

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 65/29 of the General Assembly

*Contribution by the International Committee of the Red Cross
(Geneva, June 1st 2012)*

Period under review: June 2010 to June 2012

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

- 1. Customary International Humanitarian Law:** In 2010, the ICRC launched its online Customary IHL Database¹ and continues to update it with State and international practice underlying its 2005 Study on Customary International Humanitarian Law. For the first time, the Database – which is updated on a regular basis by the ICRC in association with the British Red Cross – makes these materials available in a single online source, accessible worldwide and free of charge. Both the Study and the Database are widely used as a legal reference on IHL applicable in international and non-international armed conflicts by States, international organisations, national and international courts and tribunals, NGO's and academia. Statistics on its most-visited pages show that people search the Database for practice on those topics that are at the midst of debates on contemporary IHL. The Study and the Database have also proved useful in the ICRC's dialogue with government authorities, arms bearers and civil society, with customary IHL now being fully integrated into the ICRC's operational and prevention activities.
- 2. Protection for children associated with armed forces or armed groups:** On 26 September 2011, the ICRC participated in a panel discussion of the Ministerial Follow-Up Forum to the Paris Commitments and Principles on Children Associated with Armed Forces or Armed Groups, hosted by the Permanent Mission of France to the United Nations, UNICEF and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict.

The ICRC seized this opportunity to "launch" in New York a new ICRC resource, the "Guiding Principles for the Domestic Implementation of a Comprehensive System of Protection for Children Associated with Armed Forces or Armed Groups".

On the basis of its legal work and its activities in conflict situations, the ICRC has reached the conclusion that most of the suffering endured by children during armed conflicts can be prevented or alleviated if there is greater respect for, and more scrupulous implementation of, existing rules. Unfortunately, experience clearly demonstrates that, in the absence of practical measures of implementation developed at the domestic level, accepted rights and obligations are often not respected.

It was with this in mind that the ICRC decided to work on the development of these Guiding Principles. The Guiding Principles are the result of a consultation process that included detailed examination of the various rules and principles relevant to the

¹ Available at : <http://www.icrc.org/customary-ihl/eng/docs/home>

protection of children affected by armed conflicts. They also benefited from the work carried out during a meeting of experts organized by the ICRC in December 2009. The specific aim of the Guiding Principles is to suggest practical and detailed measures for effective domestic implementation of the international rules protecting children affected by armed conflict. The Guiding Principles are not aimed at developing new law. They are intended a) to clarify existing obligations (taking into consideration the fact that the degree of ratification of the applicable treaties is uneven); b) to facilitate – through legislative, administrative and practical measures – respect for existing obligations; and c) to serve the purpose of promoting, disseminating and, in particular, implementing the relevant provisions².

3. **Nuclear weapons:** Over the past 2 years the discussions have increasingly focussed on the "catastrophic humanitarian consequences" of nuclear weapons and their international humanitarian law (IHL) implications. Such consequences were recognized in the *Final Document of the 2010 Review Conference of the Treaty on the Non-proliferation of Nuclear Weapons*. In the view of the ICRC, this change is an important signal that the debate on nuclear weapons is edging away from discussions solely about military and security doctrines and towards a broader dialogue on public health, human security and the extent of suffering that States permit to inflict in warfare. It was in this context that the ICRC, as well as the broader International Red Cross and Red Crescent Movement, adopted in 2011 a position on nuclear weapons. This position highlights that nuclear weapons are unique in their destructive power, in the unspeakable human suffering they cause, in the impossibility of controlling their effects in space and time, and in the threat they pose to the environment and to future generations. The position also includes an appeal to all governments to ensure that nuclear weapons are never used again and to pursue negotiations to prohibit the use and completely eliminate such weapons through a legally binding international agreement.
4. **Occupation and Other Forms of Administration of Foreign Territory:** Recent years have been characterized by an increase in extraterritorial military interventions. Along with the continuation of more classical forms of occupation, some of these interventions have given rise to new forms of foreign military presence in the territory of a State, on occasion consensual, but more often not. These new forms of military presence have - to a certain extent - refocused attention on occupation law. Therefore, 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. The purpose of this initiative was also to analyse whether, and to what extent, the rules of occupation law are adequate to deal with the humanitarian and legal challenges arising in contemporary occupations, and whether they might need to be reaffirmed, clarified or developed. The ICRC organised three meetings involving around 30 external experts from military, academic, governmental and non-governmental backgrounds. The meetings addressed the following topics: the beginning and end of occupation, delimiting the rights and duties of an occupying power, the relevance of occupation law for United Nations administration of territory and the use of force in occupied territory. A report on the discussions was published in 2012. The overall picture emanating from the project and report shows that the law of occupation, owing to its inherent flexibility, is sufficiently equipped to provide practical answers to most of the challenges of contemporary occupations. Accordingly, the ICRC deems that the law of occupation does not require any further development. Nevertheless, clarification of some of the existing norms is, or may be, desirable.

² See <http://www.icrc.org/eng/resources/documents/publication/p4028.htm>

5. **Use of lethal force in armed conflict situations:** In 2012, the ICRC convened a 2-day expert meeting on the use of lethal force in armed conflict situations in order to shed further light on the scope of application of, and interplay between, the conduct of hostilities and law enforcement paradigms in difficult scenarios such as the intermingling of fighters with civilian rioters; members of criminal groups taking up arms; escape attempts or riots in detention accompanied by an attack aiming at liberating the detainees; or unidentified persons approaching checkpoints. The meeting also considered issues related to planning and investigations of the use of force. It brought together 22 practitioners and academics with an expertise in use of force issues, intervening in their personal capacity and coming from 16 different countries. An outcome report on the discussions will be published by the end of 2012.

Promoting international humanitarian law:

6. **Missing persons:** The ICRC welcomes the entry into force on 23 December 2010 of the *International Convention for the Protection of All Persons from Enforced Disappearance*. It notes with appreciation that, as part of their efforts to reinforce their normative framework with regard to missing persons, a number of countries acceded during the last two years to the Convention or initiated processes aimed at their becoming party to this instrument; many of them included the crime of forced disappearance in their legislation.

The ICRC was pleased to make a statement during the thematic discussions held at the 2nd session of the newly established Committee on Enforced Disappearances on 29 March 2012.

On 15 May 2012, France's Ministry of Foreign Affairs held the *International Conference on the Convention for the Protection of All Persons from Enforced Disappearance*. The ICRC was a guest speaker at the conference and reminded all of the importance of the Convention.

Most recently, the ICRC contributed to the report of the UN Secretary-General on missing persons. This report is due to come out in the summer 2012.

The *31st International Conference of the Red Cross and Red Crescent*, which was held from 28 November to 1 December 2011, stressed the importance of missing persons in its 4-year Action Plan for the implementation of IHL. In its objective 4, and in line with the right of families to know the fate of their relatives as referred to in Article 32 of the 1977 *Additional Protocol I*, the Plan of Action invites States to "consider enacting appropriate legislation or arrangements to ensure adequate participation and representation of victims and their families as well as access to justice and protection of victims and witnesses, especially of women and children, in proceedings before their courts and in other transitional justice mechanisms concerning serious violations of international humanitarian law". The ICRC also prepared a report for the 31st International Conference which includes a comprehensive section on the effective implementation of IHL treaties, including measures taken for the protection of the rights of missing persons and their families. The ICRC is conducting and supporting studies on the compatibility of domestic law with international humanitarian law as it affects the issue of missing persons.

In Burundi, within the current discussions on transitional processes the authorities organised in July 2011, in collaboration with the ICRC, a seminar on proper management of human remains where legal, forensic and psychological experts exchanged practices in this regard.

7. Work to Promote compliance with IHL and in particular with the Statute of the International Criminal Court (ICC): The ICRC continued its work to promote knowledge of and compliance with the Statute of the ICC. More specifically, the ICRC has worked on the implementation of the complementarity principle of the ICC at the national level. In achieving this goal, the ICRC helps countries to implement the complementarity principle in their national legislation and has organized regional and national events to this end. For example, on 11 August 2011 the ICRC's Regional Legal Advisor in Pretoria gave a presentation to representatives from the South African Ministry of Justice and Constitutional Development on the Statute of the ICC and the Act in South Africa implementing it. On January 25 2012, the ICRC Legal Advisor discussed with the Congress of Peru the implementation of the Statute of the ICC. In September 2011, the ICRC participated to the work of the National Commission on IHL in Buenos Aires, Argentina where it was decided that a working group would be created to study the possibility of implementing the amendments to the Statute of the ICC. The ICRC also participated in a meeting with Tunisian officials in regards to ICRC support to the National Council in drafting laws for the incorporation of the Statute of the ICC in national criminal law.

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

The ICRC is working to provide national authorities with technical assistance for the adoption of legislative, regulatory and administrative measures needed to ensure compliance with 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.

The ICRC welcomes the recent ratification (throughout the period under review) by Morocco and The Philippines of Additional Protocol I (1977). Morocco also ratified Additional Protocol II (1977).

The ICRC also welcomes the recent ratification (throughout the period under review) of Additional Protocol III (2005) by the following countries: Argentina, Armenia, Belarus, Cook Islands, Serbia (Republic of), Spain and Timor-Leste.

The ICRC would like to underline the national implementation measures of international humanitarian law (during the period under review) taken by the following countries: Argentina, Bahrain, Columbia, Fiji, France, Lebanon, Mexico, Nigeria, Paraguay, Peru, Samoa and Switzerland³.

8. Third universal meeting of National Committees for the implementation of international humanitarian law: The meeting, held from 27-29 October 2010, was organised by the ICRC Advisory Service on international humanitarian law. There were participants from all over the world including: 78 National Committees for IHL, government representatives from countries interested in creating a National Committee, representatives of international organizations, as well as members of National Societies of the Red Cross and Red Crescent. The objective of the meeting was twofold: It offered the opportunity for National IHL Committees from all parts of

³ Additional information on new national implementation of IHL is available in the following document: ICRC, "Report on implementation of Resolution 3 on reaffirming and implementing international humanitarian law", *31st International Conference of the Red Cross and Red Crescent*, online: http://www.rccconference.org/docs_upl/en/31IC_Implementation_report_IHL_EN.pdf

the world to meet and exchange views and best practices on their respective roles and activities. It also considered legal measures and national mechanisms required to support an integrated system for the repression of serious violations of IHL.

More particularly, the meeting aimed to: 1) explain the scope of an integrated system for the repression of serious violations of IHL and provide an overview of the legal and institutional framework required at domestic level, stressing the role of the ICC Statute; 2) update participants on recent developments pertaining to the incorporation at domestic level of the necessary provisions and mechanisms for the repression of serious violations of IHL; 3) provide a forum for discussing tools to assist and support National IHL Committees in implementing an efficient system for repressing serious violations of IHL, drawing particular attention to the legal and institutional framework required at domestic level; 4) discuss the key role of National IHL Committees in incorporating serious violations of IHL into national legislation and ensuring that such legislation has the maximum preventive effect.

Documentation and tools

- 9. Documentation Database on National Implementation of International Humanitarian Law**
- 10.** The ICRC has put in place a Database on National Implementation of IHL for the exchange of information on national implementation measures undertaken by States on IHL treaties. The database is customized with up-to-date information on national legislation and national judgements so that States and others have the tools required to fulfil their obligations under IHL treaties in this regard.
- 11.** The implementation of IHL norms at the domestic level is not an easy task. It requires the collaboration of multiple stake-holders, technical expertise and other resources not always readily available. The ICRC's Advisory Service came into being to assist States in this task. Among many initiatives, it does so through a system of information exchange on the laws and jurisprudence applicable to IHL, made available to States specifically, and offered generally online.
- 12.** The existence of the database enables the ICRC to systematically collect and compile data to identify gaps in national legislation, allowing States to fully implement their obligations under IHL instruments.
- 13.** It also acts as a centre to enable information sharing among States, through the ICRC, to analyse trends in implementation and source 'best practice' in the implementation of IHL treaties.

International and regional meetings

- 14. The 31st International Conference of the Red Cross and the Red Crescent (International Conference):** The International Conference took place in Geneva from 28 November to 1 December 2011. Eight (8) Resolutions were adopted by consensus, three (3) of which touched on IHL issues, notably Resolution 1 on "Strengthening Legal Protection for Victims of Armed Conflicts", Resolution 2 and its annex entitled "4-Year Action Plan for the Implementation of International Humanitarian Law" and Resolution 5 on "Health Care in Danger."
- 15.** On Resolution 1 "Strengthening Legal Protection for Victims of Armed Conflicts", in 2008 the ICRC initiated an internal study to determine whether, and to what extent,

IHL as it exists today continues to provide an appropriate response to the humanitarian problems arising in armed conflicts. The study suggested four areas where strengthening the existing framework would improve the protection of victims of armed conflicts: (1) protection of persons deprived of their liberty, especially in non-international armed conflict; (2) international mechanisms for monitoring compliance with IHL and reparation for victims of violations; (3) protection of the natural environment; and (4) protection of internally displaced persons. As a result of consultations on the conclusions of the ICRC study, States indicated two priority areas: the protection of persons deprived of liberty, and mechanisms for monitoring compliance with IHL. Through adoption of Resolution 1, the International Conference invited the ICRC to pursue further research, consultation and discussion in cooperation with States and other relevant actors and to submit a report on a range of options and recommendations for strengthening the law in both of these areas to the 32nd International Conference in 2015 for further consideration. The Resolution also mentions the pledge made by the Government of Switzerland to identify concrete ways and means to strengthen the application of IHL, in cooperation with the ICRC. The implementation of Resolution 1 will go forward on two tracks, linked by their foundation in a common resolution and the objective of strengthening legal protections in armed conflict. The first track on compliance mechanisms will be a joint initiative between the ICRC and the Government of Switzerland. The second track, dealing with the substantive norms protecting persons deprived of their liberty, will begin with four regional consultations with States intended to deepen discussions and determine the best way forward.

16. Resolution 2 on the **"4-Year Action Plan for the Implementation of International Humanitarian Law"** urges all States parties to the Geneva Conventions and components of the Red Cross and Red Crescent Movement to take specific action to enhance implementation of international humanitarian law in five areas: access by civilian populations to humanitarian assistance in armed conflicts; protection of children, women and persons with disabilities; protection of journalists; incorporation and repression of serious IHL violations; and arms transfers. States and National Societies of the Red Cross and the Red Crescent (National Societies) have adopted almost 70 different pledges related to the five areas contained in the Action Plan. Regular interaction between the ICRC, States and National Societies is planned on global, regional and bilateral levels with a view to ensuring implementation of these pledges until the next International Conference in 2015.
17. In 2011, the ICRC launched the project **Health Care in Danger**. It is based on the ICRC's observation, from its operational experience, that violence against the wounded and sick, medical personnel, facilities and transports is one of the most crucial yet overlooked humanitarian issues of today. In response, the ICRC declared its intention to mobilize support from governments, members of armed forces and groups, National Societies, and the health-care community (e.g. professional medical associations and NGOs specialised in this issue) for safeguarding the delivery of effective and impartial health care in armed conflicts and other emergencies. Resolution 5 of the International Conference calls upon the ICRC to initiate expert consultations with a view to formulating practical recommendations for making the delivery of health care safer in armed conflicts and other emergencies, and to report to the next International Conference in 2015 on the progress made. In 2012 and 2013, expert workshops on improving military practice; the responsibilities and rights of health-care personnel; improving safety precautions of health facilities; strengthening national legislation and penal repression as well as strengthening the response of National Societies in respect of health care, are designed to produce practical recommendations which States and other actors are encouraged to implement in their practice. These recommendations should also be politically

endorsed in regional consultations in 2014. The ICRC has also started to collect data on incidents on violence against the delivery of health care in 21 of the contexts in which it is operationally active.

18. First Review Conference to the Statute of the International Criminal Court: In accordance with the (ICC) Statute, a First Review Conference took place from 31 May to 11 June 2010 in Kampala, Uganda. The Review Conference brought the Statute more in line with the requirements of IHL by amending its Article 8 related to war crimes and, in particular, by adding to the list of war crimes in non-international armed conflicts the use of expanding bullets, asphyxiating or poisonous gases and poison. At the same conference, several countries made pledges on ending impunity.