

The International Committee of the Red Cross Principles in Action

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The Red Cross is a well known helping agency. The contemporary place of the International Committee of the Red Cross and its role in international humanitarian law are explored. Given its European and conservative bias, the question is raised whether it will be as effective in the next century as in the past.

I. INTRODUCTION

The International Committee of the Red Cross (hereafter the I.C.R.C.), has amassed an enviable record over the past 125 years. It has been the catalyst for alleviating the suffering of millions of people: it has reunited families, promoted humanitarianism in armed conflict, relieved civilians, obtained the release and exchange of prisoners of war, visited internees, negotiated in hijackings. The list of its achievements is long and impressive. In doing so, it has deservedly attracted many positive labels: pragmatic, discreet, effective, humanitarian, unbiased, tireless, universal. But especially in recent years, as outsiders have begun to assess it, some have claimed that other factors hamper the I.C.R.C.'s performance of its rights of action under the Geneva Conventions on Humanitarian Law and the Additional Protocols.¹ They have called it conservative, ineffectual, weak, contradictory, bureaucratic, eurocentric, male-dominated, inflexible and bourgeois. Do such criticisms have solid foundation, or do they stem from a misunderstanding of the I.C.R.C.'s role and its principles?

This paper aims not only to present the many positive aspects of the I.C.R.C.'s work pursuant to the Conventions and Protocols, but also to raise some of the current issues which create problems for the I.C.R.C. in action. The analysis of the I.C.R.C. will of necessity be selective, but will attempt to show the relationship between its rights of

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1 The Geneva Conventions of 12 August 1949 are: Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention One); Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea (Convention Two); Convention relative to the Treatment of Prisoners of War (Convention Three); Convention relative to the Protection of Civilian Persons in Time of War (Convention Four). The Protocols are: Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol One); Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol Two).

action, the principles which guide it, the characteristics which affect the way it works in practice, and the changing nature of world conflict.

II. RIGHTS OF ACTION

Legally, the I.C.R.C. is bound to do nothing by the Conventions and Protocols. Rather, it has a discretion to act in certain situations; once it accepts that discretion it must comply with the obligations which then follow.² The rights of action under the international instruments fall into three related areas: protection, relief and promotion.

General provisions common to the Conventions establish the broad role of the I.C.R.C. Common Article 3(2) provides that the I.C.R.C. may offer its services to parties to a conflict; Common Article 9 that the I.C.R.C., with the consent of parties to a conflict, may undertake humanitarian protection and relief activities. Since the First Additional Protocol made Protecting Powers compulsory, and the I.C.R.C. is almost invariably called on to substitute for Protecting Powers, pursuant to Common Article 10 (Article 11 of Convention Four), these duties are likely to increase. Promotion of the law by the I.C.R.C. is itself a form of protection and relief. Promotion is achieved through the I.C.R.C's activities (not pursuant to any specific Article) in updating and reviewing international humanitarian law (hereafter I.H.L.) by convening experts' conferences and, as with the two Protocols, by supervising additions and extensions to the law.

III. THE I.C.R.C. IN THE RED CROSS MOVEMENT

Along with the League of Red Cross Societies, National Red Cross Societies, and states adhering to the Geneva Conventions, the I.C.R.C. forms what is loosely termed "The International Red Cross Movement". There is often confusion about the movement, which is a transnational entity rather than an official organisation. Some people, especially journalists, use the terms I.C.R.C. and International Red Cross Movement interchangeably, whilst others fail to distinguish between the League's role of assisting in natural disasters, and the I.C.R.C's role of applying I.H.L. to armed conflicts - man-made disasters. This confusion partly arises from co-operation between the League and I.C.R.C. in situations like World War Two, where the I.C.R.C's limited resources were inadequate both to protect and to relieve those most in need. Another factor contributing to the confusion is that a National Society must be recognised by the I.C.R.C. before it officially exists. However, the I.C.R.C. has always asserted its uniqueness; it certainly differs from the League and National Societies in its greater ability to comply with the seven principles of the Red Cross Movement.³ These principles are humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

2 Since it is a person *sui generis* at international law, it is also capable of concluding agreements which may give rise to further rights and duties.

3 Adopted by the International Red Cross Conference in 1965.

IV. THE PRINCIPLES

Only the first four of these principles will be discussed, those most relevant to the I.C.R.C's activities. They exist to guide all its actions: deciding if a conflict is governed by the Conventions and Protocols and whether I.C.R.C. participation is desirable; assessing possible breaches of I.H.L.; and the practical activities of co-ordinating protection, relief and promotion.

Humanity is the paramount principle of the I.C.R.C. The law it promotes is called international *humanitarian* law; in the Conventions⁴ mention is made of the I.C.R.C or a *humanitarian organisation*. More than anything else, humanity guides the actions of the Assembly and its delegates. Putting humanity first requires a disregard for the rights and wrongs of a particular conflict and a devotion to the victims who have the greatest need; it means applying the same standards to all who come under their protection. Humanity is the principle which is cited when people talk of the "spirit" of I.H.L.; on occasions humanity dictates that the I.C.R.C. should intervene when strictly speaking there is no legal basis for its involvement.⁵

Humanity transcends religious boundaries. The Koran states:⁶

When Allah's help and victory come, and you see men embrace his faith in multitudes, give glory to your Lord and seek his pardon. He is ever disposed to mercy.

Deuteronomy tells of the attitude to the merciful of the God of the Jews and Christians:

And He shall show thee mercy and have compassion on thee and multiply thee.

The Four Unlimited Virtues of the Buddhist faith are benevolence, compassion, sympathetic joy and equanimity. Marxist countries emphasise the essential humanitarianism of the worker.⁷ However, what constitutes humanitarianism can be a very subjective assessment. During the colonisation of Africa in the 19th century, European states that were happy enough to apply humanitarian considerations to their own fraternal conflicts seem to have believed that humanity was a "...[luxury] incomprehensible to the African."⁸ This denied the universal quality of humanity by presuming that the principle could be applied selectively.

4 Common Article 10(1) to the first three Conventions; Article 11(1) of the Fourth.

5 As in Russia from 1918 to 1920 and in Spain from 1936 to 1939, and occasionally during hijackings and kidnappings.

6 Chapter 110.

7 IP Blishchenko and VA Grin *International Humanitarian Law and the Red Cross* (Executive Commissioner of the Order of Common Alliance of Red Cross, Moscow, 1983) 26. This booklet was published under the auspices of the Executive Committee of the Order of Lenin Alliance of Red Cross and Red Crescent Societies of the USSR.

8 UO Umzurike "The Geneva Conventions and Africa" (1971) 7 East African LJ 275,284.

Impartiality governs the attitude of individuals working for the I.C.R.C. towards a particular action. As Geoffrey Best has stated:⁹

Privately, members of the ...[I.C.R.C.]...no doubt have their own views as to the relative rightness and wrongness of the causes invoked by those fighters. Simply, as Red Cross members, however, they ought to have no opinion on the matter....

Delegates may not show partiality for one individual over another who is equally or more needy. No distinction may be drawn on the grounds of nationality, race, religion, social condition or political leanings.

Problems occur when this principle is wrongly interpreted by parties to mean that each side should receive *equal* treatment: a prisoner for a prisoner, or equal time given to the injured and needy from each side.

Neutrality in this context is a trait more of an organisation than of an individual, and is related to the cause being fought rather than the individual. Jacques Moreillon (Director General of the I.C.R.C.) calls neutrality the brake which allows the vehicle called the I.C.R.C. to slow down, so as to pull away from areas irrelevant to it.¹⁰ The Swiss domicile of the I.C.R.C. is considered very important for this principle, since Switzerland is the longest established neutral country in the world (since 1515), and does not as a rule involve itself in power gaming.

One African commentator on the I.C.R.C. has claimed that an attitude of neutrality can sometimes be equated with a political decision;¹¹ that by voicing no opinion when a minority or small state is being oppressed by a larger (perhaps imperialist) power, one is tacitly accepting the right of the oppressor to act as it does. This may well be the case in the political context, but such a criticism levelled at the I.C.R.C. would be unjustified. The I.C.R.C. exists to relieve, protect and promote humanitarianism, concerning itself with all *victims* of violence, whether they initially perpetrated the act or not. Neutrality and impartiality are inseparable principles, each clarifying and qualifying the other. The only time when the I.C.R.C. will publicly condemn a specific party to a conflict is if it has breached I.H.L, and only then subject to very strict guidelines about seeking a private solution first, and being assured that the victims' interests are best met by a public condemnation.¹² The I.C.R.C. protested earlier this year over the use of chemical weapons by Iraq in the Gulf War.

9 *Humanity in Warfare* (Methuen, London, 1984) 4.

10 "De bon usage de quelques Principes fondamentaux de la Croix Rouge" *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet* (Martinus Nijhoff Publishers, Geneva, 1984) 917.

11 Ali A Mazuri "The Red Cross and Politics in Africa" address to the Regional Institute of the League of Red Cross Societies, Dar-es Salaam, 23 November, 1970.

12 The exact preconditions are:

- i. grave, repeated violations
- ii. the I.C.R.C. has been a direct witness or is in possession of reliable information to that effect;

Independence from political or other outside interference is essential to impartiality and neutrality. As with impartiality and neutrality, it is a goal more easily achieved by the I.C.R.C. than by national societies, some of which appear to differ little from government departments. Not only the Soviet and Ethiopian¹³ National Red Cross Societies, but also those of the United States¹⁴ and New Zealand¹⁵ are susceptible to government interference of varying degrees. The I.C.R.C. however, although it receives half its funding from the Swiss government, is much closer to achieving the ideal of independence. In any case, Switzerland's neutrality makes reliance on that government less objectionable than is dependence on a non-neutral state.

V. CHARACTERISTICS

From its inception the I.C.R.C. has been based in Geneva. It was initially called the "Comité International Genevois" and for the first sixty years of its existence admitted only Genevese to its ranks. Its supreme policy maker, the Assembly, with ultimate control over finances and general strategy, now has statutes that restrict its membership to Swiss nationals. Other Geneva-based staff (about 400 in total) are about 80% Swiss, and none of the non-Swiss holds any important policy making rank. The delegates sent out by the I.C.R.C. on protection and relief activities are also almost exclusively Swiss, though a few French have been recruited.

In the history of the Assembly fewer than twenty members have been women, and all have been Caucasian. They receive no salary and hence, with few exceptions, are from bourgeois backgrounds. Doctors, lawyers and businessmen abound, and traditionally the Assembly members have been conservative: one American scholar called them "... more strongly anti-Communist than most Americans."¹⁶ This conservatism has been suggested as a factor contributing to the unfruitful relationship between the I.C.R.C. and Cuba shortly after Fidel Castro took power.¹⁷ The rest of the Geneva staff is also male-dominated, with women mainly filling secretarial roles. I.C.R.C. delegates, although usually much younger than Assembly members, share many of the same characteristics.

iii. the I.C.R.C. has unsuccessfully made confidential, private overtures to the offending party;

iv. it is in the best interest of the victims that a public appeal be made. See Michel Veuthey in *Studies and Essays* above n10, 989, 1000.

13 For a criticism of the Ethiopian Red Cross, see Myles Harris *Breakfast in Hell* (Poseiden Press, London, 1986).

14 David P Forsythe *Humanitarian Politics : The International Committee of the Red Cross* (John Hopkins University Press, Baltimore, 1977) 240.

15 Government assistance can be accompanied by suggestions of how and where money can be spent.

16 Oran Young *The Intermediaries: Third Parties in International Crises* (Princeton University Press, Princeton NJ, 1967) 109.

17 Forsythe above n14, 210.

The positive nature of some of these features is clear and well documented and, apart from the obvious advantages of Switzerland's neutrality, include the following:

- Switzerland is a country with four national languages, three of which (German, French and Italian) are official languages. Most educated Swiss are also reasonably fluent in English. Communication is an essential skill for the activities of the I.C.R.C, and the Swiss are more competent at languages than, for example, the British.

- In their long history of neutrality, the Swiss have become highly competent diplomats and organisers. They are also a technologically advanced nation with access to and experience in modern communications.

- Geneva is a centre of world diplomacy and research into international relations, home to a host of other international organisations¹⁸ and the scene of many super-power summit meetings.

- Switzerland has a particularly stable government, very little labour unrest, and is very unlikely to suffer from foreign invasion; the Geneva headquarters of the I.C.R.C. is therefore relatively safe from unwelcome intervention.

- Conservatism is a quality which reassures many of the major actors in international affairs as it signals predictability and, in the case of the I.C.R.C, pragmatism.

Conversely there are disadvantages to the I.C.R.C's characteristics, features which blunt its efficacy.

- The I.C.R.C's geographic position and single base of action were probably the main reason during World War Two for its now controversial silence on the position of Jews in concentration camps.¹⁹ Although there was seldom clear Convention basis for I.C.R.C. intervention, it did make some effort towards relieving death camp victims, just as it was also involved "extra legally" in Russia from 1918 to 1920 and in Spain from 1936 to 1939. Fear of Nazi invasion appears to have been uppermost in the Committee's decision not to publicise the Final Solution. Had there been an alternative base in New York or Moscow, for instance, such a contingency would not have been so influential.

- Some states have criticised the distance, geographic and ideological, between the I.C.R.C. and the people it helps. One aspect of this geographical isolation was manifested when the I.C.R.C. had negotiated long and hard for the release from the Mujihadeen of some Soviet prisoners. Several of the Russians refused to take up the chance once it was offered because it would have entailed two years in Geneva before repatriation; for these soldiers who had never even heard of Switzerland, it was better to stick with the devil they knew. Quite possibly, some were later executed by their captors.

18 World Health Organisation, International Labour Organisation, International Postal Union, European Community and United Nations offices etc.

19 See also Monty Penkower *The Jews Were Expendable : Free World Diplomacy and the Holocaust* (Wayne State University Press, Detroit,1986).

Ideological difficulties involve distrust of the delegates for their supposed eurocentricity, their "Christian" symbol and their whiteness. It is understandable, if misguided, when parallels are drawn between I.C.R.C. delegates preaching humanitarianism, and the missionaries who used to come preaching Christianity, but were followed by European imperialists.

On a more personal level, I.C.R.C. delegates accustomed to Swiss punctuality must find it difficult to adjust to situations where it is culturally normal for an arranged meeting to be postponed for no other reason than that "today is not possible, come back tomorrow". The relatively small number of delegates employed permanently by the I.C.R.C. makes it difficult to operate effectively when more than one large scale conflict erupts at one time. This can lead, as it did in World War Two, to a compromise of some of the Red Cross principles. The I.C.R.C. had to call on the League of Red Cross Societies to exercise some of the functions traditionally reserved to the I.C.R.C., blurring the distinction between the roles of the two institutions. More recently (in 1973), resources and personnel were again stretched as conflicts raged in the Middle East and North Africa simultaneously. Another problem is the shortage of delegates with the necessary experience to cope in certain situations; in post-Allende Chile the I.C.R.C. was required to use non-qualified personnel for visiting duties.²⁰

VI. THE NATURE OF CONFLICTS TODAY

The most marked trend in the evolution of I.C.R.C. activities since 1950 is the decline in countries relieved or visited in Europe, and the rise of action in Africa and Latin America in the last twenty years. As the Second Additional Protocol on non-international armed conflicts is more widely acceded to, this trend can be expected to continue. Already the overwhelming majority of I.C.R.C. action takes place in countries vastly different from the Switzerland which is home to the Assembly, its delegates and staff.

VII. EFFECTIVE PERFORMANCE

These four factors:

- i. the I.C.R.C.'s rights of action,
 - ii. its principles,
 - iii. its characteristics, positive and negative and
 - iv. the nature of armed conflicts in which the I.C.R.C. is now involved,
- raise, separately and together, questions about the I.C.R.C.'s practical effectiveness today. Its achievements to date have been impressive, but undeniably it is hampered by the image it projects to the world. How can the I.C.R.C. best achieve the promotion of I.H.L. and the protection and relief of people entitled to Geneva privileges²¹, without

20 Forsythe above n14, 207.

21 This extends beyond the protection expressly granted by provisions of the Conventions and Protocols, to include that which can be implied by the "spirit" of the law.

compromising its principles? Is it just a question of improving people's perception of the organisation's unique role, and if so, how? Does the I.C.R.C. need to consider combating eurocentricity through structural and/or ideological changes? Do the Conventions and Protocols provide any help?

On a few occasions in the past, the I.C.R.C. *has* shown itself receptive to change; 1973 saw a radical restructuring of the organisation. Although resistance to non-Swiss delegates and Assembly members has remained stiff, perhaps it is time to reconsider this position. Neutrality, impartiality and independence are not qualities peculiar to the Swiss; the International Court of Justice is just an example of an international tribunal required to exhibit such characteristics.

The Conventions and Protocols refer to "...the offer of the services of a humanitarian organisation, such as the International Committee of the Red Cross..."²², a recognition that bodies exist other than the I.C.R.C. which might be able to carry out its rights of action. Amnesty International and the United Nations Peacekeeping Forces are two possible examples. Article 5 of the First Protocol has strengthened the role of Protecting Powers; a greater promotion of their availability could reduce the massive burden of reliance presently placed on the I.C.R.C.

All staff of the I.C.R.C. must pay close attention to the image the I.C.R.C. projects. Its principles, particularly humanity, have such universality that if they can be presented with sensitivity, rather than by preaching, people of all cultures and religions will respect the rules of I.H.L. The I.C.R.C. could either push for greater adherence by certain National Red Cross Societies to the Red Cross principles, or could completely and publicly distance itself from them.²³

The I.C.R.C. has co-ordinated the most recent development of I.H.L, the intrusion of Hague and human rights law into pure Geneva law. Unless it changes in response to the legal revolution it has helped to instigate, it risks being left behind, a Florence Nightingale trying to operate in the twenty-first century.

22 Above n4.

23 This would be an unwise step, one which would harm the I.C.R.C. more than help it. A private insistence on greater adherence to the principles would be more in keeping with I.C.R.C. pragmatism.