



VIOLENCE

AND THE USE OF FORCE



ICRC

REFERENCE



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INTRODUCTION

Maintaining law and order is the responsibility of civil authorities. It is the task of the civil police and/or of paramilitary troops, such as gendarmeries, which are specially equipped, organized and trained for such missions. The ordinary role of the armed forces of a State is to defend national territory against external threats (international armed conflict) and to deal with internal (non-international) armed conflict situations. However, armed forces may be required to come to the assistance of civil authorities to deal with much lower levels of violence that may be characterized as internal disturbances and tensions.

Disturbances can involve a high level of violence, and even non-State actors may be fairly well organized. The line separating disturbances and tensions from armed conflict can sometimes be blurred, and the only way to categorize specific situations is by examining each individual case. The intensity of the violence is the main determining factor.

Categorizing a situation is much more than a theoretical exercise. It has direct consequences for both the commanders and the victims of the violence, because it determines which rules apply, and the protection they provide is established in greater or lesser detail according to the legal situation.

The present publication summarizes the different legal situations, their definitions, the law applicable, practical implications, and the role of the ICRC. The issues are presented in strictly legal terms. Although preventing or containing the escalation of violence is part of a commander's mission and legal obligation, this publication does not deal with tactical considerations. For methodological reasons, situations are grouped into three categories: situations other than armed conflict, armed conflict, and peace support operations.

1. LEGAL FRAMEWORK

All military or police operations, whatever their names or the forces engaged, take place within a legal framework shaped by international law (primarily law of armed conflict and/or human rights law) and national legislation.

1.1. Public international law and national legislation

Public international law governs the relations **between States** themselves, or with and between international organizations. It helps maintain a viable international society. As far as armed conflict is concerned, a distinction is made between *jus ad bellum* or the law that outlaws war – essentially the UN Charter that prohibits the use of force in the relations between States, except in cases of self defence or collective security – and *jus in bello* or the law applicable in time of armed conflict (see Part 3 below). The latter does not make any judgement on the motives for resorting to force.

There are many different kinds of **subjects of international law**, or entities that assume rights and obligations under this legal system. In relation to the issue of the use of force, **the State** – defined as a sovereign entity composed of a population, a territory and a governmental structure – is of course an important bearer of rights and obligations under international law. Consequently, it is responsible for the acts of its functionaries in their official capacity or of *de facto* agents. **Insurgents and liberation movements** also have obligations under international law – in particular, under the law of armed conflict.

Article 38 of the Statute of the International Court of Justice lists the **sources of international law** as: international conventions or treaties; international custom, as evidence of a general practice accepted as law; the general principles recognized by civilized nations; and “judicial decisions and the teachings of the most highly

qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”

National legislation needs to be in conformity with a State’s international obligations. The national legislation of each State decides on the effects of treaties in their respective jurisdiction. Many States simply allow treaties to operate as law. Others require treaties to be converted into domestic law – and in some cases rewritten – for them to have any effect.

1.2. Law of armed conflict and human rights law

The law of armed conflict and human rights law are **complementary**. Both are intended to protect the lives, integrity and dignity of individuals, albeit in different ways. Both also directly address issues related to the use of force.

The **law of armed conflict** has been codified and developed to regulate humanitarian issues in time of armed conflict; it aims to protect persons not (or no longer) taking part in hostilities and to define the rights and obligations of all parties to a conflict in the conduct of hostilities. **Human rights law** protects the individual at all times, in peace and war alike; it benefits everyone and its principal goal is to protect individuals from arbitrary behaviour by States. For these protections to be effective, international provisions must be reflected in national legislation.

Most human rights instruments allow governments to **derogate**, under strict conditions, from certain rights when confronted with a serious public threat (see below). However, there is a “hard core” (see 2.3.3.) of basic rights from which governments cannot derogate under any circumstances. Among these basic rights is the right to life. No derogations are permitted under the law of armed conflict, as this branch of law was designed from the outset to

apply in extreme situations. It strikes a balance between military necessities and humanitarian objectives.

1.2.1. LAW OF ARMED CONFLICT

The law of armed conflict is a set of rules intended to limit the effects of armed conflict for humanitarian reasons. Of customary origins, it has been codified in treaties since 1864. The law of armed conflict **protects persons** not (or no longer) participating in hostilities and **restricts the means and methods** of warfare. The law of armed conflict is also known as “international humanitarian law” or “the law of war.”

The Geneva Conventions – revised and expanded in 1949 – lay down rules to protect the following groups of people:

- First Convention: sick and wounded on the battlefield;
- Second Convention: sick, wounded and shipwrecked at sea;
- Third Convention: prisoners of war;
- Fourth Convention: civilians in time of war.

The four Geneva Conventions are the most widely accepted international treaties. In fact, they have achieved universal acceptance: they have been ratified by all States in the world.

The rules governing the **conduct of hostilities** are set out in the Hague Conventions of 1899 and 1907. They limit the methods and means of warfare that parties to a conflict may use. In essence, they regulate the conduct of military operations in an armed conflict by defining proper and permissible uses of weapons and military tactics.

Rules on the protection of individuals and the conduct of hostilities were brought together and developed in the two Protocols additional to the Geneva Conventions adopted in 1977.

Several other treaties complement these provisions, such as the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, the

Convention on Certain Conventional Weapons of 1980, the 1997 Convention on the Prohibition of Anti-personnel Mines and on their Destruction, the Rome Statute of the International Criminal Court of 1998 and the 2005 Protocol III additional to the Geneva Conventions, establishing an additional emblem (commonly referred to as the red crystal) alongside the red cross and the red crescent.

1.2.2. HUMAN RIGHTS LAW

Human rights law consists of a set of principles and rules, on the basis of which individuals or groups can expect certain **standards of protection, conduct or benefits from the authorities**, simply because they are human beings. The main universal instruments of international human rights law now in force include:

- The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948;
- The International Covenant on Civil and Political Rights of 1966;
- The International Covenant on Economic, Social and Cultural Rights of 1966;
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment of 1984;
- The Convention on the Rights of the Child of 1989.

Regional instruments – such as the European Convention on Human Rights, the American Convention on Human Rights or the African Charter on Human and Peoples' Rights – create their own regional supervisory mechanisms alongside the universal system.

The **right to life** is the supreme human right, since without effective guarantees for it, all other human rights would be devoid of meaning. The right of everyone to life, liberty and security of person is proclaimed in Article 3 of the Universal Declaration of Human Rights. These rights are reiterated in Articles 6.1 and 9.1 of the International Covenant on Civil and Political Rights (ICCPR) as well as in regional instruments (African Charter on Human and Peoples' Rights,

Arts 4 and 6; American Convention on Human Rights, Arts 4.1 and 7.1; European Convention on Human Rights, Arts 2 and 5.1).

Article 6.1 of the ICCPR states that: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

Article 9.1 of the ICCPR states that: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

Professionals responsible for law enforcement should particularly be familiar with the United Nations Code of Conduct for Law Enforcement Officials (CCLEO, 1979) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF, 1990). Because these two documents do not set legally binding obligations, they are part of what is commonly known as “soft law.” However, they give useful **guidance on specific issues related to the maintenance of law and order.**

1.2.3. CUSTOMARY INTERNATIONAL LAW

Treaties bind only those States that have agreed to be bound by them, usually through ratification. These written obligations are complemented by customary law derived from a **general practice accepted as law.** The ICRC was mandated by States to carry out a study that would contribute to the clarification of the content of the customary law of armed conflict. The study, which involved extensive research and took eight years to complete, identified 161 rules which were found to be customary today.

While the four Geneva Conventions of 1949 have been universally ratified, other treaties comprising the law of armed conflict – including the 1977 Protocols additional to the Geneva Conventions – have not. However, a number of rules and principles set out in treaties that have not been ratified by certain States, including many rules governing the conduct of hostilities and the treatment of persons not or no longer taking a direct part in hostilities, are also part of customary law and are therefore **binding on all States, regardless of which treaties they have or have not adhered to.**

A significant number of customary rules of the law of armed conflict set out in much greater detail than treaty law the obligations of parties in **non-international armed conflict**. This is especially true of rules governing the conduct of hostilities. For example, treaty law does not expressly prohibit attacks on civilian objects in non-international armed conflict, but customary international law does.

Despite the fact that, nowadays, most armed conflicts are non-international, the treaty law applicable to such conflicts remains fairly limited (see section 3.1). The ICRC study shows, however, that a large number of customary rules of the law of armed conflict are **applicable in both international and non-international armed conflict**. To apply these rules there is no need to establish that a conflict is international or non-international, as they apply in any armed conflict.

It can be especially useful to refer to the customary law of armed conflict when warring parties form **coalitions**. Contemporary armed conflict often involves a coalition of States. When the States forming a coalition do not all have the same treaty-based obligations (because they have not all ratified the same treaties), rules of the customary law of armed conflict come to represent **rules that are common to all** members of the coalition. These rules can be used as

a minimum standard for drafting common rules of engagement or for adopting targeting policies. It should be borne in mind, however, that customary rules cannot weaken or replace the applicable treaty obligations of individual coalition members.

2. SITUATIONS OTHER THAN ARMED CONFLICT

In most countries, law enforcement operations in situations other than armed conflict are conducted by the police or security forces. When military forces are deployed in such situations, they usually play a reinforcement role and are subordinated to the civilian authorities. **The role of officials and organizations tasked with law enforcement**, irrespective of who they may be or how they are set up, is to:

- prevent and detect crime;
- maintain public order; and
- provide protection and assistance for people in need.

The law of armed conflict does not apply to situations other than armed conflict. They are governed by the human rights obligations of the State concerned.

2.1. Assemblies and demonstrations

2.1.1. DEFINITION

The phenomenon of people taking to the streets to express their opinion publicly is common enough in most countries of the world. Events such as **rallies, demonstrations** (or whatever they may be called) are seen as an inevitable consequence of individual and collective freedom. Although such events are not necessarily violent, unfortunately the occasions that tend to stand out and be remembered are those where physical confrontation occurs (among demonstrators or between demonstrators and law enforcement officials).

2.1.2. APPLICABLE LAW

The authorities may decide, in accordance with their national law and international obligations, to let a demonstration or an assembly take place or, conversely, to disperse it. Whatever the decision taken, there are a number of rights, rules and standards that the authorities must respect.

Utmost attention must be paid to the obligation of law enforcement officials to respect and protect the life and

security of all persons:

Art. 6 (1) and 9 (1) ICCPR, Art. 2 CCLEO, Preamble (para. 3) of BPUFF and BPUFF No. 5.

For that purpose – as in all other law-enforcement activities – the authorities must abide by the principles of **legality, necessity, proportionality and precaution**, i.e. :

- their action must pursue a legitimate (i.e. lawful) objective;
- it must be necessary in order to achieve a legitimate objective (i.e. there is no less restricting measure available that would achieve the same objective);
- any restriction of rights must be proportionate to the legitimate objective;
- all precautions must be taken to avoid excessive use of force and endangering or injuring uninvolved persons, and the authorities must take all possible measures to minimize damage.

The practical application of these principles will depend on the nature of the assembly: whether it is lawful or unlawful and whether it is peaceful or violent.

BPUFF Nos. 13 and 14 provide guidance on the “policing” of such events in line with the principles set out above.

2.1.3. PRACTICAL IMPLICATIONS

Maintaining law and order, in particular when dealing with unlawful assemblies, is a complex task, particularly when an assembly turns violent. Riots can be frightening experiences for any law enforcement official, and it takes considerable courage to stand in front of an angry and possibly armed mob. **A well-trained, professional and disciplined force** is needed to calm or disperse a crowd without resorting to the use of force. The challenge is great for police or security forces, which may be ill-prepared or ill-equipped for such a task. It is, however, far greater for members of the armed forces, whose role or mission prepares them to deal with enemies rather than fellow citizens. They are thus

usually neither trained nor equipped for crowd control. Before assigning such a mission to any force, authorities need to make sure that **national law** conforms to international standards. Furthermore, national legislation must stipulate the circumstances in which the armed forces may be called upon to perform law enforcement tasks and clarify relations between the civilian power and the military during such operations. Accordingly, all necessary measures must be taken to:

- avoid excessive use of force by law enforcement officers, including military forces (see 5.1.1), while maintaining or restoring law and order;
- ensure that any person who is wounded receives suitable treatment and that dead bodies are treated with respect and identified; and
- ensure that those arrested or detained by authorities maintaining or restoring law and order are treated fairly and humanely.

The **standard operating procedures** for law enforcement officials need to be compatible with international standards regarding the use of force. They should be included in manuals – written in plain language that is easily accessible to the various kinds of personnel – and transformed into **rules of engagement**. The training of personnel should involve **practical exercises** that are as close to reality as possible, enabling law-enforcement officials to deal with such situations as far as possible without using force (de-escalation, mediation, and negotiation are key skills that should be developed in those training exercises). A tight **chain of command and discipline (including sanctions)** ensure effective supervision and control. Finally, **equipment**, in particular protective gear and communication devices, is key to maintaining control over a situation and averting violence. Only law enforcement officials with appropriate training, equipment and orders working in a suitable disciplinary system should be deployed.

Large-scale events like demonstrations and assemblies involve a degree of predictability in that they require **preparation**. Law enforcement agencies increasingly endeavour to be involved in the preparation phase by negotiating the details of an event with its organizers. Recognition of the fact that people in a crowd are individuals and not merely a faceless mob provides the basis for communication to take place between law enforcement officials and participants in a demonstration. **Pinpointed action** against individuals breaking the law has a low impact on a demonstration, as it does not affect uninvolved bystanders, who can carry on without interruption.

2.2. Internal disturbances and tensions

2.2.1. DEFINITION

None of the instruments of international law offers an adequate definition of what is to be understood by the term “internal disturbances and tensions.” Article 1, paragraph 2 of Protocol II additional to the Geneva Conventions of 1949 does mention “situations of internal disturbances and tensions, such as **riots, isolated and sporadic acts of violence and other acts of a similar nature**, as not being armed conflicts” (emphasis added). Beyond those few examples, it does not give a definition.

In practice, **disturbances** are typically acts of public disorder accompanied by acts of violence. In the case of internal **tensions**, there may be no violence, but the State may resort to practices such as mass arrests of opponents and the suspension of certain human rights, often with the intention of preventing the situation from degenerating into a disturbance.

2.2.2. APPLICABLE LAW

Essential principles of human rights law that are applicable in times of disturbance and tension and that are

particularly relevant for law enforcement are:

- the right of every human being to life, liberty and security of person;
- the prohibition of torture and cruel, inhuman or degrading treatment or punishment;
- the prohibition of arbitrary arrest or detention;
- the right to a fair trial;
- the right of persons deprived of their liberty to be treated with humanity;
- the prohibition of arbitrary or unlawful interference with a person's privacy, family, home or correspondence.

Where national law allows **emergency measures** to be taken in the interests of national security, public safety or public order, the application of such measures may not be arbitrary or discriminatory. The right to freedom of expression, peaceful assembly and association may be limited as a consequence of internal disturbances and tensions only where such limitations are lawful and necessary.

2.2.3. PRACTICAL IMPLICATIONS

It is not always clear when separate incidents (such as assemblies, rallies, demonstrations, riots, isolated acts of violence) become related and, viewed together, constitute more or less consistent **patterns** referred to as disturbances or tensions. What is clear, however, is that a pattern of this kind poses serious problems for the authorities in terms of maintaining public safety and law and order. Disturbances and tensions can eventually lead to situations that threaten the life of the nation and lead the government to proclaim a state of emergency (see below).

The specific law enforcement problems posed by disturbances and tensions depend on the standards of a given law enforcement agency's organization and equipment and on the training of its personnel. The law enforcement action taken in such situations can have far-reaching consequences. Lawful, non-arbitrary and precisely targeted

forms of action directed at initiators and perpetrators of disturbances and tensions can lead to a **reassertion of control** and **defuse a situation**. Random action – as well as unlawful, arbitrary and discriminatory action – can erode confidence in law enforcement, further endanger public safety and be at least partly responsible for the further escalation of a situation.

2.3. State of emergency

2.3.1. DEFINITION

Internal disturbances and tensions can lead to a government losing confidence in its ability to control a situation with the measures it has at its disposal. Accordingly, Article 4 of the ICCPR lays down that States may take “**measures derogating** from their obligations under the present Covenant,” but only “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed” (emphasis added).

2.3.2. APPLICABLE LAW

National legislation embodying human rights law, if need be with derogations, is applicable in a state of emergency. If the state of emergency is declared or maintained during an armed conflict, then the law of armed conflict also applies.

Most **constitutions** contain emergency clauses that empower the head of State or the government to take exceptional measures (including restrictions on or the suspension of certain rights) with or without the consent of parliament in wartime or in other emergency situations. Of course, such provisions may be misused. International law thus has the task of striking a balance between recognizing the legitimate right of sovereign States to defend their constitutional order and upholding human rights.

The various **regional human rights instruments** also recognize states of emergency. Whereas the ICCPR mentions

only public emergency as a basis for declaring a state of emergency, Article 15 of the European Convention on Human Rights, Article 15 of the European Social Charter and Article 27 of the American Convention on Human Rights all mention war as well. The African Charter on Human and Peoples' Rights does not contain an emergency clause.

The derogation of rights provided for under the ICCPR is a suspension or restriction by the State of certain obligations. However, even derogations are governed by international human rights law; they do not amount to a complete and unchecked suspension of human rights. A number of **requirements** need to be fulfilled:

- The emergency must be officially proclaimed by the domestic body empowered to do so. This enables the population to know the exact material, territorial and temporal scope of the emergency measures and also prevents *de facto* derogations and retroactive attempts to justify human rights violations.
- Derogation measures may be taken only "to the extent strictly required by the exigencies of the situation."
- The measures taken must not be "inconsistent with (the State's) other obligations under international law and (must) not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."
- Article 4.3 of the ICCPR stipulates that any State Party "shall immediately inform other States Parties (...), through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated." Similarly, information must be given when the state of emergency ends. These communications are meant to facilitate international supervision.

As previously mentioned, some rights cannot be derogated under any circumstances. In Article 4.2 of the ICCPR cross-reference is made to a number of **non-derogable provisions**. They are:

- the right to life (Art. 6);
- the prohibition of torture (Art. 7);
- the prohibition of slavery and servitude (Art. 8);
- the prohibition of imprisonment for debt (Art. 11);
- the prohibition of retroactivity of criminal law (Art. 15);
- the right to recognition as a person before the law (Art. 16);
- the right to freedom of thought, conscience and religion (Art. 18).

None of these may be suspended or abrogated under a state of emergency. Each provision exists for all persons **in all circumstances**. A State therefore may not use the imposition of a state of emergency as an excuse for failing to protect and uphold non-derogable rights.

2.3.3. PRACTICAL IMPLICATIONS

It is essential for any force that may operate in a declared state-of-emergency situation to fully acknowledge the fact that although some human rights are suspended, the use of force and firearms remains governed by national legislation, in compliance with international obligations. See also 2.1.3, 2.2.3 and 5.



3. ARMED CONFLICT

According to the International Criminal Tribunal for the former Yugoslavia, “an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State” (*Prosecutor v. Dusko Tadic*, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (ICTY Appeals Chamber), para. 70). In most countries, military operations are conducted by the armed forces. However, police or security forces may also be engaged; in such cases they retain their responsibility for law enforcement.

While domestic law and international human rights law remain applicable (with possible derogations) in time of peace as in time of armed conflict, the **law of armed conflict** is exclusively applicable in time of armed conflict, whether non-international or international (apart from preparatory and implementation measures applicable in time of peace). The law of armed conflict protects conflict victims and regulates the conduct of hostilities.

As stated above, no derogations are permitted under the law of armed conflict as this branch of law was designed from the outset to apply in extreme situations.

3.1. Non-international armed conflict

3.1.1. DEFINITIONS

In general, in non-international armed conflict:

- non-governmental armed groups fight either among themselves or against governmental forces;
- with a level of intensity exceeding that of isolated and sporadic acts of violence; and
- with a level of collective organization enabling them to carry out sustained and concerted operations.

In addition, the armed groups may also exercise a certain **minimum control over the territory**. Exercising such

control entails no change in the status of the parties, but it does determine which legal instruments are applicable (see below). A non-international armed conflict can also be subject to foreign intervention.

3.1.2. APPLICABLE LAW

The law of non-international armed conflict distinguishes **two situations**: that in which the armed group has achieved a certain minimum control over a territory and that in which it has not. The applicable law depends on which situation holds.

Only a few provisions of the law of armed conflict specifically concern non-international armed conflict; most of the applicable legal framework is therefore provided by customary law of armed conflict. However, **in general**, the following instruments of the law of armed conflict apply:

- Article 3 common to the Geneva Conventions of 1949;
- Article 4 of the Hague Convention of 1954 for the protection of cultural property;
- the Convention on Certain Conventional Weapons of 1980, its Protocols I to IV (through amended Article 1) and Protocol V;
- the Ottawa Convention of 1997 banning anti-personnel mines;
- the Second Protocol of 1999 to the Hague Convention for the protection of cultural property;
- the Optional Protocol of 2000 to the Convention on the Rights of the Child on the involvement of children in armed conflict;
- Protocol III of 2005 additional to the Geneva Conventions.

Article 3 common to the Geneva Conventions of 1949 is the most fundamental provision applicable to non-international armed conflict. It constitutes a summary of the essential rules applicable in all armed conflicts.

Whenever an armed group has achieved a certain **minimum control over a territory**, Protocol II additional to

the Geneva Conventions, which develops and supplements Common Article 3, is applicable in addition to the other instruments already mentioned. Additional Protocol II contains, in particular:

- an extended list of fundamental rights and protections;
- precise provisions regarding persons whose liberty has been restricted;
- provisions relating to prosecution and punishment of criminal offences related to internal armed conflicts, including a call for a broad amnesty at the end of the hostilities;
- more detailed provisions on wounded, sick and shipwrecked persons, and on medical units, transport and personnel;
- more precise provisions on the protection of the civilian population, including the prohibition of forced movement of civilians, unless the security of the civilians involved or imperative military reasons so demand.

These written obligations are complemented by **customary law**, which derives from a general practice accepted as law.

Domestic law and **international human rights law**, if need be with derogations, are fully applicable in non-international armed conflict (e.g. for persons arrested or detained). Derogations from guaranteed human rights must be compatible with the obligations of the State concerned under the law of armed conflict, in particular Art. 3 common to the Geneva Conventions.

3.1.3. PRACTICAL IMPLICATIONS

Derived from Common article 3, **the notion of “direct” or “active” participation in hostilities** is found in multiple provisions of the law of armed conflict. Direct participation in hostilities by civilians entails loss of immunity from attack during the time of such participation and may also subject them, upon capture, to criminal prosecution under the domestic law of the detaining State. Despite the

serious legal consequences involved, neither the Geneva Conventions nor their Additional Protocols include a definition of what constitutes taking an “active part in the hostilities,” and how such conduct should be distinguished from “indirect” participation, which does not entail loss of protection from direct attack. An additional difficulty is that of defining the duration of direct participation and when concrete preparations for an attack begin or the “return from” military engagement ends.

Contemporary conflicts have given rise to **further challenges** in terms of defining and implementing the notion of “direct participation in hostilities”. The use of high-tech warfare (including computer network attack and exploitation), the outsourcing of traditionally military function to private contractors and the “fight against terrorism”, among others, illustrate the increased intermingling of civilian and military activities, which makes it difficult to determine who is taking a “direct part in hostilities” and what measures should be taken to protect those who are not directly participating.

To address these challenging issues the ICRC, in cooperation with the TMC Asser Institute, initiated **an expert process aimed at clarifying** the concept of direct participation in hostilities and establishing guidance in interpreting that concept in both international and non-international armed conflict. Five informal expert meetings were held in The Hague and Geneva between 2003 and 2008, bringing together up to 50 legal experts from military, governmental and academic circles, as well as from international organizations and NGOs. In 2009, after six years of discussions and research, the ICRC published the document entitled ‘Interpretive Guidance on the Notion of Direct Participation in Hostilities under IHL’ as well as all documents produced during the proceedings of the expert process.

Although there is a **different legal basis** for non-international and international armed conflict, the behaviour

expected in practice of armed forces in both situations is so similar that it is neither necessary nor useful to treat the cases separately.

The status of prisoner of war, for example, exists only in international armed conflict. Nevertheless, the **behaviour expected** of a unit taking prisoners in a non-international armed conflict (in particular, humane treatment in all circumstances, without any adverse distinction) **does not differ** from the behaviour expected in an international armed conflict. It is only when prisoners have been safely removed from a combat area that the legal status of a conflict becomes relevant and justifies a difference in treatment. For example, enemy combatants taken prisoner in an international armed conflict must be held in prisoner-of-war camps and released at the end of active hostilities, whereas persons captured while taking an active part in a non-international armed conflict are subject to detention and may be liable to criminal prosecution and punishment under domestic criminal law. It cannot be expected that armed forces personnel will behave in two radically different ways in non-international and international armed conflict, but they must be made aware of the differences and personnel such as military police must receive proper training.

3.2. International armed conflict

3.2.1. DEFINITION

An international armed conflict is a declared war or any other armed confrontation **between two or more States**, even if the state of war is not recognized by one of them.

It has to be emphasized that **no minimum level of intensity**, military organization or control over territory is required for an international armed conflict to be recognized as such. An international armed conflict may consist merely of low-level combat (or there may even be no combat at all), small-scale incursions into enemy territory, or an invasion that meets no resistance.

3.2.2. APPLICABLE LAW

There are over 30 international instruments in force dealing with the law of international armed conflict.

The four **Geneva Conventions** of 1949 (GC I – IV) relating to the protection of the persons not (or no longer) taking part in hostilities (wounded, sick, shipwrecked, prisoners of war, the dead, civilians and those caring for victims of armed conflict) are applicable. The Fourth Geneva Convention also applies in all cases of partial or total occupation of the territory of a High Contracting Party, even if the occupation meets with no armed resistance (Article 2 common to the four Geneva Conventions).

Additional Protocol I of 1977 (AP I), which supplements the Geneva Conventions of 1949, applies in international armed conflict, in situations of occupation (AP I, Art. 1.3), and in armed conflicts in which “peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations” (AP I, Art. 1.4).

Other international instruments regulate the **conduct of hostilities** on land (Fourth 1907 Hague Convention and its annexed Regulations) or at sea (Tenth 1907 Hague Convention), the protection of cultural property (1954 Hague Convention for the protection of cultural property, completed by two Protocols, of 1954 and 1999), the **prohibition or limitation on the use of numerous types of weapons** (1925 Geneva Gas Protocol, the 1972 Biological Weapons Convention, the 1980 Convention on Certain Conventional Weapons and its five Protocols, the 1993 Convention on Chemical Weapons and the 1997 Ottawa Convention on anti-personnel mines), and the **law of neutrality** (Fifth 1907 Hague Convention respecting the rights

and duties of neutral powers and persons in case of war on land, Thirteenth 1907 Hague Convention concerning the rights and duties of neutral powers in naval war).

In cases not covered by conventions, protocols or other international agreements, or in the event such agreements are denounced, civilians and combatants remain under the protection and authority of the principles of international law derived from established **custom**, the **principles of humanity** and the **dictates of public conscience** (AP I, Art. 1.2; GC I, Art. 63; GC II, Art. 62; GC III, Art. 142; GC IV, Art. 158).

3.2.3. PRACTICAL IMPLICATIONS

With regard to situations of international armed conflict an important **distinction** is made between **combatants** and **non-combatants**.

According to Article 43.2 of Additional Protocol I: “Members of the armed forces of a Party to a conflict (other than medical personnel and chaplains covered by Article 33 of the Third Convention) are combatants, that is to say, they have the right to participate directly in hostilities.”

All those not qualifying as combatants are non-combatants, who are not entitled to participate in hostilities but who are entitled to protection against the dangers arising from military operations (AP I, Art. 51).

Persons (other than medical personnel and chaplains) who do **not** have **combatant** status are classified as **civilians**. In case of doubt whether a person is a civilian, that person must be considered to be a civilian. The law of armed conflict **does not prohibit direct participation in hostilities**. However, civilians directly participating in hostilities are not entitled to “combatant’s privilege”, and are therefore not immune from prosecution for lawful acts of war.

Civilians are entitled to prisoner-of-war status under the Third Geneva Convention only where they are specifically authorized to accompany the armed forces without being a part thereof (GC III, Art. 4 [4] and [5]). In all other cases, the Fourth Geneva Convention sets out rules for the protection of civilians finding themselves in the hands of a party to the conflict or occupying power of which they are not nationals. Additional Protocol I sets out rules for the protection of civilians against the effects of hostilities. See also 3.1.3.



Gian Luigi Geacria/AFP

4. PEACE SUPPORT OPERATIONS

4.1. Definition

Peace support operations encompass all **multinational operations** authorized or conducted by the United Nations. Authorized operations may be conducted by States or by a regional organization. Peace support operations are undertaken for the purpose of **conflict prevention, peace-keeping, peace-enforcement** or **post-conflict peace-building**.

4.2. Applicable law

The **law of armed conflict** is applicable to peace support operations as soon and as long as the conditions of its applicability are fulfilled, i.e. whenever there is a resort to the use of force that reaches the threshold of an armed conflict. The applicability of the law of armed conflict (*jus in bello* or rules governing the use of force in time of war) does not depend on the legitimacy of the operation (*jus ad bellum* or rules governing the right to resort to force). In 1999, the UN Secretary-General issued a bulletin (ST/SGB/1999/13) setting out fundamental principles and rules of the law of armed conflict applicable to UN forces.

Peace support operations must also comply with **human rights law**, in particular when taking action that interferes with individual rights. As a matter of principle, the UN and its subsidiary bodies are bound by international rules needed to fulfil the purposes and exercise the functions set out in the UN Charter. One of the purposes of the UN is the promotion of respect for human rights and fundamental freedoms. Therefore, human rights must be respected and promoted by all bodies, civilian and military, involved in a peace support operation.

The various contingents contributed by UN member States are also bound by the **international obligations** of the State they depend on as well as by their **national**

legislation, unless there are provisions to the contrary in the mandate of the peace support operation. In addition, the domestic law of the host State, if it conforms to international standards, remains applicable.

4.3. Practical implications

In a peace support operation, as in any other, the legal nature of the situation in which the force is deployed determines the legal framework and rules to be respected. In this regard, the mandate, rules of engagement (setting out applicable rules, in particular for the use of force) and status of force agreements (governing the legal status of foreign troops in relation to a host nation) are only indicative.

Peace support operations are by nature multinational. This raises the issue of **legal interoperability**. Indeed, the various troop-contributing countries may have different legal obligations in that they may not all have adhered to a certain legal instrument. They may also have different interpretations of their legal obligations or have expressed reservations when adhering to a particular treaty or convention. Similarly, they may have different opinions on the validity of the guidance provided by so-called soft law instruments such as the CCLEO or the BPUFF. Moreover, they may have expressed national exceptions to certain rules of engagement.

Customary international law helps to settle the issue of the standards applicable to the entire force and to the various contingents, as it lays down rules that are common to all members of the force. These rules can be used as a minimum standard when drafting common rules of engagement or adopting targeting policies. However, customary rules cannot weaken the applicable treaty obligations of individual troop-contributing nations.



5. SPECIFIC ISSUES

Although categories of situations such as armed conflict, situations other than armed conflict, and peace support operations can be presented in order of increasing or decreasing intensity, one particular category does not always follow or precede another. Moreover, some functions, such as law enforcement, arrest and detention, and the use of force, may occur in all kinds of situations.

5.1. Law enforcement

Law enforcement operations are normally conducted in or associated with situations other than armed conflict. However, they may also occur in situations of armed conflict and in peace support operations.

5.1.1. DEFINITIONS

Law enforcement encompasses the following **basic responsibilities**: preventing and detecting crime, maintaining public order and providing protection and assistance for people in need. To fulfil their mission, law enforcement officials exercise the following **basic powers**: arrest, detention, search and seizure, and the use of force and firearms (see below).

“The term ‘law enforcement officials’ includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials includes officers of such services” (CCLEO, Art. 1).

However, armed forces are usually neither trained nor equipped for such tasks. It should therefore be clear that whenever such responsibilities are entrusted to the armed forces, the quality of law enforcement and the maintenance of public order may suffer.

5.1.2. IN ARMED CONFLICT AND PEACE SUPPORT OPERATIONS

Situations of **armed conflict** generally have a highly disruptive effect on public life, public security and public order. Armed conflict also commonly results in large numbers of people deciding to temporarily leave their homes and seek refuge elsewhere, either within their own country or beyond its borders. Modern armed conflict is responsible for creating millions of internally displaced persons and refugees. It is important that law enforcement officials be familiar with the rights and needs of these groups, who are especially vulnerable and entitled to protection and assistance.

In **non-international armed conflict**, it is up to each nation to decide whether existing law enforcement agencies should continue to carry out their responsibilities, or whether these responsibilities should be shifted to the armed forces. In view of their training and equipment, and also in terms of appearances, it is questionable whether armed forces should be given the task of enforcing the law and maintaining law and order. Basic law enforcement responsibilities should arguably be left in the hands of regular law enforcement agencies for as long as possible.

In **international armed conflict**, the Geneva Conventions of 1949 and Additional Protocol I of 1977 implicitly acknowledge the civilian status of law enforcement agencies. According to Article 43.3 of Protocol I, parties to a conflict may incorporate a paramilitary or armed law enforcement agency into their armed forces provided that they inform the other parties to the conflict. In such a situation law enforcement officials would acquire combatant status and effectively be subject to the regime for persons with that status.

Under Article 54 of the Fourth Geneva Convention, occupying powers may not alter the status of public officials or judges in **occupied territories**, or in any way apply

sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience.

Finally, in the absence of civilian authorities **peace support** troops may be tasked with maintaining law and order.

5.2. Use of force and firearms and conduct of hostilities

Clearly, the use of force or firearms in **law enforcement** is an extreme measure. This follows directly from the right to life being the fundamental human right. Of course, the situation in **armed conflict** is significantly different. The principles underpinning the use of force therefore deserve an explanation, especially since some principles, such as those of *necessity* and *proportionality*, are referred to in connection with both law enforcement and armed conflict in completely different senses.

5.2.1. USE OF FORCE AND FIREARMS IN LAW ENFORCEMENT

The **CCLEO** and the **BPUFF**, although not treaties, offer **guidance** on the use of force and firearms. The CCLEO sets standards for law enforcement practices that are consistent with provisions on basic human rights and freedoms. The BPUFF sets forth principles formulated “to assist Member States (of the Economic and Social Council) in their task of ensuring and promoting the proper role of law enforcement officials.”

The **essential principles** underlying the use of force and firearms are those of:

- legality;
- precaution;
- necessity; and
- proportionality.

Law enforcement officials may resort to the use of force only **when all other means** of achieving a legitimate objective **have failed** (necessity) and the use of force can

be justified (proportionality) in terms of the importance of **the legitimate objective** (legality) to be achieved. Law enforcement officials are urged to exercise restraint when using force and firearms and to act **in proportion to the seriousness of the offence and the legitimate objective to be achieved** (Principles 4 and 5 of the BPUFF). They are allowed to use only as much force as is necessary to achieve a legitimate objective.

The use of firearms for the achievement of legitimate law enforcement objectives is considered an **extreme measure**. Accordingly, the principles of necessity and proportionality are further elaborated in Principles 9, 10 and 11 of the BPUFF:

- Law enforcement officials shall **not use firearms** against persons, **except:**
 - in self-defence or defence of others against the imminent threat of death or serious injury;
 - to prevent the perpetration of a particularly serious crime involving grave threat to life; or
 - to arrest, or to prevent the escape of, a **person presenting such a danger and** resisting their authority;
- **and only** when less extreme means are insufficient to achieve these objectives.
- Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (Principle 9 of the BPUFF).

Again, the use of a firearm is an extreme measure. This is further illustrated by the rules of behaviour that law enforcement officials need to observe **prior to using a firearm** (precaution). Principle 10 of the BPUFF provides that in the circumstances provided for under principle 9, law enforcement officials shall :

- identify themselves as such; **and**
- give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed; **unless**
- to do so would unduly place the law enforcement officials at risk; **or**

- would create a risk of death or serious harm to other persons; **or**
- would be clearly inappropriate or pointless in the circumstances of the incident (emphasis added).

The use of force and firearms in connection with **assemblies and demonstrations** deserves closer consideration. Several principles of particular importance for “policing” assemblies and demonstrations are set out in the BPUFF:

- In the dispersal of assemblies that are **unlawful but non-violent**, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary (Principle 13 of the BPUFF);
- In the dispersal of **violent assemblies**, law enforcement officials may use firearms only when less dangerous means are not practicable **and only** to the minimum extent necessary, **and only** under the conditions stipulated in Principle 9 (Principle 14 of the BPUFF, emphasis added).

Principle 14 **does not present an additional circumstance** authorizing the legal use of firearms. It reiterates that only the conditions mentioned in Principle 9 (i.e. the imminent threat of death or serious injury) warrant the use of firearms. The additional risks posed by a violent assembly – large crowds, confusion and disorganization – make it questionable whether the use of firearms is at all practicable in such situations, in view of the potential consequences for persons who are present but not involved in violent acts. Principle 14 does not authorize indiscriminate firing into a violent crowd as a means of dispersing it.

5.2.2. CONDUCT OF HOSTILITIES IN ARMED CONFLICT

In armed conflict the use of force is regulated by a number of principles set out or suggested in the various **instruments of the law of armed conflict**, in particular in the

1907 **Hague Convention respecting the laws and customs of war on land and its regulations**, and in the 1977 **Protocol I additional to the Geneva Conventions** of 1949. In short, whenever force is required for the fulfilling of the mission, **all feasible precautions** must be taken, in particular, to confirm that targets are legitimate military objectives and select the means and methods in order not to inflict excessive incidental harm on civilians or civilian objects and not to cause unnecessary or superfluous suffering. Thus, for example:

- Under the principle of **necessity**, only the force required for the complete or partial submission of the enemy and not otherwise prohibited by the law of armed conflict may be used.
- Under the principle of **distinction**, parties to a conflict are obliged to distinguish between combatants and civilians and between military objectives and civilian objects. Attacks may be directed only at combatants and military objectives.
- Under the principle of **limitation**, the right to choose means and methods of warfare is not unlimited. A number of instruments either restrict or prohibit the use of weapons or methods of a nature to cause superfluous injury or unnecessary suffering.
- Under the principle of **proportionality**, a balance must be struck between the expected incidental loss of civilian life, injury to civilians and damage to civilian objects on the one hand, and the concrete and direct military advantage anticipated on the other hand. Attacks expected to inflict excessive incidental harm on civilians or civilian objects are prohibited (cf. in contrast BPUFF under 5.2.1.).

5.2.3. IN PEACE SUPPORT OPERATIONS

Depending on the situation, troops may have to resort to using force and firearms either for their own protection (in self defence) or to achieve their mission. The same rules then apply as for other operations depending on the situation's legal categorization.

5.3. Arrest and detention

5.3.1. ARREST

“Arrest” means the act of **apprehending a person** for the alleged commission of an offence or by the action of an authority (Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment – BPP).

The discretionary power of law enforcement officials in deciding to make an arrest is limited by the principles of **legality and necessity** and by the **prohibition of arbitrariness**.

“No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law” (ICCPR, Art. 9.1).

This provision makes it clear that the reasons and the procedure for an arrest must have a basis in the laws of the State. In addition, the law itself must not be arbitrary, and enforcement of the law in a given case must not be handled in an arbitrary manner.

Anyone who is arrested must be informed, at the time of arrest, of the reasons for his arrest and must be promptly informed of any charges against him. He must be brought promptly before a judge or other officer authorized by law to exercise judicial power and must be entitled to trial within a reasonable time or to release. He has the right to defend himself, but also to remain silent and not to be compelled to confess guilt. Anyone who is deprived of his liberty by arrest or detention must be entitled to take proceedings before a court, in order that this court may decide without delay on the **lawfulness** of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention must have an enforceable right to compensation. Additional provisions provide special protection for women and minors.

5.3.2. DETENTION

Depriving a person of his liberty is the commonest and oldest method used by States to fight crime and maintain public order. Rather than prohibit the deprivation of liberty, international law sets out rules and guidelines intended to guarantee that the practice is **lawful** and **non-arbitrary**. All persons detained (pending investigation and trial) or imprisoned (after conviction) retain their human rights, except for those limitations that are demonstrably necessitated by the fact of incarceration. Recognition of the need to safeguard the human rights of detainees and prisoners has led the United Nations to develop a variety of instruments enhancing the provisions of the ICCPR. Additional protection for women (especially pregnant women and nursing mothers) and minors, in particular, is provided in these instruments.

“All persons deprived of their liberty shall be treated with **humanity** and with respect for the inherent **dignity** of the human person” (ICCPR, Art. 10.1 (emphasis added)).

The imposition of measures which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention is forbidden. This provision is of major importance in determining the **discipline** and **punishment** that is proper for acts or offences committed during detention or imprisonment.

The **prohibition of torture and cruel, inhuman or degrading treatment or punishment** is **absolute and without exception**. It is part of customary international law and has been codified in a number of human rights and law of armed conflict instruments. Needless to say, the scope of the prohibition of torture encompasses all aspects of law enforcement or combat operations and is not limited to detention and imprisonment. Under **international**

human rights law torture is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1). In **the law of armed conflict**, torture can also be committed by non-state actors. Cruel, inhuman or degrading treatment or punishment is not defined in international law, but requires treatment inflicting serious pain, without the purpose required for torture.

5.3.3. DETENTION IN ARMED CONFLICT

In **non-international armed conflict**, the provisions of Article 3 common to the four Geneva Conventions apply. In addition, the rules of 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) must also be observed whenever criteria for its applicability (such as control over territory) are met. Additional Protocol II lays down fundamental guarantees for the humane treatment of persons detained (Article 4) similar to those in Common Article 3, minimum provisions for the treatment of persons interned, detained or deprived of their liberty for reasons related to the armed conflict (Article 5), and judicial guarantees for the prosecution and punishment of criminal offences related to the armed conflict (Article 6). Prisoner-of-war status does not exist in non-international armed conflict.

In **international armed conflict**, the most important distinction to be made with regard to detention or deprivation of liberty in general is that between combatants and

non-combatants. Combatants who fall into the power of an adverse party must be recognized as **prisoners of war** (AP I, Art. 44.1). Article 4 of the Third Geneva Convention specifies the categories of persons entitled to prisoner-of-war status and lays down rules for the treatment of prisoners of war during captivity. The basic premise is that prisoners of war must at all times be humanely treated and they must at all times be protected, particularly against acts of violence and intimidation and against insults and public curiosity (GC III, Art. 13).

Civilians, in particular foreign nationals, may be **interned for security reasons** in connection with an armed conflict. Internment is a measure that may be taken for imperative reasons of security (to protect the persons concerned); it is therefore not a punishment. The **regulations for the treatment** of internees are virtually the same as those for the treatment of prisoners of war (see Articles 79 to 135 of the Fourth Geneva Convention).

Persons affected by armed conflict and deprived of their liberty (through arrest, detention or internment) benefit from the fundamental guarantees set out in Article 75 of Protocol I additional to the Geneva Conventions.

5.3.4. DETENTION IN PEACE SUPPORT OPERATIONS

Status of force agreements covering foreign troops usually regulate the question of detention. However, situations may arise where peace support troops have to detain people for short periods of time before handing them over to civilian authorities, or even for longer periods, especially in the absence of adequate structures due to the collapse of the host nation. The status and treatment of the detainees depend on the legal nature of the situation and on each individual case.



Anja Niedringhaus/AP

6. THE ICRC

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 war and internal violence and to provide them with assistance. It directs and coordinates the international relief activities conducted by the Movement in situations of conflict. It 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 International Red Cross and Red Crescent Movement.

6.1. In short

6.1.1. LEGAL BASIS FOR ACTION

In **situations other than armed conflict** the ICRC has a recognized right of initiative, set out, in particular, in the Statutes of the International Red Cross and Red Crescent Movement, which allows it to offer its services without that offer constituting interference in the internal affairs of the State concerned or conferring any particular status on any of the parties. In addressing the consequences, in humanitarian terms, of the use of force in situations other than armed conflict, the ICRC does not refer to the whole spectrum of international human rights law (IHRL) instruments. It refers to a core of fundamental rules that protect human beings in situations of violence. These constitute a small but central and essential part of IHRL.

In **non-international armed conflict** the ICRC also has a right of initiative recognized by the international community and enshrined in Article 3 common to the four Geneva Conventions. The ICRC may in particular offer its services to warring parties with a view to visiting persons deprived of their liberty in connection with an armed conflict so as to verify the conditions of their detention and to restore contacts between those persons and their families. Common Article 3 specifies that this does “not affect the legal status of the Parties to the conflict.”

In **international armed conflict**, States party to the Geneva Conventions of 1949 and their Additional Protocols of 1977 are bound to accept the humanitarian activities of the ICRC provided for in Article 126 of the Third Geneva Convention and Article 143 of the Fourth Geneva Convention. The ICRC's right of initiative is also acknowledged in Article 9/9/9/10 common to the four Geneva Conventions. In addition, Article 81 of Protocol I additional to the Geneva Conventions stipulates that States party to a conflict must grant the ICRC all facilities within their power so as to enable it to carry out the humanitarian functions assigned to it by the Conventions and the Protocol in order to ensure protection and assistance to the victims of conflicts.

6.1.2. KEY ACTIVITIES

The ICRC's activities involve:

- visiting prisoners of war and security detainees;
- tracing missing persons;
- exchanging messages between separated family members;
- reuniting dispersed families;
- providing safe water, food and medical assistance for those in need;
- promoting respect for international humanitarian law;
- monitoring compliance with that law;
- contributing to the development of that law.

Its activities are funded entirely through voluntary contributions, mainly from States and Red Cross/Red Crescent National Societies. Its network of offices is regularly adjusted to keep step with developments in armed conflicts and other situations of violence around the world.

6.2. Practical implications

The ICRC performs its tasks in the whole range of situations where military and police forces may operate. It is advisable, therefore, for commanders to be acquainted with some of the key features of an organization with which they may well share their theatre of operations.

6.2.1. PRINCIPLED ACTION AND DIALOGUE WITH ALL PARTIES

According to the Geneva Conventions, humanitarian work requires **impartiality** and should benefit people regardless of their race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. It follows that no one should be deprived of assistance or protection merely because of his beliefs, and no population should be abandoned merely because they are under the control of a party that the international community is attempting to isolate. The only priority that can be set must be based on need, and the order in which available humanitarian aid is provided must correspond to the urgency of the distress it is intended to relieve.

Political and military leaders should be aware that the work of the ICRC involves **not only assistance but also protection**, and that the two are closely connected. Activities such as visiting prisoners to monitor their treatment and conditions of detention, and making representations to parties to a conflict or to others involved in a violent situation on behalf of individuals or communities that have been the victims of violations of the law are also a part of humanitarian work. ICRC delegates need to be on the ground, close to people adversely affected by conflict, to meet those people's needs and influence the behaviour and attitudes of those responsible for the situation. To achieve these aims, they need to meet, negotiate or deal with the whole range of arms carriers from military personnel to police, from paramilitaries to rebels, from peace support operation forces to private contractors.

In any conflict, parties have a tendency to reject humanitarian actors that they suspect of having ulterior political motives. Without dialogue – however difficult it may be – it would be impossible for the ICRC to be sufficiently accepted to carry out its protection and assistance activities. Consequently, there is no one wielding power or influence over populations that it would refuse to talk to.

By adopting this approach, the ICRC is not postulating a moral equivalence between parties to a conflict or conferring any particular status on them (see Article 3 common to the four Geneva Conventions). **Neutrality** is a means to an end, not an end in itself. It is a tool to keep open the channels needed for taking concrete action. What the ICRC does not do is take sides in a conflict.

The ICRC believes that there is much scope for constructive interaction and cooperation between humanitarian organizations and the military, and that the relationship between them can be enhanced by mutual consultation. Nevertheless, it continues to press for a clear distinction to be maintained – in substance and in appearance – between military and humanitarian operations. Consequently, the ICRC must maintain its **independence** of decision-making and action, while consulting closely with international military missions which are deployed in the same theatre of operations.

6.2.2. DETENTION

Before beginning visits to places of detention, the ICRC first submits to the authorities a set of **standard conditions**. Delegates must be allowed to:

- see all detainees falling within the ICRC's mandate and have access to all places where they are held;
- interview detainees of their choice without witnesses;
- draw up, during the visits, lists of detainees within the ICRC's mandate or receive from the authorities such lists which the delegates may verify and, if necessary, complete;
- repeat visits to detainees of their choice as frequently as they may feel necessary;
- restore contact between detainees and family members;
- provide urgent material and medical assistance as required.

6.2.3. SUPPORTING RESPECT FOR THE LEGAL FRAMEWORK

Clearly, the law belongs to the State parties to the treaties, not to the ICRC. The same goes for the obligation to disseminate, teach and provide training in the law. Thanks to its long-term field presence and to the dialogue it maintains with authorities and arms carriers throughout the world, the ICRC has developed considerable experience in supporting the efforts aimed at preventing violations. Recognizing that the mere teaching of legal norms will not result, in itself, in a change in attitude or behaviour, the ICRC approach has gradually shifted in the past two decades **from dissemination of the law to its integration** into the doctrine, training and operations of military and police forces. Law is actually a set of general rules, sometimes too general to provide practical guidance in combat or law enforcement situations. The law must therefore be interpreted, its operational meaning analysed and its concrete consequences drawn at all levels. In short, the relevant law must be transformed into concrete measures, means or mechanisms at doctrine, education, training, equipment and sanctions to permit for compliance during operations.

Whenever a State is genuinely committed to fulfilling its obligation to promote compliance with the applicable law, and has the resources available to sustain its efforts over the long term, the ICRC is prepared to assume its supportive role as defined in the Protocols additional to the Geneva Conventions (Resolution 21 of the Diplomatic Conference adopting the Protocols invited the ICRC to participate actively in the effort to disseminate knowledge of the law of armed conflict) or on the basis of its statutory right of initiative. To provide appropriate **support** to arms carriers during the integration process, the ICRC has a specialized unit at its headquarter in Geneva and a team of specialist delegates (with previous military or police experience) in the field. They provide support for arms carriers in terms of interpreting the law, deriving its operational meaning and

deducing the concrete consequences to be drawn from it. Further steps, for instance that of writing a new tactics manual, adopting new curricula, reviewing and modifying doctrine or buying new equipment, clearly remain under the responsibility of the authorities and arms carriers.



Marko Kokić/ICRC

7. REFERENCES

ICRC publications on these issues

- *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare: Measures to Implement Article 36 of Additional Protocol I of 1977*
- *Discover the ICRC*
- *Integrating the law*
- *Report: Expert Meeting on Multinational Peace Operations, Applicability of International Humanitarian Law and International Human Rights Law to UN Mandated Forces*
- *To serve and to protect: Human rights and humanitarian law for police and security forces*
- *Expert meeting: The use of force in armed conflicts Interplay between the conduct of hostilities and law enforcement paradigms*
- *International rules and standards for policing*

Abbreviations

AP I: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

AP II: 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 June 1977

AP III: Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 8 December 2005

BPP: Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

BPUFF: Basic Principles on the use of Force and Firearms by Law Enforcement Officials

CCLEO: Code of Conduct for Law Enforcement Officials

GC I: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949

GC II: Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949

GC III: Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949

GC IV: Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949

ICCPR: International Covenant on Civil and Political Rights

ICRC: International Committee of the Red Cross

MISSION

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.



ICRC