

**Meeting of the
Intergovernmental Group of Experts
for the Protection of
War Victims**

(Geneva, 23-27 January 1995)

PROPOSALS

BY THE

**INTERNATIONAL COMMITTEE
OF THE RED CROSS**

**Special Rapporteur at the International Conference
for the Protection of War Victims**

(Geneva, 1993)

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Preamble

The ICRC was closely involved in the International Conference for the Protection of War Victims (Geneva, 1993) and in the follow-up efforts, which reflect concerns that lie at the heart of the institution's mandate and its humanitarian work in armed conflicts.

On the basis of its experience, the ICRC drew up a Report on the Protection of War Victims, which formed the basis of the 1993 Conference and was followed by a document entitled "Protection of War Victims — Suggestions of the International Committee of the Red Cross" (April 1994), in which the ICRC raised the principal issues that it felt should receive further consideration.

So as to contribute as effectively as possible to the work of the intergovernmental group of experts in January 1995, the ICRC also consulted the other components of the International Red Cross and Red Crescent Movement during a meeting with experts from the National Societies and their International Federation on 12 and 13 September 1994. It then also sent them a document drawn up following the preparatory meeting of intergovernmental experts, held from 26 to 28 September 1994, for consultation.

Despite the pledges made by the States at the 1993 International Conference, the plight of conflict victims, far from improving, has in fact worsened. It is therefore high time that decisions were made and action taken to break this tragic and intolerable deadlock. The ICRC, with the support of the National Societies and their International Federation, will do its utmost to contribute to this effort.

As regards the specific issues recommended for consideration by the experts, the ICRC wishes to make proposals on four main topics, on which it hopes that substantial progress will be made:

- the universal recognition and acceptance of international humanitarian law (IHL);
- the systematic adoption and strengthening of national measures for the implementation of IHL;
- the dissemination of IHL and its rules among the general population and more particularly among the armed forces and other persons bearing arms;
- the reaction of the international community to breaches of IHL and the repression of violations.

The ICRC stands ready, moreover, to carry out any additional studies which the experts might entrust to it on the basis of the recommendations made by the preparatory meeting.

1. Universal recognition and acceptance of international humanitarian law

Refs.: 1st, 2nd and 3rd recommendations

Universal recognition of IHL is essential if its provisions are to be properly implemented. The fact that belligerents are not all bound by the same Conventions may give rise to confusion and therefore weakens the authority of the humanitarian rules.

Compliance with the provisions restricting methods and means of combat, in particular, will be all the more difficult to secure if they are not universally accepted. States will notably hesitate to renounce a weapon proscribed by a treaty if their potential enemies possess the same weapon and are not bound by the treaty in question.

There are three possible ways of achieving this general goal, and all three should be given close consideration.

1.1 Universal acceptance of all the humanitarian treaties

This first requirement is also the most obvious. Obstacles to ratification of or accession to the humanitarian treaties may be of an administrative, military or political nature.

ICRC proposals

- **To remove administrative obstacles, it should be recommended that accession to IHL instruments be examined as a matter of priority, considering their direct impact on the plight of war victims.**
- **To remove military obstacles, it should be recommended that the military authorities in States bound by the humanitarian instruments examine, together with their counterparts in countries that**

have not become party to them, the practical implications of treaty obligations as regards the conduct of military operations.

- **To remove political obstacles, the universal impact of decisions concerning IHL treaties should be underscored, and hence the responsibility of governments in this respect towards all victims of war.**

The ICRC, for its part, will relentlessly pursue its efforts to explain the humanitarian treaties and urge States to become party to them, and to this end intends to rely more extensively on the National Societies, which have already played a major role in this regard in several countries.

The role of the United Nations General Assembly and the regional organizations not only in adopting resolutions urging States to become party to these treaties but also in seeing that these resolutions are followed up should also be examined in depth.

ICRC proposals

- **Extend to cover all the main IHL treaties the debate regularly devoted by the UN General Assembly to the 1977 Additional Protocols.**
- **Systematically place such a review on the agenda of meetings of regional organizations.**

1.2 Adaptation of international humanitarian law

The revision of IHL is an extremely long and arduous process. There is a period of at least ten years between drafting the initial version of any convention and its adoption by a Diplomatic Conference, and it takes twenty years at least from the time of adoption to achieve practically universal acceptance of the treaty. The figures may vary but they do indicate the scale of the problem. This thirty-year time lapse naturally gives rise to concern when one realizes that the universality of IHL is a *sine qua non* for its effective application and that the techniques of warfare and the circumstances in which war is waged undergo constant change. It is therefore necessary to resist the temptation of relaunching a large-scale revision of the law when universal acceptance of the existing treaties has not yet been achieved — the more so since the fundamental rules of IHL remain perfectly valid.

But examination of this issue must be taken one step further. It is neither necessary nor timely to envisage an overall revision of IHL, but it would be desirable to adapt or clarify some of its provisions. There are for example the provisions affording special protection to women and children; the rules governing the monitoring of relief supplies (linked to the problem of famine in war and the question of embargoes); and the provisions aimed at safeguarding the health of the civilian population in times of war.

The rules pertaining to prohibitions or restrictions on the use of certain weapons should likewise achieve universal adoption in the very near future.

Finally, the dire effects on civilians of the large-scale circulation of weapons deserve close consideration.

Appropriate means of rapidly adapting the law must therefore be found.

ICRC proposals

- **Make optimum use of International Conferences of the Red Cross and Red Crescent to clarify IHL and highlight problems with regard to its implementation.**
- **Make effective use of the opportunity afforded by Article 7 of 1977 Additional Protocol I to organize meetings in order to examine general problems arising with respect to the application of IHL.**

1.3 Consistency of instructions regarding IHL for armed forces worldwide

Achieving universal recognition of IHL does not concern the diplomatic world alone. Action must also be taken in the field. That is why it is essential to maintain a dialogue with the military regarding the incorporation of the humanitarian rules into the training of armed forces. Dialogue with and among the military should lead to clarification of the practical impact of the rules of humanitarian law on the conduct of military operations. It should in particular demonstrate the fact that directives concerning the conduct of hostilities in non-international armed conflicts are almost always the same as those applicable in international

conflicts. It is certainly desirable that they should be so, because it would be totally unacceptable, to take a striking example, to agree not to use a weapon and then claim the right to use it against one's own population.¹ Finally, dialogue at this level should make it possible to deal more effectively with issues such as the protection of the environment in the light of recent experience.²

ICRC proposals

- **Organize regular regional meetings, with government support, to examine and develop a consistent set of military IHL instructions.**
- **Carry out a comparative analysis of existing instructions to single out their main common characteristics and develop teaching materials on that basis.**

2. Systematic adoption and strengthening of national measures for the implementation of international humanitarian law

Refs.: 3rd, 5th and 6th recommendations

If IHL is to be effectively implemented in times of armed conflict, firm and systematic measures must be taken in peacetime to put it into effect at the national level.

Does domestic legislation adequately provide for the repression of war crimes and other violations of IHL? Is there a law protecting the Red Cross and Red Crescent emblem? Are the armed forces being given appropriate instructions? Are the principles of IHL being taught at all levels of the

¹ Such uniformity of humanitarian rules governing the conduct of hostilities in international armed conflicts and internal conflicts would not mean, however, abolishing all differences between the rules of international humanitarian law applicable to these two types of conflict — the most striking example being that the rules governing occupation obviously cannot be applied to internal conflicts.

² See *Guidelines for military manuals and instructions on the protection of the environment in times of armed conflict*, Report of the Secretary-General to the UN General Assembly, Doc. A/49/323, Annex.

education system? Do universities have a chair of international humanitarian law? These are but a few of the many questions that States should ask themselves.

Since the adoption in 1977 of the Protocols additional to the Geneva Conventions of 12 August 1949, the ICRC has regularly sent all the States a list of basic measures that they should adopt in peacetime to ensure the implementation of these instruments.

Between 1988 and 1991, the ICRC wrote to all the States asking them what national measures they had adopted or were considering. The National Societies also took part in this survey. In cooperation with them, the ICRC has organized national and regional seminars, conducted missions, published articles in the *International Review of the Red Cross* and, on request, has provided States with advice on their existing or draft legislation in this regard.

Moreover, the National Societies and ICRC delegates in the field constantly strive to impress upon the authorities concerned, members of the armed forces and civilians the importance of respecting and spreading knowledge of humanitarian standards. They also advise them on such matters.

The fact that relatively few States have so far adopted satisfactory implementation measures and that large-scale violations of IHL are committed in many conflicts today underscores the need for a marked increase in such efforts, and State responsibility in this regard must be emphasized.

To attain this objective, a system should be set up at the international level to help States devise their own national implementation measures. Its creation would enhance national efforts, just as the effectiveness of such an international system would depend on the existence of national mechanisms.

ICRC proposals

- **Create a regular reporting system to enhance dialogue with and among States on national measures and to increase the effectiveness of such measures, while avoiding complex administrative procedures.**
- **Set up an international committee of experts on IHL, representing the world's main legal systems, to examine the reports and advise States on any matters regarding the implementation of IHL.**

Commentary on this proposal

- The committee should meet at regularly, about once a year.
 - It could report to the International Conference of the Red Cross and Red Crescent (which meets in principle once every four years).
 - The ICRC is prepared to designate the committee members if the States so request, or they could be appointed by the International Conference of the Red Cross and Red Crescent.
 - The committee members could be recruited from among the members of national interministerial committees.
 - The ICRC is prepared to handle the committee's administration and provide the necessary follow-up between its meetings.
- **Step up and generalize the ICRC's advisory services and develop those provided by National Societies, in order to assist the States and promote the exchange of information.**
- **Increase coordination between these services and other advisory services, such as those provided by the UN Centre for Human Rights and regional organizations, and academic circles at the national and international levels.**
- **Create in each country a national interministerial committee responsible for coordinating the adoption of national implementation measures, with the participation as far as possible of a National Society representative.**
- **Encourage the designation and training of a National Society staff member to assist the country's authorities in this regard and to serve as a contact with the other components of the International Red Cross and Red Crescent Movement.**

General comments

The financing of these measures should also be given close consideration.

The ICRC believes it is necessary to adopt a comprehensive approach to these measures, which must be viewed as a whole and developed harmoniously.

On the other hand it considers it important to distinguish clearly between measures solely designed to help States fulfil their obligations and those required to repress violations of IHL.

3. Dissemination of humanitarian law and its rules among the general population and more particularly among the armed forces and other persons bearing arms

Ref.: 4th recommendation

This matter is in fact closely related to the issues dealt with under the previous heading, as instruction in IHL must be developed primarily at the national level. It does, however, call for particular attention.

It is essential that IHL be taught and disseminated in peacetime, since it will not be respected unless it is known by those who must comply with it and ensure its implementation.

These activities were recognized as crucial and accordingly set forth as an obligation for States in the 1949 Geneva Conventions and their 1977 Additional Protocols. The international community furthermore mandated the ICRC to take part in them, with the support of the National Societies and their International Federation.

If the military are to abide by IHL in wartime, the teaching of the humanitarian rules must be incorporated into military instruction, and the values on which the law is based must be recognized as fundamental within the society to which the military belong. The teaching of these rules and values must therefore form an integral part of the education system.

3.1 Dissemination of the humanitarian rules among the general population

A systematic effort to improve national education in this regard should be undertaken in each country.

ICRC proposals

- **Include courses on IHL in national education programmes at all levels, the content and form of these courses being tailored to the audience and to the cultural context.**
- **Step up and strengthen cooperation between UNESCO and the ICRC in this field.**

- Give priority attention to the matter within the context of national measures for the implementation of IHL.
- Increase the support provided by National Societies to their respective governments in this field, making use of their knowledge of the humanitarian rules and of local conditions and circumstances, and step up the training of these Societies, with support from the ICRC and their International Federation.

Providing instruction in IHL is extremely difficult in countries where educational facilities are inadequate or have seriously deteriorated on account of armed conflict, disturbances or simply the lack of resources.

When confronted with a situation of armed conflict the ICRC, working in cooperation with the National Societies, has had to do everything possible even in such circumstances to promote understanding of and respect for humanitarian assistance in order to be able to reach the victims. Major campaigns have been launched, essentially through local structures or well-known local people, to get humanitarian messages across in situations where tension among the population was so great that everyone feared the worst. Ad hoc means, such as the radio, visual images, i.e. all available means of communication, have been tried out, sometimes with a certain degree of success.

It should also be pointed out that even in the above-mentioned situations National Societies can get certain humanitarian messages across while conducting programmes on behalf of the most vulnerable members of a community.

ICRC proposals

- Carry out an in-depth analysis of experimental activities undertaken in particularly difficult circumstances to promote understanding of and compliance with the humanitarian rules, in order to turn the lessons learnt from them to maximum account in the future.
- Step up efforts to promote the development of National Societies, to be coordinated by the International Federation, and use National Society activities on behalf of the most vulnerable categories of the population to convey messages of humanity and tolerance.

3.2 Instruction to the armed forces

3.2.1 Instruction to the regular armed forces

For instruction to regular armed forces, the ICRC recently set up a new division for dissemination to the military and a pool of army officers from various countries who specialize in teaching IHL. The latter will conduct courses and seminars all over the world. These instructors also take part in the courses for senior officers that have been organized for many years by the International Institute of Humanitarian Law, in San Remo, Italy, and in various seminars for national dissemination officers held by the ICRC in Geneva.

ICRC proposal

- **Every State should review and if necessary strengthen its national system for IHL instruction to the armed forces and consider what support it can provide in terms of international cooperation.**

3.2.2 Instruction to dissident armed forces

Although it is often difficult to gain access to dissident armed forces, there has been some success in providing them with instruction in the humanitarian rules, especially if such forces are structured and can be reached through a well-defined chain of command.

ICRC proposal

- **Review the efforts made so far in persuading dissident forces to comply with IHL and the humanitarian rules, in order to draw lessons for the future.**

Commentary

The problems experienced in approaching certain dissident forces should not in any way discourage the efforts already being made with regular troops. It is important to convince the latter, and indeed all armed forces, that respect for IHL, far from weakening such forces, strengthens them from a moral and disciplinary point of view and enhances their acceptance by the population. The conduct of regular armed forces in that respect sets a vital example.

4. Reaction of the international community to breaches of international humanitarian law, and the repression of violations

Refs: 7th and 8th recommendations

The question of the international community's reaction to large-scale violations of IHL goes beyond the scope of the present group of experts, because the situations engendered by such violations constitute a threat to international peace and security within the meaning of Chapter VII of the United Nations Charter and therefore call for a reaction on the part of the UN Security Council. Priority must therefore be given to examining every possible means of preventing violations committed in armed conflicts from reaching a point at which they become extremely difficult to control.

When faced with violations of IHL witnessed by its delegates in the field, the ICRC's first step is to make confidential bilateral representations to the parties responsible and try to persuade them to comply with the humanitarian rules, while cooperating with them so that the victims can receive the protection and assistance to which they are entitled.

When bilateral representations fail to restore an attitude of respect for the humanitarian rules, the ICRC may take public action or draw the attention of other States to certain violations necessarily of concern to them by virtue of Article 1 common to the four Geneva Conventions.

The number of violations being committed in armed conflicts today unfortunately shows that these mechanisms alone are not sufficient to restore respect for IHL in all situations.

ICRC proposals

- **Consider how the States could increase their cooperation with the ICRC when, in accordance with its policy, it exceptionally draws their attention to grave and repeated violations which its confidential bilateral representations to the State have failed to bring to an end.**
- **Re-examine means of putting the system of Protecting Powers into effect.**

- **Make optimum use of the International Fact-Finding Commission established under Article 90 of 1977 Additional Protocol I, and urge the parties to accept the Commission's readiness to work in all situations of international or non-international conflict, if the parties involved so request.**
- **Support efforts to punish war criminals, wherever they may be, by compliance on the part of each State with its obligation to exercise universal jurisdiction over the perpetrators of grave breaches and by establishing an international criminal court to prosecute war crimes and crimes against humanity.**
- **Consider the role that can be played by the International Conference of the Red Cross and Red Crescent with regard to violations of IHL.**

5. ICRC analysis of measures designed to ensure universal respect for international humanitarian law, the protection of women and children and the rights of refugees, and of situations where government structures have collapsed

Ref.: 9th recommendation

The preparatory meeting suggested that the experts recommend an analysis by the ICRC of these specific issues concerning the implementation of IHL.

The ICRC customarily draws up a report on the principal humanitarian issues worldwide for submission to the International Conference of the Red Cross and Red Crescent.

It is therefore willing to carry out the analysis recommended by the Preparatory Meeting as part of its report to the 26th International Conference of the Red Cross and Red Crescent (Geneva, 4-8 December 1995).

The ICRC nevertheless trusts that this recommendation will not deter the intergovernmental group of experts which will be meeting from 23 to 27 January 1995 from proposing without delay, pursuant to the mandate entrusted to it, any practical measures designed to promote respect for IHL.