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^ CHAPTER BIBLIOGRAPHY

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Introduction

Quotation

The ICRC's mission Since it was founded in 1863, the ICRC has been working to protect and assist the victims of armed conflict and other situations of violence. It initially focused on wounded soldiers but over time it extended its activities to cover all victims of these events.

In A Memory of Solferino, Henry Dunant suggested creating national relief societies,[1] recognizable by their common emblem, and an international treaty to protect the wounded on the battlefield.[2] A permanent committee was established in Geneva to further Dunant's ideas. A red cross on a white ground [reversing the colours of the Swiss flag and paying tribute to the country, as host of the Geneva International Conference of 1863] was chosen as the emblem and the committee went on to adopt the name of the International Committee of the Red Cross.

Initially, it was not the ICRC's intention to take action on the ground. However, the National Societies of countries in conflict – viewed as too close to the authorities – asked the ICRC to send its own relief workers, believing that humanitarian work in times of conflict needed to offer guarantees of neutrality and independence acceptable to all parties, which only the ICRC could do. The ICRC therefore had to build up operational activities very quickly within a framework of neutrality and independence, working on both sides of the battlefield. Formal recognition of this function came later, when the Geneva Conventions explicitly recognized the purely humanitarian and impartial nature of the ICRC's activities,

and gave the organization a special role in ensuring the faithful application of international humanitarian law.

The ICRC defines its mission in the following terms:

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance.

The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

To be able to carry out its mission effectively, the ICRC needs to have the trust of all States, parties and people involved in a conflict or other situation of violence. This trust is based in particular on an awareness of the ICRC's policies and practices. The ICRC gains people's trust through continuity and predictability. Combining effectiveness and credibility irrespective of time, place or range of needs is a permanent challenge for the organization, because it must be able to prove it can be both pragmatic and creative. Within the framework of the ICRC's clear strategy and priorities, its delegations in the field are thus given considerable autonomy to decide how best to help victims of conflict and other situations of violence.

[...] **The ICRC's identity**

The ICRC's purpose

The *raison d'être* of the ICRC is to ensure respect, through its neutral and independent humanitarian work, for the lives, dignity and physical and mental well-being of victims of armed conflict and other situations of violence. All of the ICRC's work is geared towards meeting this fundamental objective and strives to fulfil this ideal. The ICRC takes action to meet the needs of these people and in accordance with their rights and the obligations incumbent upon the authorities.

The dual nature of the ICRC's work

The ICRC's work developed along two lines. The first of these is operational, i.e. helping victims of armed conflict and other situations of violence. The second involves developing and promoting international humanitarian law and humanitarian principles.

These two lines are inextricably linked because the first operates within the framework provided by the second, and the second draws on the experience of the first and facilitates the ICRC's response to the needs identified. This dual nature thus reinforces the very identity of the ICRC and distinguishes it from other international humanitarian organizations, private or intergovernmental, which generally concentrate on just one of these two priorities.

An organization with a mandate

A key characteristic of the ICRC is that it was given a mandate (or rather mandates) by the States party to the Geneva Conventions to help victims of armed conflict. Its work is therefore firmly rooted in public international law. In other situations of violence, the ICRC derives its mandate from the Statutes of the Movement.[3]

The main legal basis for the ICRC's work is to be found in international humanitarian law. The Statutes of the International Red Cross and Red Crescent Movement (the Movement) and resolutions of the International Conference of the Red Cross and Red Crescent and the Council of Delegates underscore the legitimacy of the ICRC's work. International humanitarian law, like the Statutes of the Movement, confirms a historical tradition of ICRC action which predates its successive codifications.

States gave the ICRC the responsibility of monitoring the faithful application of international humanitarian law. As the guardian of humanitarian law, the ICRC takes measures to ensure respect for, to promote, to reaffirm and even to clarify and develop this body of law. The organization is particularly concerned about possible erosion of international humanitarian law and takes bilateral, multilateral or public steps to promote respect for and development of the law.

The ICRC generally cites international humanitarian law in reference to its activities. It nevertheless reserves the right to cite other bodies of law and other international standards protecting people, in particular international human rights law, whenever it deems it necessary.

The ICRC has developed several policy documents that draw on its long experience. These texts serve as a guide for its actions and aim to give the organization long-term coherence, which in turn gives the ICRC added predictability and credibility when exercising its mandate.

Membership in a Movement

Another characteristic of the ICRC is its membership in a Movement – a Movement which it initiated. The ICRC is one component, and National Societies and the International Federation of Red Cross and Red Crescent Societies (the Federation) are the others. This link with the Movement is reinforced by the similarity of tasks of all Movement components and by the use of common emblems.

The Movement's mission is:

- to prevent and alleviate suffering wherever it may be found;
- to protect life and health and ensure respect for the human being, in particular in times of armed conflict and other emergencies;
- to work for the prevention of disease and for the promotion of health and social welfare;
- to encourage voluntary service and a constant readiness to give help by the members of the Movement, and a universal sense of solidarity towards all those in need of

its protection and assistance (Preamble to the Statutes of the Movement).

It may be added that by carrying out its activities throughout the world, the Movement contributes to the establishment of a lasting peace. The mission of the National Societies is to carry out humanitarian activities within their own countries, particularly in the role of auxiliaries to the public authorities in the humanitarian field.[4]

The ICRC undertakes procedures to recognize National Societies on the basis of criteria set out in the Statutes of the Movement. The recognition of National Societies makes them full members of the Movement and eligible to become members of the Federation. The ICRC cooperates with them in matters of common concern, such as their preparation for action in times of armed conflict, tracing and reuniting families and spreading knowledge of international humanitarian law and the Movement's Fundamental Principles. In armed conflict and other situations of violence, the ICRC is responsible for helping them boost their capacity to meet the increased need for humanitarian aid.

Often it is thanks to the National Societies' presence, resources, local knowledge and motivation that the ICRC can successfully carry out its work in the field. National Societies may also be involved in international operations via the ICRC, the Federation or the National Society of the country in question. The ICRC benefits from a unique worldwide network made up of all the National Societies. Cooperation and coordination within the Movement help make the best possible use of the capacity of all members. In accordance with the Movement's agreements and rules, the ICRC directs and coordinates international relief activities in "international and non-international armed conflicts" and in situations of "internal strife and their direct results." It also directs and coordinates activities aiming to restore family links in any situation requiring an international emergency response.

The ICRC thus has two levels of responsibility:

- doing the humanitarian work that derives from its own mandate and its specific areas of competence;
- coordinating the international operations of the Movement's components.

The Fundamental Principles of the International Red Cross and Red Crescent Movement

The ICRC's endeavour is guided by seven Fundamental Principles, which the organization shares with the other components of the Movement. The principles – humanity, impartiality, neutrality, independence, voluntary service, unity and universality – are set out in the Movement Statutes and constitute the common values that distinguish the Movement from other humanitarian organizations. The Movement has given the ICRC the task of upholding and disseminating these principles. The first four, which are set out below, are those most commonly cited by the ICRC and are specifically mentioned in its mission statement:

- Humanity is the supreme principle. It is based on respect for the human being and encapsulates the ideals and aims of the Movement. It is the main driving force behind the ICRC's work.
- Impartiality, a principle that rejects any form of discrimination, calls for equal treatment for people in distress, according to their needs. It enables the ICRC to prioritize its activities on the basis of the degree of urgency and the types of needs of those affected.
- Neutrality enables the ICRC to keep everyone's trust by not taking sides in hostilities or controversies of a political, racial, religious or ideological nature. Neutrality does not mean indifference to suffering, acceptance of war or quiescence in the face of inhumanity; rather, it means not engaging in controversies that divide peoples. The ICRC's work benefits from this principle because it enables the organization to make more contacts and gain access to those affected.
- The ICRC's independence is structural: the Committee's members are all of the same nationality and they are recruited by co-optation. The ICRC is therefore independent of national and international politics, interest groups, and any other entity that may have some connection with a situation of violence. This gives the ICRC the autonomy it needs to accomplish the exclusively humanitarian task entrusted to it with complete impartiality and neutrality.

Scope of work and criteria for taking action

There are four different situations in which the ICRC takes action:

1. The ICRC's endeavour to help the victims of international armed conflict and non-international armed conflict is at the heart of its mission. The ICRC offers its services on the basis of international humanitarian law, and after taking due account of the existing or foreseeable need for humanitarian aid.[5]
2. In other situations of violence, the ICRC offers its services if the seriousness of unmet needs and the urgency of the situation warrant such a step. It also considers whether it can do more than others owing to its status as a specifically neutral and independent organization and to its experience. In these situations, its offer of services is based not on international humanitarian law but on the Statutes of the Movement.[6]
3. If a natural or technological disaster or a pandemic occurs in an area where the ICRC has an operational presence, meaning it can deploy quickly and make a significant contribution, the organization steps in with its unique capabilities, to the extent it is able and in cooperation with the Movement. It generally takes action during the emergency phase only.
4. In other situations, it makes its own unique contribution to the efforts of all humanitarian agencies,

especially within its fields of expertise such as tracing work and disseminating international humanitarian law and the Fundamental Principles. These are all fields in which it has an explicit mandate.

The ICRC sets priorities on the basis of the following criteria:

- the extent of victims' suffering and the urgency of their needs: the principle of impartiality, mentioned in humanitarian law, remains the pillar of the ICRC's work, which is non-discriminatory and proportionate to the needs of the people requiring protection and assistance;
- its unique capabilities deriving from its distinctiveness as a neutral and independent organization and intermediary and its experience in assisting the victims of armed conflict (local knowledge, human resources, logistics, tracing work, etc.). The particular merit of the ICRC, which results from its principles and its operational experience, is recognized by the international community. It fits into the scheme of an environment for humanitarian work that is characterized by numerous very different agencies;
- the legal basis for its work: the ICRC endeavours to take action in situations where international humanitarian law is applicable and carefully considers the advisability of taking action in the context of the direct results of these situations and in other situations of violence not covered by international humanitarian law (internal disturbances and tensions). In all cases, it tailors its action according to the criteria set out above.

Operational considerations and constraints (such as impact on other activities, whether the ICRC has been invited to take action, and security issues) can be added to these criteria.

Strategies for fulfilling the mission:

From comprehensive analysis to specific activities

A comprehensive analysis

For any action to be taken, a comprehensive analysis of the situation, the actors present, the stakes and the dynamics must be carried out. This enables the ICRC to identify the people adversely affected and their needs. It requires a clear understanding of the problems' causes and a good knowledge of local facilities, their capabilities and their potential. The ICRC endeavours to obtain an overall perspective of an issue of humanitarian concern by looking at all the aspects and at the different responses that would be suitable.

A number of factors should be considered: social, economic, political, cultural, security, religious and ethnic, among others. Analysis should also take account of the interdependence of local, regional and international factors affecting a situation of conflict or any other situation of violence.

Analysis provides a basis for deciding on an overall strategy, with specific priorities and objectives, and

determines the types of problem and/or the categories of needs on which the ICRC is going to concentrate its efforts and its resources. It is then a matter of developing a strategy aimed not only at addressing the direct consequences of problems, but also – as far as possible within the framework of neutral and independent humanitarian activities – their origins and causes.

In so doing, the ICRC must first exploit its strong points and the opportunities offered by the local environment, and second try to minimize its weaknesses and neutralize or circumvent external difficulties. Because of the complementary role played by partners in and outside the Movement, the strong and weak points of these partners must also be taken into account in strategy discussions.

Depending on what needs to be done, the various activities either start simultaneously or consecutively.

Four approaches set out in the mission statement that allow the ICRC to fulfil its purpose

As described in the ICRC's mission statement, the organization combines four approaches in its overall strategy after analysing a situation in order to, directly or indirectly, in the short, medium or long term, ensure respect for the lives, dignity, and physical and mental well-being of victims of armed conflict and other situations of violence.

Protecting the lives and dignity of victims of armed conflict and other situations of violence

The protection approach

[See ICRC, Protection Policy]

- In order to preserve the lives, security, dignity, and physical and mental well-being of victims of armed conflict and other situations of violence, this approach aims to ensure that authorities and other actors fulfil their obligations and uphold the rights of individuals.
- It also tries to prevent or put an end to actual or probable violations of international humanitarian law or other bodies of law or fundamental rules protecting people in these situations.
- It focuses first on the causes or circumstances of violations, addressing those responsible and those who can influence them, and second on the consequences of violations.

Assisting victims of armed conflict and other situations of violence

The assistance approach

[See ICRC, Assistance Policy]

- The aim of assistance is to preserve life and/or restore the dignity of individuals or communities adversely affected by armed conflict or other situations of violence.

- Assistance activities principally address the consequences of violations of international humanitarian law and other relevant bodies of law. They may also tackle the causes and circumstances of these violations by reducing exposure to risk.
- Assistance covers the unmet essential needs of individuals and/or communities as determined by the social and cultural environment. These needs vary, but responses mainly address issues relating to health, water, sanitation, shelter and economic security by providing goods and services, supporting existing facilities and services and encouraging the authorities and others to assume their responsibilities.

Directing and coordinating the Movement's international relief efforts in armed conflict and other situations of violence

The cooperation approach

- The aim of cooperation is to increase the operational capacities of National Societies, above all in countries affected or likely to be affected by armed conflict or other situations of violence. A further aim is to increase the ICRC's capacity to interact with National Societies and work in partnership with them.
- The cooperation approach aims to optimize the humanitarian work of Movement components by making the best use of complementary mandates and skills in operational matters such as protection, assistance and prevention.
- It involves drawing up and implementing the policies of the Movement that are adopted during its statutory meetings and strengthening the capacities of the National Societies, helping them to adhere at all times to the Fundamental Principles.

Endeavouring to prevent suffering by promoting, reinforcing and developing international humanitarian law and universal humanitarian principles

The prevention approach

- The aim of prevention is to foster an environment that is conducive to respect for the lives and dignity of those who may be adversely affected by armed conflict and other situations of violence, and that favours the work of the ICRC.
- This approach aims to prevent suffering by influencing those who have a direct or indirect impact on the fate of people affected by these situations. This generally implies a medium or long-term perspective.
- In particular, the prevention approach involves communicating, developing, clarifying and promoting the implementation of international humanitarian law and other applicable bodies of law, and promoting acceptance of the ICRC's work.

Combining activities: Multidisciplinarity

Each activity responds, in humanitarian terms, to a specific problem or to common problems. Each

approach uses its own implementation strategies. These strategies combine different activities from the four programmes detailed in the annual planning tool: protection, assistance, prevention and cooperation. Thus, a protection strategy could also include activities from the assistance, prevention or cooperation programmes. Digging wells in a camp for the displaced may be one aspect of an assistance programme and may be intended to tackle the lack of water. It would therefore form part of the assistance approach. However, this activity could equally be intended primarily to protect people exposed to violence while looking for water outside the camp. It therefore also forms part of the protection approach.

Combining activities is particularly important. The ICRC is duty bound to use all means at its disposal, according to each situation and to the priorities and objectives identified. Furthermore, the different approaches are of mutual assistance: for example, ICRC staff may receive information on violations of international humanitarian law while carrying out assistance work and this can then provide the grounds for making representations to the authorities, which is part of the protection approach. In conflict situations, assistance activities often take on a protection nature, and vice versa, to the point of being inextricably linked. It was after all to the ICRC that the Movement assigned the task of endeavouring at all times to protect and assist victims of these events.

Combining activities is often supported by what the ICRC calls its humanitarian diplomacy. The aim is to influence – and if necessary modify – the political choices of States, armed groups, and international and supranational organizations in order to enhance compliance with international humanitarian law and to promote the ICRC's major objectives. To that end, the ICRC encourages the various services and hierarchical levels at headquarters and its network of delegations to increase dialogue with these entities on general issues of concern to it. The essential message of humanitarian diplomacy is the same for all delegations, whatever their operational priorities. Coordination of humanitarian activities

Both from headquarters and in the field, the ICRC coordinates its activities with other humanitarian organizations in order to improve the lives, directly or indirectly, of victims of armed conflict and other situations of violence. Coordination is only possible as far as the strictly humanitarian approach of the ICRC, as an impartial, neutral and independent organization, allows. Authority cannot be ceded to any other entity or group of entities.

Modes of action

In keeping with the emphasis it places on complementary roles, the ICRC takes into account its partners' (in and outside the Movement) strong and weak points and their fields of expertise in its strategic discussions.

The ICRC's strategy is based on combining "modes of action" and on selecting the appropriate activities depending on the approach (or approaches) chosen. Modes of action are the methods or

means used to persuade authorities to fulfil their obligations towards individuals or entire populations.

The ICRC's modes of action are: raising awareness of responsibility (persuasion, mobilization, denunciation), support, and substitution (direct provision of services). The ICRC does not limit itself to any one of them; on the contrary, it combines them, striking a balance between them either simultaneously or consecutively.

1. The aim of raising awareness of responsibility is to remind people of their obligations and, where necessary, to persuade them to change their behaviour. This translates into three methods:
 - a. Persuasion aims to convince someone to do something which falls within his area of responsibility or competence, through bilateral confidential dialogue. This is traditionally the ICRC's preferred mode of action.
 - b. The organization may also seek outside support, through mobilization of influential third parties (e.g. States, regional organizations, private companies, members of civil society or religious groups who have a good relationship with the authorities in question). The ICRC chooses such third parties with care, contacting only those who it thinks will be able to respect the confidential nature of the information that they receive.
 - c. Faced with an authority which has chosen to neglect or deliberately violate its obligations, persuasion (even with the mobilization of support from influential third parties) may not be effective. In certain circumstances, therefore, the ICRC may decide to break with its tradition of confidentiality and resort to public denunciation.^[7] This mode of action is used only as part of the protection approach, which focuses on the imminent or established violation of a rule protecting individuals.
2. If authorities are unable to take action, the ICRC provides support where necessary to enable them to assume their responsibilities.
3. When the competent authorities do not take or are unable to take appropriate measures (owing to lack of means, or unwillingness, or when no such authorities exist), the ICRC takes direct action in their place (substitution) to meet the needs of the people or populations affected. If the situation is critical, the ICRC acts first and then speaks to the authorities to persuade them to take appropriate measures or to help them examine possible solutions.

Guidelines for action

The above-mentioned strategy is implemented with consideration for the following guidelines:

1. The ICRC's humanitarian work is impartial, neutral and independent. Experience has taught it that this approach offers the best chance of being accepted during an armed conflict or other situation of violence, in particular given the risk that actors at a local, regional or international level may become polarized or radicalized. The integration of political, military and humanitarian means as recommended by some States is therefore a major source of difficulty for the ICRC. The organization insists on the need to avoid a blurring of lines while still allowing for the possibility of complementary action.
2. Many of the ICRC's tasks are carried out close to the people concerned – in the field, in other

words, where the organization has better access to them. The individuals and communities concerned must be consulted in order to better establish their needs and interests, and they should be associated with the action taken. Their value systems, their specific vulnerabilities and the way they perceive their needs must all be taken into consideration. The ICRC favours a participatory approach aimed at building local capacities.

3. The ICRC has a universal vocation. Its work is not limited to certain places, or to certain types of people (such as children or refugees). With a presence in numerous regions of the world, the ICRC has an overall vision that enables it to undertake comprehensive analysis. The organization must have a coherent approach everywhere it works if it is to appear transparent and predictable. However, this does not mean that ICRC activities are uniform. Taking the context into consideration is still a key aspect of analysis and strategy.
4. The ICRC gets involved during the emergency phase and stays for as long as is necessary. However, the organization is careful to ensure that its involvement does not dissuade the authorities from fully assuming their responsibilities or the communities affected from relying on their usual coping mechanisms. It also takes care not to get in the way of other organizations and actors who are building up civil society's resources. Measures are taken so that the ICRC is able to leave the scene in an appropriate manner when the time comes.
5. The ICRC engages in dialogue with all those involved in an armed conflict or other situation of violence who may have some influence on its course, whether they are recognized by the community of States or not. No one is excluded, not only because engaging in dialogue does not equate to formal recognition but also because multiple and varied contacts are essential for assessing a situation and for guaranteeing the safety of ICRC activities and personnel. The ICRC maintains a network of contacts locally, regionally and internationally. In the event of violations of international humanitarian law or other bodies of law or other fundamental rules protecting people in situations of violence, the ICRC attempts to influence the perpetrators. In the first instance, it will take bilateral confidential action.^[8] When it comes to confidential action and to communication with the public, the ICRC wants to promote transparency and present itself as an organization acting in a credible and predictable manner. Moreover, reflecting the interest that States have in the unique status and role of the ICRC, the organization's right to abstain from giving evidence has been recognized by several sources of international law.
6. While doing what it can to help needy people, the ICRC also takes into consideration the efforts of others since there is a wide variety of agencies in the humanitarian world. The main objective of interacting with other providers of aid is to make the best use of complementary efforts in order to meet needs. Interacting should provide the basis for building on the skills of each and hence for obtaining the best possible results, then continue to respond to needs in the long term through programme handover. Interaction should therefore be based on transparency, equality, effective operational capacities and a complementary relationship between organizations. It starts with – but is not limited to – the Movement and its universal network. Indeed, the other components emerge as the ICRC's natural and preferred partners, with whom it would like to develop and strengthen a common identity and vision.^[9]
7. Through its work, the ICRC bears a certain responsibility for the individuals or entire populations it endeavours to protect and assist. Its fundamental concern is to have a genuinely positive impact on their lives. It has set up a framework of accountability and tools for planning, monitoring and

assessing its actions; these help it examine its performance and results and hence constantly improve the quality of its work. The ICRC evaluates all of its activities using various criteria and indicators, including thresholds of success and failure, so that it can become more effective and find the most appropriate way of answering to beneficiaries and donors. Its work is regularly assessed, and reoriented if necessary.

[Source: ICRC, The ICRC. Its Mission and Work, March 2009; available at <http://www.icrc.org>; footnotes partially omitted]

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Footnotes

- [1] Dunant suggested that permanent relief societies be set up which would begin making preparations during peacetime so as to be ready to support the armed forces' medical services in wartime. These societies would coordinate their efforts and be recognized by the authorities. He also proposed that an international congress be held “to formulate some international principle, sanctioned by a Convention inviolate in character, which, once agreed upon and ratified, might constitute the basis for societies for the relief of the wounded,” and would also protect the wounded and those coming to their aid [...]
- [2] In making Henry Dunant's ideas a reality, and in particular, promoting the adoption of a solemn commitment by States to help and care for wounded soldiers without distinction, the ICRC was at the forefront of the development of international humanitarian law. Its fieldwork was later given a legal basis through mandates contained in international humanitarian law and in resolutions adopted at meetings of the International Conference of the Red Cross and Red Crescent.
- [3] See *Statutes of the International Red Cross and Red Crescent Movement* (footnote added by the authors)
- [4] See *infra*, I. Institution, 1. The ICRC within the International Red Cross and Red Crescent Movement, a) National Red Cross and Red Crescent Societies (footnote added by the authors)
- [5] See for instance GC I-IV, Art. 9/9/9/10 respectively; GC I, Art. 23; GC III, Arts 73, 123 and 125-126; GC IV, 14, 59, 61, 140 and 142-143; P I, Art. 33. (footnote added by the authors)

- [6] See Movement Statutes, Arts 5.2(d) and 5.3 [Statutes of the International Red Cross and Red Crescent Movement] (footnote added by the authors)
- [7] Public denunciation is subject to very strict conditions. See *infra*, Quotation, under V. I.3.3. Public condemnation
- [8] See *infra* V.ICRC's approach, 1. Confidentiality, not publicity (footnote added by the authors)
- [9] See *supra* I. Institution, 1. The ICRC within the International Red Cross and Red Crescent Movement (footnote added by the authors)

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- a. **National Red Cross and Red Crescent Societies** (The list of the National Societies’ websites is available on <http://www.ifrc.org>)

Introductory text

Originally created for service in time of armed conflicts, as auxiliaries to the military medical services, National Red Cross and Red Crescent Societies today carry out a wide range of activities in situations of both war and peace.[10]

The activities carried out by the 186 National Societies are as diverse as the countries they serve. Their wartime role to support armed forces medical units remains essential but now represents just one of many aspects of their work.

Other National Society activities include: setting up and managing hospitals; training medical personnel; organizing blood donor clinics; assisting the handicapped, the elderly and the needy; providing ambulance services and road, sea and mountain rescue services. In addition, many National Societies are also responsible for emergency relief in the event of man-made or natural disasters (technological catastrophes, floods, earthquakes, tidal waves, etc.).

More recently, many National Societies have also considerably increased their involvement in new areas: relief to refugees and displaced persons; assistance to victims of epidemics (HIV/AIDS); and dissemination and implementation of International Humanitarian Law (IHL).

Each National Society must fulfil strict conditions in order to achieve recognition by the ICRC and thus become a member of the International Red Cross and Red Crescent Movement.[11] In particular, it must be recognized by its own government as a voluntary aid society, be constituted on the territory of a State party to the Geneva Conventions, use one of the recognized emblems and respect the Fundamental Principles of the Red Cross and Red Crescent Movement.

^ CASES AND DOCUMENTS

- Statutes of the International Red Cross and Red Crescent Movement [Art. 4]

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- a. **the International Federation of Red Cross and Red Crescent Societies** (See the International Federation of the Red Cross and Red Crescent Societies website: <http://www.ifrc.org>)

^ CASES AND DOCUMENTS

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- a. **the International Red Cross and Red Crescent Conference**

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- ICTY/ICC, Confidentiality and Testimony of ICRC Personnel

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6. Neutrality and impartiality

Quotation

On the general level, the idea of neutrality pre-supposes two elements: an attitude of abstention and the existence of persons or groups who oppose one another. Although neutrality defines the attitude of the Red Cross towards belligerents and ideologies, it never determines its behaviour towards the human beings who suffer because, in the first place, the wounded do not fight one another. And, above all, the essential characteristic of the Red Cross is to act and not to remain passive.

Neutrality and impartiality have often been confused with one another because both imply the existence of groups or theories in opposition and because both call for a certain degree of reserve. The two ideas are nevertheless very different, for the neutral man refuses to make a judgement whereas the one who

is impartial judges a situation in accordance with pre-established rules.

Neutrality demands real self-control; it is indeed a form of discipline we impose upon ourselves, a brake applied to the impulsive urges of our feelings. A man who follows this arduous path will discover that it is rare in a controversy to find that one party is completely right and the other completely wrong. He will sense the futility of the reasons commonly invokes to launch one nation into war against another. In this respect, it is reasonable to say that neutrality constitutes a first step towards peace.

While neutrality, like impartiality, is often misunderstood and rejected, this happens because there are so many who want to be both judge and party, without recourse to any universally valid criterion. Each side believes, rather naively, that his cause is the only just one; that refusal to join it is an offence against truth and justice.

[Source: Pictet, J.S., Red Cross Principles, Geneva, International Committee of the Red Cross, 1979, pp. 52-53]

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- [10] See Statutes of the International Red Cross and Red Crescent Movement [Art. 3]
- [11] See *ibid.* Art. 4: Conditions for recognition of National Societies

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a. visits to detained persons – interviews without witnesses

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a. tracing service

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a. the relevance of ICRC practice for the development of customary IHL

Quotation

“[...] a number of Governments have suggested that the phrase “the international community as a whole” [...] should read “the international community of States as a whole”. [...] The Special Rapporteur does not agree that any change is necessary in what has become a well-accepted phrase. States remain central to the process of international lawmaking and law-applying, and it is axiomatic that every State is as such a member of the international community. But the international community includes entities in addition to States: for example, the European Union, the International Committee of the Red Cross, the United Nations itself.”

[Source: A/CN.4/517, United Nations General Assembly, 2 April 2001, International Law Commission, 53rd session, Geneva, 23 April – 1 June and 2 July – 10 August 2001, Fourth Report on State Responsibility, presented by M. James Crawford, Special Rapporteur, p. 15, available on <http://www.un.org>]

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a. visits (with interviews without witnesses) to detainees held in connection with the situation

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a. ICRC residual responsibility towards persons it has assisted during a conflict

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a. **“substitute of the Protecting Power”** GC I-IV, Arts 10(3)/10(3)/10(3)/11(3) respectively; P I, Art. 5(4)

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a. practical importance of qualifying a conflict

b. difficulties for the ICRC to qualify a conflict

^ CASES AND DOCUMENTS

- Case Study, Armed Conflicts in the former Yugoslavia [Paras 2 and 9]

aa) objective difficulties

- establishment of the facts
- constantly developing law

bb) political difficulties

- the ICRC seen as warmonger
- the ICRC taking position on facts relevant to jus ad bellum (the origin of the conflict)

^ CASES AND DOCUMENTS

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- divergence from the appreciation of the international community

cc) difficulties for its operational access dd) advantages and shortcomings of a pragmatic approach

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f. mobilizing against violations of IHL

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3. Reference to IHL in ICRC operations

- a. dissemination
- b. preventive appeal for respect for IHL

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- argument for ICRC access to conflict victims
- argument in negotiations on the behaviour of belligerents
- request for enquiry into and repression of individual violations

^ CASES AND DOCUMENTS

- Afghanistan, ICRC Position on Alleged III-Treatment of Prisoners

- condemnation of violations aa) bilateral bb) public
- reference in negotiations with third States and the international community aa) requests for ICRC support bb) appeals under Art. 1 common to the Conventions

^ CASES AND DOCUMENTS

- ICRC/Lebanon, Sabra and Chatila
- ICRC, Iran/Iraq, Memoranda

4. Importance of IHL in the absence of an explicit reference

- reference to the contents of a rule without reference to its source

^ CASES AND DOCUMENTS

- Sri Lanka, Jaffna Hospital Zone

- presentation of facts and questions
- IHL as political pressure in the background

V. ICRC's approach

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1. Confidentiality, not publicity

(See also *infra* Quotation 3, under V. 3. Access to victims, not investigation of violations)

Quotation

Action taken by the ICRC in the event of violations of International Humanitarian Law or of other fundamental rules protecting persons in situations of violence

[...]

Action taken by the ICRC on its own initiative

1 General rule

The ICRC takes all appropriate steps to put an end to violations of international humanitarian law or of other fundamental rules protecting the persons in situations of violence, or to prevent the occurrence of such violations. These steps are taken at various levels and through various modes of action, according to the nature and the extent of the violations.

[...]

3.3 Public condemnation

The ICRC reserves the right to issue a public condemnation of specific violations of international humanitarian law providing the following conditions are met:

1. the violations are major and repeated or likely to be repeated;
2. delegates have witnessed the violations with their own eyes, or the existence and extent of those violations have been established on the basis of reliable and verifiable sources;
3. bilateral confidential representations and, when attempted, humanitarian mobilization efforts have failed to put an end to the violations;
4. such publicity is in the interest of the persons or populations affected or threatened.

Public condemnation means a public statement by the ICRC to the effect that acts which can be attributed to a party to a conflict – whether or not they are known to the public – constitute a violation of international humanitarian law.

The ICRC only takes recourse to this measure when it has exhausted every other reasonable means, including, where appropriate, through third parties, of influencing the party responsible for a violation, at the most relevant levels, and where these means have not produced the desired result or where it is clear that the violation is part of a deliberate policy adopted by the party concerned. It is also the case when the authorities concerned are inaccessible and when the ICRC is convinced that public pressure is the only means of improving the situation in humanitarian terms.

Such a measure is nevertheless exceptional and may be issued only if all of the four above-mentioned conditions have been met. In considering “the interest of the persons or populations affected or threatened,” the ICRC must take account not only of their short-term interests but also of their long-term interests and of the fact that its responsibility is greater when it witnesses particularly serious events of which the public is unaware.

[Source: “Action by the International Committee of the Red Cross in the Event of Violations of International Humanitarian Law or of other Fundamental Rules Protecting Persons in Situations of Violence”, in *IRRC*, No. 858, June 2005, pp. 393-400, footnotes omitted; online: <http://www.icrc.org/eng/resources/international-review/>]

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- a. reports on visits to the authorities
- b. cases in which the ICRC goes public

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- UN/ICRC, The Use of Chemical Weapons [Part B.]
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 21]
- ICRC, Visits to Detainees: Interviews without Witnesses [Part A.]

2. Cooperation, not confrontation

^ CASES AND DOCUMENTS

- Sri Lanka, Jaffna Hospital Zone
- Case Study, Armed Conflicts in the former Yugoslavia [Para. 21]
- Former Yugoslavia, Special Agreements Between the Parties to the Conflicts [Part B., Art. 5]

3. Access to victims, not investigation of violations

Quotation 1

Here again, measures contrary to the laws of warfare must, like war itself, be considered by the International Committee primarily in the sense of existing facts, just as the doctor to whom the sick and wounded are brought turns his attention first to the injury or disease, without going into the human guilt which may be its cause. The Red Cross, above all a work of aid, must first strive to bring relief to these victims of war, as to all others.

[Source: Report of the International Committee of the Red Cross on its Activities During the Second World War (September 1, 1939 – June 30, 1947), Geneva, vol. 1, 1948, pp. 22-23]

Quotation 2

[...] [T]he International Red Cross Committee has no intention whatsoever of sitting in judgment. It is not a court of justice and, besides, it has not itself the means of ascertaining the facts, which alone would enable it to give a verdict. [...] It has a different part to play: it is a humanitarian institution.

[Source: HUBER Max, The Red Cross: Principles and Problems, Geneva, ICRC, Sine Data, pp. 73 and 74]

Quotation 3

[A]s a general rule, the ICRC abstains from making public pronouncements about specific acts committed in violation of law and humanity and attributed to belligerents. [...] [I]n the quest for a result which would most of the time be illusory, demonstrations of this sort would compromise the charitable activity which the ICRC is in a position to carry out. One cannot be at one and the same time the champion of justice and of charity. One must choose, and the ICRC has long since chosen to be a defender of charity.

[Source: Pictet Jean S., Red Cross Principles, Geneva, International Committee of the Red Cross, 1979, pp. 59 and 60]

^ CASES AND DOCUMENTS

- Case Study, Armed Conflicts in the former Yugoslavia [Paras 5 and 7]
- Former Yugoslavia, Special Agreements Between the Parties to the Conflicts [Part A., Arts 11 and 12; Part B., Arts 2.6 and 5.2]
- Afghanistan, Separate Hospital Treatment for Men and Women
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