

# The law and legal considerations

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# THE LAW AND LEGAL CONSIDERATIONS

In accordance with its mandate, the ICRC continued to monitor respect for and full implementation of international humanitarian law and to work to promote and develop that body of law in the year under review.

Although international humanitarian law requires further adaptation and development, it remains one of the most complete branches of international law. The ICRC's primary concern in 1990 was therefore to ensure acceptance of and respect for all its provisions by all parties concerned.

Alongside its field operations, the ICRC pursued the following objectives:

- to promote the treaties of humanitarian law, particularly the Additional Protocols of 1977, in order to bring about their acceptance throughout the world;
- to persuade States to enact domestic legislation or adopt practical measures to implement international humanitarian law and ensure its application;
- to foster greater knowledge and understanding of international humanitarian law through teaching and dissemination;
- and to contribute to its development in order to remedy any omissions and adapt it to new requirements.

## Promotion of the Conventions and Protocols

### Ratifications and accessions

In 1990, the following States became party to the Protocols:<sup>1</sup> Barbados, Canada, Czechoslovakia, Paraguay, Romania, Ukrainian SSR and Yemen.

The President of the ICRC regularly broached the subject of ratification of the Protocols, both in discussions with visitors to Geneva and during his own visits elsewhere. The ICRC also often approached the authorities of the countries in which it has a delegation and its legal adviser responsible for the matter in Geneva continued to encourage those States not yet party to the Protocols to ratify or accede to them.

### International Fact-Finding Commission

On 20 November 1990, the optional declaration provided for by Article 90 of Additional Protocol I of 1977 was made by the twentieth State<sup>2</sup> recognizing the competence of the International Fact-Finding Commission. With this declaration, the conditions for establishment of the Commission have been fulfilled.

The Commission will be competent to enquire into any facts alleged to be a grave breach as defined in the Geneva Conventions and Protocol I or other serious violation of the Conventions or that Protocol, and to facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and Protocol I.

As the depositary State for the Geneva Conventions, Switzerland has the task of convening a meeting of representatives of the States that have made this declara-

<sup>1</sup> The complete list of States party to the Geneva Conventions of 1949 and their Additional Protocols of 1977 appears at the end of this Report.

<sup>2</sup> The 20 States that have now recognized the Commission under Article 90 are Algeria, Austria, Belgium, Byelorussian SSR, Canada, Denmark, Finland, Iceland, Italy, Liechtenstein, Malta, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, Ukrainian SSR, Uruguay and USSR.

tion, for the purpose of electing, by secret ballot, the fifteen members of the Commission. Those members, who must possess the necessary qualifications and be of high moral standing and acknowledged impartiality, will serve in their personal capacity.

### **Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons**

The year under review marked the 10th anniversary of 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. This Convention, with its three Protocols, prohibits weapons whose primary purpose is to cause injury by non-detectable fragments (Protocol I) and restricts the use of mines, booby-traps and other devices (Protocol II) and of incendiary weapons (Protocol III). These texts contain detailed provisions relating to specific weapons and thus serve as an elaboration of the general rules, set forth in Protocol I additional to the Geneva Conventions, which prohibit weapons and methods of warfare of a nature to cause superfluous injury or unnecessary suffering or to have indiscriminate effects. The 1980 Convention restates the principle reaffirmed by Additional Protocol I that the right of the parties to a conflict to choose methods or means of warfare is not unlimited.

The ICRC addressed the forty-fifth session of the United Nations General Assembly to stress the Convention's importance in terms of international humanitarian law and to appeal to those States which had not yet done so to become party to it.<sup>3</sup>

Attention was also drawn to this Convention during activities to promote knowledge of international humanitarian law.

## **Respect for international humanitarian law**

### **Implementation measures at the national level**

Resolution V of the 25th International Conference of the Red Cross (Geneva, 1986) asked the ICRC to gather and assess information on legislation and other measures, either already taken or being considered, to implement international humanitarian law.

The ICRC continued to urge the States party to the Geneva Conventions and the National Red Cross and Red Crescent Societies to take the necessary measures and to provide it with all relevant information. To this end the ICRC, together with the International Institute of Humanitarian Law and the Bulgarian Red Cross, held a regional seminar in Sofia from 20 to 22 September. This seminar — the first of its kind — was attended by over 50 representatives of governments, academic circles and the Red Cross from 11 European countries. The ICRC presented the results of its efforts hitherto and exchanged views with the experts present as to the future course of action to be adopted. The seminar, which the participants found very productive, will be repeated in other regions.

### **Consultation of experts**

As it has done since 1984, the ICRC once again benefited from the advice of out-

<sup>3</sup> As at 31 December 1990, the following States had ratified (or acceded to) the Convention: Australia, Austria, Benin, Bulgaria, Byelorussian SSR, China, Cuba, Cyprus, Czechoslovakia, Denmark, Ecuador, Finland, France (the first two Protocols), German Democratic Republic, Guatemala, Hungary, India, Japan, Laos, Liechtenstein, Mexico, Mongolia, Netherlands, Norway, Pakistan, Poland, Sweden, Switzerland, Tunisia, Ukrainian SSR, USSR and Yugoslavia.

side experts, of various nationalities, who have agreed to take part in the institution's deliberations in a personal capacity and who meet twice a year in Geneva in a working group. In 1990, they met on 14, 15 and 16 May, and on 26, 27 and 28 November.

## Development of international humanitarian law

In its Resolution III, the 25th International Conference of the Red Cross asked the ICRC to continue its work to improve identification of medical transports and to keep it informed of developments.

In accordance with this request, and pursuant to Article 98 of Additional Protocol I, the ICRC continued to work on revision of the Protocol's Annex I (Regulations Concerning Identification) and convened a meeting of technical experts in Geneva on 20-24 August 1990, attended by over 110 experts and government observers representing 60 States party to Protocol I or only to the Geneva Conventions of 1949, as well as observers from specialized international organizations (in particular ICAO, IMO and ITU).<sup>4</sup> The meeting of experts made it possible to study in detail the present provisions of Annex I and to prepare the necessary amendments incorporating the technical rules adopted since 1977 by the specialized international organizations. It was likewise an opportunity to clarify and update some of the existing provisions.

As stipulated in Article 98(2) of Protocol I, any amendments must be ratified by a diplomatic conference that Switzerland, as depositary State for the 1949 Conven-

tions and their Additional Protocols, said it was prepared to convene.

The ICRC also continued discussions with the aforesaid specialized organizations on problems relating to the marking and identification of medical transports in armed conflicts. These organizations have always been most helpful and cooperative. IMO, for example, has granted the ICRC observer status.

### New weapons

In accordance with Resolution VII (B) of the 25th International Conference of the Red Cross, the ICRC continued to follow weapons development, in particular that of small-calibre bullets, and new weapons technology.

ICRC lawyers and the institution's technical adviser attended meetings, both in Switzerland and abroad, on small-calibre bullets and new infantry weapons under development. They reminded the participants of the relevant rules of international humanitarian law and stressed the need to standardize tests in order to identify, before they go into production, bullets that fragment too easily.

Further to recommendations made by the round table on battleground laser weapons, held by the ICRC in June 1989, the institution convened two specialized working groups that met from 31 May to 1 June and from 5 to 7 November 1990 respectively. The first meeting dealt with technical and medical aspects of the use of such weapons. The second studied the inevitable psychological and social problems that would be caused by laser weapons whose principal effect would be the permanent blinding of soldiers. A study was made comparing those effects with other wounds and disabilities caused by war. The results of these meetings will enable a larger conference in 1991 to con-

<sup>4</sup> International Civil Aviation Organization, International Maritime Organization, International Telecommunication Union.

sider the advisability of some kind of regulation to prohibit or limit weapons whose principal effect is to irreversibly blind combatants.

### **The law of war at sea**

The ICRC took an active part in the round table of experts on international humanitarian law applicable to armed conflict at sea. The meeting was held in Toulon, France, and was organized by the International Institute of Humanitarian Law in conjunction with the Mediterranean Institute of Strategic Studies and the French Red Cross. It was the second of a series of meetings under the plan of action adopted in Madrid in 1988, which provides for the drafting of a document indicating the present state of treaty and customary law and, where appropriate, some proposals for its amendment and development. The Toulon meeting discussed methods and means of combat in naval warfare. This included both general principles and specific rules relating to the use of sea mines and long-distance weapons, precautions that must be taken in the event of attack, the use of blockades and the establishment of special zones.

The ICRC also took part in a symposium on the law of naval warfare which was held by the Naval War College in Newport, USA, from 1 to 3 February 1990. The meeting, which discussed the targeting of merchant shipping, had 62 participants, half of whom were US Navy officers. The other participants were academics or military personnel from the USA and a few other States.

### **Humanitarian assistance**

The development of international law in the area of assistance to the victims of natural and technological disasters continued to be of keen interest to the ICRC.

The institution, whose mandate primarily concerns armed conflict, made a point of stressing that humanitarian assistance in such situations is governed by detailed provisions of international humanitarian law. By laying down the relevant procedures, those provisions establish the principle that civilians who lack the basic necessities for their survival must be enabled to receive impartial humanitarian assistance.

### **Relations with other institutions in the realm of international humanitarian law**

The ICRC kept in close touch with the International Institute of Humanitarian Law in San Remo, Italy, and, as in previous years, helped in the preparation and running of several courses and seminars organized by the Institute. Thus, it was closely involved in the *15th Round Table on current problems of international humanitarian law* (4-8 September 1990) which brought together over 150 people representing governments, the academic world, international organizations and the International Red Cross and Red Crescent Movement. The meeting examined specific means of improving respect for international humanitarian law and discussed topics such as:

- the contents and scope of the obligation to ensure respect for the law (Article 1 common to the Geneva Conventions of 1949 and Protocol I of 1977);
- the role of the future International Fact-Finding Commission (Article 90 of Protocol I);
- the usefulness of a system of periodic reports on the application of international humanitarian law;
- the role of the United Nations in implementing that body of law.

The meeting ended with a day of discussions, organized jointly by the Institute and the Office of the United Nations High Commissioner for Refugees (UNHCR), on the subject "Refugees — a continuing challenge for humanity: for a realistic approach in asylum policy".

As usual, the round table was followed by a Red Cross and Red Crescent symposium, this time devoted to "National laws and policy as a factor in the development of National Red Cross and Red Crescent Societies".

The ICRC was also involved in a number of courses, conferences and seminars organized by institutions and associations concerned with international humanitarian law, such as the *American Society of International Law* (Washington, 28-31 March), the *International Institute of Human Rights* in Strasbourg, France, the *Inter-American Institute of Human Rights* in San José, Costa Rica, and the *United Nations Institute for Training and Research*, which held a series of courses in The Hague in July.

## **Relations with other international and regional organizations**

The high point of 1990 came when the ICRC was granted observer status with the United Nations General Assembly (resolution 45/6 adopted by consensus on 16 October). Until then, the ICRC had had consultative status with the UN Economic and Social Council; this did not reflect the institution's specific character nor its growing cooperation with UN bodies in New York.

The new status takes due account of the ICRC's specific nature and of the mandate conferred on it by the 1949 Geneva Conventions; it also means that the institution will henceforth have access to

all UN meetings and to the documents relative thereto.

The ICRC started making representations to bring about the change in July 1990. Delegates in New York and in Geneva called on about one hundred Permanent Missions, and the institution's field delegations contacted many governments, at the same time enhancing awareness of the ICRC, its mandate and activities and its specific role in today's world.

Observer status having been obtained, delegates from the ICRC's International Organizations Division adopted a new approach at the forty-fifth session of the UN General Assembly, making the ICRC's position better known on a number of questions, such as the new international humanitarian order, the United Nations Decade of International Law, and the United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons. The delegates emphasized the need to strengthen compliance with existing rules rather than to supplement them, reminding those concerned that the ICRC stood ready to work towards that end. They also encouraged States to ratify the Additional Protocols and stressed that the ICRC attached great importance, in peacetime as well as in war, to dissemination of knowledge of the rules of international humanitarian law.

As an observer, the ICRC was able to attend sessions of the UN Security Council, which met to discuss issues such as the situation in the Middle East. In addition, the ICRC again attended meetings organized by the UN on human rights issues, questions concerning refugees and displaced and repatriated persons, and detention matters. In the latter field, the Eighth Congress for the Prevention of Crime and the Treatment of Offenders, organized by the UN from 27 August to

7 September in Havana, recognized that ICRC visits to places of detention contributed to the struggle against torture and disappearances and often resulted in a general improvement in detainees' material and psychological conditions of detention.

The ICRC stepped up its contacts with the UN Centre for Human Rights, in particular in the areas of training and dissemination, as had been recommended in resolutions adopted by the UN Commission on Human Rights and the General Assembly. Talks on international humanitarian law were given in seminars and workshops organized by the UN, especially in Latin America.

The ICRC also had the opportunity to exchange views on its operational activities with participants in different inter-agency meetings — both in New York and in the field — which dealt more specifically with the situation in the Horn of Africa and in southern Africa.

As in the past, the International Organizations Division participated in many international meetings (Organization of African Unity, Council of Europe, Organization of the Islamic Conference, League of Arab States, Inter-Parliamentary Union, to name but a few), each of which provided an opportunity for the ICRC to lend an attentive ear to the concerns of the international community and to express the humanitarian point of view.

## **Dissemination**

Dissemination of international humanitarian law and the principles of the International Red Cross and Red Crescent Movement is always one of the ICRC's primary objectives. Through such activities the ICRC seeks to promote respect for international humanitarian law and prevent violations of it; to increase the

effectiveness and safety of humanitarian action; and to strengthen the Movement's identity and cohesion whilst making the specific role of each of its components (ICRC, League, National Societies) better known.

The ICRC's efforts in this respect are based on the particular responsibility for dissemination assigned to it by the Movement's Statutes. The ICRC is also helping, along with the League and the National Societies, to achieve the objectives of the Third Programme of Action which was launched for a four-year period by the 25th International Conference of the Red Cross in 1986.

The Programme had four objectives: to encourage States to ratify or accede to the Protocols additional to the Geneva Conventions; to analyse the legal and practical consequences of provisions of the Additional Protocols; to disseminate and encourage the dissemination of international humanitarian law; and to integrate the dissemination of the principles and ideals of the Movement in all its activities.

With the Third Programme of Action drawing to a close, the ICRC decided in 1990 to review its own dissemination policy in the light of its experience over the past 10 years. It was found that, of the eight target groups identified by the Movement for dissemination,<sup>5</sup> the ICRC should henceforth focus to a greater extent on five of them: the armed forces, National Societies, government authorities, academic circles and the media — without, of course, neglecting the others. Experience has shown that it is always necessary to adapt dissemination methods to local cultural, political and other con-

<sup>5</sup> Armed forces, National Societies, government authorities, universities, schools, medical circles, the media and the general public.

ditions. It is therefore very important to identify people, in particular within the armed forces and the National Societies, who are in a position to relay and spread the humanitarian message effectively.

Dissemination does much to underpin ICRC operations in countries beset by armed conflict, but it is also a necessary activity in countries spared that kind of violence, for if humanitarian rules are understood and accepted in peacetime they will be more readily respected should war occur. Most ICRC delegations therefore work closely with the National Societies to carry out dissemination programmes.

As part of its efforts in this direction, the ICRC offers traineeships in Geneva for people whose work involves promoting knowledge of international humanitarian law and the Movement's principles and ideals. In 1990, 24 lawyers, academics and National Society representatives from all over the world took part in such programmes.

### New publications

As part of its work in Colombia, the ICRC cooperated with the Colombian Red Cross to produce publications informing the general public about the basic rules of humanitarian law and the protection to which they are entitled in the event of disturbances or internal conflict. Some 15,000 copies were distributed over the year.

After the Gulf crisis arose in the Middle East, the ICRC published a new version of "Rules for Behaviour in Combat" for the coalition and Iraqi armed forces. This combined Arabic-English version of the manual, entitled "Code of Conduct for Combatants", was adapted to the particular situation in the Gulf and, in addition to humanitarian rules, contained

first-aid information. Some 100,000 copies were printed.

### Courses and seminars

For dissemination purposes the ICRC works closely with the League, the National Societies, the Henry Dunant Institute and organizations outside the Movement. The courses and seminars held in 1990 were largely intended for the armed forces, National Societies, government authorities and academic circles.<sup>6</sup>

#### — for the armed forces

Although the main responsibility for dissemination to this target group lies with the States party to the Geneva Conventions, the ICRC joins in by setting up programmes to encourage instruction in international humanitarian law as part of military training. It passes on its experience to future instructors and legal advisers, helps to produce teaching material and engages in dialogue as a way of fostering understanding of its humanitarian work.

To this end, as in previous years, the ICRC organized the following courses for members of the armed forces:

- centralized courses for senior officers from all countries, held since 1976 in conjunction with the International Institute of Humanitarian Law in San Remo, Italy;
- decentralized courses organized jointly with national armed forces in their respective countries and held since 1984 for senior officers holding command posts.

<sup>6</sup> Readers interested in details of the various dissemination seminars, courses and lectures will find them in the corresponding issues of *Dissemination* magazine, which they may order from the ICRC, 19 avenue de la Paix, 1202 Geneva, Switzerland.



In 1990 three centralized courses, attended by a total of 129 officers from 55 countries, were held in San Remo. A course in Geneva for medical officers was attended by 18 participants from 12 countries. In addition, the ICRC for the first time organized a special course for commanders of military academies and those responsible for armed forces training. Likewise for the first time, seminars on international humanitarian law were held in Romania and the USSR; they were attended by 250 and 330 officers respectively. In the USSR the course was led by the Soviet Army Chief of Staff and attended by regional military commanders and legal advisers.

In the field, ICRC delegates to the armed forces gave 15 courses (11 national and 4 regional), attended by 447 officers and covering 38 countries. Nine of the 15 courses took place in Africa and were attended by servicemen from 29 countries. For the first time, these courses were organized on a regional basis, an innovation that met with a very favourable response.

Finally, ICRC delegations made an ongoing contribution to dissemination in the armed forces through lectures, seminars and other contacts.

#### *— for the National Societies*

The National Red Cross and Red Crescent Societies have a role to play in spreading knowledge of international humanitarian law and the principles and ideals of the Movement. Their help in putting programmes of action into effect is therefore important, as is the appropriate training for their staff. If asked, the ICRC provides support and advice and, with the League, gives courses at the regional and national levels for officials who will be responsible for future National Society dissemination programmes.

The 1990 Dissemination Award was given by the International Institute of Humanitarian Law in San Remo to Pedro Ramón Varela Aparicio, head of dissemination at the Salvadoran Red Cross, for 10 years of faithful work. Mr. Varela Aparicio was one of the first members of a Latin American National Society to attend a regional ICRC-League dissemination course.

#### *— for government and diplomatic circles*

The ICRC regularly reminds governments of their obligation under the Geneva Conventions and their Additional Protocols to make those texts widely known in order to ensure their application, and accordingly gave courses and lectures at meetings for diplomats and government officials, in particular in New York, The Hague and Great Britain.

#### *— for universities*

The academic world is of twofold interest to the ICRC, which seeks to promote international humanitarian law by encouraging teaching and research, and also to give future national leaders a heightened awareness of that body of law and of humanitarian work in general.

In the period under review, the ICRC continued its efforts to this end, in particular by working with National Societies to organize courses and seminars in Poland, in Switzerland and at a number of universities in Europe, the United States and Egypt.

#### **Paul Reuter Prize**

On 15 November 1990, the deadline for nominations for the 1991 Paul Reuter Prize, there were 10 candidates. The prize of 2,000 Swiss francs is awarded in recognition of particularly deserving work in the area of international humanitarian law.