

UN, ICRC Granted Observer Status

A. Resolution of the General Assembly

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: UN Doc. A/RES/45/6 (October 16, 1990); available on <http://www.icrc.org>]

Observer status for the International Committee of the Red Cross in consideration of the special role and mandates conferred upon it by the Geneva Conventions of 12 August 1949

The General Assembly,

Recalling the mandates conferred upon the International Committee of the Red Cross by the Geneva Conventions of 12 August 1949,

Considering the special role carried on accordingly by the International Committee of the Red Cross in international humanitarian relations,

Desirous of promoting co-operation between the United Nations and the International Committee of the Red Cross,

1. *Decides* to invite the International Committee of the Red Cross to participate in the sessions and the work of the General Assembly in the capacity of observer;
2. *Requests* the Secretary-General to take the necessary action to implement the present resolution.

B. Explanatory Memorandum

[Source: Annex to UN Doc. A/45/191 (August 16, 1990), letter to the UN Secretary-General by the permanent representatives of 21 States asking that the question of observer status for the ICRC be

Observer status for the International Committee of the Red Cross in Consideration of the Special Role and Mandates Conferred upon it by the Geneva Conventions of 12 August 1949

Explanatory memorandum

1. The International Committee of the Red Cross (ICRC) is an independent humanitarian institution that was founded at Geneva, Switzerland, in 1863. In conformity with the mandate conferred on it by the international community of States through universally ratified international treaties, ICRC acts as a neutral intermediary to provide protection and assistance to the victims of international and non-international armed conflicts.
2. The four Geneva Conventions of 12 August 1949 for the protection of war victims, to which 166 States are party, and their two Additional Protocols of 1977 explicitly establish the role of the ICRC as a neutral and impartial humanitarian intermediary. The treaties of international humanitarian law thus assign duties to ICRC that are similar to those of a Protecting Power responsible for safeguarding the interests of a State at war, in that ICRC may act as a substitute for the Protecting Power within the meaning of the 1949 Geneva Conventions and 1977 Additional Protocol I. Moreover, the International Committee of the Red Cross has the same right of access as a Protecting Power to prisoners of war (the Third Geneva Convention) and civilians covered by the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention). In addition to these specific tasks ICRC, as a neutral institution, has a right of initiative deriving from a provision common to the four Geneva Conventions that entitles it to make any proposal it deems to be in the interest of the victims of the conflict.
3. The Statutes of the International Red Cross and Red Crescent Movement, as adopted by the International Conference of the Red Cross and Red Crescent, in which the States parties to the Geneva Conventions take part, require ICRC to spread knowledge and increase understanding of international humanitarian law and promote the development thereof. The Statutes also provide that ICRC shall uphold and make known the Movements fundamental principles, namely, humanity, impartiality, neutrality, independence, voluntary service, unity and universality.
4. It was at the initiative of ICRC that the original Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field was adopted by Governments in 1864. Ever since, ICRC has endeavoured to develop international humanitarian law to keep pace with the evolution of conflicts.
5. In order to fulfill the mandate conferred on it by international humanitarian law, the resolutions of the International Conference of the Red Cross and Red Crescent and the Statutes of the Movement, ICRC has concluded with many States headquarters agreements governing the status of its delegations and their staff. In the course of its work, ICRC has concluded other agreements with States and intergovernmental organizations.
6. With an average of 590 delegates working in 48 delegations, ICRC was active in 1989 in nearly 90 countries in Africa, Asia, Europe, Latin America and the Middle East including the countries covered from its various regional delegations providing protection and assistance to the victims of armed conflicts by virtue of the Geneva Conventions and, with the agreement of the Governments concerned, to victims of internal disturbances and tension.
7. In the event of international armed conflict, the mandate of ICRC is to visit prisoners of war and civilians

in accordance with the provisions of the Geneva Convention relative to the Treatment of Prisoners of War (Third Convention), the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention) and the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I). In situations of non-international armed conflict, ICRC bases its requests for access to persons deprived of their freedom on account of the conflict on Article 3 common to the Geneva Conventions and on the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

8. In situations other than those covered by the Geneva Conventions and their Additional Protocols, ICRC may avail itself of its statutory right of initiative to propose to Governments that it be granted access to persons deprived of their freedom as a result of internal disturbances and tension.
9. The purpose of ICRC visits to persons deprived of their freedom is exclusively humanitarian: ICRC authorities to take steps to improve the detainees treatment and living conditions. ICRC never expresses an opinion on the grounds for detention. Its findings are recorded in confidential reports that are not intended for publication.
10. In the event of armed conflicts or internal disturbances, ICRC provides material and medical assistance, with the consent of the Governments concerned and on condition that it is allowed to assess the urgency of victims needs on the spot, to carry out surveys in the field to identify the categories and the number of people requiring assistance and to organize and monitor relief distributions.
11. The activities of the Central Tracing Agency of ICRC are based on the institutions obligations under the Geneva Conventions to assist military and civilian victims of international armed conflicts and on its right of humanitarian initiative in other situations. The work of the Agency and its delegates in the field consists in collecting, recording, centralizing and, where appropriate, forwarding information concerning people entitled to ICRC assistance, such as prisoners of war, civilian internees, detainees, displaced persons and refugees. It also includes restoring contact between separated family members, essentially by means of family messages where normal means of communication do not exist or have been disrupted because of a conflict, tracing persons reported missing or whose families have no news of them, organizing family reunification's, transfers to safe places and repatriation operations.
12. The tasks of ICRC and the United Nations increasingly complement one another and cooperation between the two institutions is closer, both in their field activities and in their efforts to enhance respect for international humanitarian law. In recent years, this has been seen in many operations to provide protection and assistance to the victims of conflict in all parts of the world.
13. ICRC and the United Nations have also cooperated closely on legal matters, with ICRC contributing to United Nations work in this field. This is also reflected in resolutions of the Security Council, the General Assembly and its subsidiary bodies and reports of the Secretary-General.
14. Participants of ICRC as an observer at the proceedings of the General Assembly would further enhance cooperation between the United Nations and ICRC and facilitate the work of ICRC.

Discussion

1.
 - a. Before the ICRC obtained observer status, which status could it have within the United Nations?
 - b. Given that the ICRC was included in category II of the NGOs granted consultative status with the Economic and Social Council under ECOSOC Resolution 1296 (XLIV), has the General Assembly

created a precedent by granting observer status to an entity which is neither a State nor an intergovernmental organization?

- c. What are the main differences between observer status and consultative status? Has this change of status conferred a more important role on the ICRC in the United Nations arena?

2.

- a. Is the ICRC undermining its principle of neutrality or abandoning its confidential working method by its acceptance of observer status? What impact would the ICRC's observer status have on its possible role in conflict management?
- b. Does the ICRC have international legal personality? How would you qualify the legal personality of the ICRC? Does the fact that the Geneva Conventions assign certain tasks to the ICRC necessarily imply that it is a subject of international law?
- c. What impact does the ICRC have in international relations because of the status granted to it by the Geneva Conventions and Protocol I? What is the relationship between the right of initiative of the ICRC under Art. 3 common to the Geneva Conventions and Arts. 10/10/10/11, respectively, of the four Geneva Conventions, and its more active role within the United Nations fora? Do they contradict or reinforce each other?

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