



ICRC

The Delegation of the International Committee of the Red Cross to the United Nations presents its compliments to the Under-Secretary-General for Legal Affairs, The Legal Counsel, and has the honour to hereby refer to her letter (LA/COD/2) dated 24 March 2010 regarding General Assembly Resolution A/RES/63/125 of 15 January 2009 entitled "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts".

The ICRC is pleased to provide its contribution to the report of the Secretary-General as requested in paragraph 11 of the above-mentioned Resolution, which is enclosed herewith. An electronic version thereof will also be sent shortly.

The Delegation of the International Committee of the Red Cross to the United Nations avails itself of this opportunity to convey to the Under-Secretary-General for Legal Affairs, The Legal Counsel, the renewed assurance of its high consideration.

New York, 03 June 2010
NYC 10/968 – WFU/sag



Ms. Patricia O'Brien
Under-Secretary-General for Legal Affairs
The Legal Counsel
Office of Legal Affairs
380 Madison Avenue
Room M-13031
New York, NY 10017

Information on the Status of the Additional Protocols relating to the protection of victims of armed conflicts, as well as on measures taken to strengthen the existing body of international humanitarian law, inter alia, with respect to its dissemination and full implementation at the national level

Resolution 63/125 of the General Assembly

*Contribution by the International Committee of the Red Cross
(Geneva, June 1st 2010)*

Period under review: June 2008 to June 2010

Significant developments

1. 2009 marked the 60th anniversary of the 1949 Geneva Conventions, which constitute the cornerstone of IHL. The ICRC took this opportunity to reaffirm the relevance of IHL for protecting the victims of today's conflicts while examining the potential need to adapt IHL to current realities and challenges. The ICRC, together with many National Societies, commemorated this anniversary throughout the year, and in all corners of the world, with conferences, workshops, photo exhibitions and other events. On 12 August 2009, before the diplomatic community in Geneva, the ICRC President made a speech, taking stock of the important contribution of the Geneva Conventions to the protection of war victims, but also stated that the future must be prepared. In this respect, the ICRC President signalled that there was still room to improve the protection afforded by IHL in certain areas, in particular in situations of non-international armed conflict.
2. In November 2009, the ICRC co-organized a conference with Switzerland aimed at addressing the challenges to come for IHL and its relevance posed by new threats, new actors and new means and methods of warfare. The Conference, which brought together States' representatives, debated the legal issues that these challenges pose for the international community and tackled the question of the existing instruments for the implementation of IHL and their adaptation to current realities and challenges.

Initiatives taken by the ICRC to reaffirm, clarify and strengthen IHL

3. ***Civilian Participation in Hostilities:*** In IHL, the notion of "direct participation in hostilities" denotes conduct which, if carried out by civilians, entails their loss of protection against direct attack. The lack of clarity as to the interpretation of this expression in contemporary armed conflict means that civilians not directly participating in hostilities are increasingly exposed to arbitrary or erroneous targeting, despite the protection they are entitled to under IHL. From 2003 to 2008, the ICRC worked with a group of more than 50 international legal experts from military, academic, governmental and non-governmental backgrounds with the aim of clarifying the notion of "direct participation in hostilities". Based on an evaluation of the expert discussions and further internal analysis, the ICRC published a document entitled "Interpretive Guidance on the Notion of Direct Participation in Hostilities under IHL" in June 2009. This provides the ICRC's recommendations as to how IHL relating to civilian participation in hostilities should be interpreted in contemporary armed conflicts. The ICRC has since engaged in a proactive dialogue with military, governmental, non-governmental, humanitarian and academic stakeholders to explain and promote the *Interpretive Guidance*.

4. **Customary International Humanitarian Law:** The ICRC teamed up with the British Red Cross and initiated a project, based at the Lauterpacht Centre for International Law at Cambridge University, to update the practice underlying the ICRC Study on Customary IHL, first published in 2005. The update will be launched in August 2010 in the form of a database, and available free of charge on the ICRC website. It will include new international materials, in particular international case law and United Nations materials up until the end of 2007. It will be updated twice yearly, including updates on national practice. The new database will be an invaluable resource for anyone following developments in the application and interpretation of IHL and for any future weighing of State practice in the assessment of customary IHL. It should serve as a useful tool for practitioners to access the practice of States, international organizations and other relevant actors on specific IHL subjects and contexts.
5. **Non-international armed conflicts:** In 2007, the ICRC initiated a comprehensive study on the law governing non-international armed conflicts. The first aim of this project was to identify the main current humanitarian challenges faced by people affected by such conflicts. From there, the ICRC analyzed whether, and to what extent, the current legal framework offers adequate answers to these challenges. In most cases, the research evidenced that the treaty and customary law applicable to non-international armed conflicts, in its current state, remains broadly appropriate. In general, improvements of the victims' situation would be achieved through better compliance with the existing legal framework rather than the adoption of new rules. Most of the current humanitarian issues identified would not exist if existing IHL rules were strictly observed by parties to armed conflicts. However, this research also identified certain areas in which the current law should be clarified and even strengthened in order to offer better protection to victims of armed conflicts. Some of these areas – such as detention, protection of internally displaced persons or protection of the natural environment – were alluded to in the speech made by the ICRC President on the occasion of the 60th anniversary of the 1949 Geneva Conventions. So far, detailed conclusions of this study remain internal to the ICRC. In the coming months, the ICRC will share these conclusions with States. It will then evaluate whether, and how, initiatives aimed at strengthening the IHL framework should be proposed.
6. **Procedural principles and safeguards on internment or administrative detention:** Administrative detention is common in times of war but is also being more and more widely practised outside of situations of armed conflict. According to the ICRC, rules governing administrative detention are insufficiently elaborated in terms of the protection of the rights of the persons affected. In 2005, the ICRC proposed a set of *procedural principles and safeguards* that should — as a matter of law and policy — be applied as a minimum to all cases of deprivation of liberty for security reasons. This text continues to serve as a basis for calibrated ICRC interventions and proposals in diverse operational contexts. In September 2008, the ICRC and Chatham House organized a two-day expert seminar examining a range of issues arising from security detention in the framework of non-international armed conflicts. The discussions provided additional impetus to ICRC activity in the field and will facilitate the further refinement and operational application of the ICRC's institutional position on this issue.
7. **Unregulated availability of weapons:** The ICRC has continued to strive for stricter controls on arms availability through the implementation of national and regional arms transfer instruments, as well as the adoption of a global, legally binding arms trade treaty. In 2009, UN discussions on an arms trade treaty drew on the ICRC's views on the objective, scope and parameters for such an instrument, as did regional seminars organized by the European Union and the UN Institute for Disarmament Research in cooperation with host countries.

8. ***Nuclear weapons:*** In 2009 a new "nuclear disarmament agenda" and international processes were put in place. They aim at preventing the use of nuclear weapons by halting their proliferation and promoting their eventual disarmament by nuclear powers. There was increasing support for a nuclear weapon-free world, including in statements by many current and former world leaders, at the first-ever UN Security Council Summit on nuclear non-proliferation and disarmament. In late 2009, the ICRC began communicating its views on humanitarian and legal issues related to these weapons. The ICRC notably addressed the issue of nuclear weapons in its speech to the First Committee of the 64th UN General Assembly and again in a speech to the Geneva Diplomatic Corps by the ICRC President in April 2010. The ICRC noted, in particular, that in 1996 the International Court of Justice concluded that "the use of nuclear weapons would generally be contrary to the principles and rules of international humanitarian law". In light of the potentially immense adverse effects of nuclear weapons, the ICRC appealed to all States to ensure that these weapons are never used again, regardless of their views on the legality of such use. It also called on States to prevent the use of nuclear weapons by preventing their proliferation and by fulfilling existing obligations to pursue negotiations to prohibit and completely eliminate such weapons. The ICRC urged all States to seize the unique opportunities now available to ensure that nuclear weapons are not used and are eliminated.

9. ***Private Military and Security Companies (PMSCs):*** Since 2005, the ICRC has closely collaborated with the Swiss government to engage countries which are most affected by PMSCs in a dialogue on existing law and how best to avoid harm to civilians caused by PMSCs. These countries either hire PMSCs or such companies are headquartered or carry out operations in their territory. This initiative brought together 17 governments from different regions of the world (Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, United Kingdom, Ukraine, United States of America) and drew widely on the knowledge of academic, industry and NGO experts. The initiative is meant to promote respect for IHL and human rights law by PMSCs operating in conflict situations and resulted notably in the adoption of the Montreux Document of September 2008. This document recalls the most pertinent international legal obligations relevant for PMSCs. It also articulates good practices for the States involved, aimed at ensuring that they effectively implement their obligations with respect to PMSCs.

10. In 2009, the Swiss government and the ICRC began their outreach activities on the Document, in particular through bilateral interventions. Already, 17 new States have committed their official support for the Document (The Former Yugoslav Republic of Macedonia, Ecuador, Albania, Netherlands, Bosnia and Herzegovina, Greece, Portugal, Chile, Uruguay, Liechtenstein, Qatar, Jordan, Spain, Italy, Uganda, Cyprus and Georgia). The ICRC is committed to assisting States in legislating or otherwise regulating the industry. The Montreux Document has already served as a reference, either formally or informally, in some States where regulation is discussed. The ICRC is also working with the Swiss government, and the Geneva Centre for the Democratic Control of Armed Forces, to organize regional seminars in order to garner broader political support.

- 11. *The role of sanctions regarding respect for IHL:*** Better implementation of IHL, both in peace time and during armed conflict, remains a priority for the ICRC. To address this issue, the ICRC initiated a project on sanctions and has worked since 2006 with a group of independent experts from various disciplines with the overall objective of devising further possibilities for promoting sanctions as a means of ensuring compliance with IHL and to help the authorities to set up an integrated sanction system that should have a lasting impact on the conduct of weapon bearers and their environment in order to achieve greater compliance with IHL. A paper on 'Elements to Render Sanctions more Effective' was produced in October 2008. In December that year an edition of the *International Review of the Red Cross* was entirely devoted to "sanctions". In 2009 there were a number of regional and national meetings on the project, including through National Red Cross and Red Crescent Societies. In addition, exchanges with concerned stakeholders were held on the bases of jurisdiction for prosecuting serious IHL violations, including universal jurisdiction.
- 12. *Occupation and other Forms of Administration of Foreign Territory:*** Recent extraterritorial military interventions have revived discussions on the relevance of the law of occupation. In 2007, the ICRC initiated a project aimed at considering the more salient questions relating to contemporary occupation and other forms of administration of foreign territory. Within this framework, the ICRC organized three meetings involving around 30 external experts from military, academic, governmental and non-governmental backgrounds. The meetings permitted the exchange of views on legal issues pertaining to the beginning and end of occupation, the rights and duties of the occupying power, the relevance of occupation law in relation to the international administration of a territory and the use of force in an occupied territory. A comprehensive report, faithfully reflecting the core of the discussions held during those three expert meetings, is being drafted and will be published by the ICRC during the second semester of 2010.

Promoting international humanitarian law

- 13. *Work to Promote compliance with IHL:*** The ICRC continued its work to promote knowledge of and compliance with IHL and to promote that law's incorporation in training programmes intended for military personnel and other weapon bearers. ICRC programmes directed towards civilian schools and universities were also actively pursued.
- 14. *Cluster Munitions:*** Being concerned for many years about the humanitarian impact resulting from the use of cluster munitions, the ICRC welcomed the adoption of the Convention on Cluster Munitions (CCM) in 2008 and looks forward to the Convention's entry into force on 1 August 2010.
- 15.** Promoting the CCM has been a significant area of work for the ICRC in the period under review. The ICRC has developed a number of tools to promote understanding of the CCM and its obligations among States, organizations and civil society. These include booklets, brochures, films and other communication materials. They also include a ratification kit and model law to facilitate adherence to and implementation of the CCM by States. The Convention was also on the agenda of various ICRC-organized national and regional meetings on IHL. The ICRC will continue its efforts to promote the CCM in 2010. It will also contribute to the preparations for the First Meeting of States Parties that will take place in Vientiane, Laos from 9 to 12 November.

16. The States Parties to the Convention on Certain Conventional Weapons (CCW) have continued their efforts to negotiate a CCW protocol on cluster munitions. The ICRC has participated in this work and contributed its legal and humanitarian expertise. However, progress on this protocol has been slow. CCW States were unable to finalize a protocol in 2009 and work on this matter continues in 2010.

Legal and technical assistance for development and national implementation of international humanitarian law

17. Throughout the period under review, ICRC legal experts attended numerous conferences, seminars and courses and provided States, intergovernmental organizations, NGOs and other interested bodies with expertise on a variety of IHL-related topics. The primary aim of these activities was to promote IHL, to stress the importance of its provisions in contemporary armed conflicts, and to explain the specific role and mandate of the ICRC.
18. The ICRC is working to provide national authorities with technical assistance for adoption of the legislative, regulatory and administrative measures needed to ensure observance of IHL at the national level and its full implementation in domestic law. The ICRC continued over the past two years to provide advice on the ratification and implementation of the 1949 Geneva Conventions, their Additional Protocols of 1977 and 2005, and various other IHL instruments. Support was also provided for the adoption or amendment of national measures in various areas, such as the status and rights of the missing persons and their families, repressing war crimes, protecting the distinctive red cross, red crescent and red crystal emblems, protecting cultural property, and the prohibition of anti-personnel mines.

Support for National Committees on international humanitarian law

19. The ICRC has pursued its support for the setting up of effective national inter-ministerial Committees on IHL and the fulfilment of their mandate to advise and assist the national authorities concerned in promoting IHL in domestic law and practice. The number of national committees increased steadily during the period under review. As of 27 May 2010, National Committees entrusted with the national implementation of IHL were working in 94 States.

International and regional meetings

20. **Cartagena Summit on a Mine Free World:** The ICRC participated actively in work relating to the Anti-Personnel Mine Ban Convention, in particular at the Second Review Conference of the Convention (*Cartagena Summit on a Mine Free World*) as well as the meetings of the Standing Committees on victim assistance, mine clearance, stockpile destruction and the general status and operation of the Convention. The ICRC also convened, together with the Norwegian Red Cross, a meeting of practitioners, survivors and other victim assistance experts in Oslo, from 23-25 June 2009, that adopted recommendations on priorities for the implementation of victim assistance commitments, later largely integrated in the Cartagena Action Plan. The ICRC provided proposals and comments on the draft outcome documents for the Review Conference - the vast majority of its proposals were reflected in the final document. The Cartagena Action Plan for 2010-2014 contains strong commitments and will provide a useful framework for future implementation. Its successful implementation will save lives and improve lives in affected communities around the world.

- 21. Council of Delegates of the International Red Cross and Red Crescent Movement:** In parallel with the aforementioned efforts, the ICRC led endeavours within the International Movement of the Red Cross and Red Crescent ("The Movement") in 2009 to renew and extend the Movement's Strategy on Landmines, Cluster Munitions and Explosive Remnants of War. The renewed Strategy takes into account new international legal norms and the evolution of practice in the fields of weapon contamination and victim assistance over the past ten years. It was adopted by the Movement's Council of Delegates in Nairobi, Kenya in December 2009 and commits all components of the Movement to continue their work in this field.
- 22.** During its November 2009 meeting in Kenya, the Movement's Council of Delegates also unanimously adopted a resolution entitled "*Respecting and Protecting Health Care in armed conflicts and other situations of violence*". This resolution emphasizes the importance of upholding IHL and human rights rules. It calls upon all parties to armed conflicts and actors of other situations of violence to respect and ensure respect for health care personnel, premises and means of transport, and to take all measures to ensure safe and prompt access to health care. This resolution also assigns specific objectives to the Movement. In this respect, the ICRC and Red Cross and Red Crescent National Societies, with the assistance of the International Federation, will increase their efforts to promote, disseminate and support the national implementation of IHL and human rights obligations. Moreover, campaigns will be developed and promoted to heighten the awareness of concerned authorities, armed and security forces, and local communities of the importance of protecting health care personnel, premises and means of transport in armed conflicts and other situations of violence. An assessment of these activities will be made and the ICRC, in consultation with National Societies and the International Federation, will present a report, with recommendations, on the issue of health care in armed conflict and other situations of violence to the 31st International Conference of the Red Cross and Red Crescent in 2011.
- 23. First Review Conference to the Statute of the International Criminal Court:** In accordance with the International Criminal Court (ICC) Statute, a First Review Conference is taking place from 31 May to 11 June 2010 in Kampala, Uganda. The ICRC participated actively in the preparatory process of the Review Conference. It supported the amendments presented by Belgium and co-sponsored by 18 States, whereby three additional crimes would be added to the list of war crimes applicable in non-international armed conflicts (employing poison or poisoned weapons; employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions). Moreover, the ICRC supported the ministerial segment, the Pledging exercise and the "stocktaking" exercise on international criminal justice. It underlined the need to address the "Right to Know" of families of missing persons and provide answers to them when assessing the impact of the ICC on victims, and the primary role of States in the implementation of the complementarity principle at the domestic level.

Cooperation and dialogue with other organizations

- 24.** The ICRC continued its cooperation with various international and regional organizations such as the Commonwealth, the League of Arab States, the Organization of American States, the Council of Europe, the European Union, the African Union and Inter-Parliamentary Union. While scrupulously remaining within the bounds of its mandate and operational procedures, the ICRC also maintained its dialogue with various international, regional and mixed judicial institutions assigned to try international crimes. Close contacts were also maintained with various non-governmental organizations.

Documentation and tools

25. **Children in Armed Conflicts:** The ICRC continues to devote particular attention to the issue of children associated with armed forces or armed groups. It took the initiative in 2009 to elaborate a set of *Guiding Principles for the Domestic Implementation of a Comprehensive System of Protection for Children Associated with Armed Forces or Armed Groups*. The *Guiding Principles* were established based on work at an Expert Meeting, organized by the ICRC in December 2009, and will be launched soon in 2010.
26. **The ICRC Manual on implementation of IHL:** launched in Kampala in June 2010, the manual draws on the many years of experience and cooperation of the ICRC Advisory Service on International Humanitarian Law. It is for policy-makers, legislators and other stakeholders in the implementation of IHL at the domestic level. It is designed to be useful for all States, regardless of the diversity of national legal systems. The Manual therefore emphasizes general principles and obligations as much as possible, going beyond differences in legal traditions and institutions.
27. A significant part of the Manual is dedicated to the repression of serious violations of international humanitarian law. Divided into eight chapters, the Manual gives general information on international humanitarian law, its implementation at a domestic level and its links to criminal law. It then takes a treaty-based approach and covers the concrete steps required for implementation of the Geneva Conventions and their Additional Protocols. Treaties on the protection of children and cultural property in armed conflict and the use of weapons are also covered. A chapter is devoted to the implementation of the ICC Statute at the domestic level. Finally, the Manual reviews the bodies and mechanisms that can help States in their efforts. This includes the extremely important role of National Red Cross and Red Crescent Societies and National Committees in the implementation of international humanitarian law.