not only constitutes a treaty obligation, but also has the twofold advantage of “nationalizing” international law provisions by attaching them specifically to domestic laws and structures, and of making it possible to apply sanctions in the event of non-compliance.

It should be noted here that the National Red Cross or Red Crescent Societies have an important advisory role to play in their respective countries, although this is not their main task. Some National Societies already act as advisers to their governments, their Parliaments, and even to their local authorities on measures for the implementation and dissemination of international humanitarian law.

The International Federation’s contribution in this regard consists in strengthening the capacity of its member Societies; this in turn will develop their ability to provide advisory services along with their other activities. It will mainly be a matter of drawing up long-term plans of work, recruiting and training staff and volunteers, and funding such activities.

### **3.3 Structure set up within the ICRC to provide advisory services**

The need to set up a new structure has been examined from several angles. The ICRC wants a unit that is as streamlined as possible, involves a minimum of bureaucracy and fits well into existing headquarters and field services. It has therefore opted for a separate unit at headquarters called **Advisory Services on international humanitarian law**. This new unit is attached to the Legal Division and will be backed up by advisers based in the field.

**At headquarters**, the unit has been operating since mid-1995. It comprises a head of Advisory Services, two lawyers — one trained in the continental and the other in the Anglo-Saxon legal systems — a documentation officer, and a secretary. Close links will be maintained with other ICRC services, in particular the Cooperation and Dissemination Division.

**In the field**, there will be one lawyer based in each of the various geographical regions.

This decentralized structure will be put in place as from early 1996. The lawyers will be selected on the basis of their competence in inter-

national and humanitarian law and of their familiarity with the region to be covered.

### **3.4 Cooperation with National Red Cross or Red Crescent Societies**

Recommendation III also suggests that “*States and National Societies indicate to the ICRC or, as appropriate, to the International Federation the specific needs they may have for such advisory services*”.

The ICRC is convinced that in this specific area of implementation of international humanitarian law it is essential to work in close cooperation with the National Red Cross or Red Crescent Societies and their International Federation. In particular, the ICRC is relying on National Societies to act as relays for the Advisory Services in their respective countries.

To this end, it is important for National Red Cross or Red Crescent Societies to be represented on national interministerial committees discussed in section 5 of this report. The National Societies very often play a very important role in the dissemination of humanitarian law in their own countries. They should therefore also be associated with the advisory process, in their capacity as national experts.

In view of its responsibilities in the area of development of National Societies, the Federation intends to pay close attention to wishes they express in regard to enhancing the advisory services they can provide to their governments, and will coordinate its efforts with those of the ICRC so as to avoid any duplication or any waste of available resources.

To ensure coherence within the Movement, the ICRC Advisory Services unit will remain in contact with the Federation and will rely as much as possible on the National Red Cross or Red Crescent Societies and on academic institutions competent in this sphere.

### **3.5 Information on advisory services provided**

Recommendation III finally proposes that “*the ICRC submit reports on its advisory services to the States party to the Geneva Conventions of 1949 and other interested bodies on an annual basis, and to the International Conference of the Red Cross and Red Crescent ...*”.

It goes without saying that the ICRC intends to keep the international community informed of the work it will undertake in this area. This will be done by including such information in its *Annual Report*, as well as by preparing ad hoc documents to be sent to States and made available

to interested bodies. These ad hoc documents will also enable the ICRC to evaluate the effectiveness of the Advisory Services unit, promote its activities and provide progress reports on its work. We hope that these documents, which the ICRC undertakes to prepare each year, will be a source of increased motivation for some States. The latter may then embark on their own projects and become associated with the enterprise. An account will also be given of the contributions made by the National Societies and their Federation to providing advisory services to States to support their efforts in the area of implementation of international humanitarian law and dissemination of its rules and principles.

The ICRC, in consultation with the International Federation, will also submit reports to the International Conferences of the Red Cross and Red Crescent on the advisory services provided.

Naturally, the ICRC does not intend to change its usual practice of reporting on field operations.

#### **4. Means of stepping up dissemination of international humanitarian law**

Recommendation IV of the Intergovernmental Group of Experts is of singular importance. Indeed, it is quite obvious that knowledge of international humanitarian law is a fundamental prerequisite for respecting it.

##### **4.1 Cooperation in dissemination**

The Intergovernmental Group of Experts recommends *“that the ICRC, in carrying out its mandate to disseminate international humanitarian law, work together, wherever possible, with other interested bodies including the International Federation, UN organs and specialized agencies, and regional organizations”*.

The ICRC is fully aware of the need for interested institutions to pool their efforts to make international humanitarian law better known.

To this end, the ICRC maintains close cooperation with the International Federation of Red Cross and Red Crescent Societies, one of whose tasks is to cooperate with the ICRC in this area, and with the National Red Cross or Red Crescent Societies in different countries. In recent years the ICRC, with the cooperation of interested National Societies, has held a large number of seminars designed to provide appropriate training for those called upon to give instruction in humanitarian law. In most cases,

these seminars were organized jointly by the ICRC and the International Federation when they were intended for leaders, senior staff or volunteers from National Societies. The Federation has also organized ad hoc seminars in this area; the National Societies have naturally held a far greater number of seminars, either for their own staff or for other target groups.

The ICRC wishes to establish closer cooperation in this connection with UNESCO, whose Executive Board adopted a resolution in 1994 urging its member States to step up their efforts in the area of dissemination. The first seminar organized jointly by the ICRC and UNESCO took place in Tashkent in September 1995.

For many years now, close links have been forged with the Organization of African Unity (OAU), which have enabled the organization of two high-level seminars on the teaching of humanitarian law to the armed forces.

The ICRC is ready to pursue cooperation in this regard with other regional organizations.

Finally, the ICRC believes that National Societies have a special responsibility as regards dissemination, both to make humanitarian law known to their staff and volunteers and to act as relays vis-à-vis the public and the circles most directly concerned: armed forces, universities, secondary schools, and so on. The ICRC attaches the greatest importance to the support of the National Societies in this area and wishes to strengthen further its cooperation with them and with the Federation.

## 4.2 Military manuals

The Intergovernmental Group of Experts recommends that “*the ICRC prepare, in cooperation with experts from various geographical regions, a model manual for armed forces on the law of international and non-international armed conflicts*”.

Military manuals on the law of armed conflicts are without doubt particularly effective instruments of dissemination. They make it possible to reach all the members of a military force, since they are distributed by the hierarchy and thus have the blessing of the high command or the Ministry of Defence. Moreover, they state the rules of the law of armed conflicts in a language understood by those to whom they are addressed.

Nevertheless, many armies still do not have such manuals.

To encourage and facilitate the production of works of this type, the ICRC stands ready to draw up, together with experts from different regions of the world, a manual that could serve as a model.

This document will set out the treaty and customary rules relating to the conduct of hostilities, methods and means of combat, and persons and property protected under humanitarian law.

Convinced of the favourable impact that such a teaching aid would have on respect for humanitarian law and the protection of persons and property, the ICRC has already brought together a group of military experts to work out its content.

A study of military manuals in use around the world has made it possible to pinpoint training needs for each level and each special function in the military hierarchy.

The ICRC intends to pursue its consultations until completion of the model manual, which should be available in 1997. The ICRC believes that the drafting of this model manual could be a significant step forward in the harmonization of the efforts made by many States to meet their obligation to instruct their armed forces in the law of war, and will promote cooperation in this area among armed forces.

Naturally, such a universal reference manual will then have to be translated and adapted to the different national contexts, in both cultural and strategic terms.

#### **4.3 Dissemination of international humanitarian law among the civilian population**

The Intergovernmental Group of Experts recommends that States, where appropriate with the assistance of National Societies, “*should increase the civilian population’s awareness of international humanitarian law, thus contributing to the dissemination of a culture based on respect for the individual and human life ...*”. The experts further recommend that a special effort should be made to produce specific teaching materials “*designed to imbue students of all ages with the principles of IHL ...*”.

Members of regular armed forces are no longer the only ones to commit violent acts on today’s battlefields; indeed, every citizen — man, woman or adolescent — has become a potential combatant. Furthermore, civilians are protected under humanitarian law and therefore benefit from the rules the law lays down in their favour. It is clear that the attitude of the civilian population has an influence on the behaviour of armed forces, whether by inducing greater restraint and better observance of the rules or, on the contrary, by further inflaming passions and fuelling violence.

While instruction in humanitarian law remains a priority for the armed forces, it is just as important to familiarize the civilian population, and young people in particular, with the essential rules. Teachers have a special responsibility in this regard.

States should therefore include the teaching of the key provisions of international humanitarian law in national curricula.

Furthermore, the press, radio and television are ideal means of spreading knowledge of the basic rules of humanitarian law among the public at large.

As auxiliaries to the public authorities in the humanitarian field, National Red Cross or Red Crescent Societies should be in a position to provide effective support for these efforts at the national level. Some of them are already able to do so, while others still need to set up an appropriate structure for that purpose. Both the ICRC and the Federation intend to pursue their efforts, in their respective spheres of competence, to strengthen the capacity of the National Societies in the area of dissemination.

Lastly, the ICRC, the Federation and the National Societies have already prepared a considerable amount of teaching and audiovisual materials to this end, aimed in particular at the national and international media, including the new communication networks. They intend to continue and develop these endeavours within the limits of the means made available to them.

#### **4.4 Dissemination of the basic texts of humanitarian law in national languages**

The Intergovernmental Group of Experts recommends that *“the ICRC and States make efforts to provide technical assistance in order to ensure that basic documents of IHL are widely available in national languages”*.

Under the Geneva Conventions, it is up to States to translate these instruments into their national languages and to publicize them. The ICRC has only very limited experience in this regard.

It nonetheless stands ready to extend its efforts in this field, with the cooperation of the National Societies concerned, if adequate resources are made available.

#### **4.5 Expansion of dissemination activities**

Generally speaking, the ICRC, the International Federation and the National Red Cross or Red Crescent Societies are firmly convinced of the need to promote better knowledge of humanitarian law and are preparing

to step up their endeavours in this area, both to ensure improved application of humanitarian law and to propagate a culture of tolerance and respect for basic humanitarian values, which alone can help ease tensions and pave the way for a more peaceful future.

A new approach is indispensable. Indeed, it is not enough to spread knowledge of the rules enshrined in the Geneva Conventions and the other humanitarian law treaties; it is also necessary to demonstrate that those rules are the expression of human values that are deeply rooted in all cultures and all civilizations, as curbing violence is a goal common to every civilization.

Implanted as they are in their national communities, the National Red Cross or Red Crescent Societies are in a position to play a pivotal role in this regard.

For their part, the ICRC and the Federation intend to develop, each within its purview, the support that they can give to National Societies in the field of dissemination. The ICRC furthermore intends to intensify its own specific dissemination activities. Both the ICRC and the Federation have recently set up new structures corresponding to their responsibilities in this area.

## **5. Means whereby the establishment of national committees can encourage the implementation and dissemination of international humanitarian law**

### **5.1 Internal mechanisms for promoting and ensuring implementation of humanitarian law: national committees**

In addition to the recommendation made to the ICRC to step up its activities in terms of advisory services, the Intergovernmental Group of Experts for the Protection of War Victims, in Recommendation V, proposes that “*States be encouraged to create national committees, with the possible support of National Societies, to advise and assist governments in implementing and disseminating IHL*”.

From the beginning of its recent approaches made in regard to implementation of international humanitarian law, prompted by Resolution V of the 25th International Conference of the Red Cross (Geneva, 1986), the ICRC has insisted on the establishment of national interministerial committees<sup>4</sup> in each State party to the Geneva Conventions.

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<sup>4</sup> See note 2.

These committees, which are responsible for coordinating the implementation of humanitarian law at the domestic level, should comprise representatives of the ministries involved in the application of humanitarian law. If possible, they should also include representatives of National Red Cross or Red Crescent Societies which, as stated above, could contribute their expertise. The task of these committees should be to evaluate national laws in relation to the obligations created by the treaties of international humanitarian law, and to make proposals designed to ensure effective application of the law.

It should be pointed out that some National Societies have been instrumental in the establishment of such committees, having taken the initiative of asking their governments to set them up. Moreover, several of them provide the secretariat for the committees.

## **5.2 Number of national committees established**

According to information received by the ICRC, a few such committees have already been set up. In some cases this is thanks to the sustained efforts of the National Red Cross or Red Crescent Societies, and of the ICRC in countries where it is present; in others the step has been taken in pursuance of ICRC recommendations for implementation of international humanitarian law.

The ICRC has been informed of the establishment of 17 national interministerial committees. The list of the countries concerned, together with an indication of each committee's composition and mandate, is appended to this chapter.

These data, which are not necessarily exhaustive, are based on information sent to the ICRC, which regularly receives reports on the work of some of these committees. As for the others, the ICRC has only learned of their existence, without having been able to follow their work or cooperate with them.

Moreover, a number of other commissions, committees or State agencies responsible for human rights issues very often deal with aspects of the promotion and implementation of the humanitarian law treaties, with or without the participation of National Red Cross or Red Crescent Societies, and also undertake important work in that domain. However, for lack of precise information in that regard, the ICRC is not in a position to publicize their existence.

According to reports received, the national committees differ widely in terms of mandates and composition. Some have been dealing or deal

in an ad hoc manner with the adoption of national implementation measures — legislative, regulatory or practical — while others have been engaged mainly in dissemination. Some are permanent, while others have been constituted for a fixed period.

The ICRC feels it is important for such committees to be permanent. Indeed, the arduous task of ensuring implementation of international humanitarian law at the national level cannot be accomplished by the mere adoption of a set of laws and regulations. After these measures have been taken, much remains to be done in the form of dissemination and teaching, as well as interpretation and monitoring application of the law. Here too, the committees can and should continue to play an important role. Experience shows that it is very often in countries where such committees have been set up that significant advances have been made in this crucial area.

### **5.3 Cooperation among national committees**

Recommendation V also proposes that “*States be encouraged to facilitate cooperation between national committees and the ICRC in their efforts to implement and disseminate IHL*”.

International cooperation should be established among the committees themselves, and between them and the ICRC.

Cooperation between national committees should take the form of regular exchanges and meetings both of their government representatives and of representatives of National Societies, and especially among committees in the same geographical region and in countries with similar legal systems.

To this end, periodic meetings should be organized to allow for the pooling of information on activities under way or planned. Exchanges of written communications and the sharing of the services of experts should also be encouraged.

The ICRC for its part intends to increase and develop its cooperation with the national committees, by providing advisory services in the following main areas: assessment of the legislation, administrative provisions and practices that are in force, under study or in draft form; legal assistance; and support for dissemination activities.

### **5.4 Meeting of experts from national committees**

In keeping with the foregoing and with the last recommendation of the Intergovernmental Group of Experts on this point, which proposes that

*“the ICRC organize a meeting of experts from States having already established national committees and from other interested States, and report on the meeting’s conclusions to States interested in the establishment of such committees”.*

The ICRC undertakes to organize, in the first half of 1996, a meeting of chairmen and experts of these committees, together with representatives of interested States.

In preparation for this first meeting, the ICRC Advisory Services unit will approach all States party to the Geneva Conventions to find out whether such committees exist and to gather as much information as possible on their programmes.

It goes without saying that the support of States and National Red Cross or Red Crescent Societies is indispensable to the success of this project. Relevant information as to the existence or the constitution of such committees and information on other entities with responsibility for promoting international humanitarian law on the national level should be assembled and communicated without delay. Considerable preparatory work will also be done to identify interests common to all these bodies and to establish priorities that will lead to proposals for practical action.

#### **List of National Committees**

- Albania:** A National Committee for the implementation of international humanitarian law was set up in March 1994. It comprises representatives of the Ministries of Foreign Affairs, Justice, Defence and Health, and of the Albanian Red Cross. It was established and continues to function thanks mainly to the sustained efforts of the National Society.
- Argentina:** A Committee for the implementation of international humanitarian law was set up on 16 June 1994 by decree 933/94. It is composed of representatives of the Ministries of Defence, the Interior, Foreign Relations and Justice, and its mandate is to conduct studies and propose measures for the implementation, teaching and dissemination of international humanitarian law.
- Australia:** In 1978, on the initiative of the National Society, a joint government/National Society Committee was set up and has been active mainly in the sphere of dissemination. This committee is composed of representatives of the National Society and of the Ministries of Defence, Foreign Affairs and Justice.
- Austria:** On 31 January 1989 the ICRC was informed that a Governmental Working Group had been set up in November 1988 and that the National Society was associated with it. Chaired by representatives of the Federal Chancellery, the group comprises representatives of the Ministries of Foreign Affairs, Defence and the Interior. Its mandate is to propose the necessary amendments to national laws with a view to implementation of humanitarian law.

- Belgium:** The Interdepartmental Humanitarian Law Committee, set up by a Cabinet decision on 20 February 1987 on the initiative of the Belgian Red Cross, is responsible for examining measures to be taken in Belgium for the implementation of international humanitarian law. The committee is composed of representatives of the Prime Minister, of the Ministers of Justice, the Budget, Foreign Affairs and National Defence, and of the Secretary of State for Public Health. The Belgian Red Cross takes part as an expert in the work of the committee and hosts its meetings.
- Bolivia:** The Permanent National Committee for the Implementation of Humanitarian Law was set up on 2 December 1992 by Decree No. 23.345. It comprises representatives of the Ministries of Foreign Affairs, National Defence, the Interior, Education, Social Defence and Public Health, and representatives of the Supreme Court, the Faculty of Law of the Universidad Mayor de San Andrés, and the Bolivian Red Cross. Its objectives are to monitor the application of humanitarian law, to study and propose measures necessary for the dissemination and implementation of its provisions, and to propose to the executive and legislative branches the adoption of the relevant internal rules or their amendment.
- Bulgaria:** The Bulgarian Red Cross has set up an Interministerial Committee responsible for the implementation of international humanitarian law. This committee comprises government and armed forces representatives, jurists, journalists and social workers, and its purpose is to work for the dissemination of humanitarian law.
- Chile:** A National Humanitarian Law Committee was established by Decree 654 in 1994. Its objectives are to study and propose to the authorities measures for the effective application of humanitarian law. The Director of Legal Affairs at the Ministry of Foreign Affairs chairs the committee, which also includes representatives of the Ministries of the Interior, Defence, Education, Justice and Health.
- Denmark:** On 16 July 1982 the government set up the Governmental Red Cross Committee, comprising representatives of the ministries concerned, the civilian and military authorities and the Danish Red Cross. The mandate of the committee is to identify needs with a view to the adoption of administrative measures to guarantee the application of humanitarian law and to coordinate the content and the implementation of such measures. The committee may also provide advice on the interpretation or application of the humanitarian rules.
- Finland:** An Interministerial Working Group has been set up to coordinate activities undertaken to meet obligations in regard to dissemination of humanitarian law. This group is made up of representatives of the Ministries of Foreign Affairs, the Interior, Education, Health and Defence, and of the Finnish Red Cross.
- Indonesia:** In 1980 the Ministry of Justice approved a decree establishing an interministerial committee, with which the National Society was associated, to study the question of ratification of the Additional Protocols of 1977. The mandate of this committee has been extended to include dissemination within law faculties and among journalists.
- Italy:** At the prompting of the Italian Red Cross, the Ministry of Foreign Affairs set up a Working Group in 1988 comprising representatives of the Ministries of Foreign Affairs, Defence and Justice, and of the National Society. Its mandate is to study means of making the necessary amendments to Italian legislation to include the penal sanctions, prohibitions, restrictions and duties provided for in humanitarian law.

- Norway:** By royal decree of 15 September 1989, the government established a National Committee comprising representatives of the ministries concerned with the application of humanitarian law, of the civilian and military authorities, and of the National Society. The committee's terms of reference were to study the need for national measures for the implementation of humanitarian law and to advise the authorities on its interpretation and application.
- Portugal:** The Portuguese government decided to set up a Committee responsible for identifying the amendments to be made to national legislation following the country's ratification of the Additional Protocols. The Portuguese Red Cross is a member of this committee, along with representatives of the Ministries of Foreign Affairs, Justice, Defence, Health and Internal Administration.
- Sweden:** A Special Council set up within the framework of the Ministry of Defence is responsible for the application of and developments in humanitarian law. Pursuant to Decree 1990/91:102 of 20 June 1991, this Council replaced the Advisory Committee on international humanitarian law, which essentially comprised representatives of the Ministry of Defence and of Health, of National Disaster Preparedness Committees, and of the Swedish Red Cross.
- Uruguay:** The National Humanitarian Law Committee was established by Decree No. 191/92. Its mandate was made permanent by Decree 677/992 of 24 November 1992 following the submission to the national authorities of a report on measures to be taken on the national level in regard to humanitarian law. This committee is made up of representatives of the Ministries of Foreign Relations, National Defence, the Interior, Health and Education, and representatives of the Supreme Court, the Faculty of Law and the Uruguayan Red Cross.
- Zimbabwe:** An Interministerial Committee on Human Rights and Humanitarian Law, set up in 1994, deals with issues relating to humanitarian law. It is chaired by a representative of the Ministry of Justice, and comprises representatives of the Ministries of Defence, Foreign Affairs, Home Affairs and Social Affairs, and of the Office of the President. The committee's task is to furnish opinions on the possible adoption of new treaties, to study implementation measures and to draft periodic reports.

## **6. Means of exchanging information on the implementation of international humanitarian law and on dissemination**

Recommendation VI of the Intergovernmental Group of Experts proposes that:

*"in order to comply with their commitments in this regard under IHL instruments, States*

*— be invited by the Conference to provide to the ICRC any information which might be of assistance to other States in their efforts to disseminate and implement international humanitarian law;*

— *make every effort to participate in the fullest possible exchange of information on the measures that they have taken to implement their obligations under IHL instruments...*”.

Information-sharing on national implementation and dissemination measures adopted by States is essential to ensure the coherence of systems of application of international humanitarian law.

The request that such information be shared is not new. Under the Geneva Conventions of 1949, States undertook to communicate to one another, through the depositary (the Swiss Federal Council) translations of these treaties into their respective national languages, as well as the laws and regulations adopted for their application. This provision was recalled in Resolution V of the 25th International Conference, which further requests that States communicate the same information to the ICRC to enable it to gather and assess such information and report accordingly to subsequent International Conferences.<sup>5</sup>

Regrettably, the fact is that very few States have lived up to this obligation in practice. Indeed, despite its efforts, the ICRC has received little information on what States have done at the national level.

To gather this information, the ICRC made a series of written representations to States and National Societies between 1988 and 1991. It has also fostered the exchange of information by organizing regional and national seminars. All the information gathered has been made available to States and National Red Cross or Red Crescent Societies and to other interested bodies.

Nevertheless, these initiatives will bear fruit only when States and National Societies make a greater effort to ensure a genuine sharing of information on implementation and dissemination of humanitarian law. The system of transmission of reports among States provided for in the humanitarian treaties should become the basis for a real exchange of information. Admittedly, the system suffers from the lack of an international monitoring body. This shortcoming can, however, be offset to a large extent by the activities of the ICRC in this area. But that would call for greater investment and commitment on the part of States and other parties responsible for the application of the law. This will be the ultimate test of the resolve of States to do their utmost to ensure greater respect for international humanitarian law.

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<sup>5</sup> See note 2.

Along the same lines, Recommendation VI also requests that “*in order to facilitate these measures, the ICRC*

- *continue to participate actively in efforts to disseminate and implement IHL;*
- *be encouraged to draw up guidelines, from time to time, for the purpose of enhancing the exchange of information;*
- *collect, assemble and transmit the information provided to States and to the Conference.”*

By setting up the Advisory Services on international humanitarian law, the ICRC also hopes to make this exchange of information a reality.

As indicated in section 3.5 of this document, the ICRC will report every year to States on the advisory services provided and will also inform the International Conferences. Information on this matter cannot be comprehensive unless the ICRC draws up a report on the national implementation measures taken by each State.

To do this, the ICRC has started to set up an **Advisory Services Documentation Centre**.

The Centre will be open to all States, National Societies and interested institutions. Its long-term aim is to make an inventory of all useful documentation on the implementation and dissemination of international humanitarian law: reference works, examples of laws and implementing regulations, translations of treaties into national languages, dissemination programmes for different target audiences, etc.

The Documentation Centre is still in its infancy, but to build it up and complete it the ICRC will be drawing up guidelines to encourage information-sharing and the systematic collection and compilation of data. These guidelines should also enable States and National Societies to identify the topics on which data are required, as such data are an indispensable adjunct to measures for the implementation of the international rules.

In addition to the information that will be gathered and compiled at ICRC headquarters, the institution will feed relevant data on implementation and dissemination into the database on international humanitarian law (DB-IHL), already available on CD-ROM.

This computerized tool made available by the ICRC to States and institutions concerned with international humanitarian law will be expanded by the addition of a new section dealing with implementation and dissemination. The ease of access to information offered by this new tool

will enhance the use of the data already available on international humanitarian law and facilitate further collection and transmission.

The ICRC hopes that these new approaches and initiatives will encourage States to do all they can at the national level to ensure respect for humanitarian law. The ICRC also wishes to contribute to the adoption of practical measures and to facilitate the sharing of information. Only by having as much data as possible and encouraging their exchange will the ICRC be able to carry out surveys and identify the areas where more work is called for. Lastly, these new tools will make it possible to increase cooperation among States and between States and the ICRC in this extremely important field.

## **7. Means of increasing respect for international humanitarian law**

Recommendation VII is of singular importance as it proposes specific steps designed to enhance respect for international humanitarian law.

This recommendation, however, is addressed to the States party to the Geneva Conventions. As the aim of the present document is to outline the follow-up which the Red Cross and Red Crescent institutions intend to give to the recommendations addressed to them, neither the ICRC nor the International Federation will take a position at this stage on the proposals made in this recommendation, but they invite the States party to the Geneva Conventions to examine it with all due attention.

A comment should nonetheless be made on the last paragraph of the recommendation: it invites the depositary of the Geneva Conventions to organize periodical meetings of the States party to consider general problems regarding the application of IHL. It is of course understood that these periodical meetings and future International Conferences of the Red Cross and Red Crescent must be properly coordinated, in particular as regards their frequency, their agenda and the follow-up given to their decisions. For one thing, the International Conference of the Red Cross and Red Crescent is the only apolitical forum in which all humanitarian issues can be examined in a broader context than that of the periodical meetings to be organized by the depositary; for another, only the International Conference of the Red Cross and Red Crescent provides an opportunity to discuss humanitarian matters of common interest to States and to the Red Cross and Red Crescent institutions with the participation of all the components of the Movement, including the National Red Cross and Red Crescent Societies.

## **8. Analysis of measures that could ensure universal respect for international humanitarian law**

Recommendation VIII of the Intergovernmental Group of Experts calls upon the ICRC to analyse measures which could ensure universal respect for international humanitarian law, particularly as it relates to civilians, women, children, refugees, and displaced persons. It also asks the ICRC to examine situations in which State structures have disintegrated as a result of non-international armed conflict and the extent to which the availability of weapons is contributing, on the one hand, to the proliferation of such conflicts and aggravation of violations of international humanitarian law, and, on the other, to the deterioration of the situation of civilians.

### **8.1 Full respect for international humanitarian law and the protection of civilians**

All rules governing armed conflict are based on the principle of distinction and protection of the civilian population and individual civilians in order to spare them as far as possible from the effects of war. This issue nonetheless remains a cause for concern, in particular when one thinks of the tragic fate often suffered by the civilian population of countries torn apart by internal conflict. Indeed, although civilians ought to be protected, they frequently become the main target of attack. In violation of the provisions of international humanitarian law, the parties to conflict resort to acts or threats whose primary purpose is to spread terror among the population. It is not rare to see civilians taking a temporary yet direct part in hostilities, either voluntarily or under duress. They thus lose the protection they are afforded under international law, and it becomes difficult or even impossible to distinguish between those taking part in the hostilities and those not doing so.

It is admittedly difficult for parties to a conflict to make such a distinction in certain situations, in particular during civil wars. Yet every person must be presumed to be a civilian; otherwise all protection for the civilian population would be lost. If the rules of international humanitarian law protecting civilians were respected, much suffering could be avoided. Moreover, especially vulnerable categories of people such as children, women, refugees and persons displaced by conflict could be spared if the specific rules protecting them were applied.

The effectiveness of the rules depends mainly on the good faith of the parties to conflict and their willingness to heed humanitarian imperatives.

The problem thus lies in the implementation of the law rather than in the adoption of new rules.

The work of the Intergovernmental Group of Experts nevertheless showed that the protection of victims of armed conflicts raised major problems which the experts were not able to study in sufficient detail. To make this task easier, the ICRC is ready to prepare a thorough study on the various matters identified by the experts.

## **8.2 “Unstructured” conflicts**

More and more frequently, non-international armed conflict leads to the disintegration of State structures. Often already weak before the outbreak of conflict, the administration no longer has any influence over events and cannot ensure respect for international humanitarian law or provide the minimum of supplies essential for the survival of the civilian population. This encourages the emergence of numerous non-State entities. During the conflict, many (often dozens or even more) armed groups take part in the hostilities.

Although such situations continue to be governed by humanitarian law, and in particular Article 3 common to the four Geneva Conventions, it is all too evident that the diverse warring groups do not feel bound by the law and are not capable of ensuring respect for its rules. Even humanitarian aid is then no longer feasible. Lack of willingness on the part of the belligerents, and the fact that humanitarian organizations cannot obtain the consent of all parties to the conflict, make it impossible to bring in the assistance necessary for the survival of a whole population. Somalia, Liberia, and Afghanistan are recent cases in point.

Trying to provide protection and assistance to the victims of these “unstructured” conflicts, in accordance with its mandate, is a major challenge for a humanitarian organization such as the ICRC. Although it is far from able to examine all the political, legal and social issues arising from these situations, the ICRC has the duty to seek all possible means of responding to humanitarian needs.

The ICRC will be organizing a meeting in 1996 on situations in which State structures have disintegrated as a result of non-international armed conflict. This meeting should help to find appropriate responses for the international community to preserve a minimum of humanity in these anarchic conflicts. The ICRC will present a report on the subject and will distribute it to all participants at the International Conference of the Red Cross and Red Crescent.

### **8.3 The availability of weapons and violations of international humanitarian law**

The current flow of weapons visibly aggravates conflict situations and leads to an increase in violations of international humanitarian law. This is notably the case when established structures disintegrate and clashes between organized forces degenerate into uncontrolled violence verging on banditry.

The availability of weapons is often considered to be a major source of tension in peacetime and the cause of higher numbers of casualties during conflicts.

The ICRC is concerned about this phenomenon. On the basis of its experience in conflicts, it will examine the link between the arms flow and violations of international humanitarian law, and will involve the National Societies and the International Federation in this process. It will then provide the participants at the International Conference of the Red Cross and Red Crescent with the results of the study, along with proposals for possible measures to counter the negative consequences of the transfer of weapons.

### **8.4 Voluntary contributions to support programmes for the dissemination and implementation of international humanitarian law**

Recommendation VIII of the Intergovernmental Group of Experts *“invites the ICRC (...) to prepare, in collaboration with the International Federation, a draft recommendation for consideration by the Conference, encouraging voluntary contributions to support programmes for the dissemination and implementation of IHL, with particular emphasis on the protection of war victims”*.

The experts asked in their recommendations that there be a significant increase in efforts to disseminate and implement international humanitarian law.

This responsibility is incumbent primarily on States, but such efforts will also entail new tasks for the different components of the International Red Cross and Red Crescent Movement, in accordance with their respective responsibilities under the Movement's Statutes. As these tasks are described in detail above, they will not be repeated here.

To perform these tasks and to strengthen the dissemination component in their ongoing relief and development programmes, the ICRC, the International Federation and the National Red Cross and Red Crescent

Societies will need to have additional resources, in particular financial resources, at their disposal. The ICRC and the International Federation earnestly hope that donors, and especially the States party to the Geneva Conventions, will support these activities by making financial contributions to the specific dissemination programmes run by the ICRC and the Federation, and by responding to their special appeals in favour of relief and development operations.

Clearly, however, if they lack outside support many National Societies will be unable to make significant efforts to disseminate international humanitarian law, which is precisely what the experts recommend.

The ICRC and the International Federation share the opinion that, in making voluntary contributions as suggested by the experts, donors should give priority to dissemination programmes set up by National Societies that are in need of outside support. After studying the question in depth, the ICRC and the Federation have concluded that it is best to avoid creating a new administrative structure whose management would be an additional burden, and to ensure that the ICRC, the Federation and the National Societies do not appeal to the same donors for funds to finance the same or similar projects. Consequently, they have adopted the following solution.

Once a year, the ICRC and the Federation will jointly present a special appeal for funds for specific dissemination projects devised by the National Societies concerned, in agreement with either the ICRC or the Federation as the case may be. The special appeal will also mention the support provided by the ICRC and the Federation to the National Societies in this context. The ICRC will be responsible for the coordination of projects to be implemented in situations of armed conflict. In all other cases, the International Federation or the ICRC will coordinate projects relating to dissemination, in accordance with the statutory rules of the Movement.

Donors will be invited to pay their voluntary contributions either directly to the National Society concerned, or to the ICRC or the Federation, depending on the nature of the project or projects they wish to support. In accordance with their respective customary procedures, the ICRC, the International Federation and the National Societies will provide reports on how the funds contributed are used.

The ICRC and the International Federation are confident that this solution will help them to step up their dissemination efforts without

creating an additional administrative burden. In due time, they will be sending a special appeal relating to dissemination activities slated for 1996 to the States and National Societies concerned.

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