

The role of National Red Cross and Red Crescent Societies in the development of international humanitarian law: Lessons learned and perspectives based on the Belgian Red Cross experience

Frédéric Casier and Laura De Grève*

Frédéric Casier is Senior Legal Advisor in international humanitarian law at the Belgian Red Cross – French-speaking Community. Email: frederic.casier@croix-rouge.be.

Laura De Grève is the Head of International Humanitarian Law at the Belgian Red Cross – Flanders. Email: Laura.DeGreve@rodekruis.be.

Abstract

National Societies can assist their authorities in the development of international humanitarian law (IHL). This role has been consolidated in their mandate, especially through their auxiliary role in support of public authorities in the humanitarian field. This article recalls the main legal bases from which this role is

* The views expressed by the authors in this article are personal and in no way binding upon the Belgian Red Cross.

derived. Based on the Belgian Red Cross experience, it demonstrates how the National Societies' support to the promotion and national implementation measures of IHL can constitute an incentive for further elaboration of IHL treaties and policies. It also highlights their humanitarian diplomacy work to assist the International Committee of the Red Cross's approach at the international level. Finally, the article shares some thoughts to increase the Movement's collective impact in IHL development.

Keywords: National Red Cross and Red Crescent Societies, International Committee of the Red Cross, International Federation of Red Cross and Red Crescent Societies, auxiliary role, National International Humanitarian Law Committee, implementation of international humanitarian law, humanitarian diplomacy, international humanitarian law treaties, informal networks, international conferences.



Introduction: The historic role of the Movement

The development of international humanitarian law (IHL) remains the primary responsibility of States, through the negotiation and adoption of treaties or other legal instruments. For the purposes of this article, IHL development refers to any contribution to the elaboration of international legal and policy frameworks, i.e. treaties and soft law instruments, that are negotiated and adopted by States. However, throughout its history, the International Red Cross and Red Crescent Movement (the Movement) has significantly contributed to the development of IHL since its origins. The International Committee of the Red Cross (ICRC) was the first component to be historically involved in this area. The adoption in 1864 of the First Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field reflects one of the recommendations made by Henry Dunant, the main founder of the ICRC, in his book *A Memory of Solferino*, published in October 1862.¹ The conclusion of this treaty was achieved in large part due to the vision and determination of the ICRC's founders. The ICRC has subsequently played a consistent and considerable role in this regard by encouraging States to adopt other IHL treaties, including the current Geneva Conventions of 1949 and their two Additional Protocols of 1977 and many other treaties in the IHL field. This expertise has been consolidated in its mandate as conferred by the Movement's Statutes, which recognize that one of the ICRC's main roles is "to work for the understanding and dissemination of knowledge of

1 Henry Dunant, *Memory of Solferino*, ICRC, Geneva, 1986, p. 126: Dunant considered it would be desirable to "formulate some international principle, sanctioned by a Convention inviolate in character, which, once agreed upon and ratified, might constitute the basis for societies for the relief of the wounded". The draft of the Convention was prepared by the Geneva Committee and submitted to the diplomatic conference hosted by the Swiss Federal Council, on the initiative of the Geneva Committee, from 8 to 22 August 1864, for the purpose of adopting a convention for the amelioration of the condition of the wounded in war.

international humanitarian law applicable in armed conflicts and to prepare any development thereof”.²

While the ICRC plays a vital role at the international level, the National Red Cross and Red Crescent Societies (the National Societies) have also progressively contributed to the development of IHL treaties, firstly through their participation in the International Conferences of the Red Cross and Red Crescent. For instance, the first drafts of the future 1949 Geneva Conventions, as prepared by several expert conferences organized on ICRC’s initiative, were presented in 1948 to the XVIIth International Conference of the Red Cross in Stockholm, where further amendments were adopted. These revised drafts then served as the basis for negotiation at the Diplomatic Conference convened by the Swiss Government at Geneva from 21 April to 12 August 1949. It is relevant to notice that National Societies, considering their extensive experience on the battlefield, were requested by the ICRC to provide their views and proposals on the elaboration of the Geneva Conventions from the outset of the drafting process in 1945 and were regularly consulted together with States on the drafts prior to their submission to the XVIIth International Conference of the Red Cross.³ Beyond their participation in these international fora, National Societies have also been able to contribute to the development of IHL in different and complementary ways through their regular and privileged dialogue with their governments. This is based on their auxiliary role in the humanitarian field which entails a specific relationship with their public authorities. This auxiliary role includes the National Societies’ mandate to disseminate and assist their governments in disseminating IHL and cooperate with them to ensure respect for IHL as foreseen in the Movement’s Statutes.⁴

2 Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross and Red Crescent, Geneva, 8 November 1986 and amended in 1995 and 2006, Art. 5(2)(g), available at: www.icrc.org/en/doc/assets/files/other/statutes-en-a5.pdf (all internet references were accessed in August 2022).

3 See the “Draft Revised or New Conventions for the Protection of War Victims”, established by the ICRC with the assistance of Government Experts, National Red Cross Societies and other humanitarian associations in May 1948, and submitted to the XVIIth International Red Cross Conference, Stockholm, 20–30 August 1948, pp. 1–3, available at: https://library.icrc.org/library/docs/CI/CI_1948_B3_01_ENG_01.pdf. Assistance of governments and National Societies was already requested by the ICRC in its memorandum dated 15 February 1945 and informing it was undertaking the work of preparing the revision of the Geneva Conventions and the conclusion of new humanitarian agreements. After having received proposals and useful data from numerous governments and National Red Cross Societies, the ICRC started upon its task and continued to consult different stakeholders including National Societies. It submitted its proposals and first drafts to the “Preliminary Conference of National Red Cross Societies for the Study of the Conventions and of Various Problems Relative to the Red Cross”, held on its initiative in Geneva on 26 July–3 August 1946. Several proposals were made by the National Societies relating to questions which are of their particular competency. Other consultations were then conducted with governmental experts, such as during the “Conference of Governments of Experts for the Study of the Conventions for the Protection of War Victims” on 14–26 April 1947 in Geneva. The drafts were thus gradually developed and finally submitted by the ICRC to the “Commission of National Red Cross Societies for the Study of the Conventions” as appointed by the 1946 Conference. This Commission comprised of thirteen National Society members of the League of Red Cross Societies gave its general approval to the drafts and made some additional suggestions before the texts were submitted to the XVIIth International Conference of the Red Cross in 1948.

This article will focus on this National Societies' role by sharing the experience of the Belgian Red Cross. It will aim to demonstrate the important interlinkages between the international and national levels for IHL development and the role that National Societies can play in complementarity with the ICRC's approach. For that purpose, the authors will first recall how the role of National Societies also covers IHL development according to the relevant legal provisions. Concrete examples will then be given of the way that National Societies can encourage their respective authorities to implement IHL's fundamental rules through the development of their respective domestic legal frameworks, which consequently can influence States' practice and potentially contribute to the development of new IHL treaties or other international initiatives aiming to strengthen existing IHL rules. Furthermore, the article will emphasize that the National Societies' humanitarian diplomacy carried out at the domestic level can substantially support the ICRC's approach towards States, including in the preparation of international conferences. The interlinkage between the national and the international levels can entail multiplier effects if joint or coordinated approaches from National Societies towards their respective governments are encouraged, including on a regional basis. Lastly, the article will raise some considerations on how to better capitalize this interplay between the National Societies and the ICRC and their complementary roles in IHL development.

An inherent component of the National Society's mandate in IHL

The involvement of National Societies in the development of IHL has been consolidated not only in practice, but also through its formulation in several legal bases, mainly the Statutes of the Movement and other resolutions adopted at the Statutory Meetings of the Movement. This role is first and foremost based on the auxiliary role of National Societies, the duty of the ICRC and National Societies to coordinate on IHL matters, and the member National Societies' commitment to give support to the International Federation of Red Cross and Red Crescent Societies (IFRC) in its contribution to the IHL development at the global level. A National Society can also play a proactive role in this area through its participation in the International Conference of the Red Cross and Red Crescent whose one of the main functions is to contribute to the respect for and development of IHL treaties. Additionally, National Societies also participate in the elaboration and implementation of several Movement's positions adopted at the Council of Delegates of the Movement which commit National Societies to engage in a dialogue with their authorities in IHL development.

4 Statutes of the International Red Cross and Red Crescent Movement, above note 2, Art. 3(2)(3).

The auxiliary role as the fundamental legal basis

The contribution of a National Red Cross or Red Crescent Society to IHL development relies first and foremost on its auxiliary role in the humanitarian field. Although this role originally focused on assisting medical services of armed forces and is still enshrined in the First Geneva Convention of 1949,⁵ such as the engagement in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease in the battlefield during armed conflicts, the scope of a National Society's auxiliary function has considerably expanded due to the broad range of situations of emergency and the various humanitarian needs resulting therefrom. The National Societies henceforth "support their public authorities in their humanitarian tasks, according to the needs of the people of their respective countries" as reflected in the Statutes of the Movement.⁶ It is therefore recognized that the National Societies can act as auxiliaries to their public authorities to meet humanitarian needs, whatever they are and in every context, and in accordance with the Fundamental Principles of the Movement. They can provide humanitarian assistance to victims of emergency and crisis situations, as well as develop long-term programmes for the benefit of the population. Whilst a National Society may also act upon its own initiative and not only upon request by the authorities, the auxiliary role constitutes a specific feature as the National Society must be duly recognized by the "government of its country on the basis of the Geneva Conventions and of the national legislation as a voluntary aid society, auxiliary to the public authorities in the humanitarian field" in order to be part of the Movement.⁷

Resolution 2 of the 30th International Conference of the Red Cross and Red Crescent (2007), recalled some fundamental characteristics of the unique relationship between the National Societies and their authorities raised by their auxiliary role in the humanitarian field. First, States have the primary responsibility to fulfil their humanitarian tasks according to their international obligations and their National Societies have the primary purpose to supplement them in this regard. Second, the resolution calls upon National Societies and their respective public authorities "to consolidate a balanced relationship with clear and reciprocal responsibilities, maintaining and enhancing a permanent dialogue at all levels within the agreed framework for humanitarian action". Third, the International Conference recognizes that both States and their National Societies acting as auxiliaries "enjoy a specific and distinctive partnership, entailing mutual responsibilities and benefits" in the humanitarian field.⁸ It is therefore important

5 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950) (GC I), Art. 26.

6 Statutes of the International Red Cross and Red Crescent Movement, above note 2, Art. 3(1).

7 *Ibid.*, Art. 4(3).

8 Resolution 2, "Specific Nature of the International Red Cross and Red Crescent Movement in Action and Partnerships and the Role of National Societies as Auxiliaries to the Public Authorities in the Humanitarian Field", adopted at the 30th International Conference of the Red Cross and Red Crescent, Geneva, 23–24 November 2007, paras 1–3, available at: www.icrc.org/en/doc/resources/documents/resolution/30-international-conference-resolution-2-2007.htm.

to note that National Societies shall not assume States' responsibility deriving from their international obligations, but that they commit to assist or provisionally substitute their public authorities in their humanitarian work based on a specific relationship built upon trust and confidence.

This privileged dialogue is also applicable in the IHL field which is one of the main areas where the National Society's auxiliary role is explicitly recognized under the Statutes of the Movement:

[National Societies] disseminate and assist their governments in disseminating international humanitarian law; they take initiatives in this respect. They disseminate the principles and ideals of the Movement and assist those governments which also disseminate them. They also cooperate with their governments to ensure respect for international humanitarian law and to protect the distinctive emblems recognized by the Geneva Conventions and their Additional Protocols.⁹

States are bound by the Geneva Conventions and their Additional Protocols that they ratified.¹⁰ Consequently, they have to adopt all the necessary measures to disseminate and implement these treaties to ensure their respect.¹¹ National Societies can support them in these tasks. It is interesting to highlight that under the Statutes of the Movement, National Societies' assistance is not limited to IHL dissemination through communication, training or awareness activities. It also refers to cooperation with their authorities to ensure respect for IHL, which can include any activities or initiatives aiming to reach this objective. National implementation of IHL is one of the main examples: National Societies may assist their authorities to identify and elaborate the domestic legal and practical measures that must be taken to ensure that the rules of IHL are fully implemented and respected in both wartime and peacetime.¹² Furthermore, this provision does not preclude any

9 Statutes of the International Red Cross and Red Crescent Movement, above note 2, Art. 3(2)(3).

10 All States are bound by the 1949 Geneva Conventions as they are universally ratified. Around 90% of the States have ratified the 1977 Additional Protocols and thus must abide by them.

11 GC I, above note 5, Arts 47–8; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950), Arts 48–9; Geneva Convention (III) Relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950), Arts 127–8; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Arts 144–5; Protocol Additional (I) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3, 8 June 1977 (entered into force 7 December 1978) (AP I), Arts 80, 83 and 84; Protocol Additional (II) to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609, 8 June 1977 (entered into force 7 December 1978), Art. 19.

12 AP I, *ibid.*, Art. 80. The commentary of this article mentions the National Red Cross or Red Crescent Society could be associated with the study and preparation of all necessary measures to be taken by the State Party for the execution of its obligations under the Geneva Conventions and AP I; see Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds), *Commentary on the Additional Protocols*, ICRC, Geneva, 1987, p. 931, para. 3996. Several resolutions of the International Conferences of the Red Cross and Red Crescent confirmed this National Societies' role, including: Resolution V, see the Movement, "National Measures to Implement International Humanitarian Law", adopted by the 25th International Conference of the Red Cross and Red Crescent, Geneva, October 1986,

initiatives carried out by National Societies to encourage States in developing new international legal and policy frameworks to ensure a better compliance with existing IHL rules, in cooperation with the ICRC and IFRC, even though IHL development remains under the States' primary role and responsibility.

The National Society's auxiliary role in the field of IHL is also reaffirmed through national legal frameworks,¹³ by some resolutions of the International Conference of the Red Cross and Red Crescent¹⁴ and by the United Nations (UN) General Assembly's biannual resolutions on the "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts" which systematically note the National Societies' responsibilities "to cooperate with and assist their Governments in the promotion, dissemination and implementation of international humanitarian law". This auxiliary role is furthermore mentioned in these resolutions where the UN General Assembly usually affirms "the necessity of making the implementation of international humanitarian law more effective, *and supports its further strengthening and development*".¹⁵ This confirms the role that National Societies can play in developing IHL.

A complementary role with the other components of the Movement

As mentioned above, IHL is a core part of the Movement's mandate for historical reasons. The Statutes of the Movement thus confer specific missions upon the different components in the field of IHL which are complementary.

As a specifically neutral and independent institution and intermediary in situations in armed conflict, the ICRC works "for the faithful application of international humanitarian law applicable in armed conflicts" and takes "cognizance of any complaints based on alleged breaches of that law". It also works "for the understanding and dissemination of knowledge of international

International Review of the Red Cross, Vol. 28, No. 263, 1988, p. 127, paras 2–3; Resolution 1, "Bringing IHL Home: A Road Map for Better National Implementation of International Humanitarian Law", adopted at the 33rd International Conference of the Red Cross and Red Crescent, Geneva, 9–12 December 2019, para. 2, available at: https://rcrcconference.org/app/uploads/2019/12/33IC-R1-Bringing-IHL-home_CLEAN_ADOPTED_FINAL-171219.pdf.

- 13 For example, in Belgium, this role is explicitly reflected in the Statutes of the Belgian Red Cross, lastly revised on 23 April 2018, Art. 4; approved by the decree of the government of the French Community on 24 March 2018, *Belgian Official Gazette*, 3 August 2018, p. 61293; by the decree of the Flemish government on 1 June 2018, *Belgian Official Gazette*, 9 July 2018, p. 54866; and by the decree of the government of the German-speaking Community on 20 June 2018, *Belgian Official Gazette*, 24 August 2018, p. 66153.
- 14 For example, Resolution 3; "Reaffirmation and Implementation of International Humanitarian Law", adopted at the 30th International Conference of the Red Cross and Red Crescent, Geneva, 26–30 November 2007, preamble, para. 15, available at: www.icrc.org/en/doc/assets/files/other/icrc_002_1108.pdf; and for Resolution 1, "Bringing IHL Home: A Road Map for Better National Implementation of International Humanitarian Law", above note 12, preamble, para. 11.
- 15 Emphasis added. UN General Assembly, Resolution Adopted by the General Assembly on 20 December 2018, UN Doc. A/RES/73/204, 9 January 2019, preamble, recital 13 and para. 7, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/457/48/PDF/N1845748.pdf?OpenElement>; UN General Assembly, Resolution Adopted by the General Assembly on 15 December 2020, UN Doc. A/RES/75/138, 22 December 2020, preamble, recital 13 and para. 7, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/368/91/PDF/N2036891.pdf?OpenElement>.

humanitarian law applicable in armed conflicts and to prepare any development thereof”,¹⁶ through the support to the adoption of new treaties or policies to strengthen and complement the existing rules of IHL. The Statutes of the Movement also recognize the complementary role of National Societies and, in that sense, the need for coordination. More specifically, in agreement with National Societies, the ICRC “shall cooperate in matters of common concern, such as their preparation for action in times of armed conflict, respect for and development and ratification of the Geneva Conventions, and the dissemination of the Fundamental Principles of the Movement and international humanitarian law”.¹⁷ It is therefore emphasized that coordination and joint efforts are key elements to successfully assist States in the development of IHL. Due to their auxiliary role enabling a specific relationship with their authorities, National Societies can indeed provide concrete support to the ICRC’s efforts towards States, and thus through their own mobilization efforts.

The Movement can also rely upon the IFRC in IHL development, in line with its mandate to assist the ICRC in the promotion and development of IHL.¹⁸ As members of the IFRC, National Societies have the duty to provide the necessary support to this organization in the pursuit of its general object and functions that include the contribution to IHL development.¹⁹ This membership gives National Societies the opportunity to participate in a more direct manner to the debates on IHL development in international fora. As it is the official representative of National Societies at the international level due to its legal personality and when assisted by the National Societies’ expertise in IHL, the IFRC can make the National Societies’ voice heard and participate with them in a proactive way in discussions on IHL issues at the global level, as has been the case in some international conferences on the follow-up to treaties on weapons.²⁰

The National Society’s participation in the International Conference of the Red Cross and Red Crescent and in the Council of Delegates of the Movement

As already mentioned in the introductory section, National Societies can also contribute to IHL development as a member of the International Conference which constitutes the supreme deliberative body for the Movement.²¹ The latter gathers every four years the three components of the Movement and the States

16 Statutes of the International Red Cross and Red Crescent Movement, above note 2, Art. 5(2)(c) and (g).

17 *Ibid.*, Art. 5(4)(a).

18 *Ibid.*, Art. 6(4)(j); Constitution of the International Federation of the Red Cross and Red Crescent Societies, last amended and adopted by the 22nd Session of the General Assembly, Geneva, 5–7 December 2019, Art. 5(1)(B)(c), available at: www.ifrc.org/sites/default/files/2021-08/01_IFRC-Constitution-2019-EN.pdf.

19 *Ibid.*, Art. 8(1)(B)(e).

20 See the Conclusion of this article.

21 More detailed information on the role of the National Societies at the International Conference can be found in the following excellent article: Michael Meyer, “The Importance of the International Conference of the Red Cross and Red Crescent to National Societies: Fundamental in Theory and in Practice”, *International Review of the Red Cross*, Vol. 91, No. 876, 2009.

party to the Geneva Conventions to discuss, examine and decide upon humanitarian matters of common interest and any other related matter. These include IHL issues. Indeed, one of the main functions of the International Conference is to contribute “to the respect for and development of international humanitarian law and other international conventions of particular interest to the Movement”.²²

Unlike the diplomatic conferences involving States and international organizations on new treaties, National Societies enjoy a unique status in the International Conference allowing them to participate and discuss directly and on an equal footing with States on matters relating to the application and the development of IHL. This specific and privileged dialogue with States in this international forum illustrates the National Societies’ auxiliary role in IHL as the latter often assist their respective national authorities in the preparation of and the follow-up to the decisions adopted at the International Conferences, including on IHL commitments to be implemented. In recent years, the International Conference has focused on adopting substantial actions plans on IHL in order to strengthen the respect for existing rules as enshrined in the Geneva Conventions and their Additional Protocols and in Customary IHL. For instance, the 31st International Conference adopted in 2011 a “4-Year Action Plan for the Implementation of International Humanitarian Law” to encourage States, in cooperation with their National Societies and the ICRC, to adopt measures of national implementation and enforcement of international law relevant to access by civilians of humanitarian assistance, the protection afforded to certain categories of persons (in particular children, women and persons with disabilities), the protection of journalists, the repression of serious violations of IHL, and the transfers of weapons in compliance with IHL rules. It may be noted that the commitments in relation to responsible arms transfers were not limited to national implementation measures. They included the incorporation of IHL criteria into national laws or policies and into regional and global norms on arms transfers at a time when the Arms Trade Treaty had not yet been adopted.²³ The “road map for better national implementation of international humanitarian law”, adopted in 2019 at the 33rd International Conference, constitutes another example of a resolution encouraging States to analyse areas requiring further domestic implementation of IHL with the support of their National Societies, and to adopt the necessary legislative, administrative and practical measures for that purpose.²⁴

While the Council of Delegates of the International Red Cross and Red Crescent Movement is not explicitly assigned to contribute to the development of IHL according to the Statutes of the Movement, it also constitutes a forum where decisions on IHL are discussed and adopted with National Societies. The Council of Delegates has indeed a broad mandate on humanitarian issues that include

22 Statutes of the International Red Cross and Red Crescent Movement, above note 2, Art. 10(2).

23 Resolution 2, “4-Year Action Plan for the Implementation of International Humanitarian Law”, adopted at the 31st International Conference of the Red Cross and Red Crescent, Geneva, 28 November–1 December 2011, available at: https://rcrcconference.org/app/uploads/2019/03/R2_4-Year_Action_Plan_EN.pdf.

24 Resolution 1, “Bringing IHL Home: A Road Map for Better National Implementation of International Humanitarian Law”, above note 12.

IHL, as it is “the body where the representatives of all the components of the Movement meet to discuss matters which concern the Movement as a whole”.²⁵ For that purpose, the Council of Delegates shall give an opinion and where necessary take decisions on these matters.²⁶ Several Movement positions and calls upon States have been adopted in the past, and have engaged National Societies with their governments on a number of questions relating to IHL development. For example, in 1995, the Council of Delegates “invites National Societies to intensify contacts with their respective governments in order to obtain a total ban on anti-personnel landmines”.²⁷ In 1999, it “encourages all National Societies to support, particularly through contacts with their government, the adoption of international instruments implementing the principle of non-participation and non-recruitment of children below the age of 18 in armed conflicts with a view to such instruments being applicable to all situations of armed conflict and to all armed groups”.²⁸ In 2011 and 2013, the Council of Delegates appealed to States “to pursue in good faith and conclude with urgency and determination negotiations to prohibit the use of and completely eliminate nuclear weapons through a legally binding international agreement”.²⁹ Resolutions adopted in this regard constituted good incentives for National Societies to engage in a dialogue with their respective authorities and to urge them to take concrete steps leading to the negotiation of legally binding international agreements afterwards, i.e. the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction adopted in 1997, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict adopted in 2000 and the Treaty on the Prohibition of Nuclear Weapons adopted in 2017.

The impact of the domestic legal framework on the development of IHL at the international level

According to their above-mentioned mandate, National Societies usually assist their authorities to identify and take concrete national measures to implement IHL

25 Statutes of the International Red Cross and Red Crescent Movement, above note 2, Art. 12.

26 *Ibid.*, Art. 14(1).

27 Resolution 10, “Anti-Personnel Landmines”, adopted at the Council of Delegates, Geneva, 1–2 December 1995, para. 3.

28 Resolution 8, “Children Affected by Armed Conflict”, adopted at the Council of Delegates, Geneva, 29–30 October 1999, para. 4, available at: www.icrc.org/en/doc/resources/documents/resolution/council-delegates-resolution-8-1999.htm (emphasis in original). Resolution 8, “Peace, International Humanitarian Law and Human Rights”, adopted at the Council of Delegates, Seville, 25–27 November 1997, Section 1, para. 6, available at: www.icrc.org/en/doc/resources/documents/resolution/council-delegates-resolution-8-1997.htm had already asked National Societies of countries that had adopted the 18-year age limit for recruitment and participation “to encourage their respective governments to participate in and support the process of drafting an optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflicts”.

29 Resolution 1, “Working Towards the Elimination of Nuclear Weapons”, adopted at the Council of Delegates, Geneva, 26 November 2011, para. 3. This appeal was indirectly recalled in Resolution 1, “Working Towards the Elimination of Nuclear Weapons: Four-Year Action Plan”, adopted at the Council of Delegates, Sydney, Australia, 17–18 November 2013, para. 2b.

treaties ratified by the States. Indeed, becoming party to these conventions is not sufficient as such and implies additional efforts to incorporate their provisions into domestic law of the States Parties through new legislations or regulatory measures, or amendments to the existing legal framework. National implementation measures are necessary to ensure that the rules of IHL are fully respected when the State is involved in an armed conflict. However, if National Societies indirectly contribute to the development of domestic frameworks to implement existing IHL rules binding their States or even to go beyond obligations as specifically defined under existing IHL treaty law, they are also able to assist their authorities to develop national legislation that can potentially influence the adoption of new legally binding rules or policies at international level. This work can be carried out by the National Society through its bilateral and confidential dialogue with the relevant authorities (ministries and cabinets), in cooperation with parliamentarians and/or through the National IHL Committee. Two examples will be shared below from the Belgian Red Cross experience with its own authorities. Some lessons learned on the National Societies' role towards the parliamentarians and within the National IHL Committee will be highlighted.

The Belgian Red Cross support to its authorities at the national level for the development of IHL

Belgium has played a pioneer role in the development of IHL rules, notably in supporting the elaboration of treaties on weapons and in the repression of war crimes over the past years. Several initiatives were taken by Belgium, with the support of civil society and the National Society, which was able to share its IHL expertise to that end.

The first example is the leading role played by Belgium in the adoption of the Convention on Cluster Munitions in 2008. Belgium actively participated in the Oslo Process launched in February 2007 by Norway, to address the suffering of civilians resulting from the use of cluster munitions. States were invited to elaborate new rules for that purpose. Since the beginning, Belgium's position was based on three main requirements: the adoption of an international legal instrument which should be legally binding, ambitious, and effectively protect civilians.

This position was consolidated by the fact that Belgium was the first State to adopt in 2006 a domestic law prohibiting activities aiming to develop, repair, sell, transfer, transport, detain or carry cluster munitions.³⁰ During the parliamentary debates pertaining to this draft law, the Belgian Red Cross was invited to participate in a hearing session of the Belgian Senate (Commission of External

30 This prohibition was first incorporated in the Law of 18 May 2006, supplementing the Law of 3 January 1933 relating to the manufacture, trade, and bearing of weapons and to the trade of munitions, concerning the prohibition of cluster munitions, *Belgian Official Gazette*, 26 June 2006, p. 32229. This prohibition was then set out in the Law of 8 June 2006, regulating the economic and individual activities with weapons, *Belgian Official Gazette*, p. 29840, Art. 2, 4°. This law was amended by a Law of 20 March 2007 prohibiting the financing of the manufacture, the use or the possession of anti-personnel landmines and cluster munitions, *Belgian Official Gazette*, 26 April 2007, p. 22122 (see Art. 8(2) of the Law of 2006).

Relations and Defence) in 2005 to share its insights on the humanitarian consequences of the use of such weapons towards civilians and the challenges raised for the compliance with some IHL rules on conduct of hostilities in some circumstances due to their lack of accuracy and of reliability, more specifically the rules of distinction, proportionality and precaution, and the prohibition of indiscriminate attacks. It was also highlighted that self-destruction and self-neutralization mechanisms did not address the humanitarian consequences because of their high failure rate.³¹ This intervention contributed to convince the parliamentarians to adopt a law of prohibition to give an impetus in the stigmatization of these weapons in the hope that an international treaty would be adopted. It is relevant to note that this law was adopted at a time when the ICRC called States to take urgent measures to immediately put an end to the use of non-accurate and non-reliable cluster munitions, to prohibit the use of cluster munitions against military objectives in populated areas, to eliminate stockpiles of non-accurate and non-reliable cluster munitions and to elaborate a new IHL convention to address these weapons.³² This allowed the Belgian Red Cross, in consultation with the ICRC, to continue to support its authorities in the promotion of an international convention on cluster munitions that was finally adopted afterwards.

The second example relates to the integration of war crimes in the domestic legislation with the support of the National IHL Committee. According to the 2000 Royal Decree on the Belgian Interministerial Commission for Humanitarian Law (ICHL), the latter is considered as a permanent advisory body to the Federal Government whose mission consists of proposing national measures necessary for the implementation of IHL, following up on and coordinating these measures, and in preparing opinions and proposals concerning the application and further development of this body of law.³³ Therefore, the Belgian ICHL is the entity that

31 Belgian Senate, Draft Law supplementing the Law of 3 January 1933 relating to the manufacture, trade, and bearing of weapons and to the trade of munitions, regarding cluster bombs – Report made on behalf of the Commission of External Relations and Defence by Mr Lionel Vandenberghe, Documents Parlementaires, Session 2004–2005, No. 3-1152/3, 5 July 2005, pp. 3–4, section III, available at: www.senate.be/www/webdriver?MITabObj=pdf&MicolObj=pdf&MinamObj=pdfid&MItypeObj=application/pdf&MivalObj=50334315.

32 ICRC, “The Need for Urgent International Action on Cluster Munitions”, Statement by Philip Spoerri, Director of International Law and Cooperation within the Movement, ICRC, delivered at an ICRC Press Conference on 6 November 2006, available at: www.icrc.org/en/doc/resources/documents/statement/cluster-munition-statement-061106.htm.

33 Under the terms of Article 2 of the Royal Decree of 6 December 2000, relating to the Interministerial Commission for Humanitarian Law, *Belgian Official Gazette*, 12 December 2000, p. 41449, as reviewed by the Royal Decree of 22 June 2016 (*Belgian Official Gazette*, 19 August 2016, p. 52544):

The mission of the Interministerial Commission for Humanitarian Law ... is to:

1. identify and examine the national enforcement measures necessary for the implementation of the rules of international humanitarian law, inform the federal ministers concerned of them and submit proposals to them in this regard;
2. monitor and coordinate the national enforcement measures addressed in point 1;
3. as a permanent advisory body, assist the federal government, on its own initiative or on the request of the latter, with studies, reports, opinions and proposals concerning the application and development of international humanitarian law;
4. ensure the work of the Interdepartmental Commission for Humanitarian Law is carried on and its archives preserved;

prepares the text of draft laws in the area of IHL and submits them to the Federal Government. Indeed, the Commission made proposals that led to the law of 16 June 1993 on prosecuting grave breaches of the Geneva Conventions and Additional Protocols³⁴ (modified on 10 February 1999 and 23 April 2003), which was abrogated and replaced by the law of 5 August 2003 on grave breaches of IHL.³⁵ Since then, a Law of 5 May 2019 inserted three additional incriminations in the Belgian Criminal Code's Article 136 *quater* on war crimes on the initiative of the Belgian ICHL. These incriminations are the transposition of amendments to Article 8 of the Statute of the International Criminal Court on war crimes that were proposed by Belgium and adopted by the Assembly of States party to the Rome Statute on 14 December 2017. The amendments aimed to include among the list of war crimes perpetrated in international and non-international armed conflicts the following acts: employing weapons, which use microbial or other biological agents, or toxins; employing weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays; and employing blinding laser weapons.³⁶ The incrimination of such acts was justified by the fact that considering their nature, using such weapons is in contradiction of fundamental rules of IHL, especially the prohibition of using weapons of a nature to cause superfluous injury or unnecessary suffering, the principle of distinction and the prohibition of indiscriminate attacks. The Belgian Red Cross supported the amendments suggested by its authorities. As mentioned in the 2000 Royal Decree, the National Society is invited to take part in the ICHL's work.³⁷ Given its expertise in the IHL field, the Belgian Red Cross was consulted and able to contribute to the draft legislation from the legal perspective to elaborate the above-mentioned IHL arguments that could support the insertion of these additional war crimes in the Belgian Criminal Code. It is expected that this incorporation in the Belgian domestic law will encourage other States party to the

5. act as a national advisory committee for the protection of cultural property, under the terms of Resolution II of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 14 May 1954.

For more detailed information on the Belgian ICHL, see Frédéric Casier and Alix Janssens, "Belgium's Interministerial Commission for Humanitarian Law: Playing A Key Role in the Implementation and Promotion of IHL", *International Review of the Red Cross*, Vol. 96, No. 895/896, 2015.

- 34 Law of 16 June 1993 on prosecuting grave breaches of international humanitarian law, *Belgian Official Gazette*, 5 August 1993, p. 17751.
- 35 Draft amendments abrogating the law of 16 June 1993 on prosecuting grave breaches of international humanitarian law and transferring its provisions to the Criminal Code and the Code of Criminal Procedure. These texts led to the law of 5 August 2003 on grave breaches of international humanitarian law, *Belgian Official Gazette*, 7 August 2003, p. 40506.
- 36 Resolution on amendments to Article 8 of the Rome Statute of the International Criminal Court, ICC-ASP/16/Res.4, adopted by consensus by the Sixteenth Session of the Assembly of States Parties, New York, 4–14 December 2017. The resolution provides the insertion of new Articles 8-2-b)xxvii) and 8-2-e)xxvi), new Articles 8-2-b)xxviii) and 8-2-e)xxvii) and new Articles 8-2-b)xxix) and 8-2-e)xxviii) in the Rome Statute of the International Criminal Court, UN Doc. A/CONF.183/9, 17 July 1998 (entered into force 1 July 2002), available at: https://asp.icc-cpi.int/sites/asp/files/asp_docs/Resolutions/ASP16/ICC-ASP-16-Res4-ENG.pdf.
- 37 Royal Decree of 6 December 2000, above note 33, p. 41449, Art. 4(2).

Rome Statute to ratify and implement these amendments in their respective national legal frameworks in the future.

The National Societies' expertise in IHL and specific position

The above-mentioned experiences in Belgium highlight the relevant role that National Societies can play in cooperation with their authorities in the national implementation of IHL and thus by consequence their potential influence on the development of IHL at the international level.

It is not indeed precluded that National Societies may directly or indirectly support their national authorities in proposing initiatives to develop additional rules to strengthen the existing IHL framework at the international level. When a State considers it is necessary to adopt additional domestic legislative measures to address eventual gaps on the basis of existing IHL rules, these measures can sometimes contribute to influence the national practice of other States and eventually the international legal framework for a better protection of the victims of armed conflicts. The National Society may be contacted by its authorities to clarify the interpretation of the applicable rules of IHL and present its views on the compatibility of the draft legislation with the latter, or it may have the opportunity to proactively advise them on such matters considering its auxiliary role in the IHL field and the specific relationship and permanent dialogue thereof. A bilateral consultation between the National Society and the ICRC may be welcome if any additional legal support is necessary and/or if the National Society is requested to share its official position on the suggested initiative for the sake of coherence in the Movement's approach. This was, for instance, the case when the Belgian Red Cross was asked to give its position on the draft law prohibiting the cluster munitions at the Federal Parliament in 2005 considering that, at that time, the Oslo process had not yet been launched and the ICRC's position was nuanced on this question by expressing its concerns on the compatibility of the use of such weapons with the existing IHL rules in certain contexts. A consultation between the ICRC and the Belgian Red Cross was helpful to avoid any discrepancies within the Movement's position publicly shared at international and national levels.

The National Societies are key players in the IHL field in their respective countries and have the opportunity to bring their expertise on the draft legislations to relevant fora, including National IHL Committees which have the mandate to advise and assist national authorities in implementing, developing and disseminating knowledge of IHL.³⁸ According to the constitutive legal bases in their respective countries, National IHL Committees usually gather representatives of the different ministries involved in IHL implementation, but also other experts, as well as representatives of the National Society, as they possess valuable knowledge and experience in IHL. National Societies can exercise different functions within National IHL Committees from one country to

38 This role has been explicitly acknowledged by Resolution 1; "Bringing IHL Home: A Road Map for Better National Implementation of International Humanitarian Law", above note 12, para. 5.

another, whether in a charring capacity or in providing a secretariat function for the committee, and/or providing advice on IHL issues such as commenting on draft legislation.³⁹

Other channels of communication with the authorities can be used such as confidential and bilateral dialogue with the representatives of relevant ministries (e.g. Ministries of Foreign Affairs, Defence or Justice). Also, with regards to the parliament, a National Society can participate as an expert in hearing sessions and/or maintain a dialogue with some key parliamentarians or with the chairs of relevant commissions (e.g. Defence or External Relations). The National Society's position and recommendations can bring added value to parliamentary debates on draft legislation, as it will contribute from an IHL perspective and with a neutral approach, which is a specificity that is often appreciated by parliamentarians and other policy makers, especially if the draft legislation is subject to tense political debates.

Last but not least, if a State can share its domestic legislation on IHL as good practice with other States to encourage them to adopt similar national measures and potentially develop new international treaties or policies, such initiatives can also be disseminated among National Societies to inspire each other in their humanitarian diplomacy work with their respective national authorities. This can be done, for example, in a bilateral way between National Societies or through the existing regional networks of National Societies' legal advisers within the Movement. Considering the worldwide nature of the Movement and the National Societies "form the basic units and constitute a vital force of the Movement" and carry out their humanitarian activities "in pursuance of the mission of the Movement" at the national level,⁴⁰ sharing examples of IHL domestic legislation between the components of the Movement can also encourage numerous States in the development of IHL.

The National Society's humanitarian diplomacy work at the national level in complementarity with the ICRC approach at the international level

In parallel with their contribution in strengthening the domestic legal framework that can indirectly inspire the development of new international treaties or policies in IHL, National Societies can effectively support their authorities through their specific relationship based on their auxiliary role in IHL, helping the States to play a proactive role in the discussions held in international fora aiming to further develop legal and policy frameworks at the international level on the basis of existing rules of IHL. The difference from the previous approach is the fact that the National Society will take the initiative to contact its

39 ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success – Towards Respecting and Implementing International Humanitarian Law*, Geneva, 2018, pp. 33–4, available at: www.icrc.org/en/document/national-committees-and-similar-entities-international-humanitarian-law-guidelines-success.

40 Statutes of the International Red Cross and Red Crescent Movement, above note 2, Art. 3(1).

authorities because there are some key messages to be disseminated in advance of international meetings where legal or policy frameworks are to be discussed, usually upon the request of the ICRC which actively follows and contributes to the discussions at the international level.

This support can be provided through different approaches, such as: the bilateral and confidential dialogue carried out by National Societies with their authorities or their participation in domestic fora, including the National IHL Committee; the National Societies' participation in the elaboration of the Movement's strategies and policies adopted at the Statutory Meetings (e.g. International Conferences of the Red Cross and Red Crescent and the Council of Delegates); and the joint or coordinated approaches taken by National Societies at the regional level. In recent years the Belgian Red Cross has aimed to adopt a proactive approach towards the Belgian authorities in the framework of international meetings dealing with IHL issues and challenges, through these different fora. The humanitarian diplomacy work conducted by National Societies towards their authorities in their national contexts can substantially support the ICRC approach towards States, especially in the preparation of international conferences. The interlinkage between the national and international levels can indeed entail multiplier effects in the development of IHL.

Ongoing dialogue with relevant ministries

In Belgium, the authorities usually maintain a constructive and open dialogue with civil society and humanitarian organizations on humanitarian issues that are internationally discussed. Due to its specific mandate in IHL, the Belgian Red Cross is part of this dialogue through different channels of communication and regularly takes the initiative for meetings with its authorities.

The Belgian Red Cross maintains a regular dialogue with several ministries, especially the Belgian Ministry of Foreign Affairs, which is a key actor considering its main mission to develop Belgium's foreign policy at the international level by promoting fundamental values and human rights and strengthening the international legal order to contribute to worldwide peace and security.⁴¹ It is therefore a key ministerial department to be reached, as it coordinates Belgium's position on public international law, including IHL issues, at the global level. Information and respective positions are exchanged between the authorities and the National Society (especially by sharing briefing notes and position papers) in preparation of and follow-up to international meetings in relation to IHL, such as meetings of States party to treaties on weapons, including the 1997 Convention on the Prohibition of Anti-Personnel Mines and the 2008 Convention on Cluster Munitions. Discussions can also be held on IHL issues where there could be some different views between the National Society and its authorities, such as the

41 See the missions and goals of the Belgian Ministry of Foreign Affairs, in its Administrative Agreement (Contract of Administration) on its functioning in 2016–2018, Part 2, available at: <https://diplomatie.belgium.be/en/about-us/mission-and-goals>.

question of nuclear weapons. If Belgium's commitment to a world without nuclear weapons and the recognition of the catastrophic humanitarian consequences of the use of such weapons are shared with the Belgian Red Cross position, the way to reach this objective is different in some aspects. This does not hamper the National Society in expressing its views in a constructive and open dialogue with its authorities as an independent humanitarian organization, to continue to share the Movement's position, and to work on the elements of convergence as the support to the promotion and adoption of concrete risk reduction measures in order to prevent the humanitarian consequences resulting from the increasing risk of intentional or incidental use of nuclear weapons, in accordance with the Action Plan of the 2010 Review Conference of the States party to the 1968 Treaty on the Non-Proliferation of Nuclear Weapons.⁴²

This main channel of communication is usually reinforced at key moments where Belgium can play a particular influential role at the regional and/or global level. For example, the Belgian Red Cross took an active part in the dialogue of the Ministry of Foreign Affairs with civil society at the time that Belgium fulfilled its mandate as a non-permanent member of the UN Security Council in 2019–2020. The Belgian Red Cross aimed to support by providing legal expertise and views on specific themes to assist the Belgian authorities in the debates around several draft resolutions that covered IHL issues such as the protection of healthcare in situations of armed conflict,⁴³ effective humanitarian access in the context of the COVID pandemic and the protection and respect of humanitarian actors in compliance with the existing rules of IHL, the reaffirmation to maintain a language that ensures the compliance of counterterrorism measures with existing IHL obligations, including rules governing humanitarian activities such as the entitlement of impartial humanitarian organizations to offer their services and the obligation to allow and facilitate humanitarian activities,⁴⁴ and the protection of civilians in war in cities.

Furthermore, when Belgium was chairing the 2021 Group of Governmental Experts on Lethal Autonomous Weapons Systems (GGE LAWS) in the framework of the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons (CCW),⁴⁵ the Belgian Red Cross proactively shared

42 The National Society's support of the adoption of risk reduction measures is in line with the Movement's "Action Plan on the Non-use, Prohibition and Elimination of Nuclear Weapons 2018–2021" adopted by the Council of Delegates through its Resolution 4 on 11 November 2017 in Antalya, Turkey, available at: https://rcrcconference.org/app/uploads/2017/08/CD-17-R4_clean.pdf; and its "2022–2027 Action Plan on the Non-Use, Prohibition and Elimination of Nuclear Weapons" adopted by the Council of Delegates through its Resolution 7 on 23 June 2022 in Geneva, available at: https://rcrcconference.org/app/uploads/2022/06/CD22-R07-Nuclear-weapons_22-June-2022_EN_FINAL.pdf.

43 Especially the implementation of Resolution 2286 (2016) on "Protection of Civilians in Armed Conflict" adopted by the UN Security Council, UN Doc. S/RES/2286 (2016), 3 May 2016, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/125/06/PDF/N1612506.pdf?OpenElement>.

44 See the example of Resolution 2462 (2019) on "Threats to International Peace and Security Caused by Terrorist Acts: Preventing and Combating the Financing of Terrorism" adopted by the UN Security Council, UN Doc. S/RES/2462 (2019), 28 March 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/090/16/PDF/N1909016.pdf?OpenElement>.

45 High Contracting Parties to the Convention on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW), Technical Decisions by the High Contracting Parties to the Convention on

comments and recommendations based on the ICRC's new position on autonomous weapons systems published on 12 May 2021.⁴⁶ The GGE LAWS was indeed mandated by the High Contracting Parties to the CCW in 2019, to explore possible recommendations in relation to the clarification, consideration and development of aspects of the normative and operational framework on LAWS to be proposed at the Sixth CCW Review Conference that was held on 13–17 December 2021.⁴⁷ More specifically, the Belgian Red Cross recommended the adoption of new legally binding rules that could address the humanitarian, ethical and IHL concerns expressed by the ICRC. It promoted articulating commitments by CCW High Contracting Parties to prohibit certain types of autonomous weapons (unpredictable autonomous weapons and anti-personnel autonomous weapons) and regulating all others with a view to ensuring sufficient human control over critical functions (selecting and applying force to targets). The recommendations were welcomed and carefully considered by the Ministry of Foreign Affairs in the same way as the other suggestions received by the Chair. They were reflected in papers put forward by the Chair, to the extent they were supported by States and other stakeholders. The excellent cooperation and regular consultation between the ICRC and the Belgian Red Cross enabled the mutual support of their respective efforts in promoting the recommendations.

Other national fora of humanitarian diplomacy

There are other national fora where the National Society can disseminate the ICRC and/or the Movement's position on developing new IHL legal or policy frameworks at the international level. These fora are the same as those mentioned in the previous part for the development of domestic legislation: the Parliament and the National IHL Committee. They can also be used in complementarity with the bilateral dialogue conducted with the Ministry of Foreign Affairs as strong leverages to influence the government's position in its international discussions on IHL matters.

Through the adoption of resolutions, the parliament can call upon the government to support any measure or initiative at the international level that aims to develop IHL legal and policy frameworks. In Belgium, the Federal Parliament pays attention to the pioneer role that Belgium can play in the respect and development of IHL. For example, in January 2021, the Belgian Red Cross participated in a hearing session organized by the National Defence Commission of the Belgian Federal Parliament (Chamber of Representatives) in relation to the

Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects on the Work Related to the Convention for 2021, UN Doc. No. CCW/2020/1, 3 May 2021, para. 7, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/100/85/PDF/G2110085.pdf?OpenElement>.

46 ICRC, "Position on Autonomous Weapons Systems", 12 May 2021, available at: www.icrc.org/en/document/icrc-position-autonomous-weapon-systems.

47 Meeting of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Geneva, 13–15 November 2019, Agenda Item 15, Final Report, UN Doc. No. CCW/MSP/2019/9, 13 December 2019, para. 31, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/343/64/PDF/G1934364.pdf?OpenElement>.

topic of the use of explosive weapons in populated areas (EWIPA). This hearing session was held in relation to the debates on a pending national draft resolution on the protection of civilians against the use of EWIPA. The draft resolution aimed to call on the Federal Government to actively participate in the diplomatic consultation process led by the Republic of Ireland since 2019 and to ask for suggesting clear and detailed elements of language for a strong and meaningful Political Declaration on EWIPA at the international level.⁴⁸ Complementing the interventions by other experts from Humanity & Inclusion and from the Ministry of Defence, the Belgian Red Cross focused on the relevant IHL rules and the Movement's concerns on the interpretation and application of these rules when using such weapons in populated areas. It shared its position and recommendations, including the promotion of an avoidance policy, the commitment to consider reverberating effects in military operations and the necessary assistance to be provided to the victims. The final draft resolution was adopted in a plenary session by the Federal Parliament on 6 May 2021 and reflects the main recommendations supported by the Belgian Red Cross.⁴⁹ It is an important decision to which the National Society has regularly referred in its dialogue with its national authorities to encourage Belgium to support ambitious commitments in the Political Declaration which was agreed at the final round of international negotiations on 17 June 2022.⁵⁰

With the support of the National Society, the National IHL Committee can also advise significantly State authorities in international discussions on the development of IHL legal and policy frameworks. For instance, in Belgium, the ICHL, as a permanent advisory body of the Federal Government to assist in the development of IHL,⁵¹ supports Belgium's role in the protection of cultural property at the international level. The ICHL is recognized as the national advisory committee for the protection of cultural property under the terms of Resolution II of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 14 May 1954, as confirmed by the Royal Decree relating to the ICHL revised in 2016.⁵² Following the ratification of the Second Protocol to the Hague Convention of 26

48 For more information on the diplomatic process on a political declaration to address the humanitarian harm arising from the use of EWIPA, see the Irish Department of Foreign Affairs, "Protecting Civilians in Urban Warfare: A Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas", available at: www.dfa.ie/our-role-policies/international-priorities/peace-and-security/ewipa-consultations/.

49 Chamber of Representatives, Belgian Federal Parliament, Resolution pertaining to the protection of civilians against the use of explosive weapons with wide-area effects in populated areas, Documents Parlementaires, Session 2019–2020, No. 55 1222/007, 6 May 2021, available at: www.lachambre.be/FLWB/PDF/55/1222/55K1222007.pdf.

50 Irish Department of Foreign Affairs, "Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences Arising from the Use of Explosive Weapons in Populated Areas", 25 May 2022, available at: www.dfa.ie/media/dfa/ourrolepolicies/peaceandsecurity/ewipa/EWIPA-Political-Declaration-Final-Rev-25052022.pdf.

51 Royal Decree of 6 December 2000, above note 33, p. 41449, Art. 4(3).

52 Resolutions of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954, Resolution II, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6FA17D44AABA6394C12563CD0051D062>; Royal Decree of 6 December 2000, above note 33, p. 41449, Art. 2, 5°.

March 1999 and its entry into force for Belgium in January 2011, the scope of the mission of the internal working group of the ICHL in charge of the protection of cultural property was expanded. Its aims are: to implement the obligations provided by The Hague Convention and its two Protocols at the national level, and to provide input, on behalf of Belgium, to international meetings pertaining to the promotion and implementation of these conventions as the meetings of States party to these conventions and the meetings of the Committee for the Protection of Cultural Property in the Event of Armed Conflict.⁵³ For that purpose, the working group of the ICHL comprised of all the relevant authorities and associations/organizations in Belgium, including the Belgian Red Cross, regularly assists Belgium in the preparation of international meetings, especially aiming to strengthen the existing rules of IHL protecting cultural property. During Belgium's membership of the Committee for the Protection of Cultural Property in 2011–2015, the ICHL played a substantial role to propose, on behalf of Belgium, the creation of a specific distinctive emblem to identify cultural property under enhanced protection and its modalities of use. This emblem was adopted at the 6th Meeting of States party to the 1999 Second Protocol to the Hague Convention through amendments to the Guidelines for the implementation of this treaty.⁵⁴ It is expected that the use of the emblem will contribute to the effective protection of cultural heritage of the greatest importance for humanity as provided by the Second Protocol to the Hague Convention. The Belgian Red Cross is still regularly consulted within the working group of the ICHL at the Belgian level on other issues in relation to the protection of cultural property under the IHL perspective, such as the discussions currently held in the *ad hoc* Sub-Committee established by the Committee for the Protection of Cultural Property to clarify its supervision and monitoring functions as provided by Article 27 of the Second Protocol to the Hague Convention, including proposed amendments to the above-mentioned Guidelines on a monitoring and supervision mechanism to improve the protection of cultural property.⁵⁵

53 The mandate of this Committee is provided in the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 26 March 1999, UNTS 2253 (entered into force 9 March 2004), Art. 27.

54 UN Educational, Scientific and Cultural Organization, "Guidelines for the Implementation of the 1999 Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict", Paris, 16 December 2021, especially paras 97–116 and Annex IV, available at: https://en.unesco.org/sites/default/files/1999-secondprotocol_guidelines_2021_eng.pdf. "The present version reflects the amendments endorsed by the 9th Meeting of the Parties to the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (Paris, 2021)."

55 UN Educational, Scientific and Cultural Organization, Committee for the Protection of Cultural Property in the Event of Armed Conflict, "Monitoring and Supervision Mechanism for the Implementation of the 1999 Second Protocol", Paris, 10–11 December 2020, Decision No. C54/20/15.COM/14, para. 7, available at: <https://unesdoc.unesco.org/ark:/48223/pf0000375412>.

The Movement as a supportive network to the National Society's humanitarian diplomacy work

In order to increase the impact of its humanitarian diplomacy work towards its authorities on IHL development, support from other components of the Movement is fundamental. The ICRC's IHL expertise and knowledge of the international context, including the identification of areas where IHL legal or policy framework could be developed in the light of the challenges of application and interpretation of existing rules of IHL in contemporary armed conflicts and the main views of the different groups of States on the issues that are being discussed in international fora, are very helpful for a National Society. The Belgian Red Cross has experienced several opportunities where it could rely upon the availability and assistance of the ICRC in its approach with the Belgian authorities. On the other hand, the National Societies' analysis on their national contexts constitutes an interesting indication for the ICRC on how their recommendations could be considered by the States, including in regional contexts. Therefore, the Movement has a real interest to coordinate efforts at national and international levels to increase its impact towards the States.

Beyond ICRC assistance for specific IHL issues upon its request, the National Society can build its humanitarian diplomacy strategy upon the policies and action plans that are adopted by components of the Movement at the Council of Delegates, which usually represents a key milestone to the next International Conference and upon the resolutions adopted at this meeting with the States party to the Geneva Conventions. These resolutions are humanitarian diplomacy instruments that can help to identify the priorities of the National Society at the national level and the actions that could be carried out towards the authorities on IHL issues in the next years considering the specific national context.⁵⁶ Indeed, they have helped the Belgian Red Cross in the elaboration of its own IHL action plan. It is important to highlight that there is an increasing consultation with National Societies on the draft resolutions so their main concerns and the exchanges with their authorities can be better considered, and they can take ownership of these resolutions by developing concrete action points at the national level.

For the last few years, the role of the Movement's informal networks has also become significant for the humanitarian diplomacy work of the National Societies and for the ICRC. These networks constitute important fora for exchange of information, consultation and cooperation on IHL issues. The authors notice an increasing participation of National Societies in several

56 For example: the Movement's "Action Plan on the Non-use, Prohibition and Elimination of Nuclear Weapons 2018–2021", above note 42; the Movement's "2022–2027 Action Plan on the Non-Use, Prohibition and Elimination of Nuclear Weapons", above note 42; and "2022–2027 Movement Action Plan to Prevent and Respond to the Humanitarian Impacts of War in Cities", adopted at the Council of Delegates through Resolution 6 in Geneva on 22–23 June 2022, available at: https://rcrcconference.org/app/uploads/2022/06/CD22-R06-War-in-cities_22-June-2022_FINAL_EN.pdf.

initiatives proposed by the ICRC for developing and/or strengthening the legal and policy frameworks of IHL.

These networks can be established on a specific topic as is the case of the Movement Support Group comprised of National Societies, the ICRC and the IFRC and as established in accordance with Resolution 4 of the 2017 Council of Delegates on the Movement's action plan on nuclear weapons 2018–2021 to support and guide implementation of this action plan. This group proposed several initiatives to be implemented to support the ratification of the 2017 Treaty on the Prohibition of Nuclear Weapons and on the adoption of risk reduction measures in the framework of the implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, including a briefing note on this topic to better inform National Societies on these measures and to encourage them to engage with their authorities.

These informal networks can also have a geographic dimension as the regional legal networks of National Societies' legal advisers. The European Legal Support Group (ELSG) that gathers the National Societies' legal advisers from European countries has developed several coordinated actions towards their respective authorities with the support of the ICRC and the IFRC which are observers in this network. For example, in the preparation, during and after the International Conferences of the Red Cross and Red Crescent where often one or more resolutions on IHL issues are adopted, National Societies can play a constructive role to support the adoption of and follow-up to these resolutions. At the 32nd International Conference in 2019, the ELSG took the initiative to take the floor at the Drafting Committee to defend the essence of several resolutions by delivering statements on behalf of a group of National Societies including on Resolution 1 "Bringing IHL Home". Additionally, in consultation with the ICRC, National Societies coordinated between them and proposed several solutions to address the remarks of States. Furthermore, the adoption of pledges by National Societies jointly with their respective authorities can also be a good starting basis for coordinated actions at the regional level on IHL matters. In 2012, the ELSG launched a standard letter to be adapted by each National Society to its own context and to be addressed to its authorities. The standard letter aimed to invite the authorities to support the adoption of a strong and robust Arms Trade Treaty with the highest possible legally binding standards which would prevent conventional weapons from being used to violate IHL. This initiative was actually based on a pledge jointly adopted by the European Union (EU) Member States and their National Societies at the 31st International Conference of the Red Cross and Red Crescent (2011). This kind of initiative can potentially influence the position of the States to develop strong IHL treaties as they may carefully consider the recommendations made by the National Society if they know that a similar approach has been launched in other countries.⁵⁷

57 Considering the success of such pledges and the wish of the ELSG members to continue coordinated actions at the European level, other similar pledges were adopted afterwards. A pledge entitled

Conclusion: Increasing the Movement's collective impact

The Belgian Red Cross experience in IHL development illustrates that National Societies can potentially contribute domestically to this field thanks to their auxiliary role in IHL that entails a specific relationship with their respective authorities. Their mission is complementary to ICRC's one, which consists of disseminating, ensuring respect for and preparing the development of IHL. Cooperation and coordination between the ICRC and National Societies, as provided by the Statutes of the Movement, are more relevant than ever in the current international context where the overview of States' positions on IHL issues is more complex and the National Societies are more involved in the preparation of their authorities for international conferences on IHL matters. Stronger cooperation and coordination may outline the benefits of the respective roles of the ICRC and National Societies in IHL development.

The benefits of a stronger coordinated approach

National Societies have valuable knowledge on the national context, including the debates on IHL matters within the relevant bodies such as the government, parliament and National IHL Committee and the existing domestic legal framework. They can reach out to the relevant authorities to enquire and analyse their States' positions on IHL issues and their rationale. They can also help their authorities to clarify some aspects linked to the ICRC's positions on IHL matters. This knowledge can therefore help the ICRC to better identify IHL topics which are particularly sensitive and those where strong positions can be expected to further develop new IHL legal and policy frameworks if relevant. In this case, National Societies are key actors to elaborate in consultation with the ICRC, additional information papers, commitments to be proposed to States and some elements of language that could be suitable for different national contexts.

On the other hand, the ICRC's experience as observer and expert in IHL in international and regional fora where treaties and policies are discussed, its valuable knowledge on the latest developments of international diplomatic processes and on the main key issues, and its comprehensive overview of the different States' positions and those which can play a key role are very helpful for the National Societies' advocacy work with their authorities. The ICRC's analysis shared with National Societies gives a comprehensive view on the issues at stake and helps to identify the areas where National Societies can still move forward on possible commitments to be suggested at international meetings. Indeed, the international context and the positions of other States in international and regional

"Strengthening Compliance with International Humanitarian Law (IHL) Through its Promotion, Dissemination and Implementation" was jointly adopted by the EU, the EU Member States and their National Societies at the 33rd International Conference of the Red Cross and Red Crescent, Geneva, 9–12 December 2019, available at: <https://rcrcconference.org/pledge/strengthening-compliance-with-international-humanitarian-law-ihl-through-its-promotion-dissemination-and-implementation/>.

organizations broadly influence each country that usually coordinates its position with its regional partners.

These complementary approaches and expertise require more consideration of the interlinkage between the national and international levels. This would aim to consolidate a coherent Movement position in IHL development at the global level. Stronger coordination and cooperation through a continued dialogue between the ICRC and National Societies can ensure that common key messages, comments and recommendations on draft treaties or policies are well understood and disseminated in an accurate way to the States and consolidate the multiplier effects of their respective advocacy works and the credibility of the Movement's position.

Showcasing good practice

Three avenues can be further explored to increase the cooperation and coordination between the ICRC and National Societies. These suggestions are actually based on existing practice experienced by the Belgian Red Cross.

An ongoing dialogue between the ICRC and the National Societies on respective progress made with the authorities in the capitals, and towards the permanent missions of States to the main international organizations is key to ensure a coordinated and cohesive position of the Movement on IHL development. This dialogue could be intensified especially at key moments in the lead up to relevant international conferences or in the consultation process aiming to develop and adopt new IHL legal or policy frameworks. Divergent and convergent views on IHL issues between the concerned States and the Movement's position can be clarified to identify areas where some progress can still be made with the authorities. Communication can be facilitated through exchanges between the National Society and the ICRC to better identify IHL priority topics for humanitarian diplomacy work and possible actions to be carried out jointly or in a coordinated manner.

The development or use of informal networks within the Movement, such as the regional networks of National Societies' legal advisers or thematic consultative groups, can be relevant for exchanging experiences and good practice in humanitarian diplomacy and for initiating coordinated or joint initiatives. These groups aim to address the main concerns and challenges faced by the ICRC at the international level and by National Societies at the national level but also in similar regional contexts, through developing joint or coordinated strategies or actions at key moments (e.g. joint/standard letters, briefing notes, key messages or reactive lines) through the sharing and pooling of respective expertise and resources. These initiatives are opportunities to increase mutual support and the impact of the National Societies' work in their respective national contexts, especially in States whose position could be broadly influenced by the policies of other States members in the same regional organizations.

Even if National Societies have no international legal personality, such as the ICRC, they can still play a proactive role in supporting the recommendations

made by the ICRC during international conferences aiming to adopt new IHL legal or policy frameworks. The National Societies are members of the International Conferences of the Red Cross and the Red Crescent and have an equal right to participate in the elaboration of the resolutions on IHL, including in the Drafting Committee. Coordination with the ICRC before and during the International Conferences has, according to the authors, been improved through informal exchanges, consultation and briefings, not only during the consultation process, but also at the International Conferences. This has contributed to an increase in the cohesive approach of the Movement towards States and the visibility of National Societies. At other relevant international fora on IHL issues that allow the participation of international organizations, the National Societies could also be better represented alongside the ICRC, by participating in the delegation of the IFRC. This practice has increased during the past years including in the review conferences of some treaties on weapons,⁵⁸ and can be strengthened in the future so that National Societies can continue to actively support the Movement's voice in IHL development.

58 For example, the IFRC is directly or indirectly allowed to participate in the Review Conferences on the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, adopted on 18 September 1997 (according to Article 12 (3)) and on the Convention on Cluster Munitions, adopted on 30 May 2008 (according to Article 12 (3)).