

Police and security forces

A new interest for human rights and humanitarian law

by
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THE dissemination of international humanitarian law among armed forces has always been an important part of the ICRC's work. Only recently, however, has the organization decided to expand its dissemination activities to police and security forces. This article examines the motives behind the ICRC's decision and the current and anticipated results. It also provides an overview of the strategies and methods being used to reach a critical new audience.

Changing nature of conflict

It is an oft-repeated truth that the nature of conflict is changing. In recent years there have been fewer and fewer armed conflicts between States and the very threat of such conflicts has significantly diminished. At the same time, there has been a dramatic increase in the number of armed conflicts within States. It is important to acknowledge that such conflicts are not simply the consequence of the threat or use of force. Their causes are complex: contributing factors include poverty, illiteracy, unemployment, discrimination, ethnic tensions, religious intolerance, exploitation and the progressive depletion

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of natural resources. As each of these factors has some connection with human rights issues, it is only logical to conclude that violations of human rights are as much a cause as they are a consequence of armed conflict. Furthermore, progressive globalization, the increased mobility of people and the disappearance of inner borders (as has recently been witnessed in Europe) combined with economic deprivation, social injustice and political oppression pose complex security challenges both for individual States and for regional and global security alliances. The conflicts which ensue are not easily settled, and it is not enough to avert the threat or use of armed force to prevent them from breaking out.

Moreover, today's battles are no longer fought by soldiers alone: irregular armed groups, isolated individuals and members of police and security forces often take part in them as well. An important consequence of the latter's involvement is the blurring of previously absolute task distinctions between police and security forces, on the one hand, and armed forces, on the other, with one readily taking on the apparent responsibilities of the other. Thus we see examples of police and security forces involved in the conduct of hostilities, as well as of armed forces involved in the maintenance of public order. As for the battlefield, it is increasingly shifting to urban areas and civilian populations are no longer spared. Attacks upon civilians and civilian targets are common, as evidenced by the high number of civilian casualties which these conflicts produce.

It is in these complex and extreme circumstances that the ICRC is striving to carry out its mandate to provide protection and assistance to the victims of armed conflict. One of the approaches taken is to promote active respect for international humanitarian law by ensuring that its rules are better known, understood, and applied. Traditionally, the ICRC has focused its dissemination efforts on members of the armed forces throughout the world. However, in view of the changing nature of armed conflict, it has come to realize that members of police and security forces are an important part of the equation and can no longer be ignored. In 1996 it therefore decided to develop an institutional policy and suitable methods for the dissemination of human rights law and humanitarian law among such forces.

Police and security forces

The term "police and security forces" often gives rise to confusion. What is its exact meaning and which forces are involved? Does it make a difference whether a target audience comprises members of a civilian police force, a *gendarmerie* or the armed forces? And how do national intelligence agencies and security services fit into the picture? Although the role they play in conflict situations may not be visible, it obviously exists.

In the author's view, this problem of definition can be avoided by adopting a functional approach, that is to say by focusing on *what* a particular action entails rather than on *who* is performing it. The law enforcement function can typically be defined as follows:

Basic responsibilities :

- maintenance of public order and security ;
- prevention and detection of crime ; and
- provision of help and assistance to those in need of it.

Basic powers :

- arrest ;
- detention ;
- search and seizure ; and
- use of force and firearms.

If members of armed forces engage in the maintenance of public order, they are performing a law enforcement function. Consequently, they must themselves observe the existing domestic legal framework, as well as relevant and applicable international obligations. From the standpoint of their legal obligations, it does not really matter that they are members of armed forces: when performing a law enforcement function, they have the same obligations as do members of a civilian police force. The UN Code of Conduct for Law Enforcement Officials¹ confirms this view. According to the Code, the term "law enforcement officials" "includes all officers of the law, whether appointed or elected, who exercise police powers, especially

¹ Code of Conduct for Law Enforcement Officials, adopted by General Assembly Resolution 34/169 of 17 December 1979. The Code consists of eight articles covering all aspects of law enforcement behaviour and responsibility. It is generally referred to as a "soft-law" instrument

as its provisions do not constitute legally binding obligations. However, it is based upon basic human rights principles which are protected under treaty law. It provides national law enforcement officials with guidance on the proper way to perform their tasks and duties.

the powers of arrest or detention”.²The Code further provides that “in countries where police powers are exercised by military authorities, whether in uniform or civilian, or by the security forces of the State, the definition of law enforcement officials will be understood to include the agents of these services”³. It follows that civilian police services, *gendarmeries*, armed forces and/or State security services may be entrusted with law enforcement responsibilities and resort to the use of law enforcement powers. The legal and practical consequences of this statement must now be explored.

Applicable international legal standards

To focus on the type of action performed rather than on the status of the actor is not merely of semantic value since the applicable international conventions focus on the former as well. Everyone knows, for example, that international humanitarian law is applicable in situations of armed conflict. What happens, however, when armed forces, civilian police or security units conduct operations in a context where international humanitarian law is not applicable? What rules of behaviour, if any, are relevant in such a situation? It is to international human rights treaties⁴ and to so-called “soft law” texts⁵ that we turn for answers. These instruments contain rules of behaviour which have been established on the international level for law enforcement officials and which cover a wide range of subjects related to adequate and correct performance of law enforcement functions.

Rather than emphasising the differences between international human rights law and humanitarian law, the ICRC, in its deal-

² *Ibid*, Art. 1 (commentary, para. a).

³ *Ibid*, Art. 1 (commentary, para. b).

⁴ Human rights treaties of greatest significance to the duties and responsibilities of law enforcement officials include the International Covenant on Civil and Political Rights, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of the Child, the Convention on the Status of Refugees (1951) and the UN Protocol Relating to the Status of Refugees (1967).

⁵ See, *inter alia*, Basic Principles on the Use of Force and Firearms (adopted by the 8th UN Congress on the Prevention of Crime and Treatment of Offenders, 1990), the Code of Conduct for Law Enforcement Officials (supra note 1), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (GA Res. 43/173 of 9 December 1988), the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (GA Res. 40/34 of 29 November 1985) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (GA Res 40/33 of 29 November 1985).

ings with police and security forces, has given preference to identifying what both branches of international law have in common. Thus, it can be observed that the right to life, liberty and security of person, or the right to physical integrity and to the respect for human dignity are protected by both bodies of law. Any restriction to the enjoyment of these rights will have to be justified by legal and ethical arguments and by referring to the principles of justice, proportionality and necessity. Depending upon the circumstances prevailing in the country or region concerned, the ICRC's message to members of police and security forces will be based on human rights law and/or humanitarian law, and on domestic provisions. The content of the message, however, does not change.

Theory and practice

The principal task of law enforcement officials is to protect all persons against illegal acts and to serve their community. The effective discharge of these responsibilities requires a law enforcement organisation to be representative of that community and to be responsive and accountable to it. Generally, the performance of law enforcement agencies is dictated by the national legal framework, including rules for independent judicial control over law enforcement activities. In particular, recourse to law enforcement powers is subject to strict rules, including the duty of reporting. Each law enforcement official must know, apply and respect the law and principles of justice. A law enforcement body that violates the law or principles of justice in the performance of its duties can no longer be distinguished from the criminals it is pursuing. Even isolated violations are extremely destructive. Invariably, responsibility for such acts is attributed to the organization as a whole. This, in turn, serves to erode public trust in the police and to widen the gap between police and community.

Violations of the law — including violations of international human rights law and humanitarian law — are rarely if ever the result of sheer ignorance. Rather, they are symptomatic of an incapacity or unwillingness on the part of law enforcement organisations to transform hard legal obligations into adequate, correct and equitable law enforcement conduct. Lack of practical skills, lack of adequate

supervision, shortcomings in individual attitudes and behaviour, lack of judicial control and accountability and lack of organisational transparency can all be identified as potential causes.

From this understanding comes the general objective of ICRC dissemination activities for police and security forces, which is to integrate relevant principles of law into operational behaviour and education and training. In other words, members of police and security forces must understand the implications of the law for the performance of their tasks and be able to put this theoretical knowledge into practice. The emphasis in dissemination is on “know how” rather than on “know what”. It would therefore be unrealistic to expect too much from the conducting of seminars aimed at imparting knowledge of legal rules.

The ICRC’s concern for the activities of police and security forces

The reality of limited resources, on the one hand, and the dictates of its mandate, on the other, mean that the ICRC cannot focus its dissemination efforts on each and every domestic police or security force. Priority is therefore given to those countries where the ICRC maintains an operational delegation and where it carries out its protection mandate. Even though the ICRC’s relations with police and security forces may concentrate on dissemination activities, they also hold potential value for negotiating access to security detainees and for ensuring the safety of its delegates.

As stated above, the objective of the ICRC’s dissemination work among police and security forces is to integrate relevant legal norms and standards into operational behaviour and training. A two-pronged approach has been adopted to this end. First, the operational hierarchy of the target force is engaged in a dialogue on the implications of these norms and standards for task performance. The aim of this dialogue is to secure a commitment. From management officials within the target force to incorporate the relevant legal requirements into standing orders and procedures and to ensure that these new rules and procedures are implemented and respected. Secondly, the ICRC enters into a dialogue with the academies and institutions responsible for the education and training of members of the target force. One

objective of this dialogue is to determine the extent to which relevant international obligations must still be integrated into the existing training curricula. Ultimately, this process should lead to a review of such curricula or to the development of new ones. Emphasis is placed on ensuring that aspects of knowledge, skill, attitude and behaviour are equally addressed throughout the training process.

In both cases the ICRC organizes training courses. A typical training course for the operational hierarchy lasts five days, and training courses for instructors last a minimum of five days and a maximum of 10. In both types of courses the number of participants is limited to 24.

The content of these courses is based upon the ICRC's own training manual, *To Serve and to Protect*,⁶ which contains the rules of human rights law and humanitarian law that are relevant for professional law enforcement practice in every type of situation ranging from peace to international armed conflict. The manual consists of 16 different chapters addressing, *inter alia*, issues of international law, law enforcement responsibility and law enforcement power. It also focuses on the implications of the special position of women, juveniles, victims, refugees and internally displaced persons for law enforcement practice. Courses follow a standard programme which may be adapted to reflect local and/or regional realities and needs. The ICRC has established a pool of experts to conduct these training courses. Pool members are all active or recently retired law enforcement officials who have received extensive training from the ICRC in human rights law and humanitarian law and been taught effective training techniques.

The ICRC does not view the implementation of a training course as the culmination of its efforts. Instead, participation in such a course is seen as the beginning of a lasting relationship with the target force. Continued involvement is considered as necessary to help forces address practical problems in implementing legal principles. In addition, the ICRC places great value on being able to identify minor

⁶ C. de Rover, *To Serve and to Protect. Human Rights and Humanitarian Law for Police and Security Forces*, ICRC, Geneva, 1998.

deficiencies or shortcomings in the training process which require remedy. In this respect, the ICRC enjoys the advantage of being permanently based in the field. Since most other international organisations lack a substantive field presence themselves, they cannot easily provide the continuity and post-training service which is so often required.

The ICRC is seeking to strengthen its regular field-based support by hiring delegates with a police or security forces background. Such delegates are able to offer expert assistance and support. Moreover, their knowledge and practical experience could be used as the basis for dissemination programmes designed to assist the target force in its efforts to integrate relevant provisions of the law into both operations and training. In February 1999 the ICRC had already posted Delegates to Police and Security Forces in its delegations in Brazil, Peru and Hungary. Such delegates, who also cover others countries in their region, will be posted in Kiev and Pretoria as well.

The example of Brazil

Knowledge of the law and a capacity and willingness to transform that knowledge into action are basic prerequisites for the achievement of the ICRC's dissemination objective *vis-à-vis* police and security forces. As noted above, mere seminars, irrespective of their content, quality or duration, will not do the trick. However, the ICRC has neither the mandate nor the competence to assist police and security forces in training their members in police techniques and tactics. It has therefore had to identify potential partners who could fill the gap.

In Brazil this has led to the implementation of a multi-year project aimed at integrating relevant norms into operations and training. A detailed assessment of needs and capacities revealed that the Brazilian Military Police lacked the skills required to bring about that integration. The assessment identified serious deficiencies in personal and collective capacities in a range of fields, particularly with regard to the arrest of suspects and the use of force and firearms. It should be pointed out that the force has been widely and severely criticised for its frequent recourse to excessive use of force and firearms and its practice of arbitrary arrest and detention. Accusations

of extrajudicial killings and summary executions have also been reliably reported.⁷

In close cooperation with the Brazilian Ministry of Justice and the Military Police, the ICRC has designed a strategy to remedy the detected deficiencies and build the force's capacities to alter negative behaviour patterns. The chosen strategy is to use a training-of-trainers approach. When the project is completed, 800 core police instructors drawn from the various states of Brazil will have been trained.

The training for these instructors is conducted under the auspices of the ICRC and the Ministry of Justice. It comprises both a theoretical and a practical component. The theoretical component is based on the contents of *To Serve and to Protect*,⁸ which for this purpose has been translated into Portuguese, and the relevant instruction is given by ICRC experts. The practical component seeks to transform the acquired legal knowledge into behaviour. It focuses particularly on the tactics to be adopted in approaching and arresting dangerous suspects and on the use of force and firearms. It also seeks to shape personal attitudes.

The learning goals and objectives for the practical component are derived from the theoretical instruction and are formulated by the ICRC. However, the ICRC does not provide or supervise any practical instruction. This task has been assigned to Equity International (EI),⁹ an independent non-profit foundation which seeks to improve police performance by promoting international norms for professional and equitable law enforcement. It offers assistance and training to police and security forces at the request of the relevant authorities.

In 1998 six professional police instructors recruited by and under the supervision of EI were stationed in Brazil for a period of four months in order to give the practical instruction described above. In 1999 instructors will again be active in Brazil. Their task will be to

⁷ See, for example, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, UN Doc. E/CN.4/1998/68 (1997), par. 41 and 42.

⁸ *Supra*, note 6.

⁹ See Equity International, *Integrating Human Rights into the Functioning of the Military Police of the State of Sao Paulo*, Report of Project BRA/98/01, December 1998. Report on file with the author.

consolidate the levels of knowledge and skill attained in 1998 and to assist the Military Police in developing teaching materials.

The ICRC will undertake a detailed and thorough evaluation of this project at its completion. The evaluation will cover both process and outcomes and thus enable the ICRC to make the necessary adjustments. However, preliminary results indicate that the ICRC is well on track. The Brazil project, including its essential practical component, has been received with enthusiasm both by the government and by the Military Police. On the basis of the experience it has gained, the ICRC is currently studying the possibility of extending this service, once again in cooperation with EI, to police and security forces in other countries.

Concluding remarks

The ICRC seeks, wherever possible, to decentralise and deconcentrate its dissemination activities. For the time being, however, most of its dissemination activities for police and security forces are still being coordinated at ICRC headquarters in Geneva.

For the third year in a row, the demand for ICRC assistance has increased exponentially. However, the success of this programme should not be measured in terms of demand, but in terms of the effect which the programme has on the operational task performance of the target force. Ultimately, ICRC efforts in this regard aim to offer protection to victims and potential victims of violence, human rights violations and other abuses of power and authority. The way in which an individual perceives and experiences his or her rights is often decided on the basis of personal encounters with police and security forces. All too often, these experiences are negative. Every effort should therefore be made to ensure that those with law enforcement responsibility uphold that law and respect rights and freedoms — without any adverse distinction and irrespective of circumstances.

After two years of activity, the ICRC now has a strategy, a structure, the methods and necessary support materials to meet the special needs of police and security forces in the field. However, this is only the beginning. The ICRC must now seek to refine its tools and approaches. Relationships with established contacts must be consolidated. New contacts must be made in countries where they do not yet

exist but are deemed necessary. In addition, the programme must be constantly reviewed on the basis of ongoing evaluations in order to ensure its continued relevance.

To sum up, the changing nature of conflict poses challenges that can only be met by developing tools and approaches different from those which have found favour in the past. The expansion of ICRC activities to police and security forces is one example of a response which is both reactive and proactive. Peace in tomorrow's world will depend, to a great extent, on the capacities, commitment and functioning of those in charge of maintaining law and order. All efforts to sensitize this important group to their potential both for violating and for protecting the rights of individuals deserve encouragement and support.



Résumé

Les forces de police et de sécurité — Un intérêt accru pour les droits de l'homme et le droit humanitaire

par CEES DE ROVER

Promouvoir l'enseignement du droit international humanitaire auprès des membres des forces armées a toujours été l'une des tâches prioritaires du CICR. Aujourd'hui cependant, les forces de police ou d'autres unités chargées de tâches similaires sont de plus en plus souvent engagées directement dans des opérations de maintien de l'ordre et de la sécurité, notamment dans des situations de troubles intérieurs, voire de conflit interne. Il est devenu important de s'assurer que les membres de ces unités connaissent quelques règles fondamentales en matière de protection de l'individu dans ces circonstances, et que leur comportement respecte la dignité humaine. Le CICR a mis en route un programme pour assister les autorités nationales compétentes dans l'organisation d'un tel enseignement.