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Repression of breaches of international humanitarian law

Violations of international humanitarian law and measures of repression: the International Tribunal for the former Yugoslavia

by Juan José Quintana*

1. Introduction

The International Conference for the Protection of War Victims, held in Geneva from 31 August to 1 September 1993, urged all States to make every effort to

*“ensure that war crimes are duly prosecuted and do not go unpunished, and accordingly implement the provisions on the punishment of grave breaches of international humanitarian law and encourage the timely establishment of appropriate international legal machinery ...”*¹

This refers to the establishment of an international criminal court, a widely discussed matter which has received new impetus in recent years within the framework of the United Nations. Recent prominent international instruments, such as the Final Declaration of the Geneva Conference and the Vienna Declaration adopted by the World Conference on Human Rights in June 1993², have noted with satisfaction the progress

* Original: Spanish — March 1994. The opinions expressed in the present article are entirely personal and do not necessarily reflect the views of the Colombian Government or Ministry of Foreign Affairs.

¹ Final Declaration of the Conference, Part II, para. 7. The text is to be found in the *International Review of the Red Cross*, No. 296, September–October 1993, p. 379. For consideration of the topic by the participants in the Conference, see *ibid.*, p. 375, pp. 436 ff.

² Vienna Declaration and Programme of Action, Part II, para. 92 (Doc. A/CONF. 157/23 of 12 July 1993).

achieved on this subject within the International Law Commission and called on this subsidiary organ of the General Assembly to continue examining the matter.³

However, until the said "appropriate legal machinery" is established, the international community will have to resort to *ad hoc* procedures in order to provide effective mechanisms for punishment of serious violations of international humanitarian law. This is precisely what has taken place in relation to the events in the territory of the former Yugoslavia. The Security Council has recently set up an international tribunal to try those responsible for serious violations of international humanitarian law⁴ in the said territory. This is the first court of its kind to be established since the international military tribunals of Nuremberg and Tokyo in 1945 and 1946. The object of the present paper is to describe the main features of this tribunal, as laid down in the Statute approved by the Security Council.

2. The process of establishing the Tribunal

One of the cornerstones of the Vance-Owen peace plan for the former Yugoslavia was human rights and humanitarian considerations. Thus, given the scale of the violations of IHL which have taken place in the territory of the former Yugoslavia, the setting-up of a body such as the one under discussion was only a matter of time, once the situation in the area was put on the agenda of the United Nations Security Council.

Although the Security Council had been concerned with the issue of the former Yugoslavia since September 1991, it was not until the middle of 1992 that it adopted the first of the resolutions which were the immediate antecedent for the creation of the International Tribunal. In resolution 764 (1992) of 13 July 1992, the Security Council reaffirmed the obligation of all parties to the conflict with regard to the application of IHL and laid down the important principle of individual responsibility for grave breaches of its rules. According to the Council, anyone who commits or orders the commission of grave breaches of the Geneva Conven-

³ For the background to this question, see "The work of the International Law Commission", 4th ed., United Nations, New York, 1988, pp. 28, 34 and 121. For current treatment of the subject, see the reports of the Commission on its proceedings during the 44th and 45th sessions (Doc. A/47/10, 1992; and A/48/10, 1993).

⁴ Referred to hereinafter as "IHL".

tions of 1949 will be held personally responsible for such breaches. In resolution 771 (1992) of 1 August 1992, the Security Council went one step further, taking a decision in application of Chapter VII of the Charter of the United Nations by virtue of which it demanded that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia-Herzegovina, desist from all breaches of IHL. Should they fail to do so, the Security Council would have to take new measures in conformity with the Charter.

In resolution 780 (1992) of 6 October 1992, the Council requested the Secretary-General to establish an impartial Commission of Experts to examine and analyse corroborated information relating to IHL violations, including grave breaches of the Geneva Conventions committed in the territory of the former Yugoslavia. The interim report of the Commission of Experts was sent to the Security Council by the Secretary-General on 9 February 1993. The report concluded that, in the territory in question, there had been grave breaches and other violations of IHL, including "ethnic cleansing", mass killings, torture, rape, pillage and destruction of civilian property, destruction of cultural and religious property and arbitrary detention. The report clearly advocated the establishment of an *ad hoc* international tribunal.⁵

On 22 February 1993, the Security Council formally stated in resolution 808 (1993) that the situation in the former Yugoslavia constituted a threat to peace and international security and declared that it was determined to put an end to the above-mentioned crimes and to take effective measures to bring those responsible to justice. To this end, it decided to establish an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. In the same resolution, the Council requested the Secretary-General to prepare a report on how to establish such a tribunal, a task which the Secretary-General carried out promptly.⁶

⁵ Document S/25274 of 9 February 1993. At the same time, the French government sent a letter to the President of the Security Council, attaching an important document on this topic, namely the report of the Committee of Jurists set up by the French Minister for Foreign Affairs to study the establishment of an international criminal tribunal for the former Yugoslavia. The Committee, consisting of eight distinguished French jurists, had been established on 16 January. The *rapporteur* was Professor Alain Pellet (Doc. S/25266, 10 February 1993; referred to hereinafter as "Committee of Jurists, Report").

⁶ Report presented by the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993), 3 May 1993, Doc. S/25704 and Annex (referred to hereinafter as "Report of the Secretary-General").

On 27 May 1993, the Security Council unanimously adopted resolution 827 (1993), in which, "acting under Chapter VII of the Charter", it approved the Secretary-General's report and the Statute of the International Tribunal. As we have already said, this Tribunal is the first of its kind since the Nuremberg and Tokyo Tribunals set up after the Second World War.

3. Basis and judicial nature

The decision of the Security Council to establish the Tribunal appears in paragraph 1 of resolution 808 (1993) of 22 February 1993. With regard to the form in which this decision could be executed, the Secretary-General noted in his report to the Security Council that, in the normal course of events, a tribunal of this kind would be established by means of a treaty concluded and adopted by an appropriate international body, such as the General Assembly or a conference of plenipotentiaries, as had been the case with the Nuremberg Tribunal.⁷ This method, however, would have the enormous disadvantage of requiring considerable time, both to prepare and conclude the treaty and to ensure that it was subsequently put into effect. Such a delay would not be compatible with the criterion of urgency laid down in resolution 808.⁸

The Secretary-General, therefore, proposed that the Tribunal should be established by means of a decision taken on the basis of Chapter VII of the Charter, i.e. in the form of a measure to maintain or restore international peace and security. As well as being expeditious and immediately effective, this method would have the major advantage that all States would be under a binding obligation to take whatever action is required to apply the decision of the Security Council, since it was a measure approved under Chapter VII.⁹ The Council accepted this recommendation and, accordingly, the preamble of the Statute expressly states

⁷ London agreement of 8 August 1945 for the prosecution and punishment of the major war criminals of the European Axis (*UN Treaty Series*, Vol. 82, No. 251). However, it should be noted that the Charter of the International Military Tribunal for the Far East was approved directly on 19 January 1946 by the then Supreme Allied Commander.

⁸ The Committee of French Jurists gave three reasons why it would not be appropriate to establish the Tribunal by means of a treaty (Committee of Jurists, Report, p. 10, para. 28).

⁹ Report of the Secretary-General, p. 7, paras. 19-23.

that the Tribunal was established by the Security Council “acting under Chapter VII of the Charter of the United Nations”.¹⁰

The Security Council’s acceptance of this latter recommendation of the Secretary-General means that the International Tribunal is in fact a subsidiary organ as provided for in Article 29 of the Charter, in the present case an international judicial organ.¹¹

The Tribunal has the following distinctive features:

- i) It is an **independent** organ, which, given its judicial character, is not subject to any kind of authority or control by the Security Council. Although there is no express provision to this effect in the Statute, this is the understanding of the members of the Security Council, as reflected in the statements recorded upon approval of the Statute.¹²
- ii) It is a **temporary** organ, the existence or maintenance of which depends on the restoration or maintenance of peace and international security in the territory of the former Yugoslavia and the future decisions of the Security Council in this regard.¹³
- iii) It is an **ad hoc** jurisdictional mechanism, the establishment of which is not directly related to the establishment of an international criminal jurisdiction of a permanent nature, this being an issue which remains under examination by the International Law Commission and the General Assembly.¹⁴ At most, it may be said that the example

¹⁰ In the debate which followed the approval of resolution 827 (1993), two members of the Security Council (China and Brazil) expressed serious reservations with regard to the suitability of the method adopted to establish the Tribunal. They clearly favoured the alternative of negotiating and concluding an international treaty (provisional verbatim record of the 3217th session, Doc. S/M.3217 of 25 May 1993, pp. 32 and 36).

¹¹ As examples of decisions of the Security Council taken within the framework of Chapter VII and involving the establishment of subsidiary organs, reference may be made to resolution 687 (1991) and subsequent resolutions relating to the situation between Iraq and Kuwait (Report of the Secretary-General, p. 8, para. 27).

¹² See, for example, the statement by the delegate of Spain, *supra*, note 9, p. 38.

¹³ Report of the Secretary-General, p. 8, para. 28. According to the Committee of Jurists, “... it would be for the Security Council to terminate the Tribunal if it determined that the latter was no longer serving the purposes for which it had been created” (Committee of Jurists, Report, p. 13, para. 40).

¹⁴ Various members of the Security Council stressed the *ad hoc* nature of the Tribunal and the fact that its establishment by means of a decision of the Council should not be taken as a precedent (*supra*, note 9, *passim*). The report of the Committee of Jurists also made it clear that, if it were a question of establishing an international criminal tribunal of universal competence, then neither the Security Council nor the General Assembly seemed to have the necessary powers (Committee of Jurists, Report, pp. 11-12, paras. 29-37).

of the creation of this organ by the Security Council has served to speed up the process of examination of the said questions by the above-mentioned bodies.¹⁵

- iv) The Tribunal will confine itself to applying the rules of existing IHL; it will not develop or create new rules. As the Secretary-General noted in his report, by establishing the Tribunal and assigning it the task of prosecuting persons responsible for serious violations of IHL, the Security Council is not creating rules of international law nor seeking to assume a sort of “legislative” function within the framework of international criminal law.¹⁶

4. Organization and composition of the Tribunal

The Tribunal is not a single entity but consists of a number of components: a judicial component, a prosecutory component and an administrative component.

The judicial component consists of three chambers: two Trial Chambers, each with a bench of three judges, responsible for hearing cases submitted to them by the prosecutory component, and an Appeals Chamber, with a bench of five judges, for appellate proceedings in respect of the decisions of the Trial Chambers. In total, the judicial component will comprise 11 judges.¹⁷

The prosecutory component, comprising a Prosecutor and other staff, has the function of investigating cases, preparing charges and indicting persons responsible for violations of IHL.

The administrative component consists of a Registry or secretariat which provides services for the three chambers and the Prosecutor’s office.

Thus, in accordance with Articles 11 and 12 of the Statute, the structure of the Tribunal is as follows:

- a) two Trial Chambers, each with a bench of three judges

¹⁵ The Report on the Protection of War Victims, drawn up by the ICRC in June 1993 and presented to the Geneva Conference, was very clear on this point: *supra*, note 1, p. 437.

¹⁶ Report of the Secretary-General, p. 8, para. 29.

¹⁷ The Committee of Jurists favoured a total of 15 judges, plus the members of the so-called “Commission for Investigation and Prosecution”, which, in this plan, would carry out the prosecutory role (Committee of Jurists, Report, p. 44, paras. 164-169).

- b) an Appeals Chamber, with a bench of five judges
- c) the Prosecutor's office
- d) a Registry which provides services to the Chambers and the Prosecutor.

Paragraph 8 of resolution 827 (1993) requests the Secretary-General to make practical arrangements for the effective functioning of the International Tribunal at the earliest time. This implies, in the first place, initiation of the procedure laid down in Articles 13 and 16 of the Statute for the election of the Tribunal's 11 judges and the Prosecutor.

The qualifications required of candidates for judges of the Tribunal are stated in paragraph 1 of Article 13 of the Statute:

“The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law, and human rights law”.

When drawing up the final list of candidates, moreover, the Security Council must “take due account of the adequate representation of the principal legal systems of the world”. This means that there should be an equitable geographical distribution of the 11 vacancies, as is the case with the International Court of Justice.

With regard to the judges, the Secretary-General invited the Member States to propose up to two candidates, no two of whom could be of the same nationality. The resulting list of candidates was submitted to the Security Council, which reduced it to 22 names. In accordance with Article 13, para. 2, the General Assembly then elected the 11 members of the Tribunal from this short list on 15 September 1993.¹⁸ Should a vacancy arise in any of the chambers, the Secretary-General will appoint

¹⁸ The list of judges elected, according to geographical distribution, is as follows (for the relevant biographical profiles, see Document A/47/1006 of 1 September 1993): **Western Europe and other States:** Antonio Cassese (Italy), Jules Deschênes (Canada), Germain Le Foyer de Costil (France), Gabrielle Kirk McDonald (United States of America), Ninian Stephen (Australia); **Africa:** Georges Michel Abi-Saab (Egypt), Adolphus Godwin Karibi-Whyte (Nigeria); **Asia:** Li Haopei (China), Lal Chand Vohrah (Malaysia), Rustam S. Sidhwa (Pakistan); **Latin America and Caribbean:** Elizabeth Odio Benito (Costa Rica).

a replacement after consultation with the presidents of the Security Council and the General Assembly.¹⁹

The 11 judges making up the Tribunal elect one of their number to act as President; he or she will be a member of the Appeals Chamber and will preside over its proceedings. The main function of the President is to assign judges to the three chambers, after consultations with the members of the Tribunal. The three members of each Trial Chamber so assigned elect their own Presiding Judge (Article 14).

The Prosecutor (with the rank of Under-Secretary-General of the United Nations) is appointed by the Security Council on nomination by the Secretary-General.²⁰ In accordance with Article 16, para. 4, of the Statute, the candidate for Prosecutor

“shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases”.

The Prosecutor’s office consists of an investigation unit and a prosecution unit. The other staff are appointed by the Secretary-General on the recommendation of the Prosecutor (Article 16).²¹

The Registry is headed by a Registrar with the rank of Assistant Secretary-General of the United Nations, appointed by the Secretary-General after consultation with the President of the Tribunal. Registry staff are also appointed by the Secretary-General, on the recommendation of the Registrar. As the organ responsible for the administration and

¹⁹ The Committee of Jurists favoured a considerably more complex solution, in which the judges would be elected by four existing jurisdictions, namely the International Court of Justice, the European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission on Human and Peoples’ Rights. If this system encountered resistance, the Committee proposed that the Security Council could elect the members from lists of candidates submitted by these four bodies (Committee of Jurists, Report, pp. 45-46, paras. 170-175).

²⁰ The last paragraph of the preamble to resolution 827 (1993) stipulates that, pending the appointment of the Prosecutor, the Commission of Experts established pursuant to resolution 780 (1992) “should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its interim report”. On this point, see Committee of Jurists, Report, pp. 27-28, paras. 102-103. The person finally appointed as Prosecutor was the jurist Ramón Escobar Salom.

²¹ As mentioned above, in the plan proposed by the Committee of Jurists, the Prosecutor would be replaced by a Commission for Investigation and Prosecution, consisting of five members of the Tribunal appointed in the same way as other Tribunal members, i.e. the judges (Committee of Jurists, Report, pp. 46-47, paras. 177-180).

servicing of the Tribunal, the Registry will deal, *inter alia*, with the following matters:

- a) public information and external relations;
- b) preparation of minutes of meetings;
- c) conference-service facilities;
- d) printing and publication of all documents;
- e) all administrative work and budgetary and personnel matters.²²

The judges, the Prosecutor and the Registrar are appointed for a four-year term and are eligible for reappointment.

5. Jurisdiction and competence

a) General scope

Article 1 of the Statute sets out the general scope of the competence attributed to the Tribunal:

“The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute”.

b) Competence *ratione materiae* (subject-matter jurisdiction)

With regard to material or subject-matter jurisdiction, the Tribunal shall prosecute persons responsible for **serious violations of international humanitarian law**, which includes both conventional and customary law. According to the Secretary-General, conventional IHL which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in seven international instruments:

- the four Geneva Conventions of 12 August 1949 for the protection of victims of war;
- Hague Convention IV respecting the Laws and Customs of War on Land and the Regulations annexed thereto of 18 October 1907;

²² Report of the Secretary-General, p. 23, para. 90.

- the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948;
- the Charter of the Nuremberg International Military Tribunal of 8 August 1945.

Recognizing the customary nature of the rules contained in these instruments, Articles 2 to 5 of the Statute specify the following acts, which fall within the scope of the subject-matter competence of the Tribunal, and systematically set forth the relevant provisions of each of the instruments referred to above.

● ***Grave breaches of the Geneva Conventions of 1949 (Article 2)***

This provision enumerates only the acts which the Conventions consider to be “grave breaches” or war crimes. They include the following:

- a) wilful killing;
- b) torture or inhuman treatment, including biological experiments;
- c) wilfully causing great suffering or serious injury to body or health;
- d) extensive destruction or appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- f) wilfully depriving a prisoner of war or a civilian of the rights of a fair and regular trial;
- g) unlawful deportation or transfer or unlawful confinement of a civilian;
- h) taking civilians as hostages.

On the basis of the argument that the Conventions adequately reflect the state of international customary law in this area, it is clear that, for the Security Council, a grave breach of the Conventions is a grave breach of IHL which gives rise to individual responsibility.²³

²³ The statement of the delegate of the United States, approving the Statute, also refers to the two Additional Protocols of 1977 but in the context of another category of acts: violations of “the laws or customs of war” (*supra*, note 10, pp. 14-15).

● ***Violation of the laws or customs of war (Article 3)***

This provision gives various examples of violations of the laws and customs of war, noting that the list is not an exhaustive one:

- a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- e) plunder of public or private property.

The drafting of the article is inspired by Hague Convention IV of 1907 and the Regulations annexed thereto, which, according to the Secretary-General,

“ ... comprise a second important area of conventional humanitarian international law which has become part of the body of international customary law”.²⁴

In support of this conclusion, he cites a ruling of the Nuremberg Tribunal to the effect that many of the provisions of the Hague Regulations had been recognized by all civilized nations by 1939 and were regarded as being declaratory of the laws and customs of war. The same can be said of the war crimes defined in Article 6 of the Charter of the said Tribunal.

● ***Genocide (Article 4)***

Article 4 is a word-for-word recapitulation of the provisions of Articles 2 and 3 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which is held to form part of international customary law, as stated by the International Court of Justice in an Advisory Opinion of 1951.²⁵

²⁴ Report of the Secretary-General, p. 11, para. 41.

²⁵ Opinion on *Reservations to the Genocide Convention*, ICJ Reports 1951, p. 23.

For the purposes of the Statute, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, such as:

- a) killing members of the group;
- b) causing serious bodily or mental harm to members of the group;
- c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) imposing measures intended to prevent births within the group.

The following acts are punishable:

- a) genocide;
- b) conspiracy to commit genocide;
- c) direct and public incitement to commit genocide;
- d) attempt to commit genocide;
- e) complicity in genocide.

In this regard, it is worth mentioning that, at the present time, there is an action between Bosnia-Herzegovina and Yugoslavia (Serbia and Montenegro) before the International Court of the Hague, relating specifically to the application of the 1948 Convention. The case was submitted through an application filed by Bosnia-Herzegovina on 20 March 1993 and is now in the phase of written proceedings, the Court having taken steps to order provisional protection measures.²⁶

According to the application, Yugoslavia has violated and remains in breach of its legal obligations under various provisions of the Convention in relation to the State and people of Bosnia-Herzegovina. It must be stressed that, as the dispute submitted to the Court refers to the interpretation of a multilateral treaty, the other States which are party to the instrument in question have the right to intervene in the proceedings under the terms and conditions stipulated in Article 63 of the Charter of the Court. In accordance with the said article, the Registrar of the Court sent the governments concerned formal notification.²⁷

²⁶ *Case concerning Application of the Convention on the Prevention and Repression of the Crime of Genocide*, Order of 8 April 1993, *ICJ Reports* 1993, p. 3. On 27 July 1993, Bosnia-Herzegovina presented a new request for provisional measures, which was under consideration by the Court when this article was being prepared.

²⁷ According to available information, no State has yet invoked Article 63 of the Statute of the Court in this case.

● ***Crimes against humanity (Article 5)***

This is probably the category of offences whose inclusion in the Statute gives rise to the most problems, owing to the absence of an international instrument which states clearly what is understood by “crimes against humanity”. At the same time, however, it is one of the most important categories in relation to the subject-matter competence of the Tribunal, given that the atrocities committed in the former Yugoslavia (such as “ethnic cleansing” and rape and other general and systematic forms of sexual abuse) do not technically belong to any of the three categories previously described. Among the international legal precedents cited in relation to this type of conduct are the Charter and Judgment of the Nuremberg Tribunal, Law No. 10 of the Control Council for Germany and a ruling of the International Court of Justice in the matter of *Military and Paramilitary Activities in and against Nicaragua*, pronounced in 1986.²⁸

The Secretary-General’s report contains an eminently explanatory definition of crimes against humanity, that is:

“ ... *inhumane acts of a very serious nature, such as wilful killing, torture or rape, committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds*”.²⁹

In accordance with Article 5, the Tribunal will have the power to prosecute persons responsible for the following crimes “ ... when committed in armed conflict, whether international or internal in character, and directed against any civilian population”:

- a) murder;
- b) extermination;
- c) enslavement;
- d) deportation;
- e) imprisonment;
- f) torture;
- g) rape;

²⁸ Report of the Secretary-General, p. 13, para. 47 and note 9.

²⁹ Report of the Secretary-General, p. 13, para. 48.

- h) persecution on political, racial and religious grounds;
- i) other inhumane acts.

c) Competence *ratio personae* (personal jurisdiction)

With regard to competence *ratio personae* or personal jurisdiction, the wording of the Security Council's resolutions is vague, referring to the trial of "persons responsible for serious violations of international humanitarian law". In the Secretary-General's report, the expression is interpreted as referring to individuals and, for this reason, Article 6 of the Statute states that the Tribunal will try only natural persons.

Closely related to this aspect is the principle of individual criminal responsibility, which is based on the fact that the various resolutions of the Security Council clearly state that persons who have committed serious violations of humanitarian international law are individually responsible for them. This principle is endorsed in Article 7 of the Statute which, more particularly, settles a number of complex questions such as the irrelevance of the official position of the accused (including a head of State or government), the responsibility of superiors for certain acts of their subordinates and the consequences where the accused acted pursuant to an order of a superior.³⁰

d) Competence *ratione loci* (territorial jurisdiction) and competence *ratione temporis* (temporal jurisdiction)

Article 8 of the Statute states as follows:

- i) *"The territorial jurisdiction of the International Tribunal shall extend to the territory of the former Socialist Federal Republic of Yugoslavia, including its land surface, airspace and territorial waters. The temporal jurisdiction of the International Tribunal shall extend to a period beginning on 1 January 1991"*.

This is a neutral date which, according to the Secretary-General,

"is not tied to any specific event and is clearly intended to convey the notion that no judgement as to the international or internal character of the conflict is being exercised".³¹

³⁰ On this aspect, see Committee of Jurists, Report, pp. 23-25, paras. 82-96.

³¹ Report of the Secretary-General, p. 16, para. 62. After lengthy reflection, the Committee declared itself in favour of a later date, namely 25 June 1991, which it considered to be "more neutral" (Committee of Jurists, Report, pp. 22-23, paras. 74-81).

e) **Concurrent jurisdiction and the principle of *non bis in idem***

Finally, Article 9 upholds the principle of **concurrent jurisdiction**. This means that in deciding on the establishment of the International Tribunal, it was not the intention of the Security Council to preclude the exercise of jurisdiction by national courts with respect to acts characterized as serious violations of international humanitarian law. However, while it is stipulated that the International Tribunal and the national courts have concurrent jurisdiction, the primacy of the former over the latter is clearly stated. At any stage of the procedure, the International Tribunal may formally request the national courts to defer to the competence of the International Tribunal in the manner set out in the rules of procedure and evidence.

In addition, Article 10 lays down the principle of *non bis in idem*, whereby a person may not be tried twice for the same crime.³²

6. Functioning: prosecutorial system

As laid down in the Statute, the International Tribunal will function in accordance with the prosecutory system of Anglo-Saxon law. This provides for an organ separate and independent from the Tribunal which will be responsible for the investigation stage and the inquiries needed in each case. Thus, provision is made for a Prosecutor who, after carrying out the necessary investigation, decides whether or not there are grounds for bringing an indictment for examination by a judge of the Trial Chamber.

As already stated, the International Tribunal will consist of three Chambers, the Prosecutor's office and the Registry. With regard to procedure, the Statute contains very general rules on the following basic aspects:

- investigation and preparation of the indictment (Article 18);
- review of the indictment (Article 19);
- commencement and conduct of the trial proceedings (Article 20);
- rights of the accused (Article 21);
- protection of victims and witnesses (Article 22).

³² For a discussion of this point, see Committee of Jurists, Report, pp. 36-37, paras. 132-137.

However, it is left to the judges to adopt the rules of procedure and evidence which will be applicable at every stage of the trial. It is to be hoped that this task will advance as the judges take up their duties and the Tribunal is formally constituted, the cooperation of all States having been requested to this end.³³

Provision has been made for two types of further proceedings: appellate proceedings (Article 25) and review proceedings (Article 26).³⁴ It is further stipulated that the Tribunal will impose only imprisonment as a penalty (Article 24), the sentence being served in the territory of a State designated by the Tribunal from a list of States having indicated to the Security Council their willingness to accept convicted persons (Article 27).

7. Duty of cooperation and judicial assistance

Article 29 of the Statute creates important obligations for all States with regard to cooperation with the Tribunal. Given the significance of this, it is worth recalling the relevant section of the Secretary-General's report which describes the nature of these obligations:

"125. (...) the establishment of the International Tribunal on the basis of a Chapter VII decision creates a binding obligation on all States to take whatever steps are required to implement the decision. In practical terms, this means that all States would be under an obligation to cooperate with the International Tribunal and to assist it in all stages of the proceedings to ensure compliance with requests for assistance in the gathering of evidence, hearing of witnesses, suspects and experts, identification and location of persons and the service of documents. Effect shall also be given to orders issued by the Trial Chambers, such as warrants of arrest, search warrants, warrants for surrender or transfer of persons, and any other orders necessary for the conduct of the trial.

³³ One of the main paragraphs of resolution 827 (1993) requested the Secretary-General to submit to the judges of the Tribunal any suggestions received from States for the rules of procedure and evidence. The judges are empowered to adopt such rules under Article 15 of the Statute.

³⁴ The Report of the Committee of Jurists provided only for "revision" by the International Court of Justice or a special Court of Revision composed of the Presidents of the four specialized jurisdictions referred to above (*supra*, note 19), in relation to the appointment of candidates for membership of the Tribunal (Committee of Jurists, Report, pp. 38-40, paras. 141-153).

126. *In this connection, an order by a Trial Chamber for the surrender or transfer of persons to the custody of the International Tribunal shall be considered to be the application of an enforcement measure under Chapter VII of the Charter of the United Nations*".³⁵

8. Final remarks

The specific obligations for States arising from resolution 827 (1993) include the presentation of suggestions for the rules of procedure of the Tribunal, with a view to facilitating the implementation of the Statute, and consideration of the possibility of contributing funds, equipment and services to the Tribunal, including the offer of expert personnel. Moreover, the general duty of States to cooperate fully with the Tribunal and its organs, in accordance with the resolution and the Statute, includes the obligation to take any measures necessary under their domestic law to implement the relevant instruments.

It may be said that the functioning of the Tribunal will depend in large measure on the readiness of States to comply with these obligations and the promptness with which they act in this regard.³⁶ Once the Tribunal has been established, great care will be required in the process of adopting rules of procedure and in the first steps taken by the Prosecutor's office, including, of course, the submission of the first cases.

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³⁵ Report of the Secretary-General, p. 31.

³⁶ Pursuant to Article 32 of the Statute, the expenses of the Tribunal will be borne by the regular budget of the United Nations. For the immediate period, one of the items on the agenda for the 48th session of the General Assembly was to be the financing of the Tribunal. The Advisory Committee on Administrative and Budgetary Questions requested the Secretary-General to prepare a report on this subject for presentation to the Assembly (Doc. A/47/980, 22 July 1993).

The International Committee of the Red Cross and the implementation of a system to repress breaches of international humanitarian law*

by **María Teresa Dutli** and
Cristina Pellandini

1. Introduction

The fundamental instruments of international humanitarian law are well known. They are principally the four Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as an extensive framework of customary law. These instruments deal with issues of vital importance in times of armed conflict including protection of the wounded, sick and shipwrecked, prisoners of war and civilian internees, as well as the protection of the civilian population as a whole.

International humanitarian law establishes not only the basic rights of the individual, but also contains important mechanisms for guaranteeing observance of these rules. It imposes the obligations necessary to repress any act constituting a serious infringement of personal dignity or a grave threat to the security of the civilian population.

The current spate of armed conflicts and flagrant violations of humanitarian law has revived interest in the sanctions system to ensure greater respect for that law. This system is designed to halt violations and, in particular, to repress grave breaches classified as war crimes.

* Original: French — March 1994.

The punishment of breaches of international humanitarian law has been the subject of several studies.¹ We shall therefore refer only briefly to the obligations of States in this regard. We shall also see how the International Committee of the Red Cross (ICRC) works for the implementation of these obligations, both at the national level and in the context of an international penal tribunal. Indeed, ensuring that breaches are duly prosecuted and do not go unpunished is a matter of constant concern to the ICRC. This is borne out by the steps already taken by the ICRC and those it continues to take to encourage the adoption of national measures for implementation of international humanitarian law, mainly in the form of penal legislation.

2. Who is responsible for repressing grave breaches of international humanitarian law?

International humanitarian law deals extensively with the repression of grave breaches committed during international armed conflicts, with the underlying idea that penal sanctions are an integral part of any coherent judicial system and that the threat of sanctions is an element of dissuasion.

Recognition of the individual penal responsibility of persons who commit or order the commission of a grave breach of the humanitarian treaties constitutes a major advance in humanitarian law.²

The Geneva Conventions of 1949 and Protocol I additional thereto address two categories of violations: those classified as grave breaches, which States have the obligation to prosecute; and those which States have the sole obligation to halt, no specific procedure having been prescribed for this.

Each Convention contains a list of grave breaches.³ This list is supplemented in Additional Protocol I,⁴ which classifies these breaches as *war crimes*.⁵

¹ See, *inter alia*, Yves Sandoz, "Mise en œuvre du droit international humanitaire", in *Les dimensions internationales du droit humanitaire*, IHL-UNESCO, Paris, Pédone, 1986, pp. 229-326. By the same author: "Penal Aspects of International Humanitarian Law", in Cherif Bassiouni, (ed.), *International Criminal Law*, Vol. 1, New York, 1986. Also Richard Baxter, "The Municipal and International Law Basis of Jurisdiction over War Crimes", in the *British Yearbook of International Law*, Vol. 28, 1951.

² Articles 49, 50, 129 and 146 common to the Geneva Convention.

³ Articles 50, 51, 130 and 147 common to the Geneva Conventions.

⁴ Articles 11, paragraph 4 and 85, paragraphs 3 and 4.

⁵ Article 85, paragraph 5.

In the repression of grave breaches of international humanitarian law, the principal role — and hence the responsibility — rests with the parties to the conflict and the other Contracting Parties. In other words, the maxim *aut judicare aut dedere* must be applied. If grave breaches are committed, a Contracting Party has the choice of bringing the perpetrators before its courts or to “hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case”.⁶ The obligation to repress grave breaches is independent of the nationality of the person committing them and of the place where they are committed, pursuant to the principle of *universal penal jurisdiction*. This principle places all States party to the humanitarian treaties under an absolute obligation to repress such breaches effectively; only their universal repression can ensure real respect for humanitarian law. This principle may not be circumvented, even by agreement among the parties concerned.⁷

To that end, the Geneva Conventions specifically lay down the obligation to prescribe *effective penal sanctions* under national legislation.⁸ Thus, while international humanitarian law qualifies those acts constituting war crimes, it is left to national jurisdictions to determine the sanctions to be imposed.

3. The repression of violations of international humanitarian law not qualified as war crimes

Persons committing violations of the rules applicable in international armed conflicts other than those qualified as grave breaches are not deemed to have international penal responsibility.⁹

⁶ See footnote 2.

⁷ Articles 51, 52, 131 and 148 common to the Geneva Conventions.

⁸ See footnote 2.

⁹ These other violations may be defined as conduct contrary to the instruments of international humanitarian law which is of a serious nature but which is not included as such in the list of “grave breaches”.

It is not necessary to have in mind exactly what conduct could fall under this definition to be able nevertheless to distinguish three categories that qualify:

- isolated instances of conduct, not included amongst the grave breaches, but nevertheless of a serious nature;
- conduct which is not included amongst the grave breaches, but which takes on a serious nature because of the frequency of the individual acts committed or because of the systematic repetition thereof or because of circumstances;

The various duties which stem from the principle *pacta sunt servanda* — reaffirmed in Article 1 common to the four Geneva Conventions and recalling the obligation of States “to respect and to ensure respect for the present Convention[s] in all circumstances” — can help to establish an international penal responsibility for other violations of international humanitarian law.¹⁰ In the absence of such an international norm, it would nevertheless be advisable, in order to stop those other violations not considered under international humanitarian law as war crimes, for domestic legislation or regulations to prescribe suitable means to restore a situation in conformity with the law, all the more so as violations of rules applicable to internal conflicts are essentially the same as those considered as war crimes when they occur in international conflicts.¹¹ At the present stage of development of international law, only such internal mechanisms could make it possible to ensure effective respect for humanitarian law in all circumstances.

Moreover, it would be desirable for national mechanisms to complement the provisions of international humanitarian law in such a way as to accord victims full compensation for damages caused them. Indeed, it is not enough to punish those responsible for such acts; victims should also be effectively compensated for the injury suffered. This crucial issue as well is not completely settled under international humanitarian law,¹² and calls for complementary measures which at present can be adopted only internally.

In contrast, the provisions of international humanitarian law concerning the observance of judicial guarantees are highly developed.¹³ In this connection, no derogation from the fundamental guarantees enshrined in domestic legislation should be tolerated merely because the acts are

— “global” violations, for example, acts whereby a particular situation, a territory or a whole category of persons or objects is withdrawn from the application of the Conventions or the Protocol.

See *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, M. Nijhoff/ICRC, Geneva, 1987, paras 3591 and 3592.

¹⁰ Denise Plattner, “The penal repression of violations of international humanitarian law applicable in non-international armed conflicts”, *IRRC*, No. 278, September-October 1990, p. 419.

¹¹ See Article 3 common to the Geneva Conventions and Article 4 of Protocol II.

¹² The question of compensation for injury suffered in international conflicts is dealt with in Articles 51, 52, 131 and 148 common to the Geneva Conventions and in Article 91 of Protocol I.

¹³ See mainly Article 75 of Protocol I and Article 6 of Protocol II.

committed in a time of armed conflict. These guarantees should be supplemented, where necessary, so as to conform to the provisions of humanitarian law.

4. Universal penal jurisdiction for the prosecution of war crimes?

It is to be regretted that despite the detailed regulations on the repression of war crimes contained in the international humanitarian law treaties, the system of universal penal jurisdiction has not really been implemented by States and, as a result, it has not been possible to repress these crimes effectively. Other mechanisms — which must be matched by the political will of States if they are to work — have recently been created and should buttress the existing system.

International humanitarian law makes no provision for an international tribunal to prosecute war crimes, as do other instruments of international law,¹⁴ but does not rule it out either. Such powers could be conferred by an agreement among States in the form of an international treaty of universal scope, or by a decision of the Security Council. This has been the case for the “*international tribunal [...] for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991*”.¹⁵

The ICRC considers the establishment of this tribunal as an important step towards effective compliance with the obligation to punish war crimes. It should be only the first step towards the setting up of a permanent international penal tribunal.¹⁶ This has been borne out by the considerable headway made in the work of the International Law Commission, which has drawn up a draft Statute for a future International Tribunal¹⁷ and submitted it to the Sixth Committee (legal) during the forty-

¹⁴ Convention on the Prevention and Punishment of the Crime of Genocide, Article VI and the Convention on the Suppression and Punishment of the Crime of Apartheid, Article V.

¹⁵ Security Council Resolutions 808 (1993) and 827 (1993).

¹⁶ Report on the Protection of War Victims submitted by the ICRC to the International Conference for the Protection of War Victims, held in Geneva under the auspices of the Government of Switzerland from 30 August to 1 September 1993, ICRC, Geneva, June 1993, para. 4.2.2. Report reproduced in *IRRC*, No. 296, September-October 1993, pp. 391-445.

¹⁷ Report of the International Law Commission to the forty-eighth Session of the General Assembly of the United Nations, doc. A/48/10.

eighth session of the General Assembly of the United Nations (1993). This draft Statute complements, *inter alia*, Article 22 (“*war crimes of exceptional gravity*”) of the draft Code of Crimes against the Peace and Security of Mankind.¹⁸ It is therefore to be hoped that more effective measures to prevent and punish crimes committed against countless victims, especially in internal conflicts, will be available in the near future.

5. Role of the International Committee of the Red Cross in the event of violations of international humanitarian law

The ICRC has devoted considerable effort to ensuring respect for the rights of victims of war. This concern is in keeping with its mandate to “*work for the faithful application of humanitarian law applicable in armed conflicts and to take cognizance of any complaints based on alleged breaches of that law*”.¹⁹

In this connection, mention must be made of the ICRC’s efforts to disseminate the principles and rules of international humanitarian law. Promoting knowledge of this law in peacetime is imperative, as it will be respected only if it is familiar to those who are expected to abide by it and apply it. This knowledge is indispensable if violations are to be avoided.²⁰ It must be matched at the national level by the adoption, in peacetime, of measures of a legislative, regulatory and practical character to implement international humanitarian law. Here again, the ICRC has devoted considerable effort to attaining this goal.²¹

The adaptation of national laws, both to take into account the provisions of international law for the repression of war crimes and to ensure

¹⁸ Report of the International Law Commission to the forty-fourth Session of the General Assembly of the United Nations, doc. A/44/10.

¹⁹ See Article 5, para. 2, (c) of the Statutes of the International Red Cross and Red Crescent Movement.

²⁰ The obligation to disseminate the law appears in Articles 47, 48, 127 and 144 common to the Geneva Conventions, in Article 83 of Protocol I and in Article 19 of Protocol II.

²¹ See, *inter alia*, “National measures to implement international humanitarian law”, Resolution V of the 25th International Conference (Geneva, 1986); “Written representations by the International Committee of the Red Cross”, ICRC, Geneva, October 1991; “Implementation of international humanitarian law - national measures”, ICRC, Geneva, 1991, doc. C.I/4.1/1.

compensation for victims, is indispensable for effective observance of humanitarian law. There must be real determination by parties to conflict to repress grave offences and to put an end to all other violations.

In the discharge of its duties, the ICRC often comes face to face with situations in which international humanitarian law is being violated.

In accordance with the role conferred upon it, the ICRC must act in response to infringements of international humanitarian law observed by its delegates and seek to induce the parties to conflict to apply and respect the rules of the humanitarian treaties they have signed. The ICRC must also bring its influence to bear on other Contracting States so that they comply with their responsibilities under Article 1 common to the Conventions and take steps *vis-à-vis* the parties to conflict to “ensure respect” for these Conventions.

ICRC delegates are in constant touch with all the parties to any given conflict in the course of their activities (visits to prisoners, protection and assistance for the civilian populations affected). They protest directly to the competent authorities against any persecution they have observed, bringing to their attention any practices that are inadmissible under international humanitarian law so that they may put an end to them.

This function differs from that of the police or the courts which are responsible for enforcing the law and for bringing to justice those who violate it. International humanitarian law assigns that task to the Contracting States.

As a general rule, steps taken by the ICRC are confidential: the ICRC promises the *de jure* or *de facto* authorities allowing it to work and according it access to victims that it will not divulge publicly what its delegates hear or see in the performance of their duties, especially when visiting places of detention. The authorities should not, however, count on a conspiratorial silence by the institution in the event of grave, repeated violations and when these authorities, having been apprised of an infringement, fail to take appropriate remedial action. In some cases the ICRC may renounce its confidentiality, in accordance with guidelines it has set itself and made public.²² The interests of the victims are its paramount

²² See, “Action by the ICRC in the event of breaches of international humanitarian law”, *JRRC*, No. 221, March-April 1981, pp. 76-83.

The ICRC reserves the right to make public statements concerning violations of international humanitarian law if the following conditions are fulfilled:

- the violations are major and repeated;
- the steps taken confidentially have not succeeded in putting an end to the violations;

consideration; they determine its decision to denounce publicly certain violations it has witnessed.

Occasionally, however, the ICRC is requested to transmit to a party to a conflict (or to its National Red Cross or Red Crescent Society) complaints about international humanitarian law violations voiced by another party to the conflict (or by its National Red Cross or Red Crescent Society). In that case, the ICRC complies with the request only if there is no other channel of communication and a neutral intermediary between the parties is therefore required. It does not transmit complaints from third parties (governments, governmental or non-governmental organizations, private persons, etc.). As a general rule, the ICRC does not make public the complaints it receives.²³

6. The ICRC's approach to inquiries or judicial proceedings instituted against persons presumed guilty of breaches of international humanitarian law²⁴

On account of its role as a neutral and independent intermediary between belligerents and given the nature of its activities, the ICRC (or any of its staff) may be requested to participate in inquiries or legal proceedings instituted against persons presumed responsible for violations

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- such publicity is in the interest of the persons or populations affected or threatened;
 - the ICRC delegates have witnessed the violations with their own eyes, or the existence and extent of those breaches have been established by reliable and verifiable sources.

The purpose of public representations is to say what the ICRC is doing in a specific situation, to raise awareness and sometimes to remind the States concerned of their responsibilities under IHL. They may take various forms (solemn appeal, public statement, press release, etc.) and may be addressed to the State involved, to all parties to a conflict or to the community of States as a whole, or even to public opinion as a means of pressure that may have an effect on the State or States concerned.

The ICRC has issued many appeals to belligerent parties and public declarations, for example, in the context of conflicts in the former Yugoslavia; see in this regard ICRC declarations and press releases.

²³ See footnote 22.

²⁴ The present article does not examine the role that the ICRC could be called upon to play with respect to judicial guarantees when it assumes, *de jure* or *de facto*, the functions incumbent on a Protecting Power. In this regard, see: Hans Peter Gasser, "Respect for fundamental humanitarian guarantees in time of armed conflict — The part played by ICRC delegates", *JRRC*, No. 287, March-April 1992, pp. 121-142.

of international humanitarian law.²⁵ In such cases it is called upon to furnish information or give evidence concerning facts related to its activities.

Such requests may come from different sources. Judicial bodies, whether national or international, competent to investigate, institute proceedings in respect of or to judge violations of international humanitarian law may request information from the ICRC or even summon the institution or one of its delegates to give evidence about facts or events linked to its activities. The defendants may also have an interest in the ICRC, or a delegate with whom they are acquainted, giving evidence for the defence. Finally, victims or plaintiffs may ask for evidence to be given for the prosecution.

This problem is not new to the ICRC. In the countries where it is working, it is often called upon to take note of violations of international humanitarian law, to establish the veracity of alleged violations or to give evidence in court.²⁶

6.1 The mandate given to the ICRC by the community of States: first and foremost an operational role

The ICRC has been mandated by the States party to the Geneva Conventions of 1949 — thus by virtually all the States — to provide protection and assistance to the military and civilian victims of armed conflicts. This mandate is confirmed in the Statutes of the International Red Cross and Red Crescent Movement and hence extends to situations of internal unrest as well.²⁷ These instruments assign a number of powers and functions to the ICRC, such as visiting prisoners,²⁸ or assuming the duties incumbent on a Protecting Power when none has been designated;²⁹ under the terms of these instruments, the ICRC may also take humanitarian initiatives.³⁰ The specific role of the ICRC as a neutral and inde-

²⁵ For example, those brought by the *ad hoc* International Tribunal set up by the United Nations Security Council with a view to “prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace”. See footnote 15.

²⁶ See footnote 22.

²⁷ Article 5, para. 2, c), d) and e) of the Statutes of the International Red Cross and Red Crescent Movement.

²⁸ Article 126 of the Third Convention and Article 143 of the Fourth Convention.

²⁹ Articles 10/10/10/11, para. 3 common to the Conventions.

³⁰ Articles 9/9/9/10 and Article 3, para. 2 common to the Conventions, Article 5, para. 3 of the Statutes.

pendent intermediary between belligerents very often has a distinctly operational character; its primary mission is, for considerations of humanity, to protect and assist victims during hostilities and to improve their circumstances as far as possible.

To the ICRC, *providing protection and assistance* means not only contacting the warring parties and calling for the rules and principles of international humanitarian law to be respected and applied, but also being present in the midst of the fighting. This presence takes the form mainly of visits to prisoners, tracing missing persons, restoring contact between and reuniting members of families separated by war and caring for the wounded and the sick, as well as taking in and distributing food, clothing and other items essential to the survival of the affected populations.³¹

To carry out its mandate, the ICRC must have access to victims from the very onset of hostilities. It must also receive minimum guarantees of security for its staff working in the field. The cooperation of governments and parties to the conflict is therefore indispensable. It stems from the credibility of the ICRC and the trust placed in it, these in turn being based on the institution's independence from all political authorities, on its strict adherence to the principles of humanity, neutrality and impartiality and on the discretion with which it works. The ICRC strives, in particular, to establish and maintain continuous dialogue with its partners on the basis of this confidentiality.

In this way it often gains access to victims which the authorities and the parties to the conflict might have denied without this relationship of trust. But that also means that the ICRC must keep its distance from all pressure groups, be they political, media-based or of any other kind.

6.2 Compatibility between the mandate of the ICRC and the giving of evidence (or transmission of information) concerning action taken or facts confirmed by ICRC delegates in the performance of their duties

The ICRC must do its utmost to safeguard its operational capacity. In the interest of the victims whom it is intended to assist, it must refrain from taking any action or adopting any attitude that could compromise or hamper its work.

The ICRC has always displayed great reserve with respect to cooperating with inquiries or judicial proceedings instituted to repress vi-

³¹ See J.-L. Blondel, "Assistance to protected persons", *IRRC*, No. 260, September-October 1987, pp. 451-468.

olations of international humanitarian law, whether such procedures are initiated by a national authority or an international body.

It may not therefore participate in inquiries into alleged violations of international humanitarian law, considering the often controversial nature of such allegations and its interest in remaining outside all controversy, be it political in nature or associated with the hostilities.³² Nevertheless, it may intervene if it is entrusted in advance with such a mandate by means of an agreement, or if all the parties concerned have expressly requested it to do so. Furthermore, it may not participate in setting up a commission of inquiry, except under the conditions outlined above. In such a case, it will confine itself to providing its good offices so as to facilitate the choice of persons from outside its ranks qualified to serve on such a commission; it will furthermore do so only if this entails no risk of making its activities in favour of victims more difficult, if not impossible, or of jeopardizing its reputation as an impartial and neutral institution.³³

The ICRC therefore declines requests, whether made directly or through one of its staff, to give evidence in court concerning facts linked to its work in the countries where it is present. This reserve is generally respected by governments.

The ICRC has furthermore set itself strict guidelines on the transmission of information regarding its activities to authorities other than those directly concerned. It agrees to supply only information that it has made public.

Inquiries and legal proceedings are aimed at establishing penal responsibility; they should logically lead to the conviction or acquittal of the accused. In either case the result will be difficult to accept for one or several of the parties involved. ICRC participation in any guise whatsoever could be a sensitive matter, as it could be construed as taking sides. It would also entail the risk of subsequent rejection of the ICRC.³⁴ Lastly, it is equally difficult to reconcile with the institution's undertaking of discretion *vis-à-vis* the parties to the conflict.

³² Pursuant to the principle of neutrality, the ICRC "may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature". The strict observance of this principle by the ICRC is a *sine qua non* for it to be able to pursue its humanitarian activities under optimum conditions in cases of armed conflict or disturbances.

³³ See footnote 22.

³⁴ Such participation is furthermore excluded when the ICRC is engaged in proceedings in the course of its duties as a substitute for a Protecting Power, especially as a neutral observer; Article 99 *ff.* of the Third Geneva Convention and Article 71 *ff.* of the Fourth Convention; see footnote 24.

There is consequently a danger that the giving of evidence by the ICRC or by its delegates in inquiries or judicial proceedings (notably those instituted against persons presumed responsible for grave breaches of international humanitarian law) might hinder the accomplishment of its mission as defined in the instruments of humanitarian law, for by doing so, the ICRC would be breaking its pledge of discretion, both in respect of the parties to the conflict and of the victims themselves, thereby undermining the confidence placed in it. As a result, the institution might be refusing access to victims of present or future conflicts, and the safety of those it is trying to help and of the personnel working under its responsibility would obviously be compromised.

Whether it takes steps on its own initiative to put an end to confirmed breaches of international humanitarian law or its cooperation is requested in inquiries (or judicial proceedings) instituted to repress such breaches, the ICRC's approach will be guided by one overriding consideration: the interests of the victims.³⁵

6.3 Immunity from the obligation to give evidence, an indispensable prerogative for the ICRC to discharge its mandate

Since the ICRC must abstain at all times from any action that might prevent it from carrying out its humanitarian mission, compelling it to take such action would run counter to the very mandate entrusted to it by the community of States. It must be assumed that in adopting the Conventions of 1949 and their Additional Protocols of 1977, States intended to provide the ICRC with the means and the prerogatives needed to perform the functions assigned to it under these instruments.

Under public international law and in State practice, the ICRC is now acknowledged to have a functional international legal personality.³⁶ The international community confirmed this status on 16 October 1990 when it granted the ICRC observer status in the General Assembly of the United Nations.³⁷

³⁵ See footnote 22.

³⁶ See, by way of example, Julio A. Barberis, "El Comité Internacional de la Cruz Roja como sujeto del derecho de gentes" in Christophe Swinarski (ed.), *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet*, Geneva-The Hague, ICRC/Nijhoff 1984, pp. 635-641; Christian Dominicé, "La personnalité juridique internationale du CICR", *idem*, pp. 663-673; Paul Reuter, "La personnalité juridique internationale du Comité international de la Croix-Rouge", *idem*, pp. 783-791.

³⁷ The granting of observer status to the ICRC in consideration of the special role and mandates conferred upon it by the Geneva Conventions of 1949, resolution A/45/6 of the United Nations General Assembly, adopted during its forty-fifth session at its thirty-first plenary meeting, on 16 October 1990. General Assembly, Official Records: 45th Session, Supplement No. 49 (A/45/49).

Immunity of jurisdiction is an essential prerogative of this status in that it guarantees the ICRC the requisite independence for fulfilling its mandate. In the situations addressed by the Conventions, such immunity should cover exemption from the giving of evidence concerning action by the ICRC or its delegates or facts that have come to their knowledge in the performance of their duties. This is of particular importance in view of the guidelines for ICRC action that are outlined above.

Delegates and other ICRC staff may therefore not be compelled either to furnish information on matters deemed confidential or to give evidence. This applies to all situations covered by the international humanitarian law treaties, whether international or non-international armed conflicts.

Furthermore, in many countries where the ICRC is active, similar immunity for situations not covered by international humanitarian law is stipulated in a headquarters agreement concluded between the ICRC and the authorities,³⁸ or is tacitly accorded to the ICRC by the latter.

6.4 The situation of other components of the International Red Cross and Red Crescent Movement

The other components of the International Red Cross and Red Crescent Movement — National Red Cross or Red Crescent Societies and the International Federation of Red Cross and Red Crescent Societies (hereinafter “the Federation”) — are in a different situation from that of the ICRC, but one which also merits special attention.

The primary purpose of Red Cross and Red Crescent Societies in times of conflict is to assist the armed forces’ medical services in caring for the war-wounded, regardless of their origin. Under the Movement’s Statutes (ratified by the community of States party to the Geneva Conventions of 1949 at International Conferences of the Red Cross and Red Crescent), the mandate of the Federation is to assist the National Societies in their humanitarian activities and, in certain cases, to bring help to victims of conflicts in accordance with agreements concluded with the ICRC.³⁹ Therefore the Federation, too, may be called upon to take care of victims of conflict such as refugees or persons who have fled conflict zones.

³⁸ The ICRC has hitherto concluded headquarters agreements in 49 countries.

³⁹ See Article 6 of the Movement’s Statutes, in particular, para. 3 and para. 4, d) and i), as well as the Agreement between the ICRC and the League (Federation) of 20 October 1989.

The staff and volunteers of Red Cross and Red Crescent Societies of countries in conflict may also be direct witnesses of serious violations of international humanitarian law, whereas Federation and National Society staff carrying out their work outside conflict areas may be confronted with allegations of such violations.

The obligation to give evidence, if maintained for members of National Societies or delegates of the Federation, could be detrimental to their activities as well, as they too, like those of the ICRC, are governed by the Fundamental Principles of the Movement, in particular those of humanity, neutrality and impartiality.⁴⁰

For the reasons stated above, the resulting loss of confidence would certainly not be without impact on the activities of the ICRC, above all in terms of access to the victims whom the Movement is endeavouring to help.

It is well known that in times of armed conflict, feelings run high and tension and animosity are the order of the day. Any sensitive matter of public interest will obviously spark controversy that will serve as propaganda for one or other party to the conflict. The conflicts in the former Yugoslavia, highly politicized and exacerbated by the media, are a striking example of this. In such situations, the Red Cross and Red Crescent Societies should be even more strict in their adherence to the Fundamental Principles. It is all too easy to imagine the pressures brought to bear on them by their governments and by the various bodies of public opinion in their respective countries; they must keep relations smooth with each side because of the support they receive and need. In such circumstances, the interests of victims and the long-term credibility of the National Societies and the Movement dictate avoidance (albeit unpopular) of any controversy unrelated to the mission of the Red Cross or the Red Crescent.

This approach must also be adopted with regard to any proceedings instituted to repress violations of international humanitarian law. Any participation in such proceedings, notably by giving evidence, may well be construed as taking sides and arouse suspicion and hostility towards the International Red Cross and Red Crescent Movement as a whole.

⁴⁰ Fundamental Principles adopted in 1965 and ratified by the States party to the Geneva Conventions of 1949, and at the 25th International Conference of the Red Cross and Red Crescent in 1986.

7. Conclusions

The States party to the Geneva Conventions have undertaken to terminate violations thereof and to repress grave breaches qualified as "war crimes".

The responsibility for ensuring compliance with this law rests first and foremost with the States themselves. They must therefore, in peacetime, adopt the penal measures necessary to sanction any act contrary to the commitments given and must also ensure that these obligations are known to all who will be required to implement them. To be effective, such legislative measures must be matched by real determination on the part of the authorities to apply them.

It is therefore encouraging to note that participants at the International Conference for the Protection of War Victims, held in Geneva from 30 August to 1 September 1993, have committed themselves to this approach. In the Final Declaration adopted by this meeting, they reiterated their firm intention to ensure that war crimes "are duly prosecuted and do not go unpunished".

For the ICRC as guardian of international humanitarian law, the main task here is to help States fulfil their obligations. It welcomes and supports their efforts to do so, and will join in those efforts to the extent allowed by its mandate to protect and assist the victims of armed conflicts.

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Legal advisers to the armed forces — The Swedish experience*

by Krister Thelin

1. Introduction

In ratifying the 1977 Protocols additional to the Geneva Conventions of 1949, Sweden pledged to inform and instruct the authorities responsible for the country's policy of "total defence" and their personnel, as well as the civilian population, on the rules of international law.

Article 82 of Additional Protocol I of 1977 requires the High Contracting Parties to ensure at all times that legal advisers are available to advise military commanders at the appropriate level on the application of the Geneva Conventions and Protocol I and on the appropriate instruction to be given to the armed forces.

In this paper I shall try to give an account of the Swedish experience in implementing this important part of international humanitarian law (IHL). By way of background, I shall also briefly describe the Swedish Defence Forces and outline the general military policy in Sweden.

However, in considering every aspect of this subject it has to be kept in mind that Sweden has had the good fortune to stay out of conflicts for nearly 200 years. The last time Swedish armed forces were involved in combat was in 1814, towards the end of the Napoleonic wars. Since then, Swedish troops have restricted themselves to participation in UN peace-keeping and peace-making forces.

* Article based on a paper presented at a seminar on international humanitarian law in Sofia on 21 September 1990 by Krister Thelin, who was then Justice of Appeal and Legal Adviser to the Commander of Sweden's Southern Military Command.

2. Sweden's military policy and the structure of the Swedish Defence Forces

The goal of Sweden's security policy is, not surprisingly, the preservation of national independence, freedom and democracy.

Sweden is a large country which, together with Finland, geographically used to separate the two military alliances in northern Europe. The distance from the very north of Sweden to its southern tip is about 1,600 kilometres, which equals that between the Baltic and Naples in Italy.

While the territory is fairly large, the population is only less than nine million. Such an extensive territory calls for a large number of combat units. A military system meeting this need can be built only upon the principle of compulsory military service. Thus, to square the circle, Sweden must rely on timely mobilization, not only of its armed forces but also of the resources of our society at large: hence the concept of "total defence".

The Swedish armed forces, therefore, range from units with a high degree of combat readiness, especially within the Air Force and the Navy, to a large number of units more dependent on the call-up of reservists.

The principal aim of the Swedish defence system is to dissuade any would-be aggressor. Any military attack against Sweden, or any form of violation of its territory, will meet with resistance.

Sweden is, as a matter of often-stated policy, determined to protect its territorial integrity by all possible means, not only in war but also in peacetime. Repeated submarine intrusions have led to countermeasures reflecting the firm resolve to deal with the issue. The Swedish rules of engagement authorize every unit commander to use weapons without prior warning in internal waters to repel such intrusions. The same rules of engagement can also be applied by the military authorities in territorial waters. This has occurred occasionally during the last few years.

The Swedish armed forces depend for their operations on the organized support of the civilian infrastructure. This functional reliance renders them incapable of large-scale operations outside Swedish territory.

Forces on high alert, of all three services, are prepared to deal with incidents, to ward off border violations, to protect and if necessary demolish key facilities such as airfields and harbours, and to act as covering forces, should the need arise. In a matter of hours forces on the alert can be supplemented by the volunteer Home Guard (125,000 men).

Sweden's geographical position means that in the event of a serious crisis or war in the vicinity there are obvious risks of violation of its territory. Should there be any indication that preparations are being made for an invasion, Sweden would mobilize massively.

The mobilization system has certain unique features. There are more than 5,000 mobilization depots throughout the country, where pre-assigned, trained reservists will collect their stockpiled equipment and form units. The time required for mobilization ranges from less than a day for some territorial units to a few days for other units. All in all, Sweden can mobilize some 800,000 men and women.

Should forward defence, in the context of an attack by sea or across land borders, not succeed, organized combat will take place in every part of the country, including any area temporarily occupied. Full use will be made of the rough terrain and Ranger units will conduct organized operations against enemy lines of communications. Remaining naval and air units will cut enemy reinforcement and supply lines. The strategic objective is to inflict unacceptable losses on the aggressor, in terms of time as well as casualties. Preparations are also made for guerrilla warfare in temporarily occupied territory. It is understood that resistance will never cease in any part of Sweden.

Sweden's defence requirements, in combination with its small population, require optimum use of the pool of 800,000 trained reservists who represent ten per cent of the population. The combat-readiness of units in all branches of the military is maintained through regular call-up for refresher training.

Command and control at operational level under the Supreme Commander are exercised by six regional commanders. These have full command authority over all armed forces within their respective areas. Operational reserves may be transferred among them. Should a command function be disrupted, authority is automatically passed on.

3. The Swedish Committee on International Humanitarian Law

Sweden has traditionally been involved in the development of international humanitarian law (IHL) applicable to armed conflicts. It is therefore natural that in 1979 Sweden ratified the two Protocols additional to the 1949 Geneva Conventions.

In order to study the application of IHL to situations of war, occupation or neutrality in accordance with the Protocols, a special committee (chaired by Judge Carl-Ivar Skarstedt) was set up back in 1978. It submitted its final report in 1984.

On the question of legal advisers, the Committee observed that they should act in both peacetime and in time of war at appropriate military levels. They were to advise generally on how to give instruction in international law to the armed forces and all those involved in the overall defence system. In addition, they were to provide special guidance on application of the rules of international law during preparations for and the actual conduct of military operations. The Committee emphasized that legal advisers have different duties in peacetime and in time of war. It observed that advisers must be assigned to the Supreme Commander and to military commanders at higher regional levels, and should also be available to commanders at lower regional levels.

Moreover, legal advisers should probably be assigned to division commanders and, if possible, also to brigade commanders, but rarely to commanders of smaller units. The legal advisers should form part of the staff of the units concerned. The Committee also examined a number of proposals on the planning of these new advisory duties. It gave its views on the education and training that legal advisers should have and as to whether they should be professional officers with legal training or lawyers with military training. The Committee stressed that the spirit and wording of Article 82, Protocol I, undeniably implied that the legal adviser should be a lawyer. Bearing in mind the organizational and financial circumstances in which the armed forces and the judicial system operate, the Committee was of the opinion that there were several advantages in a system whereby professional lawyers with subsequent military training were engaged as legal advisers. The Committee also outlined the functions of legal advisers in the organization of defence in time of war and in peacetime.

4. Later work

In general, the Committee's proposals were well received by the agencies, organizations and other interested bodies to which the report was submitted for comments. As a result, in 1986 the Government decided to adopt an Ordinance (1986:1029; most recent amendment 1988:62) concerning Advisers on International Law in the Defence Forces Organization. The Ordinance, which came into force on 1 January 1987, pro-

vided for the appointment of advisers on international law in a number specified by the Supreme Commander. They were to be posted at higher staff levels and would have the task of advising military leaders on how the rules of international law in war and during neutrality would be applied and also take part in the planning work on the staff. The Ordinance stipulated that there would be seven advisers on international law in the peacetime organization of the defence forces, one stationed with the Supreme Commander and one with every military commander. The advisers would participate in the instruction of defence force personnel on how the rules of international law in war and during neutrality should be applied and advise the respective commanders on questions relating to international law.

The advisers in the peacetime organization were appointed by the Supreme Commander on 1 January 1988 and took up their duties. The wartime organization was also recently established.

5. The present situation

As a result of the Government Ordinance and further executive orders issued by the Supreme Commander, the present organization provides for seven peacetime legal advisers: one assigned to the Supreme Commander (Judge Skarstedt) and six others — one assigned to each of the six Military District Commanders.

In the instructions for the peacetime advisers, their tasks are broadly described as follows: to advise on the planning and implementation of instruction of IHL within the armed forces, to instruct those responsible for wartime legal advisory functions and in general to advise on questions relating to IHL. Furthermore, the legal adviser takes part in peacetime operational planning at staff level to ensure that due respect is paid at this stage to the various aspects of IHL.

Apart from the peacetime legal advisers, the wartime slots have now also been filled. All in all, some 50 advisers have been appointed at corps and division level. The number should be seen in comparison with the aforementioned total of 800,000 men and women in the Swedish armed forces, when fully mobilized.

What have been the criteria in choosing the legal advisers? As already mentioned, the Committee which examined the issue put forward two alternatives: either the posts should be filled by officers from the armed forces, who would receive training in the relevant legal areas, or suitable

civilian lawyers should be given the necessary military training. The Committee proposed the latter alternative, and this was the one which was adopted.

From the way these alternatives were stated one could deduce that the Swedish armed forces are, as it were, "poor in lawyers". In the peacetime organization there are no lawyers at all employed in the Defence Force, i.e. there is no equivalent to the Judge Advocate's Office or similar bodies found in the armed forces of many other countries (e.g. the US, Canada, the Netherlands, the United Kingdom, or, closer to Sweden, Denmark). This lack of lawyers is due to the fact that, traditionally, cases which in other countries are handled, also in peacetime, by military or martial courts are in Sweden dealt with by ordinary courts. This tradition has been further strengthened in the last couple of years by the abolition of special wartime military courts. Military commanders have, both in peacetime and in times of mobilization or war, only a limited right to "punish" minor contraventions of military rules, primarily by imposing restrictions on movement or deductions from salaries, where admonitions are not considered sufficient. Detention proper or fines are dealt with through civilian channels — as are all accusations of ordinary crimes or offences. However, to guide the Commanders (at regimental or the equivalent level) in peacetime there are part-time advisers, usually drawn from the judiciary and known as *auditeurs*. In wartime, the organization also calls for this type of adviser, posted to certain military staffs (brigade and above).

The lack of legal personnel within the Defence Force had implications for both the recruitment and the activities of the newly introduced legal advisers on IHL.

By and large, the legal advisers assigned to wartime posts only were drawn from the same pool of lawyers as those assigned the role of *auditeurs*. The majority of them were practising lawyers in their thirties or early forties. (The legal career system in Sweden is similar to that in Germany or France. It provides for training from the age of 25, when a law degree is usually awarded after five years of study, as a law clerk at the District Court and Appellate levels, and also as an Associate District Court Judge and subsequently as an Associate Justice of Appeal, before an ordinary judgeship is awarded some twenty years later.) Some of them, but not the majority, were also reserve officers in various branches of the Defence Forces. The rest had basic training and were generally also conscript NCOs after refresher training.

In order to ensure an effective advisory function the legal advisers were assigned to the operations section of the staff in question. This was accomplished not without some discussion. First, the only lawyers so far attached to military staffs — the *auditeurs* — had normally been in the

“softer” personnel or logistics sections of the staff. Second, the question of rank was not uncontroversial. In accordance with the clear statement of the Committee, the objective was to confer on legal advisers a sufficiently high rank to secure respect within the military hierarchy. However, this would have meant they would have had a rank higher than that of other “civilian” personnel with an advisory function in the staff (e.g. priests or *auditeurs*). It has now been decided that the legal advisers at corps and division level should hold the rank of major. (The highest rank normally obtained by a reserve officer is captain.)

The peacetime legal advisers are all ordinary judges, and most of them are senior judges. Their military rank in their wartime capacity is colonel or lieutenant-colonel.

Contrary to what one might assume, considering the general level of Sweden's international involvement in the field of IHL, education in the subject has never formed a major part of the curriculum in Swedish law schools. In order to compensate for this, all legal advisers attend courses in the subject at the Military Academy prior to their appointment. However, this is deemed insufficient and there are at present plans for further education through specially designed seminars at some of the law schools and courses of study abroad (e.g. at the International Institute of Humanitarian Law in San Remo). A society aiming to strengthen the position of IHL and military law in general was set up in Sweden in 1991.

6. Some reflections on the system of legal advisers

What then is the experience so far with the newly introduced system of legal advisers in the Swedish Defence Forces? Taking into account the short period during which legal advisers have been part of the organization, due caution should be exercised in drawing far-reaching conclusions. However, it should be noted at the outset that the idea of assigning legal advisers to military commanders has aroused great interest among the commanders themselves. They usually have a very good knowledge of the requirements of IHL within their own fields and a positive attitude to the implementation of the rules. As far as I can judge, in all instances they have done everything possible to help establish the new system and encourage their new staff members.

In cases where the new system has been tested during field exercises or war games at corps or division level, the experiment has also been successful. The legal adviser has been used and consulted in various ways, depending on the type of staff and the kind of manoeuvre.

These encouraging results could, of course, be explained by the fact that the system is a new one. There is a certain amount of benign curiosity which could wear off once the system is better established and considered routine for the staff in question.

I would, for my part, also suggest that the present favourable situation could be explained by the fact that the legal advisers are considered to be “outsiders”. It is probably a fair assumption that military officers by and large have a degree of respect for civilian lawyers, especially if they are in positions of some seniority or importance (e.g. senior advocates or judges). This respect — which does not necessarily correspond to or reflect the knowledge or skill of the lawyer in the field of IHL — should not be overestimated but is obviously helpful, at least at the present introductory stage. The extent to which peacetime conditions influence performance is always difficult to gauge. The absence of wartime conditions would certainly tend to make the advisory function more idyllic than would be the case in a real conflict situation. This highlights the need for proper training and for imagination in creating the right environment during manoeuvres or field exercises.

At least three levels or fields of application, where different questions arise for the legal adviser, can be discerned:

- First, application of and compliance with the basic soldier's rules or rules of engagement at squad or section level.
- Second, the application of Articles 48-58 (especially Arts. 57 and 58) of Additional Protocol I, for example, at higher levels (battalion and above). These articles call for a high degree of awareness of civilian needs.
- Third, cooperation with one's own civilian authorities.

The first level is mainly a matter of education, instruction and supervision. As far as can be judged, military instructors' current knowledge as regards the obligation of the individual soldier to behave properly towards, for instance, the wounded, POWs and civilians could be regarded as sufficient — at least on the theoretical level. To what extent this would also hold true under combat conditions is difficult to assess. The main task of the legal adviser would be to stress the importance of compliance with the basic rules of IHL, including the duty to report violations, and to try to explain the whole rationale underlying the rules of IHL. *In this respect, those instructing squad leaders or company commanders would be the prime targets.*

In the past there have been incidents during field exercises involving rangers or commando units where the interrogation of POWs has not been conducted in a proper manner. This was before the introduction of legal advisers, but to what extent that development has affected an over-zealous attitude, marked by too much “Ramboism”, is hard to assess. However, such incidents are clear evidence of the need to keep a close watch in an area where it is easy to assume that the application of IHL does not cause any difficulty. In order to change an otherwise negative attitude, instructors and others need to be reminded at least of the self-serving rationale for strict compliance with the rules. Attention should be drawn to the counterproductive effect of reprisals and to the punishment prescribed for breaches of the law; it should also be pointed out that warfare is executed more efficiently if the rules are observed.

The second level, where the advisory element is to be integrated into actual tactical planning, is more complicated. Here too it is important to create an atmosphere where the interests of protected persons and property are duly respected and all necessary safety measures taken. Of course, most operations are planned by staff at a rank lower than that of legal adviser. This means that the adviser's best course of action is to instruct the commanders. As has been said before, the importance attached to questions of IHL at the Military Academy is very great, but relevant aspects need to be introduced more often during exercises. One of the legal adviser's main tasks is to ensure that examples are provided when discussions involving IHL at the tactical level take place.

Here the question of the legal adviser's position within his own staff, at corps, division or a higher level, must also be considered. If the legal adviser is a member of the operations section of the staff, conditions will be more favourable. However, it takes initiative and activity on the part of the adviser to gather information in order to make an evaluation and render an opinion.

A balance also needs to be struck between the role perceived as that of an “interfering busybody”, insensitive to the concepts of “military necessity” or “military advantage”, on the one hand, and the apparently permissive role of one who absolves all guilt and whose mind is always open to military needs, on the other.

In this context, it should be borne in mind that the adviser is merely someone who gives advice; the decisions are not his to make. An over-eager adviser could do as much harm as a more passive one, by making legal issues out of every aspect of operational planning.

The third level, i.e. cooperation with the civilian authorities, raises some questions which may be peculiar to Sweden. As mentioned before,

the concept of total defence is part of the overall Swedish defence policy. This means that military defence relies very heavily upon cooperation, not only with the civil defence forces but also with civilian authorities that have wartime functions. At the regional (county) civil administrative level, legal advisers, or persons specifically assigned to handle issues involving IHL, are in the process of being introduced. They total some 30 lawyers, presently employed at the Defence Section of the County Boards.

In creating opposite numbers, as it were, to the military legal advisers, one could easily imagine a situation where the legal adviser to the military commander has to present a “military view” on questions of IHL in contrast to a different position taken by the civilian authority in question. One case in point might be where there is a question of removing civilians from a prospective combat area, where the transport and other logistic needs of civilians would pose a threat to a military objective, whereas their presence in the area would also pose a threat — but primarily to the civilians themselves. How should the right to general protection against dangers arising from military operations (see Protocol I, Art. 51) be interpreted in such a case, bearing in mind that the ultimate purpose of distinguishing military objectives is to protect civilian society in general? Should the question be resolved in accordance with the principle of proportionality (“body-count”) only? In a case where the civilian side is counselled by its own legal adviser, would the military legal adviser be justified in giving an interpretation more favourable to the “military view”? The decision has, in any event, to be taken at a higher level if points of contention persist — assuming that there is still time for such an orderly legal discourse.

7. Conclusions

The Swedish experience of legal advisers, although fortunately never tested in real conditions, has so far proved to be encouraging. The promotion of IHL has probably been helped by the fact that lawyers *per se* are a novelty within the Defence Forces.

However, it must be remembered that there is some knowledge of the demands and restrictions created by the international instruments at all levels within the military structure. In this respect the legal adviser has an easy task at the outset, but must constantly review the need for information and monitor implementation at the various levels of the military hierarchy. In the absence of a situation where every squad is followed

by its own legal adviser — something not desired by anyone — the adviser has to rely on the attitude shown and the example set by commanders. And their readiness to abide by the book is in turn dictated by how the legal adviser is perceived as a member of the staff.

The adviser must retain his integrity, but should not stay aloof and shirk the responsibilities which fall to any member of the staff, such as watch duty and similar routine assignments. His position and rank must, on the other hand, not be so inferior that the weight of his arguments is diminished by the absence of bars, stripes or stars on his uniform. He is, after all, a member of a military organization, a combatant, even if his military function is of a highly civilized nature. In the final analysis, the “civilian” approach is the strongest argument for the legal adviser, be he a military officer turned lawyer, or, as in Sweden, a civilian lawyer in uniform.

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Means of identification for protected medical transports*

by **Gérald C. Cauderay**

1. Introduction

The Geneva Conventions of 12 August 1949 provide that medical personnel and equipment shall in general be identified by the distinctive emblem of the red cross or red crescent.¹ The Second Geneva Convention,² applicable to the victims of conflict at sea, specifies that the exterior surfaces of hospital ships and smaller craft used for medical purposes shall be white and recommends that the parties to the conflict use “the most modern methods” to facilitate identification of medical transports at sea (Art. 43). It is also recommended that medical aircraft should be clearly marked with both the distinctive emblem and their national colours on their lower, upper and lateral surfaces. They should moreover be provided with “any other markings or means of identification” agreed upon between the belligerents from the outbreak or during the course of hostilities (First Convention, Art. 36, and Second Convention, Art. 39).

The use of most of the means of identification referred to in this paper is discussed in Annex I to Protocol I of 8 June 1977 additional to the 1949 Geneva Conventions.

* This paper reflects the author’s personal views and does not engage the responsibility of the ICRC.

Original: French.

¹ (First) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, Arts 35-38.

² (Second) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, Arts 22, 24, 26, 27 and 43.

In 1990, a meeting of technical experts convened by the ICRC on the basis of Article 98 of Protocol I proceeded to review Annex I. The main purpose of the proposed amendments was to incorporate into Annex I of Protocol I technical provisions already adopted by the competent international organizations. The consultation procedure was concluded in 1993 and the amendments proposed by the experts entered into force on 1 March 1994³ for all States party to Protocol I, with the exception, for the relevant amendments, of those States which made declarations of non-acceptance.⁴

2. Flags and signs painted on the hulls of ships

Flags and signs painted on the hulls or the sails of ships are probably the most ancient means of identification used by merchant vessels and warships. For several hundred years they were sufficient to allow fairly reliable identification of ships, even at reasonable distances and early enough to permit action to be taken if needed. The introduction of field-glasses and later binoculars somewhat improved the range of visibility.

However, to be identified from the greatest distance possible, ships have to use extremely large flags and signs. Recent tests made by the ICRC have confirmed that in clear weather a red cross flag measuring 5 m across is barely discernable at a distance of 3,000 m and that a red cross flag measuring 10 m across is no longer recognizable at a distance of 5,000 m.⁵ The visibility of these flags, and therefore their identification, also largely depends on weather conditions which, for example in the event of heavy rain or fog, may render them totally invisible, even at a short distance.

These considerations were not, however, of great import when naval warfare was still limited to sailing warships, which used relatively modest gunnery with a limited shooting range, and when submarines were not yet a reality.

The tremendous development in the technical aspects of naval warfare during the last century and of air warfare since the First World War has changed the situation completely.

³ See *International Review of the Red Cross (IRRC)*, No. 298, January-February 1994, pp. 27-41.

⁴ Sweden for Articles 8 and 9 and Jordan for Article 2.

⁵ Gérald C. Cauderay, "Visibility of the distinctive emblem on medical establishments, units and transports", *IRRC*, No. 277, July-August 1990, pp.295-321.

Modern warfare relies increasingly on the use of sophisticated technology which makes it possible to destroy a target long before it can actually be seen. Moreover, the mechanization of means of combat and the widespread use of electronic means of observation, and even to some extent of automatic firing, especially of sea and air weapons, have considerably increased the range and rapidity with which weapons can be fired and their velocity. As a result it has become almost impossible to recognize at a sufficiently early stage personnel, establishments and especially protected transports (by land, sea or air) bearing only the distinctive emblem.

To make sure that medical establishments and transports can be properly identified, the visibility of the distinctive emblem must be significantly improved.

The use of visual markings and other means of visual identification is not in itself sufficient to provide effective identification of protected naval or air transports, especially during naval, air and amphibious operations.

Additional means of signalling and identification, such as radio, radar, underwater acoustic devices and, to some extent, light signals, are therefore needed.

Light signals can be compared to flags and painted signs, but they offer additional advantages, i.e. they are visible at night at greater distances, and their visibility can also be improved in daylight, depending on weather conditions and especially when the signal is a flashing light.

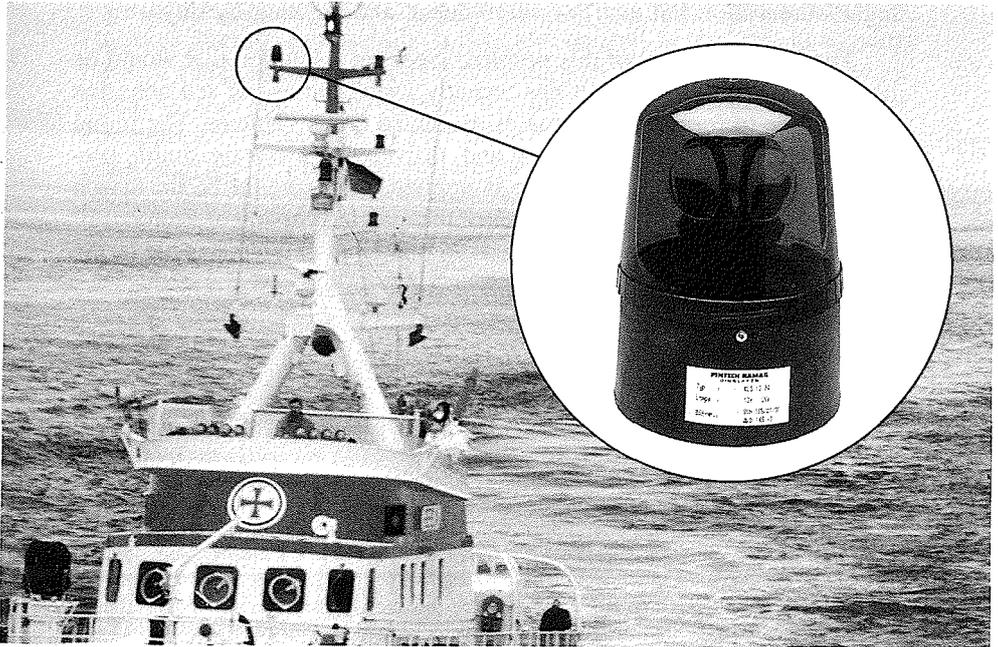
This category also includes the use of the International Code of Signals, Morse signalling lamps and even semaphore signalling. Until recently these means were still used for communication in both the merchant navy and the naval armed forces. They have since been progressively, but not completely, replaced by radiocommunications or by electronic devices.

High-intensity lights, such as those used on aircraft (anticollision beacons, strobe lights, landing lights, etc.) or at airports to indicate the approach path (PAPIs — Precision Approach Path Indicators) and illuminate the landing strips (runway lights), could be used, in accordance with the Geneva Conventions and their Additional Protocol I,⁶ to illumi-

⁶ Art. 5, para. 2, of Annex I to Protocol I additional to the 1949 Geneva Conventions (amended version of 1993).

nate the distinctive markings of hospital ships and other protected vessels, thereby somewhat extending their range of visibility and making it possible to identify them more rapidly.

For instance, the use of a flashing blue light is recommended in Annex I to Protocol I additional to the Geneva Conventions for the identification of hospital ships, medical aircraft and other protected transports (Art. 7, version amended in 1993). Many tests have been carried out to ascertain the maximum range of visibility obtainable with this type of identification. The results were rather disappointing: when used for the identification of medical aircraft, the light was visible only up to 1.5 km by day and approximately 8 km at night. Moreover, it tended to go from blue to white as the distance increased.



Model of a Flashing Blue Light Equipment for use on board sea-going vessels. (Photo by courtesy of PINTSCH-BAMAG, Hamburg, Germany)

More recent tests carried out at sea with a newly developed flashing blue light⁷ have proved more promising. Whereas the maximum range of visibility in daylight was again about 1.5 km, at night it extended beyond 9.5 km, with the light maintaining its blue colour. The results achieved were thus in conformity with the relevant provisions in this regard.⁸

Interesting though they may be, these technically somewhat crude means of communication and identification are totally inadequate when it comes to ensuring rapid and reliable identification of medical transports in modern armed conflicts. They are therefore useful only as a supplementary means of identification.

Moreover, the increasingly frequent use of day and night vision systems, based on the principle of thermal imaging (or passive infrared),⁹ raises a new problem with respect to the visibility of the emblem. If the emblem is painted with ordinary paint, it will not be visible when observed with a thermal-imaging camera. However, as these vision systems allow for a 1.5 to 1.8-fold increase in the range of visibility compared with that obtained by means of ordinary optical devices, they are used not only for night observation but also for surveillance and sighting by day.

The ICRC is aware of this problem. Seeking a solution that would be both simple and effective, it has recently tested the use of red adhesive therma tape to form the red crosses displayed on its vehicles. The initial results have been quite promising and, provided that certain simple precautions are taken when the tape is applied, there should be no reason not to make use of it. The provisions of the updated version of Protocol I¹⁰ authorize the use of special materials to make the emblem visible in the infrared band.

⁷ See *Bundesamt für Seeschifffahrt und Hydrographie*, Hamburg, results recorded under ref. No. T2110, 29 May 1992.

⁸ Article 7, Annex I to Additional Protocol I (updated version); *International Code of Signals*, Chap. XIV, para. 4, International Maritime Organization (IMO), London; *Airworthiness Technical Manual (Doc. 9051)*, Part 3, Section 7, Chap. 1, para. 4, International Civil Aviation Organization (ICAO), Montreal.

⁹ *Thermal imaging — passive infrared*: by this means, the natural or artificial electromagnetic energy emitted in the far IR band (8-12 µm) by objects is transformed into electrical signals which are then used to draw a map of the hot points on the landscape, thus forming an image which can be observed through fieldglasses or on a screen or recorded using special apparatus.

¹⁰ Art. 5, para. 3, of Annex I to Additional Protocol I.

3. Radiocommunications

During the Second World War medical transports at sea made wide use of radiocommunications to signal their identity and indicate their position and route. Today such means of identification for protected transports (hospital ships, rescue craft and medical aircraft) are even more effective.

When sailing through a dangerous area, e.g. where naval operations could take place, a hospital ship could send out a blind transmission on the appropriate frequency to provide identification, giving its call sign (which provides information on its nationality), its name, position, destination and route, in accordance with the International Telecommunication Union's Radio Regulations.¹¹ For obvious reasons of security, no answer would be transmitted by ships involved in military operations.

4. Radar identification

Since the beginning of the Second World War, radar has played an ever-increasing role in detecting the presence of objects and/or obstacles (ships or aircraft) representing a potential danger. In the case of moving objects, radar makes it possible to determine their distance and speed. Radar is also used in navigation by ships and aircraft to mitigate the consequences of bad visibility. Some radar systems are equipped for observing the ground from an aircraft, along the same lines as aerial photography; however, unlike cameras, radar has the advantage of being independent of weather conditions (a layer of clouds does not interfere with observation).

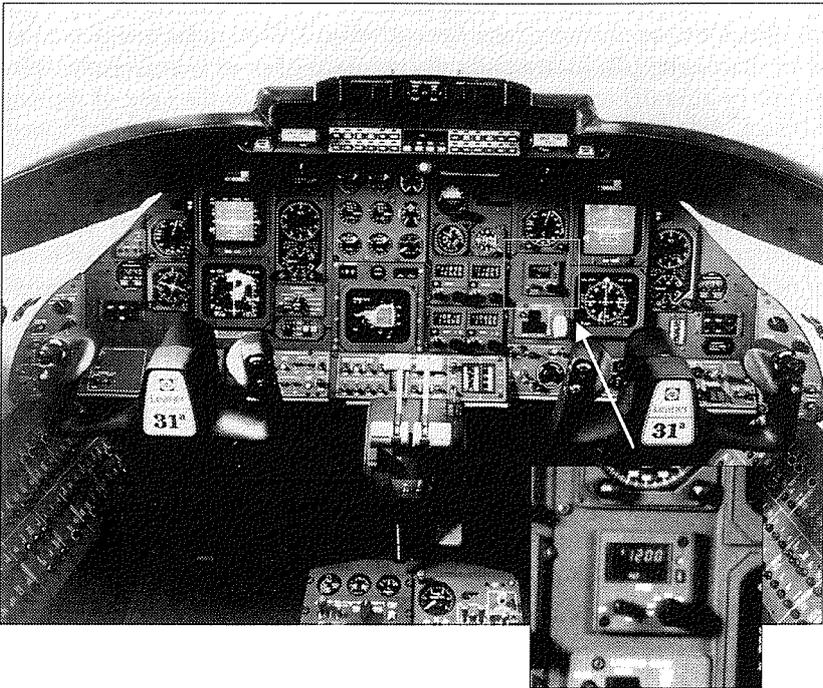
As a "target" cannot be directly identified by the echo it produces on a radar screen, a device called IFF (Identification Friend or Foe) was developed during the Second World War and installed on most warships and military aircraft.

The device has since been improved and adapted to the requirements of civil aviation. Known as a radar transponder, it is operated with Secondary Surveillance Radar (SSR) systems. It is very widely used, not only by passenger airliners, but also by all civilian and military aircraft using controlled airspaces, including almost all private aircraft, and thus contributes to the high grade of flight safety achieved today.

¹¹ *Radio Regulations*, Arts 40 and N40, International Telecommunication Union, Geneva.

As far as we know, all warships of a certain importance are equipped with IFF radar equipment and SSR systems which allow them to monitor and identify civil maritime and air traffic. We assume that this is also the case for AWACS (Airborne Warning and Control System) aircraft assigned to similar duties.

Tests have been carried out to determine whether it was possible to use aeronautical-type radar transponders to identify hospital ships. To this end, a standard aeronautical radar transponder unit was installed on a launch and set to Mode 3/A, which is common to both military and civil air traffic control. In spite of the rudimentary nature of the installation and the relatively low height of the transponder aerial, the results obtained have been very positive.



Aviation Transponder Control Unit, installed into the instrument panel of a twin-jet executive aircraft. (Photo by courtesy of Allied-Signal Aerospace Company, BENDIX/KING General Aviation Avionics Divisions, Olathe, Kansas, USA)

5. Identification by submarines

The development of submarine technology now allows submarines to stay underwater almost indefinitely and to attack targets well beyond the horizon, without prior visual contact. Ships protected under the Geneva Conventions and their Additional Protocols should therefore be easily identifiable by submarines. There are different methods of doing this.

a. Acoustic signature¹²

This method is widely used by naval forces to identify ships belonging to their own forces or to friendly forces. Its basic principle relies on the monitoring and analysis of the sound produced when a ship is under way, especially by its main and auxiliary engines, the propeller revolving, and so forth. The combination of these noises constitutes the ship's "acoustic signature". Each ship theoretically has its own unique acoustic signature, a sort of sonic fingerprint which can be used for identification purposes.

However, ships of identical design, built by the same shipyard but sailing under different flags, may have almost identical characteristics and thus acoustic signatures which are so similar as to be very easily confused.

Moreover, a ship's acoustic signature is not immutable. When a ship's load changes, so does its draught; this alters the acoustic signature, as does the ship's age and any damage or modifications made to it. Some experts believe that the acoustic signature should be measured and recorded every six months to make reliable identification possible. The identification is made by comparing the signal recorded by means of hydrophones with a pre-recorded specimen signature.

Acoustic signature is established by recording the noises produced by a ship when it performs manoeuvres in a basin especially fitted for the purpose. The operation requires complex installations and sophisticated measuring and recording instruments. This kind of installation is usually available only in countries which have a well-developed navy and are familiar with the technology involved. In time of war it might therefore be extremely difficult if not impossible for a ship from a small, neutral country, being used as a medical transport, to have its acoustic signature recorded and then to communicate it to the belligerents.

¹² Philippe Eberlin, "Underwater acoustic identification of hospital ships", *IRRC*, No. 267, November-December 1988, pp. 505-518.

Given the complexity of establishing an acoustic signature and the uncertainties involved in its propagation at sea, only well-trained specialists with sophisticated equipment can make a reliable identification.

b. Active underwater acoustic identification

Experience during the Second World War and subsequent armed conflicts has prompted some governments, especially those of neutral countries, to develop the idea of an active underwater acoustic identification system. This idea was supported by the ICRC, which is concerned with the safety of hospital ships and other vessels protected by the Geneva Conventions.

The search for a solution led to a system based on underwater transmission of an acoustic signal emitting the ship's call sign in Morse code, preceded by the prefix NNN (for neutral) and YYY for a hospital ship, in accordance with the IMO International Code of Signals.¹³ The transmission is automatically repeated either continuously or at set intervals. The ship's call sign, which is used for all communications, is a group of letters assigned to it under the ITU Radio Regulations. It gives the ship's nationality, while its individual identity can be derived by matching those letters against lists published by the ITU.

Different prototypes have been tested, as has, more recently, a type of equipment which is industrially produced in limited series. The results obtained have confirmed the soundness of the principle and the reliability of the system. Not only does the range of the signal extend to 25 nautical miles, but it has also been possible to take an accurate bearing of the signal at the same distance.

To our knowledge, several States are interested in this method of identification and at least one has decided to equip its merchant vessels with such a device.

6. Other devices facilitating identification

Most of the technical means of identification described above are already available on the market and even employed in civilian activities.

¹³ *International Code of Signals*, Chap. XIV, para. 5, IMO, London, 1985.

Their use is mentioned in Annex I to Protocol I additional to the 1949 Geneva Conventions.

With the continued rapid development of technology, new technical means of identification will most probably become available in the future. Several devices in particular, which are already used for military purposes, could be made available for civilian applications as well.

Concerning radio transponders, in 1992 the ITU International Radio Consultative Committee (CCIR)¹⁴ adopted a recommendation (Rec. 825) pertaining to the characteristics of a transponder system using digital selective-calling techniques for use with vessel traffic services and ship-to-ship identification. The recommendation provides for medical transports to be assigned a specific code that would make it possible to identify them automatically.

It is also important to mention the development of satellite-based location and data collection systems, one of which, called ARGOS,¹⁵ is used by the World Meteorological Organization (WMO) to collect data supplied by a vast network of data-collecting and transmitting buoys distributed across all the world's oceans and seas. ARGOS is also used to monitor the position and progress of ships taking part in long-distance ocean races.

The Global Maritime Distress and Safety System (GMDSS)¹⁶ can pinpoint emergencies by highly sophisticated and effective means: the International Maritime Satellite Organization (INMARSAT) and Cosmos Spacecraft/Search and Rescue Satellite-Aided Tracking (COSPAS/SARSAT) are capable of locating the EPIRBs (emergency position-indicating radio beacons) and ELTs (emergency locator transmitters) carried by mariners and navigators. The GMDSS terminals, as well as the INMARSAT Mobile Earth Stations, may now be equipped also with GPS

¹⁴ The CCIR has since been incorporate into the ITU Radiocommunication Bureau.

¹⁵ ARGOS is a satellite-based location and data collection system. It is the result of a cooperative effort between the CNES (*Centre national d'études spatiales*, France), NASA (National Space and Aeronautical Administration, USA) and NOAA (National Oceanic and Atmospheric Administration, USA). ARGOS equipment is carried on board two NOAA satellites in polar circular orbit (altitude, approximately 800 km), providing complete global coverage.

¹⁶ *Global Maritime Distress and Safety System*, IMO, London 1987.

(Global Positioning System)¹⁷ receiver cards, which enable those who carry them to communicate their positions as needed and even upon request.

These new radiolocation and satellite-location possibilities can also play an important part in making the identification of medical transports simpler and more precise and their movements easier to follow.

New technology for which military applications have already been found could be used to improve radar identification for medical transports: radar fingerprinting, for example, which consists in an electronic analysis of the carrier frequency and the pulses emitted by a commercially available navigation radar and the establishment of its electromagnetic signature. This technology should make it possible to identify a medical transport unit, either an aircraft or a ship, by simply observing and analysing the signals emitted by its navigation radar, provided a record of its radar signature has been made and communicated to all the parties concerned upon notification. However, it should be pointed out that a signature may change in course of time because of the ageing of the components, maintenance or modifications made to the radar equipment.

In our opinion, the effectiveness of this means of identification could be further improved, for instance by introducing on the carrier frequency a specific identification signal that would be recognized immediately by the surveillance system and the carrier digital analyser system. Other technical improvements could certainly be considered, but they would have to be as simple as possible to bring into operation and compatible with the surveillance systems used by parties to a conflict.

The use of modern automatic radio direction-finding equipment makes it possible to determine the direction of any radiocommunication transmitter with great accuracy and speed. Several radio bearings, taken simultaneously from different stations placed at a sufficient distance from each other, thus make it possible to check the position and/or route of a ship or aircraft protected under the Geneva Conventions and their Additional Protocols.

The means of identification described above are totally passive with respect to the belligerents, as they do not require the latter to emit any signal that could lead to their detection by the enemy.

¹⁷ GPS, also known as NAVSTAR, is a satellite global navigation system developed and maintained by the US Department of Defense. Based on a constellation of satellites (18 of the planned 24 satellites are in operation), it enables the carriers of special receivers to obtain their position on land, at sea or in the air within a range of 100 m.

7. Improper use of technical means of identification

Like the emblems of the red cross and red crescent, technical means of identification may be misused by one or other of the parties to a conflict. For instance, it may seem easy for an aircraft enjoying no protection to use a specific radar code which has already been assigned to a medical aircraft. However, such fraudulent use would imply knowledge of the code in question, which should not be easy to obtain; moreover, it would soon attract the attention of air traffic controllers. An unprotected ship might also use the provisions of Articles 40 and 40N of the ITU Radio Regulations, but its position, route and other characteristics would be different from those mentioned in an official notification and would immediately make the ship suspect. Other examples could be given; however, armed forces are now equipped with modern means of surveillance, detection and location (a great many of which are passive) which should enable them to uncover any improper use of technical means of identification.

8. Conclusion

We therefore think that identification is no longer a technical problem but an issue that largely depends on the will of the parties concerned to recognize the right of protected transports and those not involved in a conflict to use all technical means of identification available today, in order to avoid being taken as targets, or even destroyed, by belligerent forces.

It is important to point out, however, that **no means of identification** is fully reliable. Visual means are inevitably affected by distance, weather conditions, smoke screens and a number of other natural or man-made hindrances. Radiocommunication and electronic identification may be seriously jeopardized by electronic warfare measures such as the jamming of communication networks and radar systems. Electronic warfare also includes measures of deception which consist in generating and introducing false information into the enemy's systems.¹⁸ In periods of armed

¹⁸ Meeting of Technical Experts with a view to possible revision of Annex I to 1977 Protocole additional to the 1949 Geneva Conventions – Geneva, 20-24 August 1990 – Comments by the United States of America concerning Articles 8 through 14.

conflict, all these possibilities have to be taken into account and several different means of identification should therefore be used simultaneously to ensure that protected transports have the best possible chances of being rapidly and reliably identified by all the parties to the conflict.

Gérald C. Cauderay trained and worked for several years as a merchant navy radio navigator and radar operator. He later held a number of senior positions in the electronics industry, in particular in the fields of telecommunications and marine and aeronautical radio navigation, before being appointed Industrial and Scientific Counsellor to the Swiss Embassy in Moscow. At the ICRC, he is especially in charge of matters relating to the identification and marking of protected medical establishments and transports and to telecommunications. He has published several articles in the *Review*: “Visibility of the distinctive emblem on medical establishments, units and transports” (No. 277, July-August 1990, pp. 295-318), “The development of new anti-personnel weapons” (together with L. Doswald-Beck, No. 279, November-December 1990, pp. 565-576) and “Anti-personnel mines” (No. 295, July-August 1993, pp. 273-287).

**SEVENTY-FIFTH ANNIVERSARY
OF THE FOUNDING
OF THE INTERNATIONAL FEDERATION
OF RED CROSS AND RED CRESCENT SOCIETIES**

On 5 May last the International Red Cross and Red Crescent Movement celebrated the 75th anniversary of the International Federation of Red Cross and Red Crescent Societies.

On the same date in 1919 five Red Cross Societies — those of France, Great Britain, Italy, Japan and the United States of America — set up the League of Red Cross Societies. Its purpose was to “unite Red Cross Societies throughout the world in a concerted effort to prevent, mitigate and alleviate the suffering caused by disease and major disasters”.¹

This event, which took place at the initiative of Mr Henry P. Davison, President of the American Red Cross War Council, corresponded to the wish of several National Societies to “prepare and submit to Red Cross Societies throughout the world an extended programme of action in the general interest of humanity”.

The Cannes medical conference, held at the Cannes Nautical Circle from 1 to 11 April 1919, was a milestone in the setting up of the League of Red Cross Societies. It brought together some 60 eminent American, British, French and Japanese specialists in preventive medicine, child health, tuberculosis and nursing care who laid the foundations for the humanitarian work which the League, now known as the Federation, has been carrying out worldwide for three-quarters of a century.

Commemorative plaques

Geneva, Cannes and Paris can be considered as having played a key role in the founding and setting up of the League of Red Cross Societies in 1919. In

¹ Excerpt from the *Bulletin de la Ligue des Sociétés de la Croix-Rouge*, Vol. I, No. 1, 15 May 1919.

recognition of that role the Henry Dunant Society of Geneva presented the three cities with commemorative plaques to be laid at sites associated with this historic event.

Thus on 1 February 1994, exactly 75 years after a Committee of Red Cross Societies had been formed in Cannes to set up programmes for Red Cross activities in peacetime, a commemorative plaque was affixed to the *Maison Mallet* in Geneva, the League's first world headquarters. A second plaque was laid in Cannes on 9 April to mark the 75th anniversary of the medical conference and a third was unveiled on 5 May at the Hotel Regina in Paris, where the League was officially set up. These events were attended by local authorities of the three cities and representatives of the Federation, the ICRC, various National Societies, the Henry Dunant Society and the *Association Henry Dunant/France*.

The Henry Dunant Society has also published a book entitled "The Cannes Medical Conference", which contains the speeches delivered at the ceremony held on 9 April when a commemorative plaque was laid at the Cannes town hall, and various articles contributed by specialists and public figures about Cannes, the Nautical Circle and the medical conference. In addition, the Society is preparing an historical work entitled "The seventy-fifth anniversary of the founding of the League of Red Cross Societies", which will contain papers retracing the League's origins, articles about the activities of the institutions concerned and the speeches delivered on 5 May at the Hotel Regina. The *Review* will publish accounts of these two works in a forthcoming issue.

Official celebration (Paris, 5 May 1994)

The official celebration of the founding of the Federation took place in Paris on 5 May. It was attended by delegations of 70 National Societies, including the five co-founders, and representatives of the Federation and the ICRC. To mark the occasion the French Red Cross, in cooperation with the Federation, organized several ceremonies in which the French authorities took an active part.

On 4 May the members of the Federation's Executive Council, the heads of National Society delegations and the members of the ICRC were received at the Elysée Palace by the President of the French Republic, Mr François Mitterrand, who spoke of the Federation's "invaluable role".

The commemorative ceremony took place at the Ministry of Foreign Affairs in the presence of Mr Philippe Douste-Blazy, Minister Delegate attached to the Ministry of Health. After a welcoming address delivered by Professor André Delaude, President of the French Red Cross, Lady Limerick, a Vice-President of the Federation and Chairman of the British Red Cross, took the floor on behalf of the National Societies. Lady Limerick outlined the circumstances in which the League was set up in 1919 and gave an overview of the Federation's past and present activities, then concluded her talk with the following words: "The

generation who founded the League in 1919 may have hoped that the First World War was the war to end all wars, and certainly those who adopted the League's motto in 1960, *per humanitatem ad pacem*, hoped that the Red Cross and Red Crescent, through its actions to promote health and social welfare and to assist the victims of all kinds of disaster, would bring peace to the world. To meet the continuing challenge arising from resort to force and damage to the environment, the Federation and its member National Societies will remain steadfast in carrying out our common mission, with the ICRC, to protect life and health, uphold human dignity and relieve suffering amongst the growing numbers of vulnerable people, in accordance with our fundamental principles".

The President of the ICRC, Mr Cornelio Sommaruga, and the President of the Federation, Mr Mario Villarroel Lander, then gave the addresses published below.

**ADDRESS BY THE PRESIDENT OF THE INTERNATIONAL
COMMITTEE OF THE RED CROSS,
MR CORNELIO SOMMARUGA**

I should like to start by extending to the International Federation of Red Cross and Red Crescent Societies the best wishes of the International Committee on this its 75th anniversary. I congratulate the Federation, as well as its Secretariat and all the member National Societies, on the tremendous amount of work achieved in all areas within its purview, especially in the development and promotion, at all times, of the National Societies' manifold humanitarian activities.

The Statutes of our Movement remind us that the mission of the Red Cross and Red Crescent is to prevent and alleviate human suffering wherever it may be found, to protect life and health and ensure respect for human dignity. By so doing, in accordance with the principles of impartiality, neutrality and independence, the components of this universal Movement, to which we are so proud to belong, are helping in their own way to promote and maintain peace.

The Geneva Conventions and their Additional Protocols — all of which came into being at the ICRC's initiative — constitute an extraordinary expression of humane values, a heritage entrusted by the Red Cross to the international community. The International Federation and its member Societies well know the importance that the ICRC attaches to thorough and consistent work to promote knowledge of the principles and rules of the law of Geneva, laid down to preserve fundamental human rights during armed conflicts.

This happy occasion, which comes at a time when signs of a worldwide decline in respect for human dignity give serious cause for concern, is an opportunity for me to make an earnest, twofold appeal:

- *I call on the Federation and the 162 National Societies to engage, to the best of their abilities, in prevention by dissemination, firmly committing themselves to a culture of non-violence, tolerance and solidarity, and*
- *through these same National Societies I call upon the governments of the 185 States party to the Geneva Conventions to take seriously their pledge to respect and ensure respect for international humanitarian law.*

The dedication evidenced today must constantly be renewed by the whole Red Cross and Red Crescent Movement; it must unite all of us in a fresh spirit of honesty, professionalism and creativity. It is tragically pointless to be united and universal if the Movement fails to be effective. But it cannot be effective unless we know what is expected of us, what specific task is assigned to each one of us. We must know the clear division of labour between the various partners involved in humanitarian endeavour.

To be sure, the Movement must grow more united and universal day by day, but it must also become more effective! The world needs us and it must be able to count on a Movement capable of meeting the great humanitarian challenges while respecting the fundamental principles of the Red Cross and Red Crescent.

May each of us — the International Federation, the National Societies and the ICRC — rise to meet these challenges, each according to our calling and specific capacity.

Vive valeque!

**ADDRESS BY THE PRESIDENT OF THE INTERNATIONAL
FEDERATION OF RED CROSS AND RED CRESCENT SOCIETIES,
MR MARIO VILLARROEL LANDER**

On the threshold of the year 2000, the solution to major present-day problems and respect for the universal values on which humanitarian action is founded are interlinked. No sustainable progress in protecting human life, alleviating suffering, combating hunger and disease and promoting détente and cooperation can be achieved unless such efforts are combined with measures to safeguard human dignity.

Clearly this new awareness and this new reality, this change of purpose and energy must be fostered. The interests and values of all humanity converge in

time of conflict, as in the ever-increasing number of disaster situations. It is possible today to adopt a new approach, based not only on moral justification and the urgency of humanitarian action, but also on the advisability of and need for such action. This is in the best interest of all mankind.

I should like to highlight, in this somewhat philosophical context, the major role played by the International Federation of Red Cross and Red Crescent Societies in bringing relief to the most vulnerable. The Federation's humanitarian work outside conflict zones is made possible only by the solidarity demonstrated by all its member National Societies. Since it was founded in 1919, the Federation has launched some 800 appeals in connection with emergencies that occurred in about 150 countries.

If in 1992 and the beginning of 1993 more than 50 international relief appeals were launched, representing approximately 305 million Swiss francs, and if the development strategy adopted for the '90s can harness the dynamic forces of the National Societies in favour of the most vulnerable, it is because of this humanitarian mobilization, the symbol of the spirit of mutual aid which prevails in the Movement. This mobilization has pride of place in our constantly changing world; its objective is to enhance brotherhood, justice and peace.

Today, as yesterday, the effectiveness of the Red Cross and Red Crescent network of solidarity depends on the support and cooperation of the States which have joined forces for humanity and undertaken to protect human life in signing the most universal of treaties: the Geneva Conventions.

Our Institution, called the International Federation of Red Cross and Red Crescent Societies since 1991, brings together 162 National Societies representing all continents and numbers some 125 million members, all guided by the same seven Fundamental Principles: humanity, impartiality, neutrality, independence, voluntary service, universality and unity.

In their capacity as auxiliaries to the public authorities in the humanitarian field and organizations subject to the laws that govern their countries, the National Societies must nevertheless maintain a degree of autonomy which enables them always to act in accordance with the Movement's Fundamental Principles. They are, moreover, the link between the Federation and their respective governments.

These National Societies are the very foundation of the Movement and its driving force. They provide the essential framework for the work of their volunteers and their staff members. The Federation acts as a permanent body for liaison, coordination and study among the National Societies and provides them with any assistance they may request. That was the aim of the five National Societies which were the co-founders of the League, today the Federation, whose universality is vital for the fulfilment of its mission.

In conclusion, we would like this anniversary to be the occasion for a return to our origins, that is, to the convictions and principles which presided over the birth of our institution, always guided by its motto "Through Humanity to Peace".

This is not only a reminder but also an appeal to the entire human family, to all States. I am proud to make this appeal in France, the fertile country of liberty, equality and fraternity among all mankind.

The ceremony was brought to a close by Mr Douste-Blazy, who stressed the importance of the Federation's humanitarian work, especially in the areas of health and social welfare.

The delegates were later received at City Hall by Mr Jacques Chirac, Mayor of Paris, who paid tribute to the Federation and the ICRC and went on to commend the exemplary role played by the French Red Cross and its volunteers in alleviating distress in contemporary society.

* * *

Praise for the humanitarian work of the French Red Cross, founded 130 years ago, was expressed by all the speakers. In this context the *Review* is pleased to publish an article by Dr Jean Guillermand, who is well known to our readers, on the medical and social vocation of the French Red Cross (see pp. 287-295).

STATUTORY MEETINGS OF THE MOVEMENT

(Paris, 3-6 May 1994)

As part of the ceremonies to mark the 75th anniversary of the Federation, several statutory meetings of the Movement were held in Paris between 3 and 6 May. The Federation's Executive Council met on this occasion and, pursuant to Resolution 1 of the Council of Delegates (Birmingham, October 1993), appointed representatives from National Societies as members of the Policy and Planning Advisory Commission.

One of the tasks of the Commission is "to study matters of common interest to all components of the Movement and possible courses of action ...". Its members are as follows:

National Societies

Mrs. Jennifer Dorn	Vice-President of the American Red Cross
Mr. Sadiq Al-Shehabi	Secretary General of the Bahrain Red Crescent Society
Professor Stoyan Saev	President of the Bulgarian Red Cross
Mrs. Bana Maiga Ouandaogo	President of the Burkinabé Red Cross Society
Judge Darrel Jones	Honorary Vice-President of the Canadian Red Cross Society
Mr. Phan Wannamethee	Secretary General of the Thai Red Cross Society

ICRC

Professor Jacques Forster	Member of the ICRC and of the Executive Board
Mr. André Pasquier	Adviser to the President

Mrs. Françoise Krill

Deputy Head, Division for Principles and
Relations with the Movement

Federation

H.R.H. the Princess of Wales

Professor Hector Gros Espiell

Ambassador of Uruguay in Paris and
President of the International Institute of
Humanitarian Law (San Remo)

Mr. Ilkka Uusitalo

Head of the Europe Department

The Standing Commission of the Red Cross and Red Crescent met on 6 May and dealt mainly with preparations for the 26th International Conference of the Red Cross and Red Crescent, scheduled to be held in Geneva in December 1995.

The Commission on the Red Cross, Red Crescent and Peace also met on 6 May to allocate tasks amongst its members, in line with the programme set out in the resolutions adopted by the Council of Delegates in Birmingham.

While in Paris for the celebrations marking the Federation's 75th anniversary, the President of the ICRC had discussions with Mr. François Mitterrand, President of the French Republic, and several Government ministers about current humanitarian issues.

The medical and social vocation of the French Red Cross

by Dr. Jean Guillermand¹

Seventy-five years ago, soon after the end of the First World War, the history of the Red Cross was at a turning point. In 1919 the National Societies officially joined forces for the first time and extended their mandate to peacetime activities, as defined during a medical conference held in Cannes from 1 to 11 April. The decisions of the Cannes Conference were proposed as guidelines for action by the League of Red Cross Societies which came into existence shortly afterwards, on 5 May. At the same time, the Peace Conference was drawing up the Covenant of the League of Nations. The Cannes Conference was informed on 7 April that the Covenant was to include a provision, Article 25, stating that member nations would “encourage and promote the establishment and co-operation of duly authorized voluntary National Red Cross organizations having as purposes the improvement of health, the prevention of disease and the alleviation of suffering throughout the world”.

The three societies which then made up the French Red Cross² were the best prepared to discharge this mandate. After enduring four long years of total war waged on an unprecedented scale, they had naturally enlarged their scope of action to include tasks which went beyond merely helping the wounded. At the end of the conflict, working in the regions that were

¹ Pneumo-phthisiologist to the hospitals of the Armed Forces, former administrator of the French Red Cross.

² *La Société de Secours aux Blessés Militaires* (Society for Aid to Wounded Soldiers), set up in 1864, *l'Association des Dames françaises* (Association of French Ladies), set up in 1881, *l'Union des Femmes de France* (Frenchwomen's Union), set up in 1884.

liberated as the Allied armies advanced, they even saw their new role supplant some functions of the official Health Service.

There was another reason why they were perfectly well prepared to assume these duties without resorting to improvisation: they had a large number of highly qualified staff who had gained considerable experience in the years since the 1870 Franco-Prussian war. Nurses in particular, who numbered almost 70,000, could offer skills learned from doctors who themselves had profited from the remarkable advances made in medicine as a result of Pasteur's revolutionary work at the end of the nineteenth century.

The decisions made in Cannes thus coincided with a new understanding of the causes of the diseases to be combated and confidence in the efficacy of proven methods, learned during a demanding training course.

For the three French Red Cross societies, this favourable situation was the culmination of a process that reflected both the history of French society and the history of medicine. It could be said that the nursing profession in France still bears its hallmarks; and the pioneer role played by the Red Cross societies is worth examining in the historical perspective befitting anniversaries.

The golden age: 1864-1890

The first French relief society, the *Société de Secours aux Blessés Militaires* (SSBM), dated back to the very creation of the Red Cross in 1864. Under pressure from military circles, it was initially composed solely of men and was geared towards devising and preparing equipment to aid the wounded. The 1870 war revealed both the limits of this approach and the devoted commitment of many women who, despite their inexperience, proved invaluable even when they had to work in makeshift mobile units. On the basis of lessons learned during the conflict, several doctors who had organized such units called publicly for suitable training to be given to these volunteer workers in time of peace.

One such doctor, Auguste Duchaussoy, organizer of the city ambulance service of the sixth *arrondissement* during the siege of Paris, continued to instruct female ambulance workers after the war. Evening classes held with the help of his colleagues at the *Société de Médecine pratique de Paris* later took the form of a regular officially recognized training course in April 1877 when an *Ecole de garde-malades et d'ambulancières* (school for nurses and ambulance attendants) was set up. This was a milestone for the French Red Cross and for the nursing profession: it was

the first such school to be set up in France, seventeen years after England and Switzerland had taken similar steps. A compilation of the courses given was published for the first time in 1881.

The training programme was drawn up by doctors with experience in teaching: Duchaussoy, himself a professor at the Paris Faculty of Medicine, gave up his university career to devote himself to the teaching of nurses. The range of skills proposed went far beyond basic knowledge of how to care for the wounded. The instructors set out to impart the fundamental scientific data necessary for an understanding of the acts performed to treat and even prevent disease. Thus the programme included simplified but precise notions of anatomy, physiology, general pathology, therapeutics and hygiene.

The training course, which ended with a final examination, had to enable nurses to provide efficient services in all circumstances, above and beyond the patriotic duty which was the initial motivation. Right from the beginning, former students, encouraged by Duchaussoy, had used their new skills to support the social services in their local areas.

For administrative reasons (inflexibility of the SSBM statutes), the school could not be attached to the only French Red Cross society in existence at the time. Therefore Duchaussoy decided in 1881 to set up a second Red Cross Society, the *Association des Dames françaises* (ADF), which was to make teaching a priority.

A few years later, in 1884, a split occurred which led to the creation of a third Society, the *Union des Femmes de France* (UFF), which also gave priority to teaching. The UFF's governing body was entirely made up of women, but Dr. Pierre Bouloumié, a former army doctor and a veteran of the siege of Metz, was put in charge of teaching programmes. In the very first year of its existence the UFF also published a training manual for nurses. Somewhat more didactic and more fully illustrated, its successive editions were to become a standard reference work for French nurses.

Finally, the SSBM, which was now recruiting more female members, itself embarked on teaching activities. These started at its Paris headquarters in 1879 under Dr. Aimé Riant and took the form of a series of lectures which gradually became a full programme similar to those run by the other two societies.

Between 1884 and 1886, after the reorganization of the Republican army, the three societies received the official mandate to set up, in peacetime, auxiliary hospitals equipped, staffed and run by their own personnel. Instruction continued with this precise objective in mind, but without overlooking voluntary tasks carried out in peacetime.

The scientific revolution of the end of the century

The end of the nineteenth century was marked by rapid progress in medical science thanks to the revolutionary discoveries of Pasteur. The microbes responsible for the suppuration of wounds and for the major infectious diseases were identified between 1877 and 1884. Sterilization of instruments and dressings became standard hospital practice from 1888 with the introduction of Poupinel's dry sterilizer and Réard's autoclave. This paved the way for aseptic surgery. It began in France in 1890, entailing adaptation of existing surgical units and the setting-up of small, private hospitals and dispensaries especially designed and equipped to use the new techniques. Preparation for surgery and the application of dressings as well as medical treatment had now become a complicated and painstaking matter calling for qualified staff aware of the importance of every aspect of their work.

At the same time, the education of women in general was progressing rapidly, thanks to the Camille Sée law of 1880 which introduced secondary schooling for girls: in 1886 there were already 35 secondary schools for girls with a total of 6,000 pupils. Many of them were later to become the most willing volunteers within the Red Cross societies. They constituted a trained and receptive audience that was greatly appreciated by medical lecturers.

Thus the most modern ideas about microbes, sterilization and the prevention of infectious diseases were at once included in the highly scientific Red Cross training programme. However, working experience in hospitals was an indispensable adjunct to such training, and places were limited despite the willingness of some public and private establishments to accept student nurses.

Red Cross training broadens its scope

To remedy this situation, the Red Cross societies set up their own establishments especially designed to provide training, consultations and hospitalization. The first of its kind was opened by the ADF in Auteuil in 1896 (now the Henry Dunant Hospital). The SSBM first set up a training dispensary in the Plaisance, a working-class quarter, and then a model dispensary/teaching hospital in the Place des Peupliers in 1908. The UFF adopted a similar approach when it opened a dispensary/teaching hospital in the Rue de la Jonquièrre in 1907. By then, the training programme was very comprehensive, even more advanced than the one

drawn up by the *Conseil supérieur de l'Assistance publique* in 1899 for public hospitals. Doctors in charge of large hospital departments took over responsibility for training within the Red Cross societies from the general practitioners who had begun the process. They were assisted by several remarkable matrons: Marie Génin who ran the Peupliers school under the authority of Professor Félix Guyon, and Marie Feuillet at the Rue de la Jonquière, under Professor Maurice Letulle.

In addition to the main establishments in Paris with their own hospital units, teaching dispensaries, which were easier to set up, proliferated in the provinces. These not only offered the latest techniques which local committees were keen to provide, but also gave the students an insight into social realities of which they were often unaware. Some trainees even proposed making home visits to follow up patients they had attended in the dispensaries. This spontaneous propensity for social work, which could already be seen in 1878 when Red Cross teaching began and which was an intuitive response to the spirit of the institution, was encouraged by the leaders. It was also part and parcel of teaching philosophy at a time when belief in the power of science kept pace with discoveries which seemed to justify unbounded hopes.

One example of an area in which medical work assumed a social dimension was the tuberculosis control campaign which was then at its height. The tuberculosis dispensaries which were being set up on the basis of the model introduced in Lille by Albert Calmette needed women to conduct surveys in people's homes. In several cities, especially in Lyon, nurses with Red Cross training were recruited for this task.

The Great War

The 1914-1918 war provided the great testing ground for which the three French Red Cross societies had so patiently prepared. Their contribution towards the Army Health Service was considerable: they set up and ran 730 auxiliary hospitals with a total of 38,000 beds; they sent teams of nurses to accompany troops at the front (mobile surgical units and ambulances for evacuating the wounded); in addition, they ran a large number of infirmaries, railway station canteens and soldiers' clubs.

As the war dragged on, there was a corresponding expansion in social welfare activities in widely diverse fields. With regard to wounded combatants, over and above medical care proper, it became customary to take care of their families and to consider the wounded themselves as charges of the relief society which had been looking after them. The UFF had

asked its committees in the first year of the war to adopt this policy and issued a reminder at its 1916 General Assembly.

As far as the civilian population was concerned, social work was geared to the most needy, refugees and children in particular. Soup kitchens and milk distributions were organized by all three societies.

Tuberculosis, which had been partly eliminated by the efforts made before the war, was showing an alarming increase among both the military and the civilian population. This recrudescence prompted the Léon Bourgeois law of 15 April 1916; at the height of the war it provided clear guidelines for setting up public health and tuberculosis prevention dispensaries. A *Comité national d'assistance aux anciens militaires tuberculeux* (National Committee for aid to war veterans with tuberculosis) was established in 1915 and began training nurses to make house calls, organizing specialized instruction intended mainly for qualified Red Cross nurses. In February 1918 the situation was becoming worse; the National Committee launched an appeal to the three Red Cross societies inviting them to take an even more active part in the tuberculosis control campaign by training their own nurses and setting up dispensaries and medical facilities. The appeal did not go unheeded. The Peupliers school offered a specialized teaching course given by Dr. H. Kresser in April and May 1918. There were plans to convert establishments run by the Red Cross for use by tuberculosis patients. However, pressing military needs during the final offensives of the war were to delay by several months large-scale involvement of the Red Cross societies in the tuberculosis control campaign.

The postwar period

The three societies continued to have to deal with medical and social problems posed by the wounded who were still under treatment and the disabled who were being fitted with prostheses or undergoing rehabilitation. But the scale of physical destruction in the country, the return of refugees, the poor state of health of the population after four years of hardship and the ensuing deadly epidemic of Spanish influenza meant that they had to redouble their efforts. Without waiting for the recommendations of the Peace Conference and of the League of National Societies, the three French societies forged ahead with complementary activities.

Centres providing shelter, food and medical care were established, mainly by the UFF, in the liberated regions. The ADF focused on child care, setting up paediatric centres which provided prenatal consultations,

infant care and distributions of milk. Holiday camps in the country and observation centres for children at greatest risk from tuberculosis were organized. The SSBM was also active in this area.

At the time the tuberculosis control campaign was a priority for all three societies, which worked closely with the former *Comité national d'assistance*, which in 1919 became the *Comité national de défense contre la tuberculose*.

The Committee had already steered them in this direction in February 1918. Their commitment was now total and deemed quite natural by the most highly qualified tuberculosis specialists in France. In a paper on the operation of dispensaries presented during a meeting at the Academy of Medicine on 22 April 1919, Dr. Paul Armand Delille, who had taken part in the Cannes Medical Conference, reiterated the Conference's proposals and had warm words for the professional standards of Red Cross nurses:

"At the moment conditions are particularly favourable for recruiting highly qualified staff, thanks to the presence of numerous Red Cross nurses who, having provided devoted care to our wounded, are now ready to turn their attention to social welfare and public health activities. All that is needed is to provide further training by means of specialized courses".

Pursuant to these recommendations, the three societies encouraged voluntary nurses to enrol in the home visits programme after being given extra training, either at the Peupliers school in the case of the SSBM or at the school set up by the National Committee. Tuberculosis dispensaries meeting the requirements of the 1916 law were established by the three societies, often by converting unoccupied premises. Special care units, observation centres and sanatoriums were also set up throughout France, becoming part of the country's general tuberculosis control campaign.

The teaching provided by the three Red Cross societies reflected the increased scope of their activities. By 1920 the UFF nursing handbook was in its eighth edition and was still a standard reference work, reaching a readership far wider than that for which it was originally intended. Even though the chapter on the management of auxiliary war hospitals had been omitted, the book was considerably expanded, notably to include developments in fields such as infectious diseases like tuberculosis, and dietetics.

It is remarkable that these new tasks which Red Cross nurses were called upon to perform, though evidently less prestigious than taking care of soldiers wounded while defending their fatherland, were embraced with the same enthusiasm. The staff of the three societies continued to increase.

SSBM nurses numbered 33,925 in 1918, 34,367 in 1919 and 35,564 in 1920. The UFF awarded 365 diplomas in 1919.

Within the nursing profession which was now taking shape, the Red Cross played a particularly important role in the years following the war. The profession's legal standing in France was officially recognized by a decree of 27 June 1922 which instituted a State diploma in the form of a certificate of proficiency awarded according to strict criteria. Representatives of the three societies sat on the *Conseil de perfectionnement* (proficiency board) established by the decree to draw up the course of study, set official standards for the recognition of schools of nursing and award the first diplomas to candidates whose training was regarded as meeting the new standards. The programme decided upon closely resembled that of the Red Cross schools, which at the time were by far the most experienced. Of the 43 schools approved between 1923 and 1924, fifteen were run by the Red Cross, and of the 1,586 nurses who were awarded the first diplomas during the same period, more than half (823) belonged to the Red Cross.

In the eyes of the public, the association between the Red Cross and nursing went even further: the red cross on nurses' caps came to symbolize the profession itself and not only membership of one of the societies. With the prestige it had gained during the four war years, the Red Cross was seen as a successful combination of technical expertise and devotion to duty. Its presence everywhere and the efficiency of its medical and social work after the war enhanced its prestige even further.

Since that historic moment, the heyday of the French relief societies, the situation has changed. The French Red Cross, formed in 1940 by the merging of the three former societies, still has 35 schools that train between 1,500 and 1,600 nurses per year. It also continues to run a sizeable medical and social welfare service, which is a direct heritage of the activities set up in the aftermath of the First World War.

However, this contribution, albeit important, is a very minor one in relation to France's highly developed medical services today. Red Cross nurses scarcely account for a tenth of the members of a profession which has grown exponentially. Red Cross establishments play a modest but innovative role in a system which itself is very complex and diversified.

Even so, the specific input of the Red Cross remains an asset for the entire system. In the words of Marie Génin, its principal characteristic remains the combination of technical expertise and devotion to duty.

A high level of technical expertise is today a standard requirement and is by no means exclusive to the Red Cross. The predominance of doctors

in nursing education continues to be a feature of the French system, and sometimes comes in for criticism. For the Red Cross this is a longstanding tradition based on many years of experience.

The humanist element reflects the spirit of the Red Cross even more directly. Just as much as technical training, it implies the ability to take action in all circumstances and to discern with tact and understand what aid is required in difficult situations in a grey area outside the scope of formal teaching, even that of the social sciences.

In its fidelity to its founder, Henry Dunant, this attitude epitomizes the very vocation of the Red Cross. Happily, the French Red Cross is not alone in inheriting this tradition and there is nothing to suggest that it is becoming outdated. On the contrary: at a time when social problems are becoming increasingly complex and the factors contributing to the breakdown of the social order are more difficult to understand and defeat than the effects of microbes, the approach of Dunant's disciples, who help victims without passing any moral judgement, appears to be the most promising way ahead. It is no bad thing that there are still people who uphold this tradition, even though they are in a minority.

RECOGNITION OF THE ANDORRA RED CROSS

Geneva, 24 March 1994

Circular No. 577

*To the Central Committees of the
National Red Cross and Red Crescent Societies*

Ladies and Gentlemen,

We have the honour of informing you that the International Committee of the Red Cross has officially recognized the Andorra Red Cross. This recognition, which took effect on 24 March 1994, brings to 162 the number of National Societies that are members of the International Red Cross and Red Crescent Movement.

The Andorra Red Cross applied for recognition by the ICRC on 10 August 1993. In support of its application it submitted various documents, including a report on its activities in 1992 and the text of its statutes. Decree No. 507/V promulgated by the General Council on 21 March 1980 recognized the Society on the basis of the Geneva Conventions as the only Red Cross Society in Andorra, a voluntary aid organization auxiliary to the public authorities and authorized to extend its activities throughout the country's territory.

The various documents submitted, which were examined by both the ICRC and the Secretariat of the International Federation of Red Cross and Red Crescent Societies in the framework of the Joint ICRC/Federation Commission for National Society Statutes, showed that the ten conditions for recognition of a new National Society had been fulfilled.

On 10 August 1993, Andorra declared its accession to the four Geneva Conventions of 12 August 1949, to which it became party on 17 March 1994.

During a visit to the Society, representatives of the ICRC and the Federation ascertained that the Society has an infrastructure enabling it to work throughout Andorra. It is currently engaged in activities in the following areas: first-aid

training, health education, ambulance services, assistance to the elderly or persons in need, and foreign aid programmes, particularly in the health field.

The President of the Andorra Red Cross is Mr Serafí Miro Bernado. The address of the Society's headquarters, which are located in Andorra la Vella, is as follows:

Andorra Red Cross
Prat de la Creu 22
Andorra la Vella
Andorra

The International Committee of the Red Cross is pleased to welcome the Andorra Red Cross into the International Red Cross and Red Crescent Movement. It hereby accredits and commends it to all other National Societies, and wishes it every success in continuing and developing its humanitarian work.

With high consideration.

FOR THE INTERNATIONAL COMMITTEE
OF THE RED CROSS

Cornelio Sommaruga
President

The Republic of San Marino ratifies the Protocols

The Republic of San Marino ratified on 5 April 1994 the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Republic of San Marino on 5 October 1994.

This ratification brings to **131** the number of States party to Protocol I and to **121** those party to Protocol II.

Accession to the Protocols by Ethiopia

Ethiopia acceded on 8 April 1994 to the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for Ethiopia on 8 October 1994.

This accession brings to **132** the number of States party to Protocol I and to **122** those party to Protocol II.

AWARD OF THE PAUL REUTER PRIZE

The Paul Reuter Prize has been awarded by unanimous decision to

Professor Eric David

of the Free University of Brussels, for his work entitled

Principles of the law of armed conflicts.

The jury emphasized the remarkable quality of this work, which constitutes a major contribution to international humanitarian law.

The jury of the Paul Reuter Prize, chaired by Mr Paolo Bernasconi, member of the International Committee of the Red Cross, also comprises Professors Luigi Condorelli and Giorgio Malinverni of Geneva University and ICRC staff.

In 1982, the late Professor Paul Reuter, former Professor Emeritus at the Paris University of Law, Economics and Social Sciences, and former Chairman of the United Nations International Law Commission, made a donation enabling the ICRC to set up the Paul Reuter Fund, the income of which is used to promote better knowledge and understanding of international humanitarian law.

The Fund also provides for the award, in principle every two years, of a Paul Reuter Prize of 2,000 Swiss francs in recognition of a particularly outstanding work in the field of international humanitarian law.

This is the fourth award of the Prize since the Fund was created. Professor David will receive the prize this spring.

Books and reviews

THE HOLY SEE AND ITS CHARITY WORK IN BEHALF OF PRISONERS OF WAR (1939-1945)

This work by Belgian historian Léon Papeleux focuses on the relations between the Holy See and the International Committee of the Red Cross in their respective activities to assist prisoners of war during World War II.¹

Based on extensive research of the archives of the Holy See, the book contains a detailed description of the Vatican's work in behalf of POWs from 1939 to 1945.

Pope Pius XII entrusted this humanitarian task to a *Bureau of Information Service*, one of whose functions was to draw up lists of prisoners and send news to their families, with the help of Radio Vatican. The service also sent the POWs relief supplies and lent them what spiritual assistance it could.

Representatives of the papal nuncio in Berlin were allowed to make a few visits to POW camps, but their activities were restricted by the German authorities, who argued that it was up to the International Red Cross to conduct such visits.

Pius XII appointed an Undersecretary of State, Monsignor Montini (the future Pope Paul VI), in charge of the service. Mgr. Montini was assisted by Cardinal Maglione and his deputy, Mgr. Tardini.

The Holy See began this work when German troops invaded Poland. It immediately requested its nuncios in Berlin, Budapest, Bucharest, Kaunas and Riga to obtain lists of Polish POWs and refugees. The papal representatives failed to do so, however, because the German authorities informed them that such lists were sent solely to the International Red Cross. The Vatican thereupon asked its nuncio in Bern, Mgr. Bernardini, to get in touch with the ICRC. From the autumn of 1939, Mgr. Bernardini had regular contacts with the institution, in particular with its President, Max Huber. Mgr. Bernardini was to become the principal liaison between the Vatican, the Swiss Government, the ICRC and the other nuncios throughout the war years. President Huber immediately informed him of the ICRC's activities and the difficulties it was experiencing — especially

¹ Léon Papeleux, *L'action caritative du Saint-Siège en faveur des prisonniers de guerre (1939-1945)*, Edition Institut historique belge de Rome, 1991, 300 pp.

with regard to Polish POWs in the USSR whom the ICRC was not authorized to visit. He promised Mgr. Bernardini the ICRC's help in forwarding mail and parcels the Holy See wanted to send to POWs and also assured him that the ICRC would try to ensure the application of Article 16 of the 1929 Geneva Convention providing for religious assistance to POWs.

After the campaign of May-June 1940 the Holy See, which was trying to obtain news of French POWs, again met with a refusal on the part of the German authorities, who maintained that such information was being forwarded to the ICRC.

When Italian troops entered Greece in late October 1940 the Holy See attempted, through the intermediary of Mgr. Roncalli (the future Pope John XXIII) and Father Biscara (a Swiss national who had been living in Greece since 1905), to obtain lists and news of Italian prisoners taken by the Greeks. The latter, however, replied that the matter came within the purview of the ICRC, which had an office in Athens, and the Hellenic Red Cross. The National Society ultimately supplied the Vatican with particulars on 400 Italian prisoners out of a total of 6,000.

Between December 1940 and February 1941, at the end of their offensive in Libya, British troops captured 130,000 Italians; the Italians for their part took a few British prisoners. The commander of the British forces in the Middle East, General Wavell, agreed to send the Vatican lists of Italian POWs and to provide any information that was needed urgently. The British also authorized the papal envoy, Mgr. Testa, to visit Italian prisoners. On 10 March 1941 the British Government stated, however, that the lists of POWs would be given to the ICRC and the Protecting Powers. On the other hand, the Vatican's diplomatic representatives were allowed to visit the camps and to request information on individual prisoners. The Vatican undertook to draw up lists of British POWs held in Italy whom the nuncio accredited to the Italian Government was authorized to visit.

Three times a week Radio Vatican broadcast the names of British and Australian prisoners held by the Italians, but the BBC refused to transmit lists of POWs in British hands.

The Vatican proved no more successful than the ICRC in its endeavours to assist German and Italian prisoners held in the USSR, nor was it able to come to the aid of Soviet servicemen captured by the Germans.

The Allied victory in North Africa in 1943 swelled the ranks of German and Italian POWs. The Vatican attempted to obtain lists of names but, with a few exceptions, the Allies sent them primarily to the ICRC.

Alongside its efforts to obtain such lists, the Vatican tried to facilitate the exchange of correspondence between prisoners and their families. It succeeded in doing so for some prisoners held by the Allies, in particular in Australia and New Zealand, but met with a flat refusal on the part of the German authorities.

The reason given by the author is that Catholics were the victims of merciless persecution in Germany and all territories controlled by the Reich — above all Poland. Indeed, despite the Holy See's protests, numerous Polish priests were deported.

In July 1942 Mgr. Bernardini went to ICRC headquarters in Geneva, where he met President Huber and some of his colleagues. When asked how he felt the institution should deal with pressure to publicly denounce war crimes, the nuncio replied that the Holy See had a spiritual legacy to defend. Should that legacy come under threat the Vatican would be faced with a choice, but would in any event be compelled to react. Conversely, the Red Cross had a purely humanitarian role. If it stepped beyond the practical domain to denounce human beings or ideas that lay beyond its purview, it would jeopardize its mission.

After Marshal Badoglio capitulated in 1943, Germany captured hundreds of thousands of Italian soldiers to whom it refused prisoner-of-war status, thus depriving them of the protection of the ICRC and the Geneva Convention. Despite its endeavours the Vatican was practically unable to contact any of these prisoners, who were regarded as military internees by the Germans. On 20 July 1944, Mussolini met Hitler and persuaded him to agree to the Italian Social Republic's acting as a protecting power for the military internees. What the Republic's representatives in fact did was to try and enrol them to fight alongside the Germans. The ICRC for its part did manage to convey messages from Italian military internees to their families.

Within the general context of its activities in behalf of prisoners of war, the Holy See succeeded in getting relief supplies to a number of these men and to repatriate some of the disabled. It also persuaded both sides to allow prisoners to receive spiritual assistance from priests of their own nationality.

In his conclusion the author notes that, as in World War I, the Vatican's work in aid of POWs throughout the Second World War was conducted in parallel with the activities carried out by the ICRC under the mandate conferred upon it by international humanitarian law.

Françoise Perret

VOLUNTARY SERVICE

Volunteer Management Cycle

In pursuance of Resolution XXIII of the 25th International Conference of the Red Cross (Geneva, 1986), which among other things recommended that the Henry Dunant Institute, in close cooperation with the League (now the Feder-

ation) and the ICRC, continue and encourage studies on voluntary service, the Henry Dunant Institute recently published *Voluntary service — current status report, volunteer management cycle*.^{*} The author is Ms Mary Harder, Programme Director, Community and International Services for the Yukon Division of the Canadian Red Cross Society.

The study, which is based on replies to a questionnaire sent out to 150 National Red Cross and Red Crescent Societies, consists of two main parts. The first deals with the definition of a volunteer and the reasons for becoming a volunteer in the context of a changing society; while the second examines matters relating to recruitment, training, evaluation of volunteers' performance and their relationship with paid staff.

Ms Harder thus gives an overview of volunteer service within the National Societies. She goes on to propose a series of measures intended to encourage the development of volunteer activities and increase the participation of volunteers in training, communication and community services programmes run by Red Cross or Red Crescent Societies.

Special emphasis is placed on taking the individual needs of volunteers into account, in relation not only to their training (management cycles), but also to their participation in decision-making within the National Societies, or indeed to their own aspirations (attention to community needs and social, economic and cultural factors).

This study will help National Society staff in charge of volunteer programmes to gain a better insight into the motivations of volunteers and to organize worthwhile activities for the members of their Societies.

In this connection, National Society leaders have an important role to play in encouraging volunteer activity and upholding the status of volunteers, who are after all the eyes and ears of the International Red Cross and Red Crescent Movement in today's world.

At the end of the study, which is illustrated by numerous practical examples and first-hand accounts, Ms Harder lists nine major recommendations to encourage volunteer work within the Movement. They are reproduced below.

1. The integration of volunteers into all aspects of National Societies' operations including leadership and management roles should be encouraged.
2. It is important that follow-up to this voluntary service study include a management of volunteers training component available to National Societies within regions.
3. It is recommended that National Societies continue and expand their efforts to involve vulnerable groups including women, culturally diverse and special populations.

^{*} Mary Harder, *Voluntary service — Current status report, volunteer management cycle*, Henry Dunant Institute, Geneva, 1992, 68 pp.

4. It is recommended that National Societies have direct access to relevant, pertinent and current information for directing volunteer program activities at the local and regional levels and that this function would best be facilitated by the Federation.
5. It is recommended that further study be undertaken to determine the scope and type of evaluation of programs/services/volunteer performance conducted by National Societies and to develop evaluation policies and strategies that can be adapted to their specific needs.
6. National Societies are encouraged to work in collaborative relationships with other voluntary agencies in their regions.
7. The dissemination of International Humanitarian Law and the principles and ideals of the Red Cross/Red Crescent is a key factor in the activities of a National Society and efforts should be made to work with ICRC in designing materials firstly to communicate to the public a positive image of voluntary service and secondly to meet the motivation and training needs of potential volunteers.
8. It is recommended that policies related to the training, preparation and support of volunteers during periods of disturbance be defined and developed.
9. It is recommended that National Societies clarify liability issues as they relate to voluntary service.”

In a world in the midst of change, where the Movement is constantly faced with new situations, this study reminds us that volunteer workers, with their motivation and their wealth of experience, are an invaluable asset for the Red Cross and Red Crescent Movement in its endeavour to rise to the challenges of the future.

Philippe Abplanalp

NOUVEL ORDRE MONDIAL ET DROITS DE L'HOMME —
LA GUERRE DU GOLFE

New world order and human rights — the Gulf war

On 22 May 1992 the *Centre de recherches et d'études sur les droits de l'homme et le droit humanitaire (CREDHO)* (Centre for research and studies on human rights and humanitarian law) of the University of Rouen, France, held a colloquium on the theme: "The Gulf war: a setback or a step forward for human

rights?”. The proceedings, edited by Professor Paul Tavernier, the founder and director of CREDHO, were published in 1993 under the title: “*Nouvel ordre mondial et droits de l’homme — La guerre du Golfe*”¹. Both the colloquium and the proceedings were dedicated to the memory of Frédéric Maurice, an ICRC delegate who lost his life in Sarajevo three days before the meeting took place.

This 200-page work begins with a preface by Mario Bettati, a professor of law based in Paris who is a fervent advocate of the duty to intervene on humanitarian grounds. It comprises four chapters which deal, respectively, with the issues of economic sanctions and human rights, the right and duty to intervene, war crimes and crimes against humanity, and minorities. A number of general comments are offered by way of conclusion.

In the chapter on economic sanctions and human rights, Professor Tavernier refers to some highly interesting developments in respect of humanitarian exceptions, in particular the relations between the ICRC and the Sanctions Committee set up under United Nations Security Council resolution 661. The author rightly notes that Article 59 of the Fourth Convention could have been included in the relevant resolutions and that its omission, for which the ICRC cannot be held responsible, has yet to be explained. Lastly, he mentions the need to reconcile economic sanctions with respect for human rights.

For Professor Dominique Rosenberg, who addresses the same issue, sanctions constitute a caveat and their value is above all symbolic (see p. 51). His comments are followed by a general debate on the utility of sanctions.

The second chapter consists of three papers entitled, respectively, *L’assistance, l’ingérence et le droit* (Assistance, intervention and the law), by Professor Patricia Buirette, *Droit d’ingérence et droit international humanitaire* (The right to intervene and international humanitarian law), by the author of the present review, and *La guerre du Golfe, le Maghreb et le droit* (The Gulf war, the Maghreb and the law), by Professor Jean-Philippe Bras, and the related discussions. It sets forth the traditional arguments for the right to intervene and the questions which they usually elicit. The ICRC’s contribution provides a rebuttal to the claim that humanitarian action is never truly neutral (p. 72) and affirms that, by virtue of the principle of subsidiarity, which could be seen as stemming from humanitarian law (p. 76, note 73), States have an obligation to accept offers of impartial and indiscriminate humanitarian aid.

The chapter on war crimes and crimes against humanity contains an overview by Catherine D’Haillecourt, a lecturer at the University of Rouen, comments by Professor Eric David and the discussions that took place under his chairmanship. Ms D’Haillecourt deplores the fact that human rights violations perpetrated

¹ *Nouvel ordre mondial et droits de l’homme — La guerre du Golfe*, Paul Tavernier, ed., University of Rouen, *Centre de recherches et d’études sur les droits de l’homme et le droit humanitaire* (CREDHO), Editions Publisud, 1993, 212 pp.

during the Gulf war were not prosecuted in the same way as those committed during the Second World War and notes that the United Nations General Assembly and Security Council are not courts of criminal law. As can be seen from the discussions, these remarks were not fully understood. It might perhaps have been more appropriate to weigh the arguments presented by the author in support of the view that a distinction should be drawn between the rules applicable, respectively, to war crimes and crimes against humanity, her opinion being that it might be necessary to disregard the former in the interest of restoring peace (p. 124).

The last chapter, which deals with international protection for minorities, comprises a paper by Professor Alain Fenet on the subject in relation to the Gulf war, comments by M. Shewki and Y. Richard on, respectively, the Kurd and Shiite minorities, and the ensuing discussions. Prof. Fenet provides some welcome insights into the intervention by coalition forces in northern Iraq and an update on recent developments in respect of international protection for minorities. Mr Shewki and Mr Richard, for their part, present some interesting data on the history of two of the largest minority groups in the Middle East.

The conclusion, which focuses on respect for human rights during and after the Gulf war, provides a balanced view of the theme dealt with at the colloquium. It is regrettable, however, that attention was not drawn to the fact that States do indeed have an obligation to accept impartial and indiscriminate humanitarian assistance in the event of armed conflict.

To sum up, this work addresses problems which have been among the major concerns of internationalists since the end of the Cold War and provides an excellent basis for further reflection.

Denise Plattner

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