

## The ICRC: a unique humanitarian protagonist

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### **Abstract**

*The International Committee of the Red Cross, associated with four Nobel Peace Prizes, is a unique and widely respected humanitarian actor. There were times in its past, however, when it was not as independent, neutral and impartial as is sometimes pictured. Since about 1970 it has made important changes in its structure and functioning so as to improve on the past. In contemporary times the ICRC has carved out an enduring place for neutral humanitarianism in conflicts, but one that is not free from controversies and challenges.*

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The International Committee of the Red Cross and its multifaceted activity since 1863 present a complex picture full of paradoxes. The organization is primarily private but with public dimensions, legally speaking being a Swiss private association but recognized in public international law. It espouses liberal ends but conservative means, championing the worth of the individual but proceeding cautiously on the basis of state consent – which can be slow to manifest itself. It professes to be non-political but is inherently part of humanitarian politics – the struggle to establish humane values in public policy. It promotes international humanitarian law (IHL) but issues public legal judgments mostly as a last resort, preferring to emphasize pragmatic – if principled – service. It is a product of, and is generally sustained by, Western (Judeo-Christian) values, but presents itself as a

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secular and global Good Samaritan. It is part of an international network officially devoted to universal humanitarianism, but one characterized historically by strong nationalism, including, in the past, Swiss nationalism. It emphasizes a limited mandate, but over time has expanded its activities broadly. Understandably, Caroline Moorehead wrote that “the International Committee itself remained a curious animal”.<sup>1</sup>

As for general evaluations, two views compete. The first of these presents the ICRC as a heroic leader with impressive accomplishments; the second sees the organization as a marginal social worker on the periphery of the big issues of world affairs. This debate entails a discussion as to whether the ICRC, with its limited mandate, and tied as it is to states and the state system of international relations, can really do very much to protect human dignity. It is a discussion centred on the dilemmas of, and alternatives to, Red Cross neutral humanitarianism in conflicts.

There are also competing views about the organizational culture of the ICRC. The more positive view sees the organization as constantly striving to make the changes necessary to adjust to new realities, so as to ensure minimal standards of humanitarian protection. The more critical view sees the ICRC as ultra-slow to change, still controlled at the top by excessively cautious traditionalists who are much affected by Swiss society and political culture, including some of its negative manifestations – like being risk-averse, unilateralist and slow to recognize gender and racial equality.

### **Heroic leader vs. marginal social worker**

On an impressive range of issues related to conflict the ICRC was one of the first to see humanitarian need, then – through both field action and more general activity – to engage with public authorities to do something about the problem. This pattern was evident from the very beginning with regard to medical assistance for the wounded in international war. Henry Dunant both responded to and publicized the shocking neglect that greeted those wounded in military service at the battle of Solferino in 1859. Belligerents callously left not only wounded opponents but even their own casualties to suffer and die. Between then and today the situation is decidedly different, at least in legal theory and certainly in the practice of the more affluent and better organized belligerents. All modern military establishments recognize a moral and legal obligation to protect the war wounded from unnecessary suffering. The ICRC’s leadership in this regard has had a broad and lasting impact.<sup>2</sup>

1 Caroline Moorehead, *Dunant’s Dream: War, Switzerland, and the History of the Red Cross*, Harper Collins, New York, 1999, p. 175.

2 While Dunant’s and then the ICRC’s motivation were strictly humanitarian during 1859–64, states had mixed motives – humanitarian, but also expedient in the sense of shoring up war as a viable policy option that was acceptable on the home front. See especially John F. Hutchinson, *Champions of Charity: War and the Rise of the Red Cross*, Westview Press, Boulder, 1996.

## Medical services as starting point

The fact that certain contemporary irregular fighting forces do not provide medical services to their members does not detract from what the ICRC has helped to accomplish over time. There is no rethinking of fundamental principles, namely adequate medical services in war provided on a neutral basis. True, for a considerable time the ICRC itself got out of the business of systematic planning for medical care in conflicts. But this only shows that the obligation to provide that assistance was accepted by states and national RC<sup>3</sup> societies to such an extent that the ICRC mistakenly thought that its far-reaching and persistent role was not needed.<sup>4</sup> After the Nigerian civil war the ICRC made substantial changes, featuring the appointment in 1975 of a Chief Medical Officer at headquarters. Since then, not just medical planning but medical operations have been one of the leading activities of the ICRC. In this sense the ICRC, in returning to its origins, has come full circle.

Were Dunant and his successors naive, used by states to keep war going when the human horrors of war, if left untreated, would have ended a brutal method of conflict resolution? Is war on the way out anyway, like foot binding, cock-fighting, jousting and slavery, and the ICRC guilty of prolonging war's inevitable demise?<sup>5</sup>

Major states know that peace is much preferable to war and that it has been since at least 1914.<sup>6</sup> From their own experience leading military powers have learned that owing to certain factors – military technology, national bureaucratic development and control, and mass democracy plus conscription – traditional war among the major states has become so horribly destructive that it is no longer worth the game. These factors, rendering traditional great-power war too destructive for rational choice, have been much more important than any ICRC and broader Red Cross impact might have been in terms of keeping war viable by making it tolerable.

Beyond what Robert Gilpin called hegemonic war,<sup>7</sup> however, war remains an all-too-evident choice for conflict resolution at lower levels of destruction. This is obvious in contemporary times both in civil wars and when one state seeks to exploit its putative power advantage over others, for example, the United States versus the Taliban's Afghanistan, the United States versus Saddam's Iraq, Iraq versus Kuwait, Israel versus Palestinian radical groups. In the war calculation for these types of situation, the initiator obviously believes that military objectives can be achieved at tolerable cost, including cost measured in terms of persons killed,

3 I use the abbreviation RC throughout this article to denote Red Cross, Red Crescent and/or Red Crystal.

4 Henry Dunant would have been shocked, no doubt, to learn that the ICRC in the 1960s had a chief medical officer who showed up at headquarters "every Thursday afternoon" (internal document in the possession of the author). Its medical planning at that time remained "*dérisoires*" (insignificant); Philippe Ryfman, *La question humanitaire*, Ellipses, Paris, 1999, p. 79.

5 For an argument about the declining utility of war, at least among the great powers, see John Mueller, *Quiet Cataclysm: Reflections on the Recent Transformation of World Politics*, HarperCollins, New York, 1995.

6 For the argument that the idea of peace is now accepted as a dominant value among major states see Michael Mandelbaum, *The Ideas that Conquered the World: Peace, Democracy, and Free Markets in the Twenty-First Century*, Public Affairs, New York, 2003.

7 Robert Gilpin, *War and Change in World Politics*, Cambridge University Press, Cambridge, 1981.

wounded and otherwise harmed. In democracies at least, there is usually attention to how much humanitarian cost the public will tolerate. But the role of Red Cross medical relief and other types of Red Cross activity has never been documented as being a very important part of the decision to go to war.

### Expanding humanitarian protection

Second in the list of ICRC accomplishments is the fact that, beyond enhancing medical relief in war, ever since the 1860s and 1870s and then especially in the 1930s, the ICRC was one of the first and no doubt the most persistent in trying to expand humanitarian protection from international to internal wars. While the initial efforts were decidedly limited in impact, the work in particular of Marcel Junod in the Spanish Civil War did much to induce official thinking to devote more attention to the horrors of brutal civil wars. Both Article 3 common to the four 1949 Geneva Conventions and Additional Protocol II thereto of 1977 – the first mini-treaty on non-international armed conflict – largely owe their existence to earlier field work by the ICRC and its subsequent drafting and other efforts to promote the adoption of modern international humanitarian law for civil wars.

These parts of IHL are important not so much because of legal technicalities, but because IHL is codified public policy universally accepted as the authoritative statement of which norms should prevail in war. True, in reality – compared with legal theory – there is often no clear distinction between international and internal war, and a number of authorities have recognized that this current bifurcation of IHL is often unworkable.<sup>8</sup> The central point remains, however, that the quest for humanitarian constraints on the waging of war has been extended very broadly, even when what is being fought over is essentially control of national government and/or national resources. The ICRC has played a major part in broadening the scope of humanitarian concern from international to internal war.

In this regard the legal technicalities have had some importance. After the cold war, courts such as the International Criminal Tribunal for the former Yugoslavia were seen to hold individuals responsible for war crimes in internal war, partly because much earlier the ICRC had refused to confine its activity to international war. Instead, the organization had sought to address the plight of individuals in the disintegrating Ottoman Empire, in the tsars' collapsing empire and in Spain in the interwar years. As in medical assistance for wounded combatants in international war, the ICRC led the way in showing broad concern for the plight of victims of internal wars by taking practical action on the ground and then by legal drafting.<sup>9</sup>

8 See especially James G. Stewart, "Towards a single definition of armed conflict in international humanitarian law: a critique of internationalized armed conflict", *International Review of the Red Cross*, Vol. 85, No. 850 (2003), pp. 313–50.

9 In the quest to limit war's destructiveness we should not forget the role of others, such as that of Francis Lieber in the legal regulation of civil war, or of Florence Nightingale and Clara Barton in the provision of medical assistance. It seems that Clara Barton was closer to Dunant's vision than Florence Nightingale. The latter was interested only in her own compatriots, while the former wanted a more

One culmination of these developments was the 2006 *Hamdan* case, in which the US Supreme Court stated that 1949 Common Article 3 had become the baseline of minimal humanitarian protection in all armed conflicts and was consequently relevant as a binding standard for US military commissions at the detention facility at Guantánamo and, by implication, for the treatment of prisoners there and elsewhere when related to armed conflict.<sup>10</sup> What started as a non-legal activity in the 1870s, namely ICRC concern for victims of violence *within* the Ottoman Empire, thus resulted in a major court judgment in a major state in a major transnational conflict some 135 years later.

### Visits to prisoners of war

Third, the ICRC took the lead, particularly during and after the First World War, in trying to ensure that in international war all combatants placed out of action, and not only sick and wounded ones, were given humane treatment. Visiting the European prisoner-of-war (POW) camps from 1917 to stop reprisals and provide medical relief, and seeing other issues incompatible with basic human respect for captive combatants, the ICRC showed first its moral creativity and then its customary legal follow-up. Drawing vaguely on the Hague Conventions, in which it had not played any substantial part and which gave it no specific supervisory or visiting rights, the ICRC nevertheless broadened and systemized its concern for captive combatants. As in the case of Dunant's original efforts for wounded soldiers, states did not tell the ICRC to do this, even if they approved ICRC practice after the fact. Once again, although without any authorization in the 1906 Geneva Convention, the ICRC took the practical lead in responding to human need in conflicts as it does for the victims of internal wars today. The 1929 Geneva Convention for Prisoners of War was based largely on its pragmatic, moral and non-legal action during the First World War.

Nowadays humane treatment of POWs as verified by ICRC visits has become, at least in many parts of the world, a major issue in conflicts, a benchmark for the requisite minimum of civilized behaviour. It is in fact much safer in many modern conflicts to be an official combatant than a civilian, due not only to the way in which many wars are fought (with intentional attacks on unarmed civilians) but also to treatment while under enemy control. By virtue of reciprocity and military honour, POWs often fare better than civilians. POWs attracted extensive legal attention in 1907 and again in 1929, whereas despite

neutral concern for all victims. Over time, however, the American Red Cross, like the British, has adopted the Nightingale nationalistic approach rather than the Barton–Dunant neutral one.

10 *Hamdan v. Rumsfeld*, 29 June 2006. The Supreme Court, while courageous in interjecting IHL into the US “war on terrorism” in such a way as to challenge highly questionable policies by the George W. Bush administration, left itself open to certain criticisms. Some prisoners at Guantánamo, seized outside situations of armed conflict, did not fall under IHL. Also, insofar as detainees were taken prisoner in Afghanistan during winter 2001–2, objectively speaking they were legally protected by those parts of the 1949 Geneva Conventions pertaining to international war, not just by Common Article 3 thereof pertaining to internal war.

considerable ICRC efforts it was not until 1949 that civilians obtained broad legal protection.

### Extending protection to political or security detainees

Fourth, another considerable achievement is the attention given by the ICRC to “those detained by reason of events” outside armed conflict, or to “political” or security prisoners. Although public international law has never recognized the concept of political or security prisoners, this has not prevented the ICRC, starting in Hungary and Russia after the First World War, from trying to provide humanitarian protection to this category of detainee. While Amnesty International (AI) has since 1961 done more than the ICRC to publicize what AI came to call prisoners of conscience, the ICRC has been the organization actually to visit security prisoners on a regular basis.<sup>11</sup> In 1935 it created a special commission to deal systematically with the problem of political prisoners.<sup>12</sup> This was almost thirty years before the creation of AI.<sup>13</sup>

The deviation in the usual pattern is that so far the ICRC has not tried to push for recognition and protection in international law for this category of detainee. It believes that definitional problems are great, whereas the political will of states to take positive legal action to tackle the problem is not. The principle of reciprocity that underpins much of IHL, for example with regard to the legal protection of POWs, does not come into play in the same way for “political” prisoners. When a state agrees to ICRC visits to security prisoners, it often sees itself as making a unilateral concession with no connection to the protection of its citizens abroad. Nevertheless, the fact that ICRC visits to places of detention in internal disturbances and tensions have become quite systematic indicates that humanitarian progress can be achieved. In many cases the organization and public authorities both know who “enemy” detainees are. Even without legal parameters, the ICRC and public authorities often reach agreement on the focus of ICRC concern.

11 The concerns of Amnesty International and the ICRC were not, and are not, identical. While AI officially “adopted” and sought the release of only those persons who had renounced violence, the ICRC did not rule out the need for humanitarian protection for those who had engaged in violence in domestic unrest. AI would not adopt Nelson Mandela since he refused to renounce violence to achieve “regime change” in South Africa under apartheid. The ICRC had no such qualms in visiting Mandela. In fact, the more a detainee in a situation short of war could be equated with a combatant in war, the more the ICRC paid attention. The issue is complex, and AI has nuanced its position over time in various ways, for example by opposing torture of any political detainees regardless of their attitude towards violence, but the details of AI’s evolution need not concern us here.

12 Jacques Moreillon, *Le Comité international de la Croix-Rouge et la protection des détenus politiques*, Henry Dunant Institute, Geneva, 1973. It is strange that this authoritative work has never been translated into English.

13 The ICRC and AI nowadays have a mostly close and co-operative relationship. AI has become more active with regard to international humanitarian law, but without challenging the ICRC’s role and emphasis on discretion. The ICRC mostly perceives AI’s publicity campaigns as complementary to its own more discreet activities.

## Care for the civilian population

Fifth, and overlapping with some of the categories above, there is the ICRC's concern for the civilian population in armed conflict and domestic unrest. Although the ICRC started out by addressing the needs of wounded combatants, and then emerged from the First World War better known because of its attention to captive combatants, it is certainly true that the ICRC did not ignore civilians, particularly from that war on. It was clearly ahead of the curve in the 1930s in trying to get public authorities to provide better legal and practical protection for civilians caught up in war situations. One of the bedrock principles of modern humanitarian thinking is that belligerents must make a distinction between combatant and civilian, protecting the latter from suffering not required by military necessity. A person who is not an active combatant must not be made the object of military attack. The ICRC progressively played a large role in developing this core principle.<sup>14</sup>

This does not mean that the ICRC was always well prepared to act in the light of this principle. Its controversial performance in the Nigerian war of 1967–70, when it vacillated and departed from the principles of IHL in trying to attend especially to the civilian population in secessionist Biafra, was not impressive. The ICRC did not deal well with the complexity it faced: the Biafran leader Ojukwu was prepared to sacrifice the welfare of “his” people by opposing international relief supervised by Lagos (an opposition which symbolized his independence and sovereignty), whereas the Geneva Conventions provided for a right of supervision over relief leaving a belligerent's territory. The solution Geneva chose because of its concern for civilians in need but also because of competition with other relief agencies, namely to proceed with relief supplies at its own risk, led to a debacle for the organization, which was widely seen as unfaithful to the principles of IHL and Red Cross neutrality. Even in the Balkans in the 1990s, it was slow to mobilize the necessary resources for civilian relief. Nevertheless, the ICRC has remained a leader in focusing on civilians in conflicts, whether in modern times one speaks of the Balkans, Somalia, Cambodia, former Zaire, Sudan or other places. Its efforts for civilians in those places have been laudable, especially as demonstrated by its final record in the Balkans and Somalia in the early 1990s.<sup>15</sup>

14 The line between combatant and civilian had been blurred by several modern practices such as governmental hiring of “corporate warriors” or private security firms (especially in the United States) and civilian guards armed by governments (especially by Israel in the West Bank). Moreover in the past, as in the Vietnam War, one sometimes found farmers by day who became warriors at night. So the blurring of the line between combatant and civilian is not entirely new.

15 It can be briefly noted that the Fourth Geneva Convention of 1949, intended to protect civilians, mainly focuses on detention and occupation – situations transpiring after major combat. But from the Nigerian civil war on, the ICRC was expected also to protect civilians in the midst of continuing combat – by providing food and other relief in the theatre of war. The legal provisions pertaining to civilian protection in the 1977 Additional Protocols I and II are in fact much more demanding than comparable provisions of 1949.

## Efforts to restore family links

Sixth, and still further in this list of major accomplishments, the ICRC has led the way in what was first called tracing activity and is now more accurately characterized as family linkage efforts. No other organization over time has accomplished so much in restoring contact between members of families divided by conflict. Reflecting this status as well as its expertise, the International Tracing Service at Arolsen, Germany, with a mandate to establish personal facts about victims of the Nazis, is administered by the ICRC (since 1955), although certain governments control the rules of operation. The treaty establishing the Arolsen Tracing Service was amended by the states parties in 2006 to open it to scholarly researchers. The ICRC has worked to maximize personal privacy in the new rules of access and use.

The ICRC has shown creativity beyond the now well-known personal information cards that prisoners of war are legally authorized to send to loved ones. For various categories of detainees, whether civilians falling under the Fourth Geneva Convention of 1949 or security prisoners held in connection with internal unrest, the ICRC has often arranged family visits to places of detention and/or financial payments to distressed families whose chief provider was in custody. The number of family members thus assisted has been quite large in places such as Israeli-controlled territory since 1967 and white-ruled South Africa. In the past few years the ICRC has also made a major effort in conflicts plaguing countries such as former Zaire, Angola and so on to reunite numerous African children with their relatives. Some of these activities are not tracing per se, but form part of the broader realm of protecting family ties, which in turn protects sound mental health for those adversely affected by conflict. Trying to reintegrate former child soldiers into society has become a modern preoccupation in this area of endeavour.

The question of tracing or family reunification has not diminished in importance across time. In 2004, given that US and allied forces then occupying Iraq were not systematically notifying loved ones of Iraqis detained, this traditional ICRC activity took on renewed significance.<sup>16</sup> While the ICRC motivation was humanitarian, as usual there were “political” ramifications. The lack of systematic notification and family visits tarnished the Coalition forces, as well as fuelling Iraqi resentment against the foreign powers.

## Limiting the means and methods of warfare

Seventh, there is the ICRC’s role in general of assuming guardianship over the Hague tradition of trying to limit the means and methods of warfare, and in particular of helping to build opposition to anti-personnel landmines. Perhaps the organization could have limited its focus to victims, declaring that means and

<sup>16</sup> Ian Fisher, “Searing uncertainty for Iraqis’ missing loved ones”, *New York Times*, 1 June 2004, p. A1.



methods were beyond its mandate. But the ICRC had taken a stand on poison gas in the First World War, then helped to promote the 1925 treaty prohibiting poisonous and asphyxiating gases. Perhaps the distinction between the Hague and Geneva legal traditions, between a focus on victims and on means or methods of warfare, was always artificial (the Hague Regulations covered prisoners of war, for example, and the ICRC expanded its work with POWs during the First World War partly in order to implement provisions of those Hague rules regarding reprisals against POWs). Thus the 1977 Protocols additional to the 1949 Geneva Conventions eventually integrated rules on the protection of victims and on means and methods in one single treaty, paving the way for a more comprehensive approach.

In any event, in modern times the ICRC has clearly agreed to address various weapons issues and then did not shy away from opposing some major states, including its main financial donor, the United States, on the issue of a total ban on anti-personnel mines or landmines. In 2006 the ICRC drew renewed attention to the problem of cluster bombs and their use in heavily populated areas, even though once again its biggest donor – the United States – was not enthusiastic about further restrictions on that weapon. To be sure, ICRC action against these landmines and cluster bombs was shared with many other organizations and public figures.

On the landmines issue in particular it was ICRC experience in the field, combined with its penchant for maintaining exact statistics, plus its official contacts and adept lobbying tactics, that helped to arouse widespread revulsion against anti-personnel mines as indiscriminate weapons. Having led the way in developing prosthetic services for victims of landmines in such places as Afghanistan, Cambodia and Angola, the ICRC well knew the misery inflicted, long after the conflict had subsided, on farmers working the land, women fetching wood and water, and children at play.<sup>17</sup> Finally devising appropriate publicity and lobbying measures, not at all its strong point historically, the ICRC made a major effort in the largely successful anti-landmine campaign. It remains to be seen whether similar developments concerning cluster bombs will ensue.

### Integrity in reporting

Beyond these core accomplishments, others – perhaps of different dimensions – can be cited. The organization has constructed an excellent reputation for integrity. If the ICRC says that its delegates have observed a certain situation or condition, justified confidence can be placed in that report.

Yet no organization is perfect in this regard. Just as widely respected human rights advocacy groups have a few blemishes on their record, so ICRC

17 The International Society for Prosthetics and Orthotics awarded the Brian Blatchford Prize to the ICRC at its World Congress in Hong Kong in 2004. The prize recognized the ICRC's "innovative achievements, particularly in the design and development of ... prosthetic services in developing countries". ICRC press release 04/91, 6 August 2004.

officials can recall a few mistakes in reporting. Amnesty International has to admit from time to time that some of its reports or testimonies are mistaken; it got caught up, for example, in Kuwaiti propaganda and erroneously said that invading Iraqi forces had taken premature babies from incubators in 1991.<sup>18</sup> There were a few other examples of AI statements not proving accurate.<sup>19</sup> Likewise an ICRC delegate here or there has referred to a “fact” in public without sufficient checking, or someone in the Geneva office has picked up a figure from a UN agency or some other source and circulated it without proper care.<sup>20</sup> On balance, however, over the years the ICRC has been extremely careful about facts, even if this meant that it did not, for instance, join Western networks in reporting very high numbers of rapes in the Balkan wars. Its delegates could not verify those numbers, so the organization marched to its own drummer on that issue. The ICRC’s care with facts has contributed to an excellent reputation for integrity and veracity.<sup>21</sup>

There is, however, the matter of the organization choosing not to follow up properly facts reported by its delegates. Here the leading historical example is not really the Nazi Holocaust, because its delegates did not have access to the death camps during 1942–4. The better example comes from the Abyssinian–Italian war of the 1930s, when ICRC headquarters decided not to pursue vigorously certain Italian violations of humanitarian standards.<sup>22</sup> Once again we find that ICRC delegates were reporting accurately from the field – although a few errors did occur – but the Geneva headquarters, for whatever reasons, tilted toward Mussolini’s government – in part by downplaying such things as intentional Italian attacks on RC field hospitals. ICRC leaders declined to publicize the facts objectively and also failed to take up such matters vigorously with Mussolini and others in Rome.

So while the record shows exceptional integrity in the reporting of facts, ICRC decisions about going public and about vigorous quiet diplomacy on the basis of those facts are more open to question. These matters affect, of course, the ICRC image of neutrality. The guidelines on going public in the event of violations of international humanitarian law and other fundamental rules pertaining to violent conflicts have recently been reviewed and supplemented to take account of

18 Kirsten Sellars, *The Rise and Rise of Human Rights*, Sutton, Phoenix Mill, 2002, pp. 153–6.

19 See David Gonzalez, “Police doubts about attack cast cloud on rights group”, *New York Times*, 6 May 2002, p. A3, regarding a staged attack on a Guatemalan rights activist on the US west coast, about which AI-USA sent out an alert.

20 In 1992 the ICRC relied on the United Nations to give a total for the number of anti-personnel mines deployed around the world. This figure turned out to be exaggerated, and the ICRC then altered its public statements. See Ilaria Bottigliero, *120 Million Landmines Deployed World Wide: Fact or Fiction?*, Foundation Pro Victimis, Geneva, 2000, esp. p. 77.

21 André Rochat was an extraordinary ICRC delegate in the field, but later as an ICRC regional official dealing with the Middle East in general his integrity and veracity were questioned, particularly by Israel, and not always without reason. The first part of this interesting story is found in André Rochat, *L’Homme à la Croix: Une Anticroisade*, Editions de L’Aire (no place of publication indicated), 2005. The second part of the story is tellingly absent from this memoir.

22 Rainer Baudendistel, *Between Bombs and Good Intentions: The Red Cross and the Italo-Ethiopian War, 1935–1936*, Berghahn Books, New York, 2006. This well-researched and well-considered analysis deserves wide reading.

various developments that have affected the environment in which the organization works, such as the proliferation and increasing diversity of parties involved in situations of violence, ad hoc international tribunals and the International Criminal Court and changes in the world of communications. They were published to increase the predictability and neutrality of the institution.<sup>23</sup>

Returning to the positive ledger, we can note that among agencies with field operations in conflict situations, the ICRC was the first to establish clear doctrine – or general policy – on a wide range of issues. And ICRC staff members were expected to adhere to these guidelines. If we compare the organization with the UN's refugee agency (the Office of the UN High Commissioner for Refugees – UNHCR) or Médecins sans Frontières (MSF), for example, the ICRC alone has established clear policy guidelines on such matters as publicity versus discretion, or what situation triggers interest in political detainees. Likewise, after the cold war it was the ICRC that developed clear policies on how to make its field delegations as secure as possible in the face of possible attacks. Other agencies with field operations came to the ICRC for guidance on this perplexing issue, for it was the organization that from the early 1990s developed systematic training, including simulation, on security matters.

Going still further, by 2003 the ICRC had developed a most remarkable reporting system in the midst of conflict. In the war in Iraq that year, the ICRC sent electronic reports to the rest of the world concerning such matters as the state of Iraqi hospitals visited by its delegates, thus providing an instantaneous and independent view of certain humanitarian issues not controlled by any belligerent. For an organization with a woeful record on public information historically speaking, that represented an important shift – although incomplete.

When the ICRC did make its public reports about Iraqi hospitals, it carefully avoided any reference to the extent of civilian casualties and the general subject of collateral damage. It made no attempt to ascertain how many hospital patients were civilians as compared with combatants, and whether the extent of civilian harm might exceed the bounds of permissible collateral damage. So while the ICRC broke new ground in eyewitness, “real time” reporting, it avoided any commentary that might prove embarrassing to the US-led Coalition forces. Thus the notion of unacceptable collateral damage remained as vague as before the Iraqi invasion, and the public counting of civilian dead and wounded was left to other, less authoritative voices.<sup>24</sup>

Still, the ICRC Communications Department continued to provide vivid factual reporting in Haiti, the Darfur region of Sudan, the Democratic Republic of the Congo and other places. Even if carefully constrained, this public reporting

23 “Action by the International Committee of the Red Cross in the event of violations of international humanitarian law or of other fundamental rules protecting persons in situations of violence”, *International Review of the Red Cross*, Vol. 87, No. 858 (2005), pp. 393–400. This statement of doctrine is in fact bolder than its 1981 antecedent, because the ICRC commits itself to taking into account not just IHL norms but also human rights standards applicable to “situations of violence”.

24 The UN reported 34,000 Iraqis killed during 2006 alone. Sabrina Tavernise, “Iraqi death toll exceeded 34,000 in '06, U.N. says”, *New York Times*, 17 January 2007.

made it impossible for states and intergovernmental organizations to deny certain facts. ICRC public reporting thus generated certain pressures on public authorities to respond to humanitarian need.

Admittedly, in all these areas of accomplishment the early ICRC record was more impressive for its creativity and commitment than for its practical impact. In the beginning ICRC delegates were often more a witness and a bystander, recording events for posterity rather than managing impressive programmes to alleviate the abuses in any significant way. Initial field operations were usually modest. This was true in 1864, when the ICRC arranged observers for the war in Schleswig-Holstein, in 1918 in dealing with the movement of civilians after the First World War, in the Far East during the Second World War, and so on.<sup>25</sup> Yet the *long-term* significance of ICRC efforts has been impressive. Given time, a meagre ad hoc initiative could become systematic practice with substantive impact, with or without legal codification.

In sum, if one wants a model of leadership for progressive and incremental change on behalf of humane values in conflict situations over considerable time, the ICRC is a wonderful example. Persistent, dogged, able to reconstitute itself at the top and down the line so as to keep the cause going, overcoming setbacks and mistakes – not to mention the callousness and brutality of many belligerents in conflicts – the ICRC has gradually expanded the specific coverage of its consistent focus with impressive results.<sup>26</sup> Naturally it has acted in tandem with others, including various states with their own versions of humanitarianism, to compile the existing record. There are sound reasons for the ICRC to be so widely respected, and the view of the ICRC as heroic leader with impressive accomplishments is not wrong. But it is incomplete.<sup>27</sup>

### “Modest morality of small deeds”

A more critical view of the ICRC is that in international relations it is a marginal social worker, the agency of “the modest morality of small deeds”.<sup>28</sup> A similar view is that “the International Red Cross” is in reality not much more than “Europe’s pharmacy” or “perpetual first aid station”.<sup>29</sup> A former US Secretary of Defense

25 Caroline Moorehead makes this point well, above note 2, pp. 297, 298, 304 and *passim*.

26 While the ICRC has always focused on victims of conflicts, it does so in expanded ways. For example, it now pays more attention to the transition from active conflict to what might pass for stability or normality, thus overlapping with what is often called “development”. In so doing, it has also blurred the distinction between humanitarian norms and human rights. The organization, for example, pays more attention now to the long-term mental health of women who have been adversely affected by conflict, sometimes by rape. See especially the article by Marion Harroff-Tavel, “Do wars ever end? The work of the International Committee of the Red Cross when the guns fall silent”, *International Review of the Red Cross*, Vol. 85, No. 851 (2003), pp. 465–95.

27 The ICRC has won, shared, or been associated with four Nobel Peace Prizes: 1901, Henry Dunant (co-winner); 1917, itself; 1944, itself; 1963, shared with RC Federation (then called the League).

28 Michael Ignatieff, *The Warrior’s Honour: Ethnic War and the Modern Conscience*, Vintage, London, 1999, p. 144.

29 Amos Elon, “Switzerland’s lasting demon”, *New York Times Magazine*, 12 April 1998, p. 40.

tried to present the ICRC as nothing more than an accounting agency for prisoners.<sup>30</sup> A candid ICRC delegate remarked on “the inventory of impotence” and the “useless heroism” that characterized the organization in the Balkans in the early 1990s.<sup>31</sup>

The bitter phrase “the well-fed dead” captures certain experiences during the Second World War, in which the ICRC gained access to a number of detention camps in France. The organization carried out its traditional activities, after which many of the camp inmates were shipped east to the gas chambers. (It is also true that some of the inmates in France survived the Holocaust; the ICRC contributed to that outcome as well.)<sup>32</sup> The basic problem has not gone away. With regard to Bosnia in the 1990s, one ICRC delegate remarked of the intentional targeting of non-combatants for abuse, “the only thing you can do for them is to make sure they are fed before they are shot”.<sup>33</sup>

The same “modest morality” that avoids confrontation with many of the major affronts to human dignity in conflict situations is also demonstrated by events in South Africa. Admittedly, the ICRC was able to improve the diet of Nelson Mandela, obtain more reading and recreational material for him, and get the South African white penal authorities to respect their own rules better concerning prisoner complaints.<sup>34</sup> But on the issue of the racist repression that led to his arrest and kept him detained for twenty-seven years, the neutral ICRC had nothing to say – beyond operating on its principles of humanity and impartiality. Many national Red Cross and Red Crescent societies, through voting in the International Conference, did take a stand against apartheid, but the ICRC did not take part in the voting, arguing that a suspension of a state party to the Geneva Conventions ran counter to the Statutes of the Movement.

### The “Mandela axiom”

It is true that Mandela emerged from detention with positive feelings for the ICRC, beyond the point that the first ICRC representative sent to visit him was a white, conservative resident of Rhodesia who did not impress Mandela with his commitment to the black prisoners.<sup>35</sup> But it is also true that if one wanted to do something important broadly to oppose brutal apartheid in the old South Africa,

30 *Final Report of the Independent Panel to Review DoD Detention Operations*, Government Printing Office, Washington, 2004 (The Schlesinger Report, available at <http://www.isn.ethz.ch/pubs/ph/details.cfm?id=10157>, last visited 22 December 2006).

31 Michèle Mercier, *Crimes sans châtement: L'action humanitaire en ex-Yougoslavie 1991–1993*, Bruylant, Brussels, 1994.

32 See further Mary B. Anderson, ““You save my life today, but for what tomorrow?”: Some moral dilemmas of humanitarian aid”, in Jonathan Moore (ed.), *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, Rowman & Littlefield for the ICRC, Geneva, 1998, pp. 137–56.

33 Urs Boegli, quoted by Elizabeth Becker in “Red Cross Man in Guantánamo: A “busybody”, but not unwelcome”, *New York Times*, 20 February 2002, A10.

34 Nelson Mandela, *Long Walk to Freedom*, Little, Brown, Boston, 1995.

35 *Ibid.*, p. 410.

the ICRC was not the agency of choice.<sup>36</sup> The all-white and neutral ICRC was not going to boldly confront the great moral evil of racism in any direct and public way. The best it could do was to carry out its traditional activities in conflict in a way that showed impartial concern for all detainees regardless of race. This is something, to be sure, but ICRC activity stood no chance of undermining apartheid.

Of course the organization has a limited mandate, related to armed conflict and domestic unrest. Moreover, some of the limitations on the ICRC mandate and tactics, such as not challenging the reasons for war or detention, and certainly not in public, are said to be the price – the downside – of the ICRC's positive accomplishments. It has been widely accepted that limited mandate and discreet tactics are the price paid for the organization's access to victims. The organization believes that whatever influence it has stems from its "non-political" and limited focus.

One of the reasons why the young ICRC delegate in El Salvador, Dres Balmer, violated his contractual obligation to maintain discretion and published some details of his experiences there<sup>37</sup> was because of his frustration at being unable to do anything about the basic causes of human misery in that internationalized civil war. Successful long-term delegates, like Urs Boegli, accept the fact that often the delegate has to be content with providing not much more than a relaxed conversation in the prisoner's native language, and thus a brief social respite from the monotony or tension of confinement.<sup>38</sup> The successful ICRC delegate knows that often he is just a minor social worker, marginal to the big issues of world affairs. Many ICRC delegates are content being able to do the social good they can, while others – like Balmer – are deeply frustrated at this often marginal role in terrible conflicts.

Mandela wrote that the authorities feared the ICRC.<sup>39</sup> This view is mostly hyperbole. Authorities often co-operate with the ICRC because they know that the organization will not interfere with, or have an important impact on, the major issues at stake in the conflict concerned.<sup>40</sup>

36 Some in Geneva believe that in getting more newspapers and other reading material to Mandela and other detainees in old South Africa, the ICRC helped to ensure that he and his colleagues were better prepared to exercise the leadership they assumed on release. So, the argument goes, Mandela was prepared for the 1990s and not the 1960s because of the ICRC. While this is an intriguing interpretation, if true, it is strange that Mandela does not mention it in his lengthy memoirs.

37 Dres Balmer, *L'heure de cuivre*, Editions d'En Bas, Lausanne, 1984, trans. from the original German.

38 Boegli, quoted in Becker, above note 33.

39 Mandela, above note 34, p. 409. Mandela's logic, in an otherwise wonderful book, is faulty here. He writes that the South African authorities respected and feared the ICRC because they feared a loss of international reputation. But if those authorities acceded to its requests and modified the conditions of detention in relatively minor ways, the discreet ICRC would not resort to public denunciation. Pretoria was indeed concerned about its international reputation, but was able both to continue with its racist and repressive policies and to placate the ICRC by making certain changes in prison administration. See Fran Lisa Buntman, *Robben Island and Prisoner Resistance to Apartheid*, Cambridge University Press, Cambridge, 2003.

40 A contrary example that might prove the general rule is that of Greece around 1970. The junta may indeed have (i) relied heavily on the ICRC's presence for visits to detainees to allay European criticism;

In May 1975 the ICRC did in fact consider suspending its visits in South Africa. It was advised to continue by Mandela, who is reliably reported to have said, “Always remember that what matters is not only the good you bring but just as much the bad you prevent.”<sup>41</sup> This statement has become a traditional adage of the ICRC, a part of its organizational culture. Mandela is often cited to confirm the wisdom of not denouncing and withdrawing. There is no empirical proof of the bad that might be prevented by a continuation of visits, so there is no real way of testing the wisdom of the “Mandela axiom”. The cautious tactics of the organization are endorsed by no less than Mandela, and this axiom virtually rules out any justifiable criticism of a continuation of discreet visits by the ICRC.

Whether the ICRC is more heroic leader than marginal social worker is difficult to say. The answer often varies with context. After more than thirty years of visiting Palestinians convicted by Israel of security offences and detained within the regular Israeli penal system, the ICRC has now become mostly a marginal social worker at that point in the detention process. Whatever the situation in the past, it can be said in this regard that Israel runs a modern, legalized penal system. The ICRC now winds up dealing with petty details of penal administration. In some ways, paradoxically enough, the ICRC’s objective is to exercise heroic leadership so that it can become a marginal or routine social agency.

On the other hand, when visiting security prisoners in various countries, such as Chile or Argentina in the 1970s or Colombia or Peru in the 1980s, ICRC visits constitute a basic life insurance policy. The issue is the life and death and fundamental mental health of prisoners. This is not a matter of petty penal administration. True, the ICRC takes no position on the causes of conflict and detention, but it winds up as a key player in trying to protect the right to life – hardly a matter of mere bureaucratic regulation.

All players on the scene are composed of contradictory elements and tendencies. Just as no one individual can be characterized with one simple summary label, so no organization is one-dimensional. The ICRC is a heroic leader that has helped to accomplish a number of important objectives over time; and it is also often a minor social worker operating on the sidelines of the great issues that confront humanity. On the general subject of limiting the damage caused to human beings by conflict, its record is superb when viewed in historical perspective. On issues such as the causes of peace and war, and whether genocide and other forms of crimes against humanity do in fact exist, and whether racist repression is pervasive, the ICRC is marginal – content with the morality of minor good deeds that mostly avoids the core of these big moral issues.

Those who wanted to save the Muslim males at Srebrenica in 1995 should not have expected the ICRC to do so. First of all, that “safe area” was created by

and (ii) when that did not work out as hoped, found the ICRC’s vigorous protection of political prisoners to be unacceptable for its interrogation policy. The forced departure of the ICRC from Greek prisons did not bring down the junta either.

41 Personal sources, Geneva. See also Anthony Sampson, *Mandela: The Authorised Biography*, Harper Collins, London, 1999, pp. 226–7.

the United Nations, and UN officials promised protection to the civilians there. Second, the ICRC's humanitarian protection depended on co-operation from General Mladić, the direct instigator of the massacre. Moreover, the cautious ICRC, wedded to discretion by tradition and doctrine, often contents itself with incremental progress over time while continuing to search for discreet co-operation.<sup>42</sup>

## Core dilemmas of humanitarian protection

What do contemporary policy choices by the ICRC tell us about the dilemmas of Red Cross neutral humanitarianism – and about the tensions between the roles of heroic leader for human dignity versus marginal social worker? Statistics on the number of detainees visited and tons of relief delivered do not tell us very much about the assertiveness of the ICRC and the wisdom of its policy choices when confronting grave violations of human rights and humanitarian standards.<sup>43</sup>

### Co-operation with authorities

Pierre Boissier wrote that the organization was conscious of its need for co-operation from public authorities and therefore was careful not to proceed beyond the realm of their consent.<sup>44</sup> Yet victims of war and of power politics are victimized precisely because of the policies of these same public authorities. It is precisely these governments that have killed millions in past decades.<sup>45</sup> That is why advocacy groups like Amnesty International and Human Rights Watch, that also do not run service programmes inside states, believe in a more adversarial relationship with states that features attempted public pressure – the naming and shaming game. They believe in the necessity of uncomfortable conflict, while the ICRC's neutral protection is based on hope for quiet co-operation.

So the ICRC locks itself into a complex situation in which it seeks co-operation from the very authorities that are causing most of the affronts to human dignity in the first place. On the one hand it is commendable to discuss violations of humanitarian standards with those directly responsible. The ICRC's delegates Thierry Germond and François Bugnion did this with Mladić in the Balkans in the 1990s. The ICRC's presidents Max Huber and Carl Burckhardt did not do this

42 Samantha Power, in *"A Problem from Hell": America and the Age of Genocide*, Perennial, New York, 2002, is very critical of the ICRC for not denouncing the Serbs' non-co-operation at Srebrenica. See pp. 409–411. She does not report on the dynamics of ICRC quiet diplomacy vis-à-vis Mladić.

43 While such macrostatistics may be important to donors, showing that goods and services are being delivered to beneficiaries, too much focus on them may cause the humanitarian agency concerned to lose sight of the needs of particular victims. See further John Prendergast, *Frontline Diplomacy: Humanitarian Aid and Conflict in Africa*, Lynne Rienner, Boulder, 1996.

44 *History of the International Committee of the Red Cross: From Solferino to Tushima*, Henry Dunant Institute, Geneva, 1985.

45 R. J. Rummel, *Death by Government: Genocide and Mass Murder since 1900*, Transaction, Somerset, NJ, 1997.



with Himmler and other Nazi leaders in the 1940s. (Burckhardt did meet Ernst Kaltenbruner, but that was in 1945 when the end of the Nazi regime was near.) On the other hand, how long does the ICRC wait for co-operation to manifest itself, and what does it do when serious co-operation is evidently not forthcoming?

What was the point of continuing to politely write to the German Red Cross in the 1930s about the concentration camps when that National Red Cross Society was part of the brutal totalitarian regime that instituted the camps in the first place? What was the point of continuing quietly to ask the Balkan parties for genuine co-operation in humanitarian matters, when the Serbs in particular displayed a clear policy of stalling the ICRC so that they could continue with their ethnic cleansing on behalf of a chauvinistic nationalism? All of the Balkan belligerents might sign humanitarian agreements, but that meant very little to ICRC humanitarian protection on the ground.

In the dialectic between “national security” and human security, between what passes for military and political “necessity” and humane values, how does the ICRC find and defend its synthesis? How does it justify the timing of its various policy options – discreet routine, high-level visits to officials, public denunciations?

The ICRC is the establishment humanitarian organization, officially recognized as such by states through their conferring of rights on it in public international law. The ICRC is very proud of this special position, as noted with some irritation by former President Sommaruga with his caustic comments about his colleagues who saw themselves as the high priests of humanitarianism.<sup>46</sup> It is little wonder, then, that the ICRC likes to picture itself as the Good Samaritan engaging in service activities that have been approved by states. Given all of this, how could we logically expect the ICRC to be dynamic in protecting human dignity when that involves a certain challenge to the policies of public authorities?

Yet states did not tell the ICRC to start supervising prisoners of war, or to get involved in civil wars, or to start visiting detainees beyond situations of war, or – to use a very specific example from more recent years – to lobby for the Ottawa treaty banning anti-personnel mines. The ICRC could not have become what it is today without state approval, but it also has a rich tradition of initiative and creativity as a private player.<sup>47</sup>

In reality, the ICRC has a foot in two worlds – the world of state approval and the world of civil society initiative. Because of the organization’s dual nature, there is a tension in ICRC actions between deferring to state views on military and political necessity, and pressing states in a timely fashion to do more for human dignity. Managing that tension wisely is the crux of humanitarian politics and diplomacy by the ICRC. How the ICRC manages that tension says a lot about

46 Massimo Lorenzi, *Le CICR, le coeur et la raison: Entretien avec Cornelio Sommaruga*, Favre, Lausanne, 1998, p. 75 and *passim*.

47 The UNHCR, created by states and remaining an agency in an inter-governmental organization, also takes initiatives not pre-approved by states. See Gil Loescher, *The UNHCR and World Politics: A Perilous Path*, Oxford University Press, Oxford, 2001.

whether the organization is more heroic humanitarian leader than marginal social worker.

## Detention

With regard to the contemporary ICRC and its attempts at traditional protection of detainees, we simply do not know how assertive and wise it has been overall. No outsider knows. The archives are closed under the forty-year non-disclosure rule. As for the longer-term historical record on this point, what we do know leads to a mixed conclusion. On the one hand the ICRC was vigorous in dealing with the Greek junta in the 1960s, French authorities in the war in Algeria and so on. On the other hand it was mostly uninvolved as to the question of Turkish treatment of the Armenians in the First World War, very cautious in dealing with fascist Germany and Italy in the 1930s and 1940s, not very assertive vis-à-vis Japan during the Second World War, not always assertive concerning the French in Indochina in 1945–54, and so on. When China forcibly occupied Tibet and the detention of many followed, the ICRC was silent. But that was history, and the ICRC is not really the same organization today.<sup>48</sup>

We know<sup>49</sup> that when confronting recalcitrant authorities in the cold war era, the ICRC would sometimes discreetly approach “patron” states and try to get the latter to bring effective pressure on the former. Sometimes this approach helped; at other times it did not. The organization soon learned that it was fairly pointless to talk to Washington about Israel’s many violations of IHL, although in early 2004 President Kellenberger was still trying.<sup>50</sup> After the cold war, with the decline of the loose bipolar structure of international relations, this approach proved less helpful in general. In the Balkan wars of the 1990s, ICRC delegates sometimes gave general information to journalists about the severity of certain detention conditions.

Some modern examples demonstrate dynamic efforts, within carefully calculated limits. In 2002 it was very clear that Israel was making the life of detained but unconvicted Palestinians very uncomfortable, one of several measures intended to convince the Palestinian authorities, and Palestinian society in general, to control violence against the Jewish state. In that situation the ICRC increased its material assistance to Palestinian detainees, thus trying to counter-balance Israeli policies: the organization did not hesitate to “get in the way of” the harsh policies of the detaining authority. Israel is a relatively wealthy and well-organized state. It certainly had the capability to provide for detainees what the ICRC wound up providing. For Israel it was not a matter of capability but of an

48 It is highly doubtful that the ICRC would make the same mistakes today that it did in the 1930s when tilting toward Mussolini at the expense of Abyssinia. See Baudendistel, above note 22.

49 From interviews, Geneva.

50 An ICRC press release, No. 04/30, indicated that when its President Kellenberger visited Washington in early 2004, issues arising from the Israeli–Palestinian conflict were on his agenda.

intentional policy of deprivation. Geneva did not hesitate to take further action to buffer detainees from new deprivations.<sup>51</sup>

Slow change and partial access remain problematic. In historical perspective, because the ICRC has been so reluctant on occasion to confront public authorities in a timely manner about their violations of humanitarian standards, a great deal of harm is done to individuals while it probes the firmness and full meaning of governmental policy. Occasionally in the past the organization has been “bought off” by brutal authorities prepared to give it partial or inconsequential access to victims. It has accepted partial access in the hope of proving its bona fides and expanding its operations over time. Sometimes this expansion transpires, as in Kosovo in the late 1980s. But it took the ICRC a very long time to suspend, for example, its visits to places of detention in Peru. It continued with relatively meaningless visits for a lengthy period before finally concluding that the authorities were not going to be serious about significantly improving very bad detention conditions. Meanwhile the Peruvian authorities, while abusing prisoners, were able to say that they were co-operating with the ICRC.

An official in a repressive regime, for instance in the Republika Srpska of Bosnia and Herzegovina in the 1990s, can offer the ICRC general promises of co-operation and perhaps access to some victims here and there, but can try to prevent the organization from having any serious impact on policies of persecution and abuse. That official will generally be at least temporarily successful, particularly if powerful outside parties do not intervene with force or economic coercion on behalf of humanitarian values or if journalists do not publicize the situation, because the ICRC is committed to discreet and incremental change over time. This ICRC approach enables a repressive official to stall and continue abusing individuals. The organization will not quickly blow the whistle or declare that there is no co-operation; it is reluctant to reject or give up its access to some victims, and this allows it to be manipulated by inhumane authorities.<sup>52</sup> The decision to withdraw in protest is almost impossible to sustain if the victims want the ICRC presence to continue. The Mandela axiom of staying on to prevent unspecified and unknowable harm in the future is conducive to the same approach. If the ICRC withdraws with a public denunciation, it loses its great comparative advantage over most other human rights and humanitarian

51 ICRC press release 02/30, 26 July 2002, “Israel and the occupied/autonomous territories: ICRC distributes clothes to detainees”. On the other hand, in 2003 the ICRC reduced its assistance to certain Palestinian civilians under Israeli occupation in the West Bank area. The ICRC drew the conclusion that Israel was avoiding its responsibilities as occupying power to care properly for the civilian population. In other words, Geneva concluded that Israel was avoiding certain costs of occupation by trying to substitute the resources of the ICRC. See ICRC statement, 20 November 2003, “New strategy for the West Bank”.

52 In David P. Forsythe, *Humanitarian Politics: The International Committee of the Red Cross*, Johns Hopkins University Press, Baltimore, 1977, there is a discussion of the perils of “the one more blanket theory”. The ICRC’s desire to bring in one more blanket leaves it open to manipulation by unscrupulous authorities.

organizations – its in-country presence. If it withdraws in protest, having shot the last arrow in its humanitarian quiver, it is out of the game.<sup>53</sup>

This pattern played itself out during the US “war on terrorism” after 11 September 2001. The ICRC received a certain amount of co-operation from US, Coalition and NATO forces at Guantánamo, in Afghanistan and in Iraq. But some prisoners were kept from ICRC delegates, mostly notably those “high value” detainees held in US “black (clandestine) sites” under the CIA until the latter half of 2006. The ICRC commented publicly on various issues, and even “deplored” the US policy of forced disappearances, but it never withdrew from a whole situation with a public protest (although it did quietly and temporarily suspend a certain round of visits in protest against certain practices). Even when faced with a US policy of forced disappearances and extraordinary renditions (transfer of abducted persons to foreign jurisdictions for aggressive interrogation), the ICRC mostly continued to discreetly do the good it could where it could.

In the final analysis, being discreet in the hope of eventual, slow, incremental change is the defining feature of ICRC visits to places of detention – and at the same time the Achilles heel of ICRC detention-related policy.<sup>54</sup>

All things considered, in the US “war” on terrorism after 11 September 2001 – and with regard to Israel after 1967 – should the ICRC have accepted that “stress and duress” interrogation practices were going to occur and that the best the ICRC could do was to try to ensure that the prisoner eventually emerged alive with as little damage to his physical and mental health as possible? Should the Geneva headquarters have been more dynamic and assertive in addressing these matters discreetly with top national officials? Should there have been a more timely and robust denunciation of such policies – at least in those situations in which such ICRC action held out prospects for beneficial change, which is in keeping with its guidelines for action?

But if the ICRC goes public on detention by liberal democratic governments in the hope that liberal public opinion will make a difference, does it end up adopting a persistent double standard, denouncing democracies but not brutal authoritarians? Conversely, was the ICRC too cautious in trying to mobilize support for a better protection of human dignity, given the broad outrage in the

53 The ICRC tends to refer obliquely and discreetly to the possibility of suspending visits, as did its President Kellenberger when he went to Washington in January 2004 to discuss prisoners under US control in the “war” on terrorism. The underlying logic is similar to that applied in many foreign offices when discussing with another state the possible suspension of foreign assistance. The main objective is to bring about change by discussion of possible future action. Once aid is suspended, the bolt is shot and one is out of the game. Moreover, the actual suspension of aid can trigger intensified resistance. This is not an argument for never suspending aid, but it does indicate the difficulty of exerting influence by doing so, as in the case of an ICRC suspension of visits.

54 Similar tendencies were visible in ICRC dealings with China. Beijing agreed to discuss ICRC visits to detainees, but stalled – seemingly forever. Rather than issue any kind of critical statement, the ICRC decided in 2003 to open a delegation in China for such things as humanitarian diplomacy in general and dissemination of IHL. The ICRC was doubtless hoping for a change in Chinese policy on its access to political prisoners, as a result of increased familiarity with ICRC policies and personnel. But China then stalled with regard to the opening of this office. Again, Geneva said it was on the road to progress, refusing any critical comment about China’s procrastination.

United States when the abuse of prisoners in Iraq became known in 2004?<sup>55</sup> After all, in that situation, as well as during the French–Algerian war, publicity from ICRC reports leaked by other parties brought about clear and rapid improvement on important humanitarian issues. (ICRC interlocutors like to recall the many times a press release failed to produce humanitarian progress, but almost never recall the 1962 publicity in Paris about French torture, which caused significant change in French policy.)

After the cold war the ICRC developed some internal procedures that helped to ensure at least consistency of approach, and perhaps certain standards of assertiveness, regarding detention conditions. Letters to detaining authorities by those carrying out visits to places of detention had to be approved by superiors in sub-delegations and then delegations. Everything had to be written down and recorded. These procedures made it possible for still-higher superiors in Geneva to compare the situation under review with what was being done in other regions. Thus any deviation from normal procedures had to be justified in writing on grounds of local context. It would be difficult under these procedures for a delegate in the field to be lax about the follow-up to a visit to detainees. In this case it was a good idea to bureaucratize the Good Samaritan.<sup>56</sup> Especially on such visits, the ICRC wanted to be a known and predictable element.<sup>57</sup> This would enhance its access to prisoners and its image of neutrality.

But the big issue was the dynamism of Geneva in using the factual material compiled by delegates in the field. The fate of prisoners in the US “war” on terrorism prompted much reasonable debate about whether the ICRC had been too slow and cautious in pressing Washington to correct problems at Guantánamo and in Afghanistan – not to mention the black sites.<sup>58</sup> If the ICRC had been ultra-cautious in the past, then reliance on such precedent today to determine standards for going public would tend to prioritize concern for perfect neutrality rather than stopping mistreatment of detainees in the shortest time possible. Serious questions

55 In a 2004 public opinion poll in the United States after much attention to US abuse of prisoners in Iraq, Afghanistan and Guantánamo, 66 per cent of respondents said that the United States should respect legal prohibitions against torture; 58 per cent objected to use of dogs to terrify suspects and 75 per cent to forcing them to be naked, even if the prisoner was not co-operative; 93 per cent approved of Red Cross visits; and 77 per cent approved of Red Cross family messages. Program on International Policy Attitudes, School of Public Affairs, University of Maryland, 22 July 2004, available at [listserv@americans-world.org](mailto:listserv@americans-world.org).

56 Compare Tony Waters, *Bureaucratizing the Good Samaritan: The Limitations of Humanitarian Relief Operations*, Westview Press, Boulder, 2002, pp. 49–50. Because a young girl needing medical attention was not war-wounded, an ICRC delegate in the Sudanese conflict reportedly refused to take her on board an aircraft since she did not come within the ICRC’s mandate and its bureaucratic instructions to its delegates. But even in this case, the ICRC decision could be defended: the ICRC was not supposed to be an all-purpose do-gooder and development or relief agency, and ICRC delegates were not to dissipate their energies in matters outside conflict. Whether this meant that a delegate should never do an occasional good deed beyond the official mandate of the organization is another matter. But the ICRC does indeed have to have a clear and limited focus, leading to consistent policies.

57 See, e.g., Alain Aeschlimann, “Protection of detainees: ICRC action behind bars”, *International Review of the Red Cross*, Vol. 87, No. 857 (2005), pp. 83–122.

58 On ICRC public protest, see the exchange between Daniel Warner and the present writer in *Millennium*, Vol. 34, No. 2 (2005), pp. 449–76.

remained about how much improvement, within what time frame, sufficed to justify continued ICRC discretion. Nor was it enough for ICRC officials to say that they were willing to give interviews in Washington about detention in the US “war on terrorism”: the media showed little interest. Advocacy groups like Amnesty International and Human Rights Watch knew that one had to be assertive to attract the attention of the press and public officials. This the cautious and neutral ICRC had trouble doing.

An ICRC official with a knack for turning a good phrase in English once said that “we have a very low profile with the press and quite a high profile with the prisoners, and that’s the way it should be”.<sup>59</sup> But that is not the last word in the analysis of ICRC detention-related efforts.

In the current era it might not be wrong to surmise that the ICRC is discreetly assertive in the field in its visits to places of detention, “quietly demanding” in the words of one delegate,<sup>60</sup> trying to chip away at obstacles raised by detaining authorities.<sup>61</sup> The 2003 ICRC report on Abu Ghraib prison in Iraq, and the follow-on summary report of February 2004 shows this “quietly demanding” record.<sup>62</sup> Whether the Geneva headquarters waits too long to try and is biased against both vigorous top-level private diplomacy and public pressure is a lingering question of considerable importance. Only historians, for example, with better access to facts, can judge whether the ICRC was too cautious in the way it dealt with US abuse of humanitarian standards, particularly between 2002 and 2004.<sup>63</sup>

## Relief

As for the relief supplies that are a modern aspect of protection, we know that sometimes – but not often – the ICRC will go ahead with cross-border operations to provide relief where the authorities appear unable physically to block such

59 Boegli, above note 33.

60 Mercier, above note 31.

61 Does it indicate excessive deference that an ICRC delegate is rarely declared *persona non grata* by public authorities for pushing hard for attention to humanitarian standards? The fact that Francis Amar was kicked out of Thailand in 1980 for defending the right of refugees not to be sent back to a dangerous situation in Cambodia would seem to reflect well on him and the ICRC. His departure also sent a signal to others about the inhumane policies then pursued by the Thai government. But context matters. It may be pointless, even counterproductive, persistently to challenge authorities, even discreetly, over a lost cause. If Saddam Hussein in 1990 was not going to agree that Kuwait was occupied territory, then perhaps it was better not to argue over legal status and just ask for an extension of the ICRC’s traditional activity. Of course, this soft pragmatic approach did not get the ICRC into occupied Kuwait either. But to have a delegate declared *persona non grata* for persistent devotion to the Geneva Conventions was certainly not going to get humanitarian work done either, at least not in Kuwait in 1990.

62 Another example of great creativity and determination in the field was that of Rochat in the Yemen in the 1960s, who also contended with headquarters about Egypt’s misrepresentation (namely lying) about the use of poison gas. This part of *L’Homme à la Croix*, above note 21, is reliable.

63 With regard to the ICRC and Abu Ghraib as from autumn 2003, the ICRC does not appear to have enquired enough, or soon enough, about what happened to its candid and critical reports when submitted to the US authorities. Some US officials claimed that ICRC reports never reached them, or reached them only belatedly.

operations. It sometimes informs authorities in due course about what is taking place, but does not always ask for advance permission. The ICRC did this for a while in the mid-1980s in the Ethiopian conflict (where its trucks, not marked with any RC emblem, sometimes came under ineffective military attack) and on the Thai–Cambodian border starting in September 1979. It may be recalled that around 1980, in Cambodia and on the Thai–Cambodian border, the ICRC was generally viewed as more assertive than UNICEF in dealing with the obstacles to humanitarian relief created by various governments.<sup>64</sup>

In general, given that those with guns control humanitarian relief, whether in Nigeria from 1967 to 1970 or Bosnia from 1992 to 1995, the ICRC has only been able to provide the relief allowed by the warring parties. Somalia in the 1990s was very different, being one of the few places where third parties (primarily the United States) were willing to deploy military force in support of relatively selfless and therefore mostly neutral relief – at least for a time. There the ICRC took the historic decision to operate in tandem with state-armed protection, partly because the use of military force was initially directed against bandits and not against the leading clans vying for power. In that fundamental sense UNITAF, or Operation Restore Hope, was neutral, at least to start with.

We also know that in El Salvador, when government forces carried out aerial attacks on civilians trying to obtain ICRC relief, the organization confirmed the attacks with Human Rights Watch, which then tried to pressure the government on the issue.<sup>65</sup>

If we look at ICRC relief after the cold war, we find an organization always present to provide relief in conflicts, and arguably as good as or better than the other major relief agencies such as UNHCR, UNICEF, WFP and Oxfam. This can be seen through careful studies of such areas as the Balkans, Somalia and Rwanda. Significant is the fact that in Nepal in 2003, scene of a Maoist uprising, the ICRC did not rush in with relief because the organization feared that such action would create unnecessary dependency by undermining “existing coping mechanisms” which were providing economic security at the time.<sup>66</sup> With regard to relief, the ICRC was often in the very centre of conflict and combat, more heroic leader than marginal social worker. True, the organization did not address the root causes of displacement and distress, but keeping alive 1.5 million Somalis was hardly marginal action. True, states sometimes used ICRC (and UN) action to avoid the difficulty of grappling with root causes, but this was hardly the fault of those organizations. The ICRC sometimes openly called for “political” action to address root causes, knowing full well that its mandate and resources prevented it from taking on any role in that domain.

64 William Shawcross, *The Quality of Mercy: Cambodia, Holocaust and Modern Conscience*, Simon & Schuster, New York, 1984.

65 Aryeh Neier, *Taking Liberties: Four Decades in the Struggle for Rights*, Public Affairs, New York, 2003, p. 209.

66 ICRC press release No. 03/06, 13 January 2003, “Nepal: conflict area assessed”.

## Relations with the national Red Cross and Red Crescent societies and their International Federation

A highly fragmented Red Cross Movement has been a fact of life, if not from the very beginning then certainly from the time of the First World War. It was during that conflict that, as noted above, the ICRC emerged as an important player in the field. Its quest for independent and neutral humanitarianism as an operational prerequisite subsequently caused it to give priority to its own position rather than to tightly co-ordinated action with the national societies. It is probable that a general Swiss inclination toward unilateralism affected the ICRC's outlook.

The organization certainly disliked the creation after the First World War of the International Federation (until 1991 the League) of Red Cross and Red Crescent Societies, then tried to keep it at arm's length in ICRC activities. The Federation had been promoted by Henry P. Davison when president of the American Red Cross in a way that violated various RC principles and standard procedures, as part of a direct challenge to ICRC leadership of the Movement. In the years that followed various Federation leaders, seeking to gain overall primacy in the RC network, continued to contest the ICRC's position. From time to time there was some real co-operation within the Movement, and also between the ICRC and the Federation, as in the Second World War and to a lesser extent during the Vietnam War and then the Balkan wars. But it was only after the cold war that the ICRC, under the pressure of a steadily growing workload and greater competition from other relief agencies, saw that it would need to draw more on the resources of the entire Movement if it was to survive as an important humanitarian protagonist in conflicts – especially regarding relief activities.

Ironically, by late 2003 the problem for the ICRC was no longer an assertive and encroaching Federation but instead a weak Federation badly damaged by the withholding of dues by the American Red Cross in protest against the exclusion of the Israeli official aid society, the Magen David Adom. The Federation remained unable to co-ordinate "its" national societies in international emergency action. But the ICRC encountered similar difficulties. In the US invasion and occupation of Iraq in 2003, for example, various national societies implemented their own plans, driven either by the need for visibility at home or pushed into particular projects by their governments. The result was little co-ordination with the ICRC, regardless of the 1997 Seville Agreement confirming an ICRC lead role within the Movement in armed conflicts and occupation.

Other fragmenting factors were also at work. After the main hostilities ended in Iraq in 2003, several of the more active national societies were impatient to act. The ICRC, unfortunately quite correctly, viewed the security situation on the ground as inhospitable to major relief projects. Several of the national societies did not share this view and regarded the ICRC as unnecessarily cautious. This particular source of friction within the Movement was resolved by the violent attack on ICRC headquarters in Baghdad in October 2003, which confirmed the validity of the ICRC's standpoint.



Many national societies still do not see themselves and their activities as particularly linked to armed conflict and IHL.<sup>67</sup> Caroline Moorehead is right when, citing Jean Pictet, she writes, “the Committee did make a fundamental error in bothering too little about the national societies”.<sup>68</sup> Before the 1975 Tansley Report documented the disarray within the RC network but after that study team had got under way and started discussing some of its preliminary findings, the ICRC teamed with the Federation at the 1973 International Conference of the Red Cross and Red Crescent to suggest that the two Geneva bodies should have the right to review the statutes of national societies. The two headquarters in Geneva wanted to see whether, after passing the stage of recognition by the ICRC and admission to the Federation, these national RC bodies remained in compliance with the rules of the Movement. This initiative predictably drew sharp opposition from important national societies. The Conference adopted a watered-down version of the original proposal anyway. All of this amounted to not very much at first, other than comprising a toe-hold for the ICRC to question certain policies of the national RC units.

The dilemmas of trying to ensure that national societies respected Red Cross principles, such as impartiality towards individuals in need or independence from politics, are well demonstrated by events concerning South Africa during the apartheid era. When the International Conference of the Red Cross and Red Crescent voted in 1986 to suspend the South African government because of apartheid, the ICRC declined to participate in the Conference vote. It objected to the process, arguing that Conference rules provided no grounds for suspension, and it feared a backlash against its field operations. The latter concern proved accurate, as Pretoria first expelled the ICRC delegates and subsequently allowed a limited presence and restricted the activities of the ICRC by suspending its access to the detainees then being visited. Although visits were eventually resumed (Pretoria revoked their suspension after one month), this response confirmed for the ICRC the wisdom of its policy of not raising the issue of racism and violation of the Red Cross principle of impartiality by national societies.

RC entities are supposed to be strictly humanitarian, avoiding controversies that are political, religious, racial and so on. But this distinction generates competing views. It often proves controversial to try to draw a clear and firm boundary between a humanitarian issue and a political, religious or racial one. The treatment of black prisoners in white-ruled South Africa was both a humanitarian and political issue, both a humanitarian and racial issue. The best that can be said is that when the ICRC gets involved in political, religious or racial

67 For a somewhat legalistic but nevertheless interesting focus on relations between components of the RC Movement, see Christophe Lanord, “The legal status of National Red Cross and Red Crescent Societies”, *International Review of the Red Cross*, Vol. 82, No. 840 (2000), pp. 1053–78. Given that the author is a former legal advisor to the Federation, this is a candid treatment of the subject. See also in general Ian Smillie (ed.), *Patronage or Partnership: Local Capacity Building in Humanitarian Crises*, Kumarian Press, Bloomfield, CT, 2001, although unfortunately it has little information about the RC network. At the time of writing the ICRC is much more attentive to local capacity within the RC Movement.

68 Moorehead, above note 2, p. 372.

controversies, it should focus only on the humanitarian dimensions of those disputes.

But when the ICRC refused to participate in the 1986 vote (the Federation abstained), this meant that, as has historically been the case in the RC world, once again there were no sanctions for violating Red Cross principles requiring impartial humanitarian concern for all persons regardless of race, gender, ethnicity, religion, and so on. At least the South African Red Cross Society did accept a commission of enquiry set up by the Federation's General Assembly. But even short of gross violations of RC principles, mere incompetence or corruption has never triggered withdrawal of National Society *bona fides* either. The ICRC has never withdrawn recognition from any national society, nor has the Federation (or the League before it) disbarred any.<sup>69</sup>

Today the ICRC and the Federation, in the light of various resolutions by the RC Conference, have carried on their attempted review of National Societies through a joint ICRC–Federation Commission. The approach is legalistic, focusing on statutes and rules for recognition and admission, but the attempt is to provide a central review of national society policies. Nonetheless, in keeping with Red Cross traditions, there is an effort to avoid naming and shaming – and hence to avoid embarrassing either the national society or its “patron” government. In current times the ICRC stresses, ironically enough, “constructive engagement” when dealing with wayward national societies – at least most of the time. That is to say, the organization tries to work with the society in question to improve its performance and adherence to Red Cross norms, rather than engage in any rebuke.<sup>70</sup> Each year now, the ICRC spends something like \$25 million on national society development.

This approach may have merit in general, since most governments will rise to the defence of “their” national society. But the policy of constructive engagement would have been pointless with the German Red Cross in the 1930s, and it will be pointless in similar “hard” cases in the future. If the Iranian Red Crescent discriminates against Iranian Baha'i, there is not much that the ICRC, the Federation or the International Conference of the Red Cross and Red Crescent is going to do about it. If the Iraqi Red Crescent discriminated against various opponents of the regime during the era of Saddam Hussein and failed to come to

69 Lanord, above note 67. The ICRC, cautious as ever, likes to raise the point of whether it has the legal authority to withdraw recognition once granted. Neither its own Statutes nor those of the Movement explicitly mention withdrawal of recognition. No doubt practice now weighs heavily in this regard. For one point of comparison, note that in the United States, while two-thirds of the Senate must give their advice and consent for ratification of a treaty, the courts have held that the President alone can terminate a treaty. The rights of the Senate in formulating treaty obligations are not the same as in terminating treaty obligations. Logical parallel rights have been said not to exist.

70 See “Policy on ICRC co-operation with National Societies”, *International Review of the Red Cross*, Vol. 85, No. 851 (2003), pp. 663–78. See also *Red Cross Red Crescent*, No. 4 (2003), pp. 10–11, where the presidents of the ICRC and Federation comment on the Movement and the International Conference. It was in some ways remarkable that the RC network was openly addressing the defects of these institutions, even if they were circumspect in comments about how to bring about beneficial change. It was clear that ICRC President Kellenberger was in favour of dialogue rather than sanctions.

their aid, RC bodies were not going to address that violation of Red Cross principles.

So the Movement is likely to remain fundamentally fragmented. Universal humanitarianism has yet to triumph over nationalism. At least the ICRC and Federation are no longer trying to pretend that the problem of a fragmented Movement doesn't exist, and in the Red Cross world that is a step forward. There are also efforts to improve the workings of the 1997 Seville Agreement and especially to fine-tune the focus on the ICRC's lead role for RC action in conflicts. And at least the ICRC and some RC societies do in fact co-operate in places such as Darfur in Sudan.

### Organizational culture

According to Gil Loescher, a leading scholar on the subject, the UNHCR manifests a very conservative organizational culture – resistant to change, averse to new ideas, disdainful of outsiders' views, and with arrogance at the top that at least occasionally shows insensitivity to persons of concern within the mandate of that public humanitarian agency.<sup>71</sup> Is the same true of the ICRC?

The dominant ICRC culture has indeed been primarily conservative in the sense that Edmund Burke used the term. The organization believes that history has proved the validity of its traditions. It is well aware that proceeding slowly and cautiously in a discreet manner on the basis of state consent has brought it a unique position in international relations – a position that others like the RC Federation or various private relief groups might wish to emulate if not replace with their own. Why change, if past policies have allowed access to numerous victims over the years, not to mention a special place for the ICRC in public international law? This is one reason why the organization keeps meticulous records of detainees visited, tons of relief delivered, the number of family messages transmitted and so on. It makes for an impressive general picture, presumably confirming the validity of ICRC policies as traditionally practised. But all the statistics about the ICRC in the 1930s and 1940s failed to address the question of the organization's assertiveness and wisdom in dealing with German, Italian and Japanese authorities in particular.

Historically the ICRC has been slow to embrace change. The organization shares at least some of the conservative characteristics of the UNHCR. The ICRC Assembly is not known for co-opting advocates of revolutionary change on to the Committee, the governing body.<sup>72</sup>

71 Gil Loescher, *A Perilous Path*, Oxford University Press, Oxford, 2001.

72 Swiss public figures who are political mavericks like Jean Ziegler and prone to criticize past Swiss public policies and leaders are not elected to the ICRC Assembly. But then Ziegler's position in Swiss society was roughly analogous to Noam Chomsky's in the United States. Both were academics with some recognized expertise in their original field, but who then spoke out in provocative ways beyond their expertise. Ziegler was no more likely to be co-opted into the ICRC Assembly than Chomsky to be elected on to the governing board of the American Red Cross. These are establishment organizations.

It took almost thirty-five years for Geneva to create a CEO, or Director-General, with personal responsibility, to improve the effectiveness of the organization in daily humanitarian affairs. This step took from 1970 and the end of the Nigerian civil war to July 2002. There were a number of half-steps during the transition, too complex to be recounted here. Along the way various persons, ranging from Jacques Freymond to Cornelio Sommaruga, urged rapid movement in this direction. The ICRC Assembly, whose role was being reduced, took its time.

On yet another subject, the big Tansley study of the 1970s told the ICRC of the need to “open the windows” and not be such a secretive organization. It took decades for the organization to implement these recommendations by consulting more with outside parties and increasing its own transparency in other ways. The ICRC resisted change, but finally embraced at least some change on openness and transparency.

It was the pressure of events linked to reviews of Switzerland and the Holocaust that caused it finally to open its archives to the public from 1990 on, though subject to the forty-year non-access rule.<sup>73</sup> This forced the organization to deal more candidly with its history, as researchers wrote independent and analytical studies rather than hagiographies. Also, it was in 1996 that the ICRC opened up the *International Review of the Red Cross*, under the editorship of Hans-Peter Gasser, to more interesting content. The *Review* had been a rather dry compendium of Red Cross in-house matters and legalistic studies, along with such breathtaking highlights as which dignitary came to visit headquarters. Under Gasser’s initiative, which was not mandated from the top but was supported by the top, the *Review* started to publish a wide range of views on various aspects of humanitarian affairs – even including from time to time some criticism of the organization.

The ICRC’s Annual Report for 2002 noted, on the basis of a study by some outsiders, that the ICRC still faced many issues about its communication policy, and that its visibility in international relations was still problematic.<sup>74</sup> So again, as on the question of openness and transparency, the organization only moved with deliberate speed, if speed it was. As in the case of other changes noted above, it finally moved to implement new policies when the realities of its environment left it little choice but to change if it was to remain important for humanitarianism in conflicts. As a Swiss ambassador to the United Nations

73 Interestingly, this historic decision by the Assembly was taken with almost no controversy or opposition. Apparently only one member of the Assembly objected to the policy adopted. This was in part because an ICRC official had badly handled a public discussion about the organization and the Holocaust. In the aftermath, several other officials seized the moment to push through the proposal opening the archives. Most Assembly members apparently realized the organization was faced with a reputational or public relations debacle, hence the need for some type of dramatic step. By comparison, it might be recalled that the United States finally ratified the Genocide Convention after President Reagan suffered a reputational or public relations debacle by his visit to a cemetery in Bitburg, Germany, that contained some SS graves. In response to criticism about insensitivity to human rights, he successfully pushed for US acceptance of the genocide treaty.

74 ICRC, *Annual Report 2002*, ICRC, Geneva, 2003, pp. 11–13.

candidly observed, the Swiss governing class, which overlaps with the ICRC Assembly, was risk-averse.<sup>75</sup>

Clearly, there are some similarities between ICRC and UNHCR organizational cultures, particularly in terms of conservatism and reluctance to take outsiders entirely seriously.<sup>76</sup>

While there has been some arrogance at the top of the ICRC, which leads to some friction with staff, it cannot be said that in general the organization is insensitive either to its delegates in the field or to the needs of those who benefit from its action. In 1996–2002 the ICRC undertook the “*Avenir*” process, an effort to review its mandate, strategy and tactics with a view to the future. Not surprisingly, it reaffirmed much in its basic mandate. Here we should note that it involved all levels of the house in its review, and it did prove open to a free discussion of many tactics.<sup>77</sup>

Moreover, its budget process is a bottom-up affair, starting with reports from sub-delegations and delegations in the field. Each year this budget process generates something like 5,000–6,000 pages of documents. If contemplating a suspension of its visits to places of detention, the organization usually consults with the detainees involved. When making tough decisions in the Balkans in the 1990s, it was aware that local civilians wanted to be moved out of harm’s way even if that contributed to ethnic cleansing. Its project on “People in War” at the turn of the current century was designed to let war victims have their say. Its study “Women Facing War” (2001) and its manual *Addressing the Needs of Women Affected by Armed Conflict* (2004) certainly showed some sensitivity to the special plight of women and girls.<sup>78</sup> The doctrine of the house is certainly to “stay close” to the needs and views of the victims.

In general the organizational culture of the ICRC was better than that of the UNHCR: it created a new position to listen better to non-Western opinion, and it also advanced the careers of several women clearly interested in giving more attention to gender issues.<sup>79</sup> It also created an office for a policy advisor on gender issues in the office of the Director-General.

75 Chris Hedges, “Point man at the U.N. as Switzerland takes sides”, *New York Times*, 5 April 2002, p. A21, interview with Jenö C. A. Staehelin. Several ICRC officials contest the notion that the current ICRC is risk-averse or that Swiss culture plays a large role in the organization. Rather, they say, their policies are the result of careful reflection on long experience. Yet the fact remains that most of the policies emanating from headquarters just happen to turn out to be conservative – namely, cautious.

76 Favez’s careful critique of the organization’s role in the Holocaust was met by both formal acknowledgement and hyper-criticism by the organization. The latter point, which the present author has long believed, is shared by Baudendistel (above note 22) (whose study was directed by Favez!). The organization tends to see itself as on the side of the angels and thus does not like to be criticized by outsiders.

77 See further David P. Forsythe, “1949 and 1999: making the Geneva Conventions relevant after the Cold War”, *International Review of the Red Cross*, Vol. 81, No. 834 (1999), pp. 265–76.

78 On the impact of war on women and the ICRC’s increased attention to their long-term mental health in post-conflict situations, see Harroff-Tavel, above note 26; Charlotte Lindsay, *Women Facing War*, ICRC, Geneva, 2001; and the manual cited.

79 Harroff-Tavel, above note 26.

## Final thoughts

The ICRC at the start of the twenty-first century is decidedly more professional and less amateurish than ever before in its long history. It is more thoughtful about maximizing as much as possible its independence, neutrality and impartiality. It has set in place performance-based evaluations to try to capture – or measure, if you like – the substance of its humanitarianism.<sup>80</sup> But many policy choices require contextual judgement, not quantified reports and guidelines.

One of the keys to this evolution is the necessity for the organization to look candidly at its past. It can no longer control what is known about the reality of its involvement with the world. In the past what one knew was based mostly on the portrayal in ICRC publications and statements. This carefully nurtured hagiography was actually detrimental to the ICRC because it allowed the organization to cover up various mistakes, lethargies, departures from neutrality and so on, and thus to avoid taking a hard look at its self-proclaimed independence, neutrality, impartiality and effectiveness.

It is impossible to overstress how important it was in the 1970s for Donald Tansley to put some distasteful facts in the public arena, to demonstrate how dysfunctional ICRC hyper-secrecy and unilateralism were, to show how the RC Movement was basically a dysfunctional family. Once he presented the Final Report of his “Big Study”, the ICRC could not really ignore his findings and still retain a leadership position in the Movement. In 2004, almost thirty years later, the ICRC Director-General wrote that the Tansley Report provided a useful benchmark for evaluating the organization and its changes.<sup>81</sup>

Nor can it be stressed too much how important it was for the ICRC itself to respond to renewed interest in the events of the 1930s and 1940s by opening up its archives to independent and serious research. Once those archives became accessible in the 1990s, historians such as John F. Hutchinson and Ranier Baudendistel and journalists such as Caroline Moorehead raised serious questions about past events. No doubt senior ICRC officials were too busy with pressing daily issues to read such works. But eventually the greater access to information would compel the ICRC to re-examine all sorts of questions.<sup>82</sup> Were close relations

80 See further A. Wood, R. Apthorpe and J. Borton (eds.), *Evaluating International Humanitarian Action*, Zed Books, London/New York, 2001, with a foreword by the ICRC’s Wayne MacDonald.

81 Angelo Gnaedinger and Wayne MacDonald, “The ICRC in a changing world: assessments, ambitions and priorities”, in Liesbeth Lijnzaad et al. (eds.), *Making the Voice of Humanity Heard*, Brill, for Martinus Nijhoff, Dordrecht, 2004.

82 It is still the case that few ICRC officials at any level carefully read outside publications, or even the *International Review of the Red Cross*. Presidents Kellenberger and Sommaruga were more interested in operations than “doctrine”. Lower-level officials, while impressive in intellect and historical knowledge, lack the time to read broadly, as is true of most governmental officials with operational responsibility. Hence publications by independent authors rarely get read, whether the author be Favez, Hutchinson, Moorehead, Baudendistel, Forsythe or whoever. Critical views by Hutchinson have been published for about a decade, but he is virtually unknown in Geneva. It could be interesting for some part of the ICRC to compile a summary of the critiques of the organization by outside observers, indicating points of similarity and difference. Such a study might feed into future considerations – namely things to emulate or avoid, policy to keep or re-evaluate.

with the Swiss Confederation an asset or a liability? Had the ICRC in the past been much less independent, neutral and impartial than had been widely thought, or were there serious shortcomings that needed to be guarded against in the future? Was there reason to think that the Red Cross Movement might offer more advantages than heretofore perceived, rather than just liabilities and threats, for humanitarian protection as led by the ICRC?

During the past twenty-five years the ICRC has increasingly grappled seriously with these and other questions. The spotlight of media coverage, from the Nigerian civil war through to the latest wars, complex emergencies and failed states, has made its contribution to this tougher thinking. Likewise, competition from other public and private agencies – whether Joint Church Aid in Nigeria, MSF, the UNHCR or UNICEF among many others – has compelled the ICRC to justify with facts its claim to be an important protagonist in humanitarian crises. Beyond emergency relief, even with regard to visits to places of detention, the ICRC has to address carefully its role in comparison with European and UN agencies that also visit prisons – or will do so in the future.<sup>83</sup> Various sectors of the ICRC did not always welcome competition on its role on detention, and were sometimes reluctant to admit that others could be responsible and competent with regard to such visits.<sup>84</sup> But change did occur. The focus by Amnesty International and Human Rights Watch on humanitarian issues as well as human rights meant that the ICRC was scrutinized too.

The results of a rather painful quarter of a century since the end of the Nigerian war have been, on balance, positive. A more serious look at its past, a more searching media spotlight, more competition and scrutiny from other players in international relations have led to a better ICRC.

For example, the way in which the organization produces its budget projections for the following year is so thorough and impressive that it really constitutes an early warning system for humanitarian crises. Delegates in the field make a careful study of the political context, which leads to predictions on refugee flows, displaced persons, scope of “political” detention, likelihood of major armed conflict and so on. This information is then collated and reviewed at the Geneva headquarters, adjusted according to a global perspective, and then fed into the international community in various ways. A close look at this process early in the twenty-first century confirmed that the delegates in the field were extremely well informed about “political” trends. Alert diplomats in Geneva and elsewhere paid careful attention to these ICRC budgetary reports as an early warning indicator.

83 It is telling that the European agency for prison visits under the European Convention for the Prevention of Torture is modelled on the ICRC.

84 On this point see Hans-Peter Gasser, “The International Committee of the Red Cross”, in Jürg Martin Gabriel and Thomas Fisher (eds.), *Swiss Foreign Policy in a Changing World*, Palgrave, London, 2003. More justifiably, when a group of UN human rights officials wanted to make a one-time visit to Guantánamo prisoners in 2005, the ICRC – already on the scene – was opposed to it. A one-time visit without follow-up visits could not possibly establish a reliable system for protecting prisoners there. A UN one-time visit, possibly leading to public commentary, could not possibly guard against the use of the visit by certain prisoners to misrepresent the situation for political purposes. This UN request for a visit was ill-advised.

The ICRC might be neutral in the military struggles, strategic manoeuvres and partisan competitions of “political” players, but it has paid great attention to them – and with much sophistication. Senior ICRC delegates in the field who later became key officials in Geneva on the professional side of the house have been as “politically” astute as any political officer in any Western embassy.

### Crisis?

It has been said that “humanitarianism” is in crisis.<sup>85</sup> If there is a focus on the ICRC in international humanitarian affairs, this crisis can be overstated. One component of the crisis is said to be a false sense of optimism on the part of humanitarian relief agencies about what they can accomplish. But from Gustave Moynier to Jacob Kellenberger, the ICRC has been sceptical of states and mindful of the weakness of humanitarian agencies. For example, Moynier in 1906 and Kellenberger in 2002 were sceptical about calling a new diplomatic conference to formulate and adopt more humanitarian law, fearing that states would seize the opportunity to reduce – not enlarge – humanitarian legal protections. For the same reasons, at the outset of the movement to add two new protocols to IHL in the 1970s, the ICRC was suspicious of governmental motivation.<sup>86</sup> Beyond legal development efforts, ICRC delegates in the Balkans were certainly all too aware of how little power they had to affect the root causes of ethnic cleansing, crimes against humanity and genocide. The conservative and sceptical ICRC has not been one to get caught up in unrealistically optimistic views of new world orders and dramatic improvements in human nature.

If part of the modern crisis of humanitarianism stems from discovery of the “political” side-effects of humanitarian action, then the ICRC has long been aware of this dilemma and has long based its policy calculations precisely on wrestling with the problem. When Greece was under military rule in the 1960s, the ICRC was aware that its presence there in order to carry out visits to places of detention contributed to the legitimacy of the military government. The organization was of course aware that the junta was trying to offset criticism of its detention policies, including claims of torture, by saying that the ICRC was on the scene. The ICRC therefore made sure that its defence of prisoners was vigorous enough to justify a continued presence in the country. That defence was also vigorous enough for the government to terminate the organization’s presence.

85 David Rieff, *A Bed for the Night: Humanitarianism in Crisis*, Simon & Schuster, New York, 2002. See also Michael Barnett, “What is the future of humanitarianism?”, *Global Governance*, No. 9 (2003), pp. 401–16; and Gil Loescher, “An idea lost in the rubble”, *New York Times*, 20 August 2004, p. A25. See further Peter J. Hoffman and Thomas G. Weiss, *Sword & Salve: Confronting New Wars and Humanitarian Crises*, Rowman & Littlefield, Lanham, MD, 2006.

86 If read carefully, Article 18.2 of 1977 Protocol II on non-international armed conflicts might be thought to restrict the diplomacy of the ICRC, compared to the 1949 Geneva Conventions’ common Article 3 on such situations. Fortunately, such legal comparisons do not appear to have had much effect in actual practice.



In Ethiopia in 1986 the ICRC refused to participate in governmental schemes for relocating civilians, believing that its contribution to the humanitarian needs of those civilians was not commensurate with the benefit that it would necessarily entail for the strategic position of the government in its conflict with rebel or secessionist forces. The ICRC knows well that humanitarian action can have “political” consequences. The organization therefore looks at its “political impact” with an eye to minimizing and/or counterbalancing that impact.

The ICRC has long been aware of the “difficult choices and moral quandaries”<sup>87</sup> inherent in much humanitarian work. The Balkan wars and other conflicts after 1990 or thereabouts may have brought these difficult choices and moral quandaries back to centre stage, but they certainly did not push the ICRC into a “twilight of hopelessness”.<sup>88</sup> Even when intentional and deadly attacks, and other misfortunes such as kidnappings, were visited upon ICRC delegates in the field, in such places as Burundi, Chechnya, the Democratic Republic of the Congo, Iraq and Somalia, the ICRC moved to a neighbouring area and continued as far as possible both to provide relief to the original country and to visit detainees there.

There *was* a serious problem for the ICRC in the sense that its emblem was not respected in many places and its humanitarian space in the midst of conflict often shrank to the point of disappearance. But this was because of the attitudes of others, their tendency towards total war, not because of any naive optimism on the part of the organization. There *was* another serious problem in that patterns of conflict in the twenty-first century left the ICRC wondering who the warring parties really were, and how to locate them. In Iraq in 2003 or in Afghanistan around that time, the ICRC did not know exactly with whom to hold discussions in order to stop attacks on its personnel and facilities. In seeking assurances to that effect from representatives of al Qaeda and other amorphous networks, it was difficult to know who and where they were in order to try to convince them of the ICRC’s neutrality. Even in complex situations such as the Lebanese civil war, such negotiations had been easier (in southern Lebanon in 2006, the ICRC was well known to Hezbollah and other warring parties).

For the ICRC early in the twenty-first century, the world was a lot different from what could be desired, but on balance not all that different from past worlds already encountered. Was Russia in Chechnya all that different from imperial Japan in China? Was Milošević in the Balkans all that different from Mussolini in Abyssinia? Were the Americans, in their “war on terrorism” after 2001, totally different from the French when dealing with “Algerian terrorism” between 1954 and 1962? In the Geneva press of the 1970s, high ICRC officials could be found lamenting the total war that was practised by all sorts of irregular fighters, not to mention the weaknesses of IHL in south-east Asia in particular.<sup>89</sup>

87 Barnett, above note 85, p. 406.

88 *Ibid.*, p. 410.

89 André Naef, “Le CICR a-t-il encore un rôle à jouer dans une période de changements révolutionnaires?”, *Tribune de Genève*, 9 May 1976, p. 2, based on interviews with Jacques Freymond and others.

As ICRC President Kellenberger said in an interview in 2004, the problem of getting humanitarian restraints imposed on total war thinking was an old problem, even if there were some new and “dramatic dimensions” to this old problem after 11 September 2001.<sup>90</sup>

If there has been a profound crisis in humanitarianism in the first decade of the twenty-first century, it has been more in the eyes of glib commentators and naive relief workers than in those of the experienced officials of the ICRC. The latter might have to take exceptional measures for physical security, or work harder at establishing a dialogue that could produce real security. The ICRC has, however, doggedly continued with its strange but impressive combination of devotion to the humanitarian cause, on the basis of the neutral Red Cross model, mixed with an awareness of how limited its contribution to humanity was when confronting monstrous evil.

90 Vincent Bourquin, *Tribune de Genève*, 14 February 2004, downloaded from the Internet, no page number.