

Promotion of international humanitarian law through cooperation between the ICRC and the African Union

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Access to victims of war is always preceded by a preliminary phase of information-gathering and sometimes complex negotiation. Nowadays it is a real challenge, in particular because humanitarian organizations are no longer the only ones dealing with this issue. To give only one example, the role of peacekeepers and peace-builders has evolved, leading to the development of civilian and military cooperation and thus the introduction of political agendas; moreover, economic agendas are an increasingly important factor in situations of war. Influential countries also want to have a greater say in dealing, for instance, with the issue of civilians in armed conflict, the role of international justice or the “war” against terrorism.

Diplomatic efforts are required, too, for the development and endorsement of international law instruments. As the guardian¹ of international humanitarian law, also known as the law of armed conflict, the International Committee of the Red Cross (ICRC) has since its inception taken active part in diplomatic endeavours not only to universalise the concept of humanitarian action but to adapt the legal instruments to changing reality.

In more recent years, the ICRC has stepped up the dissemination of knowledge of international humanitarian law on an institutional basis through systematic cooperation with international and regional organizations, for example in seminars such as those organized for diplomats at the United Nations headquarters in New York and the Organization of American States (OAS) in Washington DC in 1983, at the UN Office in

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Geneva in 1991, and at the Organization of African Unity (OAU) in Addis Ababa in 1994.²

The promotion of international humanitarian law is one of the ICRC's means of preventive action. One of its special features is that it is not restricted to unstable peace or pre-conflict situations. It covers the whole range of such situations (peace, crisis, conflict, post-conflict) and takes a long-term view. The ultimate objective is to influence attitudes and behaviour (particularly of those active in combat) so as to ensure that when armed violence breaks out, the rules and principles of humanitarian law are respected. In peacetime the promotion of this law is an educational act. Once a crisis has flared, it is intended to regulate behaviour.³

The promotion of international humanitarian law in diplomatic circles has led to the concept of "humanitarian diplomacy", which is described within ICRC circles as "the organization of the overall policy of external relations aimed at spreading knowledge of international humanitarian law, applying and ensuring the application of its provisions, facilitating the

¹ The ICRC has been mandated by the international community of nations through the Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977, and in Article 5.4 (a) of the Statutes of the International Red Cross and Red Crescent Movement, to develop and disseminate international humanitarian law.

² See Jean-Luc Chopard, "Dissemination of international humanitarian law to diplomats and international officials", *International Review of the Red Cross*, Vol. 77, No. 306, 1995 pp. 355-357. By the late 1990s, the ICRC had initiated similar dissemination programmes for diplomats and officials of the Organization for Security and Co-operation in Europe (OSCE), the European Union (EU), the Inter-Parliamentary Union (IPU), the League of Arab States (LAS) the North Atlantic Treaty Organization (NATO), and sub-regional organizations like the Economic Community of West African States (ECOWAS), and the Southern Africa Development Community (SADC). To facilitate dissemination of international humanitarian law in diplomatic circles, the ICRC signed cooperation agreements with these international organizations granting it the status of permanent observer or standing invitee, such as those inter alia with the Non-Aligned Movement (NAM) (February 1981), the International Maritime Organization (IMO) (November 1989), the United Nations (October 1990), the UN Inter-Agency Standing Committee on Humanitarian Affairs (April 1992), the Organization of African Unity (OAU) (May 1992), the EU (May 1993), the Organization of the Islamic Conference (OIC) (February 1994), the Organization of American States (OAS) (May 1996), and the League of Arab States (LAS) (November 1999), the International Organization for Migration (IOM) (1993) and the World Health Organization (WHO) (April 1995). See Alejandro Lorite Escorihuela, "Le Comité International de la Croix-Rouge comme organisation *sui generis*? Remarques sur la personnalité juridique internationale du CICR", *Revue générale de droit international public*, Vol. 105, No. 3, 2001, pp. 598-602. In addition, the ICRC opened permanent missions or delegations accredited to these organizations such as those in New York to the UN, in Brussels to the EU, in Cairo to the League of Arab States, and in Addis Ababa to the OAU, now the AU.

³ See Marion Haroff-Tavel, "Promoting norms to limit violence in crisis situations: Challenges, strategies and alliances", *International Review of the Red Cross*, Vol. 80, No. 322, 1998, p. 19.

accomplishment of the institution's mission and promoting independent humanitarian action".⁴ At ICRC headquarters in Geneva there is a specific unit in charge of harmonizing the institution's humanitarian diplomacy.

These diplomatic endeavours are backed by the ICRC's broader communication strategy, which is aimed at facilitating its access to war victims, generating support for its humanitarian work, promoting respect for international humanitarian law, mobilizing decision-makers and opinion-leaders to take a stand on major humanitarian concerns, and making the ICRC's particular mandate, role and activities in comparison with other humanitarian organizations better known.

In Africa, the humanitarian diplomacy of the ICRC includes exchanges and/or cooperation with UN humanitarian agencies such as UNHCR, WFP and UNICEF, other organizations such as the IOM, external donors such as ECHO and USAID, and other bilateral contacts. African organizations like the OAU (now the AU) and increasingly the regional economic communities such as ECOWAS, ECCAS, SADC, IGAD, and AMU,⁵ as well as African civil society organizations and NGOs involved in humanitarian work, are important partners of humanitarian diplomacy endeavours.

This environment for humanitarian diplomacy on the African continent also includes specialized Pan-African policy-making fora like the Conference of African Ministers of Justice and Human Rights, which deals with issues related to the rule of law, the Conference of African Ministers of Health, which handles emergency preparedness and health in armed conflict situations, the Conference of Ministers of the Environment, which deals with disaster management, the AU Labour and Social Affairs Commission, which handles matters concerning forced displacement and children, and the African Parliamentary Union (APU), which is responsible for issues related to the ratification of international humanitarian law instruments.

Within the International Red Cross and Red Crescent Movement, humanitarian diplomacy is conducted through meetings of its Council of Delegates and other regional events such as the Pan African Conference of Red Cross and Red Crescent Societies and the Conferences of the

⁴ ICRC, " 'Avenir' study: Strategic content", *International Review of the Red Cross*, Vol. 79, No. 321, 1997.

⁵ Economic Community of West African States (ECOWAS), Economic Community of Central African States (ECCAS), Southern African Development Community (SADC, Intergovernmental Authority on Development (IGAD), and Arab Maghreb Union (AMU).

Association of French-speaking African Red Cross and Red Crescent Societies (ACROFA). Finally, there is the ICRC network in Africa consisting of 20 delegations, 21 sub-delegations, 41 offices and over 450 expatriate and 3,500 local staff, which ensures a proper coverage of the continent and enables the ICRC to assert itself as a serious humanitarian player in Africa.⁶

The highest level of humanitarian diplomacy within the Movement is the International Conference of the Red Cross and Red Crescent that brings together representatives of all States party to the Geneva Conventions, including those in Africa, with all the Red Cross and Red Crescent components to examine and deliberate on humanitarian issues of mutual concern.

It was likewise to promote humanitarian diplomacy that a cooperation agreement was signed in 1992 between the ICRC and the OAU, established in 1963 to promote peace and unity among African countries and meanwhile the hub of the African diplomatic system with 53 member States. The object of this agreement was *inter alia* to encourage greater recognition and wider application of international humanitarian law throughout Africa and to raise awareness of the ICRC's role and activities.⁷

In 1993 the ICRC set up a liaison office, in charge of relations with the OAU and other international organizations in Africa, at its Addis Ababa delegation. This liaison office was accorded the status of a diplomatic mission with all privileges and immunities by the Ethiopian government in February 1996 and, henceforth officially referred to as the Permanent Mission, was headed by a Permanent Representative and answerable to ICRC headquarters in Geneva.

The ten years of OAU-ICRC cooperation under that agreement had so clearly illustrated the importance of the ICRC's humanitarian diplomacy that it was recently described by the institution's Delegate-General for Africa⁸ as "a platform by which we can foster contacts at the highest level and ensure diplomatic support for our humanitarian operations".⁹

6 See Churchill Ewumbue-Monono, "Promoting humanitarian public diplomacy in Africa: A study of ten years of the ICRC's cooperation with the OAU in disseminating international humanitarian law in the Addis Ababa African diplomatic community - 1992-2002", Center for Research on Democracy and Development in Africa (CEREDEDA) Publishers, Buea (Cameroon), 2003.

7 See the Cooperation Agreement between the Organization of African Unity and the International Committee of the Red Cross, signed by Secretary-General Salim Ahmed Salim (OAU) and President Cornelio Sommaruga (ICRC) at Geneva on 4 May 1992, published in Ewumbue-Monono, *op.cit.* (note 6), Annex 7, pp. 104-107.

8 Christoph Harnisch, ICRC Delegate-General for Africa.

9 See Jean-François Berger, "The OAU on the humanitarian path", *Red Cross, Red Crescent*, No. 3, 2001, p. 25.

In July 2002 the Organization of African Unity became the African Union (AU) and was given wider objectives.

Cooperation between the ICRC and the former OAU to promote and disseminate international humanitarian law within the African diplomatic community helped to make humanitarian concerns an integral part of the OAU-AU transformation process between 1999 and 2002 and paved the way for stronger AU-ICRC cooperation in the future.

Achievements of OAU-ICRC cooperation in promoting IHL: 1992-2002

Between 1992 and 2002, the OAU and ICRC jointly engaged in a variety of activities to promote international humanitarian law and related issues within Addis Ababa's diplomatic community. Exchanges of a political and humanitarian nature took place, concerns relating to protection and assistance for internally displaced persons as part of the civilian population affected by war were addressed, and OAU humanitarian projects were followed up and given technical assistance.

Discussions between the ICRC mission in Addis Ababa and the OAU Political Department in particular were held on a regular basis. This dialogue was also conducted at the highest level between OAU Secretary-General Dr Salim Ahmed Salim and ICRC President Cornelio Sommaruga, for instance in 1992 in Geneva at the signing of the agreement and in 1999 in Addis Ababa, or more recently between Interim Commissioner Daniel Antonio, on behalf of AU Interim Chairperson Amara Essy, and ICRC President Jakob Kellenberger in 2002.

The ICRC, represented at mission and/or headquarters level, also attended OAU ambassadorial, ministerial and summit meetings and other conferences as an observer, such as meetings of the OAU Labour and Social Affairs Commission and the OAU Commission on Refugees and the African Conferences of Ministers of Health, of Ministers of Education and of Ministers in charge of human rights. The ICRC was a member of the OAU Committee on Assistance and Protection to Refugees and Displaced Persons and various OAU technical committees of ICRC's concern and has retained this membership within the AU. Moreover, the ICRC regularly attends sessions of the African Commission on Human and Peoples' Rights (ACHPR) as an observer.

The operational role of the ICRC was recognized by the OAU's Council of Ministers in February 1998 in Addis Ababa, which recommended as follows that:

«[t]he ICRC be designated as one of the reference organizations on issues relating to assistance and protection of internally displaced persons. This is based on the background that the ICRC already co-ordinates relief efforts of national Red Cross and Red Crescent Societies and their Federation in conflict situations, as well as the fact that the ICRC is prepared to assume field co-ordination responsibilities on a pragmatic and voluntary basis for displaced persons affected by armed conflicts, particularly where it is *de facto* one of the main humanitarian organizations on the spot”.¹⁰

In the promotion of international humanitarian law, cooperation between the ICRC and the OAU included raising awareness of the humanitarian rules among the armed forces, the training of contingents deployed by the main organ of the OAU, seminars for diplomats, and symposiums on specific subjects such as anti-personnel mines, women in armed conflict and national measures for the implementation of humanitarian law.¹¹

In the area of training and workshops on the law of armed conflict for military and security officers, the ICRC jointly organized regional seminars with the OAU such as those in Mauritius (November 1991), Nairobi (December 1991, December 1993) and Addis Ababa (January 1995, June 1996), at which a number of humanitarian law topics were discussed, including several issues related to the conduct of hostilities and the use of conventional weapons. In Africa the ICRC now has four regional delegates to the armed forces, based in Nairobi, Pretoria, Abidjan and Cairo and responsible for organizing courses in international humanitarian law/the law of war. In so doing they are supporting the efforts of the various ICRC delegations in Africa to make international humanitarian law an integral part of the training of national armed forces and the police.

Between 1994 and 2002, the OAU and ICRC held seven seminars on the dissemination of international humanitarian law in Addis Ababa for OAU staff and African diplomats accredited to the OAU, *inter alia* on international humanitarian law and the activities of the ICRC (1994), the humanitarian challenges in Africa (1995), water and armed conflict (1996), the International Criminal Court (1997), international humanitarian law in

¹⁰ See OAU Decision (CM/Dec. 388 (LXVII)) of the Council of Ministers in the Report of the Commission of Twenty on the Situation of Refugees, Returnees and Displaced Persons in Africa, adopted by the Sixty-Seventh Ordinary Session of the Council of Ministers, Addis Ababa, 23-27 February 1998, OAU Doc. CM/2038 (LXVII).

¹¹ Proceedings of the Fourth OAU-ICRC Seminar for the ambassadors accredited to the OAU, Addis Ababa, 29-30 April 1997, p. 10.

the context of anarchic conflicts (1998) and conflicts and the final aim of humanitarian actions in the 21st century (2000), as well as a Brainstorming Day on the Constitutive Act of the African Union and the challenges of international humanitarian law (2002). The OAU and the ICRC also organized public round-table discussions, in particular once in 1999 and twice in 2001, to make known and exchange views on humanitarian law issues in Africa. Most of these events were covered by the local media.

ICRC-OAU cooperation also took the form of special publications and events such as visits and tours for ambassadors accredited to the OAU. From 1996 on, a calendar was jointly published to highlight current humanitarian issues. The ICRC also mobilized and provided expertise to back OAU humanitarian activities, such as integration of the programme "Exploring Humanitarian Law" (EHL)¹² into the African Decade for Education programmes. At the 4th Regional Seminar on the OAU Decade of Education held in Maputo in March 2002, the SADC adopted a recommendation that "encourages governments to integrate the educational programme EHL into their secondary curricula".¹³ From 1994 on, OAU senior officials also benefited from ICRC sponsorship of training programmes at the International Institute of Humanitarian Law in San Remo.

The ICRC's work to promote international humanitarian law in African diplomatic circles since 1992 has been particularly evident in the following five areas: the integration of humanitarian concerns and international humanitarian law issues in OAU resolutions; the incorporation of humanitarian principles in African peace agreements; the role of OAU-ICRC cooperation in the anti-personnel mines campaigns; the adherence of African States to international humanitarian law instruments; and the participation of African diplomats in programmes organized or sponsored by the ICRC.

A number of recommendations on various issues related to the development of the law and the activities of the ICRC in Africa have been

¹² Exploring Humanitarian Law (EHL) is an educational programme for adolescents that was developed in 1999 by the ICRC in close association with the Educational Development Center Inc. (ECD) and with the active participation of 20 countries, including 7 from Africa, namely Burundi, Djibouti, Egypt, Liberia, Morocco, Senegal and South Africa. The objective of the programme is to introduce adolescents to the basic rules and principles of international humanitarian law as the law intended to protect victims of armed conflict and restrict the means and methods of warfare. In 2003, nineteen African countries embarked on the process of integration or began implementing the programme in close association with education authorities.

¹³ See Report of the SADC Regional Seminar on the Decade of Education in Africa, Maputo, 12-15 March 2002, OAU/DEC/SA/Report/2002, p. 20.

adopted at the OAU and AU conferences and at ICRC/OAU joint seminars,¹⁴ several of which have been finalized as OAU/AU resolutions.¹⁵ In general, the mentioning of humanitarian law and the ICRC in such resolutions and other legal instruments is not only a mark of recognition of the relevance of its activities to international humanitarian law, but also an indication of the impact of the ICRC's advocacy strategies. OAU resolutions, decisions, and declarations¹⁶ on humanitarian law and the ICRC, like those of the AU today, not only showed Africa's commitment to the activities of the ICRC, but also had the effect of putting an African stamp on international humanitarian law principles, which enhanced their acceptance by most OAU member States, and in so doing facilitated their dissemination and implementation.¹⁷

The incorporation of humanitarian principles in peace agreements brokered by the OAU between 1992 and 2002, is illustrated by the July 1993 Cotonou Agreement on Liberia, the May 1993 Kinyira Agreement between the government of Rwanda and the Rwandan Patriotic Front, the August 1993 Arusha Peace Agreement on Rwanda, the July 1999 Lusaka Accord on a Ceasefire in the Democratic Republic of Congo, and the May 1999 Lomé Ceasefire Agreement between the government of Sierra Leone and the Revolutionary United Front (RUF/SL).¹⁸ ICRC efforts with regard to peace

¹⁴ For example, the Sixth Joint OAU/ICRC Seminar on international humanitarian law, entitled "Conflicts and Final Aim of Humanitarian Actions in the 21st Century", Addis Ababa, 15-16 May 2000, and the Joint OAU-ICRC Roundtable on women in armed conflict, Addis Ababa, 8 March 2001.

¹⁵ See e.g. Resolution on the Proposed Cooperation Agreement between the Organization of African Unity and the International Committee of the Red Cross (CM/ Res. 1380 (LV)), adopted by the Fifty-fifth Ordinary Session of the Council of Ministers, Addis Ababa, 24-28 February 1992; Resolution on Respect for International Humanitarian Law and Support for International Humanitarian Law and Support for Humanitarian Action in Armed Conflicts (CM/ Res.1526 (LX)), adopted by the Sixtieth Ordinary Session of the Council of Ministers, Tunis, 6-11 June 1994.

¹⁶ See e.g. African Parliamentary Conference on International Humanitarian Law for the Protection of Civilians during Armed Conflict, Niamey, 16-18 February 2002; Decision on the Establishment of the Peace and Security Council of the African Union (ASS/AU/Dec.2 (I) Doc. AHG/234 (XXXVIII)), adopted by the Second Ordinary Session of the African Union, Maputo, 10-12 July 2003; Grand Bay (Mauritius) Declaration, and Plan of Action, adopted by the First OAU Ministerial Conference on Human Rights in Africa, Grand Bay, 12-16 April 1999.

¹⁷ See, in the Proceedings of the Seventh Joint OAU-ICRC Seminar, the Brainstorming Day on the subject "The Constitutive Act of the African Union and the Challenges of the International Humanitarian Law", Addis Ababa, 7 May 2002, p. 52.

¹⁸ A more recent example is the 2003 Linas-Marcoussis Agreement on Côte d'Ivoire, where the AU also sent a representative. The ICRC was also invited to be present as an observer at the whole negotiation

agreements focus mainly on issues concerning prisoners or other people deprived of freedom for conflict-related reasons and their release, respect for humanitarian law if the agreed ceasefire is broken, and support and respect for humanitarian activities in general. The fate of persons unaccounted for – people around the world who are missing owing to armed conflict and internal violence – is a source of growing concern.¹⁹

ICRC-OAU cooperation in the mine-awareness campaign was jointly coordinated at three regional seminars in 1995 (Addis Ababa, Harare and Yaounde), the Conference of African Mine Experts in 1997, and the 2001 round table. Before the CCW Review Conference in Vienna in 1995 only three African countries had become party to the 1980 Convention with its Protocol on the proliferation of landmines, but by 2000 the situation had improved, as some 41 African countries had meanwhile signed the new 1997 Ottawa Convention. By 2002, only five African countries had not yet signed this new instrument.²⁰ It should be noted that African States played a major role in the process: the above-mentioned OAU Conference held in 1997 in Kempton Park (South Africa) was crucial in enabling African States to

process in Paris. Another interesting example being the 2003 Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy (LURD), the Movement for Democracy in Liberia (MODEL) and the political parties, in particular:

Part Five, Article X: “All Parties shall provide the International Committee of the Red Cross (ICRC) and other relevant national and international agencies with information regarding their prisoners of war, abductees or persons detained because of the war, to enable the ICRC (...) to visit them (...).”

Part Five, Article XI: “The Parties call on the ICRC and such other relevant national and international agencies to give all the necessary assistance to the released persons, (...).”

Part Seven, Article XV: “International Humanitarian Law – The Parties undertake to respect as well as encourage the Liberian populace to also respect the principles and rules of international humanitarian law in post-conflict Liberia.”

UN Doc. S/2003/850 of 29 August 2003 – Annex to the letter dated 27 August 2003 from the Permanent Representative of Ghana to the United Nations addressed to the President of the Security Council: Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia and the political parties.

¹⁹ In February 2003 the ICRC organized an international conference in Geneva and brought together experts from about 90 countries (including some from African countries) in a bid to draw attention to the largely forgotten ordeal of thousands of families worldwide that simply do not know what has happened to a loved one.

²⁰ By September 2003, 46 AU member States had ratified the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction (also known as the Ottawa Convention), 3 AU member States (Burundi, Ethiopia and Sudan) had only signed it and 4 AU member States (Egypt, Libya, SADR and Somalia) had neither signed nor ratified it. See also ICRC website <<http://www.icrc.org>> or <<http://www.cicr.org>>.

reach a common position in favour of a comprehensive ban on anti-personnel mines.²¹

But the impact of OAU-ICRC cooperation is best evidenced by the accession of African countries to international humanitarian law instruments, especially those adopted between 1994 and 1999 after the OAU-ICRC cooperation agreement.²²

The participation of the Addis Ababa diplomats in joint OAU/ICRC dissemination seminars between 1994 and 2002 remains one of the highest in diplomatic circles. An average of 120 participants from some 70 diplomatic missions and international organizations has hitherto been recorded for the seminars, along with an average of 87 for the round tables. The 1997 seminar on the International Criminal Court generated the most interest: the 142 participants included 25 ambassadors, the OAU Secretary-General, five assistant secretaries-general and the highest-ever OAU participation. Between 1994 and 2002 the dissemination seminars were, however, attended by some 300 diplomats and Ethiopian government officials: 71 OAU officials; 55 officials of UN agencies and 29 officials from NGOs.²³ These events were covered by the local media.

How can the impact be assessed?

The very nature of this activity makes any such assessment uncertain, for people change from one post to another and do not deal with humanitarian issues throughout their entire career or diplomatic service. There are nevertheless many reasons for the effectiveness of OAU-ICRC cooperation in promoting international humanitarian law and an understanding both of ICRC activities in Africa and of the fundamental principles such as humanity, impartiality and neutrality that govern independent humanitarian

²¹ Highlighting the importance of the Ottawa Convention for the continent, Africa will host the international First Review Conference of the Ottawa Convention, which will be held in Nairobi (Kenya) at the end of 2004.

²² Between 1994 and 1999, 10 African States became party to the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, 10 African States became party to 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), of 8 June 1977, and 6 African States became party to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, of 10 October 1980.

²³ See Ewumbue-Monono, *op. cit.* (note 6), pp. 75-76.

action. First of all, since the initial seminar to familiarize future African diplomats with humanitarian law, held by the Henry Dunant Institute in cooperation with the International Relations Institute of Cameroon (IRIC) in Yaounde in 1977, a series of such programmes have been conducted in several other African schools of diplomacy. Thanks to effective advocacy, proper planning and programming, they have helped to give African diplomats in Addis Ababa a greater understanding of the ICRC's humanitarian diplomacy efforts. Second, as the OAU-ICRC joint seminars, for instance, usually take place between April and May, a few weeks before the OAU Council of Ministers sessions, the OAU Secretary-General or the Chairman of the OAU Commission on Refugees has the opportunity to report on them and their content may find its way into the OAU agenda and eventually lead to recommendations or resolutions. Third, the participation of the ICRC mission in OAU task forces and other OAU meetings dealing with humanitarian issues has been very conducive to the incorporation of international humanitarian law in OAU instruments, especially since 1994.

These successes notwithstanding, the ICRC's humanitarian diplomacy efforts in Africa have also encountered some setbacks because of the unique nature of the ICRC and the specific characteristics of the conflict situations on that continent.

The OAU was essentially a political organization and relations with the ICRC, a non-political, impartial and independent humanitarian organization, were consequently difficult. In the OAU there was no autonomous unit in charge of humanitarian issues, as the Refugee and Humanitarian Affairs Division was within the organization's Political Department. This undoubtedly meant that humanitarian issues within the OAU were subject to African political and diplomatic considerations, which might be at variance with the ICRC's purely humanitarian mandate.

The OAU's priorities and orientations were therefore different from those of the ICRC. Moreover, the OAU's main humanitarian concern since 1963 had been the refugee problem, which is the specialized domain of the UNHCR, whereas the ICRC is concerned first and foremost with providing protection and assistance to victims of war and can be considered the advocate of those victims. ICRC-OAU cooperation also suffered because of a lack of appropriate humanitarian affairs officers within the OAU General Secretariat, as most of the people handling humanitarian issues were mainly political officers. The inadequate financial resources for promotion and dissemination activities within the OAU also considerably limited the scope of cooperation.

Humanitarian diplomacy deals mostly with the African elites and does not extend to the key contenders and other target groups, namely the armed opposition groups and the war victims themselves. The communication departments of the ICRC's operational delegations in Africa are often alone in bearing this responsibility in the various theatres of operations.

The OAU was an organization of nation-States, but since the 1990s there have been very few inter-State conflicts in Africa. Conversely many of the ongoing internal armed conflicts have a regional dimension. ICRC-OAU dissemination efforts therefore had to address the non-State contenders in these civil wars, mostly members of armed opposition groups or intervening forces who are usually unwilling to apply humanitarian law rules and principles. It must nevertheless be borne in mind that humanitarian law also extends to armed opposition groups, and that they are accountable for violations of this law.

Finally, another shortcoming with regard to OAU-ICRC dissemination efforts has been the limited participation of "military-diplomats", usually the defence attachés and counsellors in the various African embassies in Addis Ababa. This target group should be the prime audience for the promotion of humanitarian law or law of armed conflict anywhere and at all times, as the contents of the programmes would be enriched by their participation and technical advice.

Although on balance OAU-ICRC cooperation in promoting humanitarian law has had some positive effects, these could be increased in cooperation with the African Union, which has wider objectives and has created new opportunities for promoting and implementing international humanitarian law in Africa.²⁴

The integration of international humanitarian law in the OAU-AU transformation process: 1999-2003

The takeover by the new executive of the African Union (AU) on 16 September 2003 marked the culmination of a four-year²⁵ transformation

²⁴ See Proceedings of the Seventh Joint OAU-ICRC Seminar, the Brainstorming Day, *op. cit.* (note 17), p. 52.

²⁵ This process included the Algiers Summit of July 1999 calling for a review of the OAU Charter, the 4th Extraordinary Summit in Sirte in September 1999, which called for the creation of the African Union, the Lomé Summit of July 2000 which adopted the Constitutive Act of the African Union, the Solemn Declaration on the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA), and the New Partnership for Africa's Development (NEPAD), the 5th Extraordinary Summit of March 2001 in Sirte which decided on the

process of the OAU into the AU. International humanitarian law was integrated in the AU agenda at four main levels: in the formulation of basic texts of the Union and its organs; in setting up the various structures and directorates of the AU Commission; in the AU programmes; and in joint AU/ICRC activities to promote humanitarian law.

The African Union's basic texts, such as the Constitutive Act and the various Protocols, deal with issues related to international humanitarian law. For instance, Article 4(h) of the Union's Constitutive Act lays down the right of the Union to "intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide, and crimes against humanity". Articles 3, 4, 7, and 13 of the Protocol establishing the Peace and Security Council provide for respect for and the promotion of international humanitarian law.²⁶ Under Article 3(f) of the Protocol, one of its objectives is to "promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law, as part of efforts for preventing conflicts". Article 4(c) of the Protocol, relating to the principles to be observed, invokes "respect for the rule of law, fundamental human rights and freedoms, the sanctity of human life and international humanitarian law".

In addition, Article 7(m) of the Protocol empowers the Peace and Security Council to "[f]ollow up, within the framework of its conflict prevention responsibilities, the progress towards the promotion of democratic practices, good governance, the rule of law, protection of human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law by Member States". Finally, Article 13(13) of the Protocol related to the training of the Stand-by Force refers to the "training on International Humanitarian Law and International Human Rights Law, with particular emphasis on the rights of women and children, which shall be an integral part of the training of such personnel".

Respect for humanitarian law is an integral part of the AU's peace and security programme. Article 11(v) of the Draft Framework for a Common

creation of the African Union, the Lusaka Summit of July 2001 prescribing a one-year transition period, the Durban Summit of July 2002 prescribing an interim period of another year, and the Maputo Summit of July 2003 which elected the first Chairperson, the Vice-Chairperson and seven of the eight Commissioners of the Union, as well as endorsing its various structures. See also Al-Mamoun Baba Lamina Keita, *L'Union Africaine, Ressorts Historiques et Perspectives (Sécurité, Paix et Développement)*, Bamako (Mali), 2002, pp. 218-295.

²⁶ See Seventh Joint OAU-ICRC Seminar, the Brainstorming Day, *op. cit.* (note 17).

African Defence and Security Policy makes it one of the AU's policy objectives to "provide a framework for humanitarian action to ensure that International Humanitarian Law is applied during conflicts between and among African states".²⁷ Moreover, at their third meeting in May 2003 in Addis Ababa, the African Chiefs of Defence Staff (ACDS) recommended the incorporation of international humanitarian law in the security doctrine and training programmes of the African Stand-by Force (ASF), and the role of ICRC assistance in training was recognized.²⁸

Respect for international humanitarian law has also been incorporated in the African Union's human rights programme. Articles 14 and 20 of the Grand Bay (Mauritius) Declaration and Plan of Action of the First OAU Ministerial Conference on Human Rights in Africa of April 1999 appealed to member States to "develop appropriate strategies and take measures to sensitise and raise awareness of African populations about human rights and international humanitarian law" through formal and non-formal education. In the Report on the Implementation of the Grand Bay (Mauritius) Declaration and Plan of Action²⁹ paragraphs 18 to 20 are devoted to the implementation of international humanitarian law in Africa.³⁰ Paragraph 18 calls for the "Africanisation of International Humanitarian Law" through an Additional African Protocol to promote commitment and application. This proposal may create some confusion with regard to the universal character of humanitarian law.

²⁷ See Draft Framework for a Common African Defence and Security Policy, AU Document EX/EX/CL/2 (III), Sun City (South Africa), 21-25 May 2003, p. 8.

²⁸ See Policy Framework for the Establishment of the African Stand-by Force and Military Committee, AU Document EXP/ASF-MS/2(1), Addis Ababa, 12-14 May 2003, p. 42.

²⁹ See the Report on the implementation of the Grand Bay (Mauritius) Declaration and Plan of Action, AU Document MIN/CONF/HRA/2 (II) Rev. II - Second Ministerial Conference on Human Rights in Africa, Kigali (Rwanda), 5-9 May 2003. After discussions it was decided that this conference has to be considered "the First" and not "the Second".

³⁰ *Ibid.*, pp. 8-9, paras 18-20:

"Implementation of International Humanitarian Law

18. The Grand Bay Declaration appealed to the African States to observe international humanitarian law, especially to reinforce the protection of the civilian population, ensure that acts of genocide, crimes against humanity and other war crimes are eradicated. The Plan of Action further required the African governments to give effect to international humanitarian law in their national legislation (paras 6, 11, 14). The four Geneva Conventions of 1949 and its Additional Protocol of 1977, the Genocide Convention of 1948, as well as the 1951 UN Refugee Convention are the documents that stand together as a common statement on the basic obligations of States and their servants to respect humanity in warfare, to protect those not engaged in combat, and to provide asylum to those forced to flee their

More importantly, international humanitarian law was mentioned in Articles 17 and 25 of the Kigali Declaration of 8 May 2003:

- Article 17: “Calls upon Member States to fulfil their obligations under international law and, in particular, to take the necessary measures to put an end to the practice of child-soldiers and to ensure the protection of civilian populations, particularly children, women, elderly persons and persons with disability in situations of armed conflict.”
- Article 25: “Urges Member States which have yet done so to incorporate in their domestic legislation, provisions of the African Charter on Human and Peoples’ Rights, its protocols, international humanitarian law, in particular the Four (4) Geneva Conventions (1949) and their Additional Protocols (1977), and other major international human rights instruments, which they have ratified, and to honour their obligations thereon, including reporting, where applicable.”

Respect for international humanitarian law³¹ and the role of the ICRC in the AU’s human rights programme were highlighted during the Second Meeting of the African Committee of Experts on the Rights and Welfare of

countries on the grounds of persecution as well address the issue of safety of humanitarian workers. However, the applicability of these documents in Africa remains problematic.

19. For the last two years, the AU General Secretariat, in collaboration with the International Committee of the Red Cross (ICRC), has organized various seminars/workshops for the AU Member States on the implementation of international humanitarian law. The latest such seminars (...)

20. Increasingly, African States have woefully failed to implement or adhere to the provisions of international humanitarian law. The fundamental problem in Africa is the failure to disseminate and implement this law. The proposal has been made on the adoption of an Additional African protocol to reinforce international humanitarian law to prove its relevance and compliance to the prevailing realities of the continent, i.e. ‘Africanisation of international humanitarian law’. As a follow up to the Grand Bay Declaration and Plan of Action, the issue that needs to be addressed is how international humanitarian law can become an integral part of the African jurisprudence.”

³¹ It is worth noting that the African Charter on the Rights and Welfare of the Child, which was adopted on 11 July 1990 by the Assembly of Heads of State & Government and came into force on 29 November 1999, stipulates in Art. 22:

“Armed Conflicts

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of the international humanitarian law applicable in armed conflicts, which affect the child.
2. (...).
3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.”

the Child in Nairobi in February 2003, during which the ICRC was recognized as a partner that had shown “its willingness to collaborate with the Committee in technical support”.³²

International humanitarian law was given due consideration during the Second Expert Meeting on the Protocol to the African Charter of People’s and Human Rights, held in Addis Ababa in March 2003 and related to the rights of women, with the inclusion of a new Article 11 dealing with the protection of women in armed conflicts.³³

As a further example of cooperation, the ICRC and the African Commission on Human and People’s Rights issued a joint publication in 2003 to spread knowledge of international humanitarian law in governmental and non-governmental circles. The ICRC also stepped up its activities and helped to run working groups on humanitarian law or other related topics in the NGO Forum preceding the ACHPR sessions. Respect for humanitarian law also featured on the AU’s social and health agenda during the OAU-AU transformation process. At the First Conference of AU Ministers of Health, held in Tripoli in April 2003, it was recommended that international humanitarian law be integrated into medical practices during armed conflicts.³⁴

In the revised OAU Algiers Convention on the Conservation of Nature and Natural Resources, which was negotiated in Nairobi in January 2002 in line with the spirit of international humanitarian law, the new Article XV entitled “Military and hostile activities” calls on the parties to

³² See Report of the Interim Chairman on the Second Meeting of the African Committee of Experts on the Rights and Welfare of the Child, AU Document Assembly/AU/9(I), Maputo, 4-8 July 2003, p. 24.

³³ See Art. 11 of the Protocol on the Rights of Women in Africa to the African Charter on Human and People’s Rights, adopted by the 2003 Summit in Maputo:

“Protection of Women in Armed Conflicts

1. States Parties undertake to respect and ensure respect for the rules of international humanitarian law applicable in armed conflict situations, which affect the population, particularly women.
2. States Parties shall, in accordance with the obligations incumbent upon them under the international humanitarian law, protect civilians including women, irrespective of the population to which they belong, in the event of armed conflict.
3. States Parties undertake to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction.
4. States Parties shall take all necessary measures to ensure that no child, especially girls under 18 years of age, take a direct part in hostilities and that no child is recruited as a soldier.”

³⁴ Report of the First AU Conference of African Ministers of Health, AU Document (CAMH/MIN/Rpt. (I) Rev. 1, p. 21.

take practical measures such as refraining from employing or threatening to employ methods or means of combat which are intended or may be expected to cause severe harm to the environment.³⁵

International humanitarian law was furthermore cited during the OAU-AU transformation process as an issue for cooperation between the AU and civil society. Chapter VII of the Report of the First OAU-Civil Society Conference of June 2001 in Addis Ababa was devoted to “International humanitarian law – Role for civil society in Africa” and recommended more cooperation in AU-civil society relations in promoting that law. In addition, paragraph 6(f) of the Conference Recommendations called for the “promotion of human and people’s rights and the respect for international humanitarian law” as an integral part of the functions of a Regional Coordination Conference on Peace and Development in Africa.³⁶

International humanitarian law was likewise given due consideration in establishing the structures and functions of the various Departments and Directorates and of the AU Commission, although it is of particular relevance to the Peace and Security Department that deals directly with armed conflicts and is a tool for the functioning of AU organs such as the Peace and Security Council, the African Stand-by Force and the Peace Support Operations. Administrative responsibility with regard to international humanitarian law was assigned to the Political Department, a core function of which is to “monitor the implementation of international humanitarian

³⁵ See Report of the Interim Chairperson on the Revision of the 1968 African Convention on the Conservation of Nature and Natural Resources, Executive Council, Third Ordinary Session, Maputo, 4-8 July 2003, AU Document EX/CL/50 (III) Rev. 1, pp.12-13:

“Revised African Convention on the Conservation of Nature and Natural Resources
Article XV. Military and Hostile Activities (New)

1. The Parties shall:

- a) take every practical measure, during periods of armed conflict, to protect the environment against harm;
- b) refrain from employing or threatening to employ methods or means of combat which are intended or may be expected to cause widespread, long-term, or severe harm to the environment and ensure that such means and methods of warfare are not developed, tested or transferred;
- c) refrain from using the destruction or modification of the environment as a means of combat or reprisal;
- d) undertake to restore and rehabilitate areas damaged in the course of armed conflicts.

2. The Parties shall cooperate to establish and further develop and implement rules and measures to protect the environment during armed conflicts.”

³⁶ See “Building partnership for promoting peace and development in Africa”, report and main conclusions of the First OAU-Civil Society Conference, Addis Ababa, 11-15 June 2001, pp. 138-145 and 276-277.

law by Member States” through its Humanitarian Affairs, Refugees, and Displaced Persons Division.³⁷

The incorporation of international humanitarian law was encouraged by the ICRC and the OAU/AU through joint promotional initiatives during the OAU-AU transformation process,³⁸ and was eventually enshrined in the decisions of the Councils of Ministers and Heads of State. Between 1999 and 2003, for instance, a number of resolutions on humanitarian law were passed by the OAU and then the AU, in particular:

- Decision CM/2264 (LXXVII) proposed by the Republic of Sudan and adopted in Durban in July 2002 and related to the Implementation and Universality of the Prohibition, Development, and Production of Chemical Weapons;
- Decision EX/CL/Dec.46 (III) of 4-8 July 2003 on the Situation of Refugees, Returnees, and Displaced Persons, which in Paragraph 7 condemned the “serious acts of violence perpetuated against civilian populations including refugees and displaced persons and urged all parties in the conflict to scrupulously observe the International Humanitarian Law”;
- Decision EX/CL/Dec.47 (III) of 4-8 July 2003 on the Report of the First Ministerial Conference on Human Rights in Africa in Kigali, which specifically referred to the ICRC and UNDP, OHCDH, UNHCR UNICEF and UNESCO as partners in human rights and IHL on that continent; and
- Decision EX/CL/Dec.63 (III) of 10-12 July 2003 on the Global Report on Violence and Health, which called on member States to facilitate coordinated access for humanitarian organizations to all victims of armed conflicts

³⁷ See “Report of the Permanent Representatives Committee on the proposed structure, human resource requirements, and conditions of service for the staff of the Commission of the African Union and their financial implications”, AU Document EXT/EX/CL/6(III). Sun City, 21-25 May 2003, pp. 98-99.

³⁸ Such as the OAU-UNHCR Special Conference in Conakry (2000), the Pan African Forum for Children in Cairo (April 2001) ICRC-OAU round tables (March and November 2001), the OAU Commission on Refugees Session (February 2002), the African Committee on the Rights and Welfare of the Child (April 2002), the ICRC-OAU Brainstorming Day (April 2002) and the Follow-up Meeting on the Comprehensive Implementation Plan (May 2002). The OAU and ICRC also cooperated in raising awareness, during the regional meetings of Ministers of Education in Yaounde (2000), Nairobi (2001) Tripoli and Maputo (2002) and the UNESCO Ministerial Conference of Education in Dar es Salaam (2002), of the ICRC’s “Exploring Humanitarian Law” (EHL) programme as part of the African Education Decade. Respect for IHL was also expressed by the incorporation of its rules in the June 2000 Algiers Agreement on the Ethiopian-Eritrean War and the January 2002 Buergerstock Agreement on the Nuba Mountains between the government of Sudan and the Sudan People’s Liberation Movement (SPLM).

and internal violence, and to do so on the basis of IHL, which guarantees respect for the neutrality of medical missions during armed conflicts. The Decision also proclaimed the year 2005 as the “African Year for the Prevention of Violence”.

The integration of humanitarian law concerns in the OAU-AU transformation process was a major policy reversal, as Ambassador Sam Ibok, at that time OAU Director for Political Affairs, observed:

“I believe that one of the challenges before us is to ensure that even as we haste (sic) to establish the Union, the critical issues of human rights and humanitarianism will be given their rightful place in the scheme of things in the Union. I am of the view that these issues should not be treated as secondary or peripheral issues as the OAU was always tempted to do but made central to the work of the Union.”³⁹

Challenges and possibilities

Despite the ten years of cooperation in promoting and spreading knowledge of humanitarian law and the activities of the ICRC and the attempts to incorporate humanitarian law in the OAU-AU transformation process between 1992 and 2002, a symposium organized in Addis Ababa in August 2003 by the African Diplomatic Club with the ICRC’s support showed that there was still a significant lack of understanding of international humanitarian law and issues concerning the International Red Cross and Red Crescent Movement.

Prominent sources of misunderstanding were the “ownership” of international humanitarian law, including its so-called “Africanisation”, the role of humanitarian law in facing new challenges such as international terrorism, or the cooperation between the ICRC Permanent Mission in Addis Ababa and the African humanitarian NGOs. The operational presence of the ICRC and its assistance and protection role in some African conflicts may also not be fully understood, for unlike other organizations, the ICRC does not focus on a precise category of persons such as children, women, the wounded, etc., but adopts a more comprehensive operational approach covering *all* victims of armed conflict. Its response is nevertheless adapted to the needs of each of the categories concerned; for instance a detained woman needs specific protection and an unaccompanied child needs specific solutions to its problems.

³⁹ See ICRC-OAU (7 May 2002), *op. cit.* (note 18), p. 50.

This aspect came out in the debate on internally displaced persons: ICRC activities on their behalf are integrated in its wider response in aid of the civilian population as a whole, which implies, for instance, that the needs of the resident population must be taken into consideration as well.

These difficulties have resulted from differences between the mandate of the ICRC and that of most African organizations, the latter's largely exclusive focus on humanitarian assistance as opposed to the ICRC's broader approach encompassing humanitarian protection, the poor integration of humanitarianism into the agendas of African organizations, the lack of adequate human and financial resources for humanitarian work in Africa, and the prevalence of impunity for State parties and armed opposition groups.

The Director of Political Affairs of the AU Interim Peace and Security Directorate, Ambassador Ibok, summed up these challenges to the AU in May 2002 as follows:

"Often also, the picture that emerges on our attitude towards International Humanitarian Law in Africa has been one of fragmented, unregulated and uncoordinated action at best, and/or of total disregard at worse. Often, the virtual absence of national structures capable of coordination and providing policy guidance on respect of International Humanitarian Law, have eroded the collective credibility of our countries and institutions."⁴⁰

Besides these challenges, however, the advent of the African Union has created new possibilities and opportunities for ICRC cooperation with it and with other international organizations based in Africa to develop a more assertive role in promoting and providing training in international humanitarian law.

For instance, in addition to the planned Stand-by Force most African Regional Economic Communities (RECs) have developed their own mechanisms for peacekeeping and humanitarian action.⁴¹ In their training programmes for peace support and humanitarian operations, these regional military

⁴⁰ *Ibid.*, p. 50.

⁴¹ Such as the Political and Humanitarian Affairs Department and the Conflict Early Warning Network (CEWARN) in IGAD; the Department of Operations, Peace-keeping, and Humanitarian Affairs (DOPHA) and the stand-by army ECOMOG in ECOWAS; the Multinational Force (FOMAC) and the early warning system (MARAC) in ECCAS; and the Southern African Regional Police Chiefs Cooperation Organization (SARPCO), the SADC Peace-keeping Center and the SADC Disaster Management Steering Center (SDMSC) in the Southern Africa region.

and security arrangements might increasingly rely on the ICRC for expertise in teaching the law of armed conflict, notably by briefing their facilitators, special envoys and liaison officers, as well as military and police observers to be sent to conflict situations in Africa.

The ICRC has signed cooperation agreements or envisages closer cooperation with some of these RECs, which since 2002 have become full members of the African Union.⁴²

To enhance the said Communities' role in promoting international humanitarian law, it might be advisable for the Protocol on relations between the AU Commission and the RECs to ensure that the promotion of international humanitarian law is one of the areas of cooperation and coordination. The ICRC Permanent Mission to the AU will also coordinate more closely with the other ICRC delegations in charge of institutional relations between the ICRC and the continent's Regional Economic Communities.

Moreover, there is commitment on the part of the AU specialized organs to strengthen cooperation with humanitarian organizations working in Africa. At its meetings during the OAU-AU transformation process, the AU Commission on Refugees recommended the need to "develop in concert with Member States and in close collaboration with our partners, particularly the UNHCR, the ICRC, the WFP, WHO, and UNICEF, a framework policy and modalities for providing a more targeted, speedy assistance directed to the affected populations".⁴³

The AU's concern about issues like terrorism,⁴⁴ children in armed conflicts, health and armed conflicts and education in humanitarian principles within its African Education Decade could also create other opportunities and possibilities for cooperation with the ICRC.

In addition, the ICRC should take advantage of the envisaged new AU organs such as the African Parliament, the African Court of Justice and

⁴² For instance, in February 2001 the ICRC and ECOWAS signed a Memorandum of Understanding whereby both organizations agreed "to co-operate closely and to consult each other regularly on matters of mutual interest", see Ewumbue-Monono, *op. cit.* (note 6), p. 85.

⁴³ See Report of the Interim Chairperson on the Situation of Refugees, Returnees, and Displaced Persons in Africa, AU Document EX/CL/44(III), Maputo, 4-8 July 2003, p. 11.

⁴⁴ The 1999 Algiers OAU Convention on the Prevention and Combating of Terrorism, for instance, included references to international humanitarian law. Indeed Art. 22, 1 reads: "Nothing in this Convention shall be interpreted as derogating from the general principles of international law, in particular the principles of international humanitarian law, as well as the African Charter on Human and Peoples' Rights."

ECOSOC as fora for cooperation. The African Parliament, for instance, might be instrumental in mobilizing support for the ratification of international humanitarian law instruments by member States, while the African Court of Justice might provide an opportunity to examine issues related to impunity and could play a vital role in the implementation of humanitarian law. The Niamey Declaration of 20 February 2002⁴⁵ following the African Parliamentary Conference on International Humanitarian Law for the Protection of Civilians during Armed Conflicts underscored the commitment of African parliamentarians to promote IHL on their continent. The ICRC could contribute to the development of African judicial institutions whose jurisdictions would include the application of international humanitarian law, especially those rules related to war crimes and crimes against humanity. Initiatives have long been taken by the ICRC to encourage and support States in their efforts to integrate international law into their national legislation. In 1995 a specific unit, the International Humanitarian Law Advisory Service, was established at ICRC headquarters, and there are now three of its regional legal advisors in Africa, based respectively in Pretoria (South Africa), Abidjan (Côte d'Ivoire) and Cairo (Egypt).

The AU's ECOSOC could also be an important forum for cooperation with African humanitarian organizations and to make known tools such as the 1994 Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief.⁴⁶ By May 2003, as many as 300 African humanitarian organizations and think-tanks with which the ICRC and AU could cooperate in promoting international humanitarian law in Africa had observer status within the ACHPR. According to its Strategic Plan of Action for 2002-2006, the ACHPR is supposed to organize eight seminars, most of which are relevant to the ICRC because they will discuss the status of the law's implementation on that continent.

Finally the African Union's programmes, like NEPAD and those adopted by the AU Conference on Security, Stability, Development and

⁴⁵ African Parliamentary Conference on International Humanitarian Law for the Protection of Civilians during Armed Conflict – Final Declaration, Niamey, 18-20 February 2002, available at <<http://www.ipu.org/splz-e/niamey02.htm>>.

⁴⁶ This code sets standards of behaviour; it is not about operational details, but seeks to maintain high standards of independence, effectiveness and impact to which disaster response aspires. Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organisations (NGO's) during Disaster Relief Operations, adopted at the 26th International Conference of the Red Cross and the Red Crescent, 3-7 December 1995, Conference document 95/C.II/2/1, Annex IV.

Cooperation in Africa (CSSDCA), could provide new opportunities for cooperation in promoting international humanitarian law in Africa. The CSSDCA's peace and security programmes, as well as its relationship with civil society, could include the promotion of international humanitarian law, while NEPAD could also develop dialogue between the ICRC and the African private sector to promote corporate responsibility for humanitarian action there.⁴⁷

Conclusion

Prior to 1994, when the ICRC together with the OAU started holding seminars for African diplomats in Addis Ababa, little mention was made of its humanitarian activities. Since then, however, specific reference has been and continues to be made to international humanitarian law and the ICRC in a number of OAU and AU documents and member States are urged to give political support to the ICRC. This, too, implies recognition for its efforts and activities in Africa.

The integration of humanitarian law principles into OAU resolutions has given them an African stamp and ownership, which facilitate understanding and acceptance and therefore should help to enhance implementation of the law. The problem of acceptance is a crucial factor when seeking to disseminate ideas among foreign target groups with different cultural backgrounds.⁴⁸

There are many new opportunities for cooperation in promoting international humanitarian law in Africa between the ICRC, the AU, the RECs, and African NGOs, in the AU's new structures such as the Pan African Parliament, the African Court of Justice and the Peace and Security Council, and with ECOSOC – notably in improving civil-military relations and humanitarian action in Africa. The ICRC and the AU could, for instance, hold regular consultations with humanitarian NGOs in Africa within the new African Union's ECOSOC mechanism so as to promote the adoption of the 1994 Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief. Both organizations could also cooperate in devising a framework to incorporate developmental elements in the ICRC's humanitarian

⁴⁷ See Gilles Carbonnier, "Corporate responsibility and humanitarian principles: What relations between the business and humanitarian worlds?", *International Review of the Red Cross*, Vol. 83, No. 844, 2001, pp. 947-967.

⁴⁸ See Ewumbue-Monono, *op. cit.* (note 6), p. 80.

operations in Africa, as well as inserting humanitarian principles in the *calabashes* (the four main components of the process) of the African Union's Conference on Security, Stability, Development and Co-operation in Africa.

The final take-off of the African Union on 17 September 2003, with its new executive put in place, might well require an evaluation and review of the May 1992 OAU-ICRC cooperation agreement.

Within the ICRC dissemination has always been an ongoing process requiring innovative ideas and systematic evaluations to enable the adjustments and improvements of projects while lessons are learned for future planning and the accommodation of new challenges in humanitarian work.

Ten years on, an evaluation of that agreement and even a review for amendments as provided for in its Article IX (2) would be appropriate, especially as the OAU has been transformed into the African Union with new opportunities for the promotion of international humanitarian law in Africa. Such a review will certainly require cooperation between the ICRC and the new specialized institutions of the emerging African Union, above all with the Peace and Security Council and the envisaged African Stand-by Force, the Pan African Parliament, the African Court of Justice and ECOSOC, to push for greater compliance with humanitarian law on the African continent.⁴⁹

Like other bodies of international law, international humanitarian law is too often confronted with insufficient respect for its rules. This does not result solely from the inability in practice of States and armed groups engaged in armed conflict to abide by their legal obligations. The main problem lies in the lack of political will. Future cooperation between the ICRC, on the one hand, and the AU and other international organizations in Africa on the other should therefore be increasingly focused on reaffirming the relevance of the law and improving compliance with international humanitarian law, and not only on awareness-building.⁵⁰

⁴⁹ See Ewumbue-Monono, *op. cit.* (note 6).

⁵⁰ The ICRC organised in the course of 2003 five regional experts meetings (two of which in Africa) to improve compliance with international humanitarian law. These seminars took place in Cairo, Pretoria, Kuala Lumpur, Mexico City and Bruges (Belgium), with the main aim of generating debate on ways of operationalising common Article 1 to the Geneva Conventions, which obliges States Parties not only to avoid contributing themselves to violations of the law by belligerents, but also to ensure respect for international humanitarian law by the belligerents, therefore avoiding double standards and promoting a principle oriented approach. In Pretoria the seminar was organised with the support of the South African Ministry of Foreign Affairs in June 2003. The report will be available in 2004. See *Temba*, ICRC Pretoria publication, No. 6, second quarter of the year 2003, Ref.: ISSN 1681-7958.

Résumé

La promotion du droit international humanitaire par le biais de la coopération entre le CICR et l'Union africaine

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Cet article examine la coopération du Comité international de la Croix-Rouge (CICR) avec des organisations diplomatiques africaines telles que l'Union africaine (UA) dans le but de diffuser le droit international humanitaire au sein de la communauté diplomatique africaine. Décrivant les contextes institutionnels et politiques nécessaires à la promotion du droit humanitaire sur le continent africain et à la réussite des efforts en matière de diplomatie humanitaire, l'article donne un aperçu des résultats obtenus lorsque le CICR a coopéré avec l'Organisation de l'unité africaine (OUA) pour diffuser le droit international humanitaire entre 1992 et 2002. Les auteurs étudient également la manière dont le droit international humanitaire a été incorporé dans le processus de transformation de l'OUA en UA entre 1999 et 2002. Ils montrent en outre les difficultés et les possibilités que présentent les efforts déployés par le CICR dans le domaine de la diplomatie humanitaire, et celles d'une éventuelle coopération future avec l'UA et d'autres organisations internationales en Afrique pour une meilleure mise œuvre du droit humanitaire et la promotion d'une action humanitaire indépendante.

