

June 1997

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Recommended Citation

Jean-Philippe Lavoyer, *The International Committee of the Red Cross - How Does It Protect Victims of Armed Conflict?*, 9 Pace Int'l L. Rev. 287 (1997)

Available at: <https://digitalcommons.pace.edu/pilr/vol9/iss1/12>

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THE INTERNATIONAL COMMITTEE OF THE RED CROSS – HOW DOES IT PROTECT VICTIMS OF ARMED CONFLICT?

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THE INTERNATIONAL COMMITTEE OF THE RED CROSS AS PROMOTER AND GUARDIAN OF THE HUMANITARIAN LAW

The International Committee of the Red Cross (ICRC) was founded in Geneva in 1863, more than a hundred and thirty years ago, as a small, private institution.¹ It gradually received from States a mandate and responsibilities that led to the development of the large humanitarian organization it is today, working world-wide on behalf of all those who suffer from the

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‡ The opinions expressed are those of the author and do not necessarily reflect the views of the ICRC. This is an edited version of the oral remarks presented at the Pace University School of Law's International Law Day Colloquium on Oct 26, 1996. The author wishes to thank the organizers of this conference for inviting the ICRC to participate in its work.

¹ HANS HAUG, HUMANITY FOR ALL: THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT 421-22 (1993) [hereinafter HAUG]. See also GEORGES WILLEMIN AND ROGER HEACOCK, THE INTERNATIONAL COMMITTEE OF THE RED CROSS 19 (1984) [hereinafter WILLEMIN].

effects of war.² Today the ICRC's role is based on the Four Geneva Conventions of 1949³ and its Two Additional Protocols of 1977,⁴ as well as on the Statutes of the International Red Cross and Red Crescent Movement.

Given its worldwide mandate, the ICRC enjoys an international legal personality. In 1990, the United Nations General Assembly officially recognized this mandate when it accorded the ICRC "observer status." Observer status allows the ICRC to participate actively in the international debate, while keeping its independence, which is essential for assuming its mission. The ICRC is part of the International Red Cross and Red Crescent Movement (hereinafter Movement), which is composed of the ICRC, the 170 recognized Red Cross and Red Crescent Societies, as well as their International Federation.⁵ Each component has specific tasks, all of which are complementary within the Movement. The work of the entire Movement is guided by its Fundamental Principles, which include humanity, impartiality, neutrality and independence.⁶

The ICRC's mandate is to protect and assist, without discrimination, the victims of armed conflict and of internal disturbances. Thus, the ICRC is present in almost all situations in which people suffer from the effects of violence and has more than 50 offices worldwide.⁷ In concrete terms, this means that the ICRC endeavors to protect the civilian population and to visit prisoners of war, civilian internees and political prisoners, to provide emergency assistance to the civilian population (e.g. food, drinking water and protection materials), and provide

² HAUG at 425. *See also* WILLEMIN at 20.

³ Conventions for the Protection of War Victims Concerning (I) Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field (II) Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (III) Treatment of Prisoners of War and (IV) Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 31 [hereinafter Geneva Convention].

⁴ Protocols Additional to the 1949 Geneva Conventions and Relating to (I) The Protection of Victims of International Armed Conflicts and (II) The Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 16 I.L.M. 1391 [hereinafter Additional Protocol].

⁵ WILLEMIN at 26.

⁶ *Id.* at 22.

⁷ Updated information about the activities of the ICRC can be obtained through the ICRC's web site at <<http://www.icrc.org>>.

medical assistance and rehabilitation.⁸ The ICRC also tries to locate persons who became missing during armed conflicts, re-establishes contact between separated family members, e.g. between prisoners and their families, using "Red Cross Messages," and reunites separated family members.⁹ In addition to its operational activities on behalf of war victims, the ICRC also has another important responsibility in the legal field; States have requested the ICRC to work for the faithful application of international humanitarian law, which consists mainly of the Geneva Conventions and its Additional Protocols. This role is usually referred to as the "promoter and guardian of humanitarian law."¹⁰

In their daily work, ICRC delegates in the field, which number about a thousand, monitor the application of humanitarian law by all parties involved in an armed conflict.¹¹ In part, ICRC delegates also verify whether the civilian population is treated in conformity with the detailed rules of the Geneva Conventions and its Additional Protocols, check whether the wounded are respected and protected (meaning those who enjoy protection under the Red Cross or Red Crescent emblem), and examine the treatment of prisoners of war and other detained persons.¹² In instances where delegates encounter a violation of these treaties, the ICRC intervenes with the party concerned, explains the violation, and tries to obtain a change in its behavior.¹³ The ICRC does not act as a judge, but rather endeavors to initiate a constructive dialogue with the parties to a conflict.¹⁴ This is only possible if its interventions are kept discreet and confidential. These contacts occur at all levels, from the prison guard to the Head of State.

This confidential approach is often misunderstood and the ICRC is often criticized because of it. It has to be realized,

⁸ Marion Harroff-Tavel, *Action Taken by the International Committee of the Red Cross in Situations of Internal Violence*, 294 INT'L REV. 195, 207-08 (May-June 1993) [hereinafter Harroff-Tavel].

⁹ *Id.* at 208-09.

¹⁰ *Id.* at 201-03.

¹¹ These parties are either governmental or *armed opposition groups*. It is important to recognize that humanitarian law also binds these latter groups, though without giving them legal status.

¹² *Id.* at 201-02, 205 and 208.

¹³ *Id.* at 208.

¹⁴ Harroff-Tavel at 208.

though, that confidentiality is not an end in itself, but a working method. One has to make a choice; it is very difficult to denounce violations publicly and, at the same time, be present in the field to help the victims. Other organizations have made different choices. There is certainly a need for the two kinds of institutions as well as the need for some degree complementation between their activities. Confidentiality, however, has its limits. If serious violations of humanitarian law continue to occur even after the ICRC has made representations, the ICRC reserves the right to speak out and denounce such violations, though this must be in the interest of the victims themselves.¹⁵ In the last few years, the ICRC has made a more extensive use of this possibility, as was the case during the conflict in the Former Yugoslavia.

As promoter and guardian of humanitarian law, the ICRC also has the task of contributing to the dissemination and development of humanitarian law. The ICRC's humanitarian mandate is, therefore, a mixture between emergency field operations and responsibilities in the legal field. This combination is indeed quite unique and makes the ICRC very specific. There are other organizations with a mandate founded in international law, but these are usually intergovernmental.¹⁶ A good example is the United Nations High Commissioner for Refugees (UNHCR), which has a direct responsibility with regard to the implementation of refugee law, and, in particular, the 1951 Refugee Convention.¹⁷

¹⁵ *Action by the ICRC in the Event of Breaches of International Humanitarian Law*, 221 INT'L REV. OF THE RED CROSS, 78-83 (March-April 1981). This article concerns the precise conditions to be met before the ICRC makes a public denunciation.

¹⁶ An "international organization" is defined as an association "(e)stablished by treaties between two or more states, whose functions transcend national boundaries and which are for certain purposes subjects of international law." If the organization is a "public international organization," the organization is "considered to be subjects of international law. . . even though their legal personality is not comparable to that of states establishing them and their international legal personality is limited to possessing specific rights and duties." ROBERT L. BLEDSOE AND BOLESŁAW A. BOCZEK, *THE INTERNATIONAL LAW DICTIONARY* 75-76 (1987).

¹⁷ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150.

II. IS HUMANITARIAN LAW ADAPTED TO PRESENT WARS?

Because of the many violations of humanitarian law in the course of today's armed conflicts, people have started to ask if humanitarian law is still sufficient and whether it is still responding to the needs of "modern wars." Those advocating the creation of new law would argue that, with the end of the Cold War, the nature of armed conflict has changed dramatically. What should one think of such an attitude?

It is true that the world has witnessed, in the last couple of years, extremely serious violations of the Geneva Conventions. In the former Yugoslavia, the atrocious policy of "ethnic cleansing" was in complete contradiction with the most fundamental principles of humanitarian law. In addition, experience shows that ethnic conflicts tend to be particularly savage, as was also demonstrated in the cases of Rwanda and Burundi and also recently in Zaire. It has to be acknowledged, though, that the problem, even in these cases, is not so much a lack of rules, but implementation of existing rules. There is often a manifest lack of political will to apply international law.

There are, however, situations that pose specific problems of implementation. Reference is made to those situations where central military, political, economic and social structures have disintegrated or collapsed. These conflicts, which are marked by a proliferation of armed groups, are being given as an example of wars of a "new generation." State structures are weakened to a point that the State can no longer assume its essential functions. This means, in particular, that command lines, whether military or civilian, cease to work. This poses a very serious problem for the implementation of humanitarian law, as respect of this law presupposes the existence of a minimum structure: to teach the law, to enforce its respect, and to punish its violations. How can humanitarian law then be respected? This is a real challenge and there are no ready-made solutions. It should be noted that the functioning of the whole legal system is put to a test.

A good example for such conflicts is Liberia. Here, even young children handle their Kalashnikovs with impunity. In this kind of situation, the fighting is no longer about ideologies, but merely a means of survival in an increasingly hostile environment. The situation becomes even worse for the civilian

population, which is by all means the most affected, as humanitarian organizations are prevented from working because of a lack of security. Indeed, as there is no discipline, security guarantees, even if they are given, lose all meaning. In Liberia, the ICRC had to withdraw in April 1996 because the situation became too dangerous and it had to limit itself to assisting the local Red Cross from abroad. This kind of situation is aggravated by the presence of unlimited numbers of small arms available at low prices.

The real question here is that of the responsibility of the international community as a whole. What can, and should, States do when they face such dramatic situations? It is then clearly not sufficient to support humanitarian actors. Firmer action — political action — is required. This should make it possible for the humanitarian community to resume its work, though humanitarian work must always be kept strictly separate from other considerations. Thus, it is more than doubtful whether a further development of humanitarian law would solve this problem. As the lack of structures prevent the law from being respected, even the most perfect law will fail.

Fortunately, these conflicts have, so far, remained the exception, and their importance should, therefore, not be overestimated. The lack of discipline and the presence of “uncontrolled elements” are often used as an excuse for unacceptable behavior, although in reality such behavior reflects clearly stated policies. This was the case in particular in Bosnia, where the displacement of entire populations was at the center of a global political strategy.

The call for a global revision of humanitarian law will continue to be made. At this stage, however, it would seem more appropriate to put the emphasis on the implementation of the existing law, and to develop new rules in specific fields in order to respond to pressing needs. In this context, the revision of the 1980 UN Convention on Certain Conventional Weapons,¹⁸ (hereinafter “Convention”), which took place this year, should be mentioned. On this occasion, the diplomatic conference ad-

¹⁸ Convention on Prohibition or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects and Protocols I-III, Oct. 10, 1980, UN Doc. A/CONF. 95/15 and Corr. 1-5, 19 I.L.M. 1523.

ded Protocol to the Convention IV, which prohibits the use of blinding laser weapons. This step was extraordinary in the sense that a specific weapon, regarded as particularly inhumane, was prohibited before it was actually used on the battlefield. In addition, Protocol II of the Convention, which addresses landmines, was revised, adding some restrictions to the use of anti-personnel mines. The ICRC is of the opinion that given the very indiscriminate nature of anti-personnel landmines and the disastrous consequences on the civilian population, these weapons should be banned altogether. Therefore, the ICRC supports Canada's recent initiative advocating a new treaty totally prohibiting anti-personnel mines.

III. THE NEED FOR MEASURES AT THE NATIONAL LEVEL

International law will not become a reality unless the party States takes concrete measures to the Geneva Conventions. First, humanitarian law must both be taught to the armed forces and incorporated into the military instruction manuals. Second, national legislation has to be adopted, in particular, with a view to make it possible to punish those who commit war crimes and to protect the use of the Red Cross or Red Crescent emblem. Such measures must be taken in peacetime.

In order to assist States in their efforts, the ICRC has recently established an Advisory service on the implementation of humanitarian law, which is attached to the ICRC's Legal Division.¹⁹ A team of lawyers, based at ICRC Headquarters in Geneva as well as in the field, work in close co-operation with governments. Their primary task is to establish and maintain a dialogue with States and provide specialist advice. This is being done bilaterally and through the organization of regional workshops.

This Advisory Service, which became operational in early 1996, has also produced specific documents²⁰ and has created a Documentation Center in Geneva, which is open to govern-

¹⁹ Paul Berman, *The ICRC's Advisory Service on International Humanitarian Law: The Challenge of National Implementation*, 312 INT'L REV. OF THE RED CROSS 338 (May-June 1996).

²⁰ Jean-Philippe Lavoyer, *National Legislation on the Use and Protection of the Emblem of the Red Cross and Red Crescent and Model Law*, 313 INT'L REV. OF THE RED CROSS 482 (July-Aug. 1996).

ments as well as the public. The Advisory Service promotes the exchange of information and experience between governments and encourages the establishment of National Commissions for the Implementation of International Humanitarian Law. The Advisory Service publishes reports about its activities.

All these efforts will undoubtedly contribute to preventing violations of international humanitarian law in times of armed conflict.

IV. THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

The establishment of an international criminal court is a further measure that will enhance respect for humanitarian law. By virtue of the 1949 Geneva Conventions, States have a legal obligation to prosecute all those who are suspected to have committed grave breaches of the Conventions, also called war crimes. This is the principle of universal jurisdiction. Regrettably this system has not worked well as States have refrained from prosecuting war criminals.

The establishment of international *ad hoc* tribunals for the former Yugoslavia and Rwanda was, thus, a welcome development. However, this selective approach is insufficient. There is need for a permanent international court that would deal with war crimes, crimes against humanity and the crime of genocide.

The idea of a permanent international court has been discussed since the 1940's, but it has gained momentum in the last few years. The Sixth Committee of the United Nations General Assembly will soon resume its important debate on this question. There are still divergent views about what form such an international court should take. In the ICRC's opinion, the following conditions should be met. First, the court should be complementary to national courts. It should only take up a case if it is not handled by the national courts. Second, it is important that the court is independent and impartial. This means that it should be able to start legal proceedings on its own initiative and should not depend on additional conditions, like the consent of particular States, or of the United Nations Security Council. As soon as a State becomes a party to the statute of the court, it should thereby accept the court's inherent competence and no longer have to give its consent before a concrete investigation is

initiated. Lastly, the ICRC believes that the court should deal with serious violations of humanitarian law that are committed both in international and internal conflicts. This should include violations of Article 3 common to the Four Geneva Conventions and of Protocol II of 1977. Such a permanent international court could at last put an end to the reign of impunity that has prevailed so far.

V. THE LEGAL PROTECTION OF INTERNATIONALLY DISPLACED PERSONS SUFFICIENT

An international debate has been going on over the question of the legal protection of persons displaced within their own country. At the beginning of this year, the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, submitted to the Human Rights Commission a "Compilation and Analysis of Legal Norms," protecting the internally displaced. This very good report comes to the conclusion that the internally displaced enjoy, globally, good legal protection, even though some of their specific needs should be taken more into consideration, e.g. the right to return in safety and the right to restitution of goods or equivalent compensation. Again, the real problem is, as previously mentioned, not a lack of rules, but insufficient implementation of existing rules.

Humanitarian law is of special relevance with regard to forced displacements. Not only do displaced persons benefit from its protection, but the respect of humanitarian law (and also of human rights law) would help *prevent* many displacements. It is, in fact, the many violations of that law, which force entire populations to flee their homes.

The ICRC participates in the international debate and, in parallel, endeavors to protect and assist internally displaced persons in several regions of the world. Examples include Africa, the Caucasus (in particular, the Northern Caucasus in the Russian Federation), Afghanistan, Tajikistan and Sri Lanka. It should be recalled, however, that the ICRC always addresses the needs of all the victims. In order to improve humanitarian action on behalf of the internally displaced, and more generally

of victims of war, the ICRC has organized an international conference on internally displaced persons.²¹

VI. HOW SAFE CAN "SAFE AREAS" BE?

The tragic events that occurred in the Bosnian town of Srebrenica in 1995 are still sadly remembered. Yet, the United Nations Security Council had declared it a "safe area." Before starting a debate on this issue, it is important to clarify what exactly one is speaking about, as there exists much confusion on the use of the following terms: "protected areas," "security zones," "safe areas," "safe heavens," "humanitarian corridors," etc.

International humanitarian law contains several rules about the establishment of "protected zones," be it for the military sick and wounded or for the protection of civilians.²² These zones have to be based on the consent of the parties. In addition, they have to be demilitarized which necessitates a strict control of the concerned zones. The aim of these zones is to offer protection against the effects of hostilities. By its very nature the "protected zones" can, therefore, only represent a temporary measure. It follows that "protected zones" cannot serve to provide any amnesty in the case where the adversary takes the zone.

Practice shows how difficult it is to reach consent between fighting parties: tensions run high, and the suspicion between belligerents is great. Because of these obstacles, few "protected zones" are ever actually implemented.²³ On its side, the ICRC has managed to create a number of "neutralized zones," although these were limited in space and time.

²¹ See *Internally Displaced Persons*, Symposium, Geneva, 23-25 Oct. 1995, published by the ICRC, 1996. For more information about the legal protection of refugees and internally displaced persons and the activities of the ICRC, see Jean-Philippe Lavoyer, *Refugees and Internally Displaced Persons: International Humanitarian Law and the Role of the ICRC*, 305 INTERNATIONAL REVIEW OF THE RED CROSS 162 (Mar.-Apr. 1995).

²² Geneva Convention, *supra* note 3, art. 14, 15 and 23, 75 U.N.T.S. 31; Additional Protocol, *supra* note 4, art. 59 and 60, 16 I.L.M. 1391.

²³ For a detailed analysis, see Yves Sandoz, *The Establishment of Safety Zones for Persons Displaced within their Country of Origin*, In: Multi-Choice Conference on International Legal Issues Arising Under the United Nations Decade of International Law, Doha (Qatar), (Mar. 22-25, 1994).

The "safe areas" established by the United Nations were imposed on the parties on the basis of Chapter VII of the UN Charter. This was the case with Former Yugoslavia, where several "safe areas" were created: Srebrenica, Sarajevo, Tuzla, Zepa, Gorazde and Bihac.²⁴ Because of the lack of consent, these zones were very fragile and would have needed the presence of a strong protection force to be effective. This, however, was not the case. Another problem was that the zones were not even demilitarized and could, thus, be seen as legitimate military targets.

By their nature, the "United Nations areas" were, therefore, very different from the "protected zones" foreseen by humanitarian law. Not only have "United Nations areas" failed to protect the civilian population, but worse, they have given to entire populations a false sense of security and protection. For the future, it is important that lessons are drawn from this experience and that the principles and rules of humanitarian law are more readily taken into account. If protected areas have to be imposed, which may be justified in certain instances, they should be completely demilitarized and effectively protected. In sum, attention should be drawn to the fact that "protected zones" should under no circumstances weaken the protection to which the whole civilian population is entitled under humanitarian law.

VII. CONCLUSION

As discussed, the ICRC was given the mandate to work for the implementation of humanitarian law. It endeavors, through its contacts with all the parties, to obtain a maximum degree of respect of its rules. However, the responsibilities for the actual implementation of humanitarian law cannot, and do not, lie with the ICRC.

The parties to an armed conflict have to apply humanitarian law, and there is an urgent need to take the appropriate steps to improve the existing record. This responsibility is, however, shared by all the States party to the Geneva Conventions.

²⁴ S.C. Res. 819, U.N. SCOR, 48th Sess., 3199th mtg., U.N. Doc. S/RES/819 (1993) and S.C. 824, U.N. SCOR, 48th Sess., 3208th mtg., U.N. Doc. S/RES/824 (1993).

Article 1, common to the Four Conventions,²⁵ is very explicit in that respect, as it stipulates that States have to respect and “ensure respect” of the Geneva Conventions.²⁶ Current experience has shown that States do not often live up to their responsibilities. They should be encouraged to make special efforts to contribute to the implementation of humanitarian law.

In conclusion, it should be noted that the Geneva Conventions have become truly universal with 188 States bound by them. This is, however, not yet the case with its Additional Protocols of 1977, though some clear progress has been made; 146 States are at present bound by Protocol I, and 138 States are bound by Protocol II. It is important that this positive trend continues.

²⁵ Geneva Convention, *supra* note 3.

²⁶ Additional Protocols, *supra* note 4.