

Sanctions for violations of international humanitarian law: the problem of the division of competences between national authorities and between national and international authorities

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Abstract

This article seeks to explore the reasons why sanctions for international humanitarian law (IHL) violations are so difficult to put into effect. Beyond the lack of willingness of states to do so for political reasons, some more technical aspects should be emphasized. The implementation of sanctions is too often seen solely through the prism of international law, without enough attention being paid to the complexity and diversity of municipal legal systems. The author puts forward the idea that efficiency starts with a clear sharing of competencies. Three main issues are discussed: first, the influence of the sharing of competencies within the state (between the judiciary, the executive and the legislature) on the implementation of sanctions; second, the broad interpretation of their powers by regional or international bodies in charge of monitoring and reviewing human rights protection; and, third, the creation of new or specific bodies in charge of dealing with and if necessary punishing gross violations of humanitarian law.

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The debate concerning the effectiveness of sanctions in international humanitarian law (IHL) naturally leads us to ask ourselves about the impact of the exercise of competences by the institutions entrusted with this task under the Geneva Conventions. The present contribution seeks to present and enumerate a number of the difficulties and problems that concern the effectiveness of sanctions for serious breaches of international humanitarian law associated with the exercise of competence by the bodies entrusted with this task.¹

The generally perceived ineffectiveness of sanctions for serious violations of international humanitarian law is due to a combination of various factors, one of which – and a major one – is the incapacity of the bodies responsible for the control of international humanitarian law to discharge their task. To put it plainly, the control jurisdictions or institutions cannot or do not wish to fulfil their mission and impose sanctions for such violations. Considering the number of violations that occur, sanctions are rarely pronounced and, when they are, they generally appear to be lenient towards the perpetrators. This gap between the mechanisms emphasized by the texts and the reality constitutes one of the critical points of international humanitarian law, because it results in a failure to penalize the violation of legal obligations. This impression of ineffectiveness (indeed more than just an impression!) affects the image of international humanitarian law and its capacity to govern the protection situations for which it is intended.

The Geneva Conventions and the Additional Protocols contain clear and precise obligations intended for the states parties. Furthermore, these obligations are reinforced not only by the general rules of public international law but also – and this is forgotten a little too often – by the rules of domestic public law, the effectiveness and implementation of which are often more convincing. The situation can be summarized as follows.

Violations of international humanitarian law fall within the sphere of competence of the state: it is up to the state to prosecute and punish such violations.² Third-party states can also (and generally should, even if only rarely) prosecute such violations if they constitute grave violations of international humanitarian law (whether it is a question of grave violations of the Geneva Conventions, of grave violations under other texts constituting war crimes or indeed of the grave violation of customary rules also constituting war crimes). This obligation is (or should be) a direct consequence of the obligation stemming from the principle of universal competence with regard to international crimes. In the absence of implementation, the international community has sporadically tried to establish sanctions mechanisms, a process culminating in the establishment of ad hoc international criminal courts or combined courts to make up for the

1 The ideas and proposals that follow are intended more as food for thought than tried and tested solutions. They are drawn from collective thinking and from personal ideas. These are the views of the author alone and not necessarily those of the ICRC.

2 As well as to redress them, though that is a different debate, unless we consider – which should at least be discussed – that redress can also be a form of sanction.

deficiencies of the traditional mechanisms. While the establishment of a permanent International Criminal Court evidences the emergence of new political will, it cannot on its own solve all the problems if the majority of prosecutions are not undertaken by the states parties.

The approach followed in the present contribution is based on a series of findings and questions.

The findings derive from the implementation of obligations under the Geneva Conventions of 1949, which require states to implement sanctions mechanisms in their national penal systems in the event of grave violations of international humanitarian law. While numerous states have incorporated clauses providing for such sanctions in their legislation, in particular in their penal codes, it is up to them to decide how and by whom such measures are to be taken. However, the situation is far from uniform and there are different strata of competence. A first stratum is represented by “administrative sanctions” which can be pronounced by the hierarchical superior. They are generally independent of other types of sanctions but may still have points in common. A second stratum is represented by the traditional penal sanctions entrusted either to a special judge (military courts) or to an ordinary judge (of the criminal courts); the way in which competences are apportioned may vary greatly from one state to another and may be based on the status of the perpetrator, the time the offence was committed or other criteria such as the capacity of the victim, the nature of the operation in question and so on.

Apart from this organization of the division of competences relating to the sanctions for violations of humanitarian law, the implementation and/or effectiveness of which may leave much to be desired, it will be noted that there is a recent trend for actors – whether natural persons or somewhat less than natural but pre-existing – to play a role that they had not intended to play originally or that they previously had to play in only a complementary or subsidiary fashion. These are national or supranational bodies whose main role is to condemn and indeed impose sanctions on behaviour that constitutes a violation of fundamental rights. The question of sanctions goes beyond simple penal sanctions³ and simple violations of international humanitarian law involving a plurality of actors who, during recent years, have “shown themselves” capable of punishing behaviours that also (and sometimes above all) constitute violations of humanitarian law. This situation has the effect of confusing the issue because solutions are not always to be found where they might be expected!

Finally, the debate has thrown up *sui generis* institutions and solutions which, though they first appeared iconoclastic and incompatible with the guiding principles and rules of international humanitarian law and international criminal law, are now seen as vital. This includes in particular non-penal sanctions and the creation of non-judicial or para-judicial entities established to “come up with”

3 We would point out here that national penal sanctions do not – far from it – consist solely of punishments involving the deprivation of liberty.

solutions for reconstructing society, satisfying the victims and ensuring that certain grave violations of international humanitarian law do not go unpunished.

Thus there are three points to be examined: the organized division of competences within the state responsible for punishing grave violations of international humanitarian law; the spontaneous appropriation of competences by the bodies responsible for overseeing respect for human rights; the creation of *sui generis* bodies to deal with and, where necessary, impose sanctions for grave violations of humanitarian law.

The organized division of competences within the state to deal with grave violations of international humanitarian law

Sanctions for grave violations of international humanitarian law are not – far from it – left aside by international humanitarian law⁴ or by criminal law (whether national or international). The obligations are fourfold in nature.

First, states must adopt penal measures to punish persons who have committed grave violations of international humanitarian law; this constitutes a positive measure or an obligation to act, non-respect of which is (theoretically) likely to engage the international responsibility of the state. Second, states must prosecute and try, or arrange for the trial of, persons who have committed grave violations of international humanitarian law. Third, they must take the necessary steps to put an end to the grave violations of international humanitarian law if they still persist; if a violation continues, states are obliged to take measures. Fourth, states must respect and ensure respect for the right to a defence and the guarantees of a fair trial.

The state is thus offered every opportunity to fulfil its obligations in this regard. International humanitarian law empowers a state to exercise its competences in domestic law, but as it interprets them. Each state must retain control of its own proceedings and its indictments, provided that it discharges the obligations to which it has consented. Not all the obligations relate to the division of competences. Some are connected with the substance of the offences and the nature of the sanctions. Others, however, concern the obligation to try or to arrange for the trial of the persons responsible. These are the obligations that are fundamental to the division of competences, but they also represent its main challenge.

A number of remarks may be made in light of this multiplicity of situations.

First, this question relates more to domestic law than to international law. The range of possibilities is so great that it gives each state a choice as to the methods and the means of the sanction. Therefore the question of the choice of court, its composition and its rules of procedure is left to the discretion of the

4 See Geneva Convention (GC) I, Article 49; GC II, Article 50; GC III, Article 129; and GC IV, Article 146.

state, provided that it complies with the rules laid down by international humanitarian law. The question of determining whether the court should be ordinary or extraordinary (which is not the same as special) is a decision that is open to all kinds of responses. This can be unsettling when attempting to understand the process, because analysis of the implementation of this obligation presupposes a good knowledge of each national legal system, which is not always possible.

Second, international humanitarian law texts concentrate their obligations on grave violations of international humanitarian law (or more precisely grave violations of the Geneva Conventions). This formulation does not exclude other violations (which most often relate to statutory law) but, it would seem, systematically incorporates their penal dimension. This is an aspect that perhaps merits discussion. While the many actors and experts in humanitarian law and post-conflict situations currently agree to acknowledge that sanctions do not need to be perceived solely from the penal aspect, international humanitarian law, in contrast, concentrates on the penal sanctions. This could present a distorted perception of sanctions in as much as certain bodies, including in particular disciplinary entities, can apply sanctions that do not even enter into consideration in the pure perspective of humanitarian law but can prove more effective and less hypothetical than penal sanctions.

Third, international humanitarian law contains provisions only with regard to the characteristics of the court and the general rules of procedure applicable. International humanitarian law does not require states to choose between civil courts and military courts. Nor indeed does it say how the two types of jurisdiction should be apportioned where both exist. The multiplicity of domestic situations precludes any exhaustive presentation of the possibilities of assigning competences in the national legal orders. However, it is possible to outline the main models of this division, while bearing in mind that this is essentially a pedagogical exercise. There are three main possibilities.

The first possibility – and the simplest – consists of entrusting the task of dealing with such violations to the ordinary courts of the judiciary. However, although simple, this system has a twofold disadvantage: on the one hand, the courts are not generally adapted to dealing with this type of violation on a massive scale and, on the other, the judges are not specifically trained to deal with the particularities of grave violations of international humanitarian law. What is more, ordinary courts may not be functioning during hostilities.

The second possibility is the creation of special courts for grave violations of international humanitarian law. This solution results in the coexistence of ordinary courts with special courts. In this case, while a whole range of solutions is available to the state, there can be profound differences. The main question is to determine what criteria apply for the competence of the court responsible for dealing with grave violations of international humanitarian law. Is it a court of a military type which defines its competence on the basis of the capacity of the perpetrator of the violation (in which case, civilians are excluded)? Is it a permanent court or a temporary one? Is it a court that defines its sphere of

competence in terms of territory and time and so can try anyone who has committed such crimes during the conflict and on all or part of the territory of the state? This gives us all the ranges and nuances of the solutions that can exist. With this possibility, there clearly arises the question of the division of competences between civilian and military courts. This is a matter left to the discretion of the state. However, we must be careful not to be misled by words where we do not know the context. The traditional mistrust or suspicion of military courts is not necessarily appropriate where due process is guaranteed. In the case of courts of special jurisdiction, it is necessary to draw up a list of the “minimum standards” that must be complied with for them to be considered a reliable “judicial order” and so to draw up an adequate representation of the division of competences. Although the courts of special or specialized jurisdiction are an attractive option for the state, they must not be transformed into “exceptional courts” which either pass judgment without discernment or which systematically acquit the perpetrators of grave violations of international humanitarian law.

The third possibility is that there already exists within the state a plurality of orders of jurisdiction (judicial, penal and administrative courts) which share between them the authority to punish grave violations of international humanitarian law. This is particularly the case where penal sanctions and disciplinary sanctions are separate from each other. In such an eventuality, there is the risk of problems from an overlap of competences or a difference in assessment of the violation and the sanction. Disciplinary sanctions are generally perceived as administrative decisions taken in the name of the exercise of hierarchical power (in certain cases, they are even considered to be internal measures that are not open to judicial review) and so can be independent of penal sanctions. This has an unquestionable influence on the competence of the two orders of jurisdiction and can have negative induced effects (for example, the disciplinary sanction may be heavier than the penal and vice versa). However, we must not make things seem worse than they are. Despite the existence of two orders of jurisdiction, certain states (mainly states applying a Roman-German legal system) establish bridges between them and take into consideration the sanction in its entirety, despite the existence of two judges (criminal and administrative).

The only common limit concerns the jurisdictional guarantees that must be respected in all cases. If it appears that there is a discrepancy between the two types of court, only those which conform to the requirements of international humanitarian law should be able to rule.

In the fourth possibility, international humanitarian law only calls on the external jurisdictions if they are in a better position to penalize grave violations of international humanitarian law. Thus the exclusive competence of the state is not taken as a given but gives it priority in the obligation to rule on the matter. Is it therefore important to discover the extent to which the state is better placed and whether its courts are able to punish such violations?

All these questions show that the division of competences is a subject on which international humanitarian law has relatively little to say, as it is approached through an analysis of the end result (respect for international humanitarian law

and sanctions in the event of its violation) that has little effect on the division of competences within the state as regards international humanitarian law sanctions. This freedom of organization is perhaps one cause of the difficulty of applying sanctions. This is scarcely surprising considering that a sanction's effectiveness is due to the process that takes place rather than simply being a "price to pay" for a serious violation of international humanitarian law.

Here, then, are a number of questions intended to stimulate debate on this point.

Is it not a fact that, by doing no more than laying down a series of minimal rules, international humanitarian law has left too large a margin of interpretation to the states, which take advantage of this vacuum to organize their own system of the division of competence in favour of a minimalist jurisdictional system or, conversely, by deliberately leaving the treatment of grave violations of international humanitarian law out of the general rules?

Is it not a fact that the choice of an ordinary jurisdictional system is bound to fail where the judges are not specifically trained to deal with the particularities of offences connected with international humanitarian law (lack of knowledge of the particularities of the offences, lack of practice with regard to satisfaction of the conditions to be fulfilled for there to be an offence and so on)?

Is it not paradoxical to organize the division of competences between courts without paying attention to the procedure and the particularities of violations of international humanitarian law?

How are we to take into consideration the other forms of sanctions (including in particular administrative or disciplinary sanctions), which international humanitarian law takes into account only indirectly?

These questions do not presume to offer a single definitive answer to the problem of the division of competences. Rather, they demonstrate that this is one reason for the lack of effectiveness of sanctions.

The spontaneous appropriation of competences by the bodies responsible for overseeing respect for human rights

Another phenomenon that has developed more recently concerns not the exercise *a priori* of the original competence but the substitution or more precisely the "taking over of competence" by a body that exists but that is not specifically dedicated to sanctions for violations of international humanitarian law. What has been observed in recent years and noted by various authors⁵ is the following: faced with the ineffectiveness of the conventional sanctions mechanisms, the victims (or more often individuals acting privately or within a group for the defence of

5 H el ene Tigroudja, "La cour europ eennne des droits de l'homme face au conflit en Tch et ech enie", *Revue trimestrielle des droits de l'homme* (2006), p.128; and Hans-Joachim Heintze, "The European Court of Human Rights and the implementation of human rights standards during armed conflicts", *German Yearbook of International Law* (2002), p. 64.

interests) have sought new ways of obtaining “justice” before a court. Numerous states are members of international organizations for the defence of human rights and, as such, have incorporated into their legal order mechanisms of individual recourse, permitting their nationals to have recourse to a supranational judge if there is a dispute or if they do not obtain satisfaction. Thus the Inter-American Court of Human Rights and the European Court of Human Rights have, on various occasions, been called upon to punish violations of human rights which also constituted violations of international humanitarian law. However, the two courts have adopted a different approach with regard to international humanitarian law. Whereas the Inter-American Court has referred to humanitarian law to interpret the provisions of the Convention it is responsible for safeguarding,⁶ the European Court of Human Rights, while sanctioning behaviours constituting grave violations of international humanitarian law, has preferred to refer solely to the violation of the European Convention on Human Rights (ECHR).⁷ In our opinion, however, the question of the reference to the applicable law is secondary in the exercise of the search for the broadening of competences. The question of the choice of the reference norm (international humanitarian law or international human rights law) remains subject to a number of internal and external factors that are difficult to analyse here in their entirety. On the other hand, it must be noted that a real complementarity (or competition!) is beginning to take shape between the various bodies responsible for punishing violations of international humanitarian law. This competence, developed fortuitously, can also give rise to certain consequences in terms of the effectiveness of these same sanctions. It must immediately be pointed out that the jurisdictional bodies of international human rights law were not designed to respond to the challenges of violations of international humanitarian law. Although it has been possible to obtain certain considerable results, their significance must be measured over the long term. As with the preceding point, we shall take note of a certain number of issues that are important for the debate on sanctions before going on to raise a number of questions concerning the exercise of these new competences.

First, the exercise of the competence by the regional human rights jurisdictions is of an occasional nature and forms part of the wider dimension of the international protection of fundamental rights. In consequence, it is difficult to describe the situation as a real competition between jurisdictions. On the contrary, it is a “substitution mechanism”, showing, in most cases, the inability of the national systems to take efficient and effective measures.

Second, the reference to humanitarian law to analyse violations of fundamental rights may be different, depending on whether it is a question of interpreting the rules of the Geneva Conventions or a normative reference serving

6 See in particular the *La Tablada* case, and also in relation to disappearances, I/A Court H.R., *Serrano-Cruz Sisters v. El Salvador*, Series C No. 118, Judgment of 23 November 2004, paras. 111 ff.

7 See in particular the judgments of 24 February 2005 in the cases of *Khashiyev and Akayeva v. Russia* (Application No. 57942/00 and No. 57945/00), *Isayeva, Yusopova and Bazayeva v. Russia* (Application No. 57947/00, 57948/00 and 57949/00) and *Isayeva v. Russia* (Application No. 57950/00).

as the basis for the sanction. The position of the Inter-American Court in the *La Tablada Base* was much more comfortable than that of the European Court of Human Rights when it had to pronounce on the direct violation of Article 3 common to the Geneva Conventions. In these particular cases, the European Court of Human Rights referred directly to acts constituting grave violations of humanitarian law (methods and means to be used, the massive use of weapons which have indiscriminate effects). It did not qualify them as such but referred to the articles of the ECHR.⁸ Comparison and analysis of the reasoning of the courts is particularly difficult, bearing in mind that the issues at stake were different. However, we can underline here the fact that the question of the competence of these courts with regard to sanctions for violations of international humanitarian law cannot be framed in the same terms as those encountered before national or international courts. The courts responsible for establishing human rights violations are not criminal courts. They find against states, but not perpetrators. Substitution therefore has its limits.

Third, the competence of these courts *ratione materiae* does not often lead them to address questions of grave violations and their sanctions according to a perspective of repression or retribution, but more in terms of the conformity of behaviours with the international undertakings of the states (conventions protecting human rights or fundamental rights). The role of the judges is to determine whether the obligation under the Geneva Conventions was ignored in a very specific case and having regard to the evidence provided by the parties. In consequence, the “sanction” pronounced by these courts for the protection of human rights can only be the satisfaction of seeing the state denounced for its treatment of violations of international humanitarian law, possibly with an award of financial compensation, representing a so-called “equitable remedy”. Hence we may well ask whether the exercise of a competence with regard to international humanitarian law by these courts can influence the behaviour of weapon bearers in one way or another.

Fourth, these courts cannot make up for the general deficiency of the system. While they can support, encourage and initiate certain channels, they are intended for individual claims and so cannot absorb large numbers of violations of international humanitarian law where these have been committed. The regret expressed by certain observers and commentators concerning the absence of a direct reference to international humanitarian law is perfectly understandable. What court would take the risk of going beyond its “sphere of competence” on the grounds that it could have been inspired by and applied the rules of international humanitarian law? The problem may not lie there. The protection of the substance of the rule is more important for the court than the search for the broadest basis. Accordingly, there is not a transfer of competence but rather a marginal supplementary competence, the resources of which are limited. To count on a substitution of competence would be a mistake.

8 ECHR, Articles 2, 3, 5 and 13.

Fifth, it is impossible to ignore the political importance of such cases and the obligation of the court to which the matter has been referred to show itself beyond reproach in terms of legal reasoning. There can be no room for approximation in these cases, which are often heavily covered in the media and may take place in contexts where peace has not necessarily been established. This “political weight” of the legal reasoning undoubtedly influences the perception of the subject-matter competence by the court: the choice of reference norm cannot be made lightly or correspond to an exercise drawing together a compendium of all the texts existing and protecting the same rights.

Sixth, the question clearly arises as to the capacity of these courts for the protection of human rights to deal with grave violations of international humanitarian law and their sanctions. The issue here is an external physical limit to the capacity of these courts to accept a large number of applications. A massive influx of petitions would increase the risk of the system becoming congested and thus prevented from pronouncing judgment under the right conditions. In other words, if these courts are called on to deal with a restricted number of cases, they can cope. However, if it were a question of dealing with hundreds or even thousands of cases, the situation would be more complicated and the solution trickier. We must not lose sight of these questions of physical capacity when it comes to assessing the effectiveness of the “taking over of competences” and, above all, we must not give false hope to applicants who believe in a miracle solution and a direct sanction for grave violations of international humanitarian law. However, the effect of these courts’ reiterating the same message must not be underestimated. If, despite the limited number of cases, there is a certain consistency in their judgments concerning violations, the effect may prove to be positive in the medium term, particularly in terms of amending existing legislation. In fact, the intervention of these courts is often an admission that traditional mechanisms have failed.

Here again, as with the first problem, a number of questions can be raised with regard to the complementary or supplementary competence of these courts:

Does the handling of grave violations of international humanitarian law by the courts responsible for protecting international human rights law constitute progress or an advance in terms of sanctions or, on the contrary, does it represent a solution that is inevitably limited and can only play a marginal role?

In terms of sanctions for violations of international humanitarian law, what is the real impact of these new competences? Can we consider the condemnation of a violation to be a form of sanction? Can this have an influence on weapon bearers?

The creation of *sui generis* bodies to deal with and, where necessary, punish grave violations of humanitarian law

Despite the existence of grave violations of international humanitarian law, sanctions generally fail. National prosecutions for grave violations of international

humanitarian law remain marginal, the international criminal courts have difficulty in accelerating the trial process and punishing the main accused, and the states which have launched themselves into a proactive policy of applying the principle of universal competence have often had to draw back for diplomatic and political reasons. There remains one last avenue to explore, namely the possibility of establishing ad hoc institutions responsible for the management of violations. The idea is to create a competent body “to order”, depending on the possibilities available at the end of the conflict or even while it is in progress. A number of points may be raised here.

First, the difficulties of implementing the system of original competences (state and supra-state) oblige the states responsible for the implementation of international humanitarian law (as with any other international obligation they have contracted) to find solutions other than “inaction” or “amnesty”. While it is true that these two characteristics have long marked the end of conflicts, there remains a – rather recent – tendency on the part of states (under pressure from the victims, pressure groups, other states, the international community) to envisage a replacement solution when the initial solutions do not work. These actions can take the form either of the establishment of special courts (to avoid the use of the term “exceptional courts”) or of (paralegal) truth and reconciliation commissions.

Second, the search for original solutions must be combined with an imperative, namely the effectiveness and measurability of the results. It is not sufficient simply to establish an ad hoc body. Such a body must also have the means to fulfil its task and the capacity to pronounce “sanctions” in one form or another. Thus it is not impossible to combine the existing institutions (which will then have singularly reduced tasks in terms of caseload and must confine themselves to the most serious cases) with the traditional institutions (in so far as they operate at all). The new institutions have the advantage of being able to establish their own procedure and so define their competences on the basis of the needs encountered in the local context.

Third, the diversity of the expectations and a certain realism often lead to a rethink and the requirements in terms of sanctions being revised “downwards”. While no one disputes the need for an adequate and proportionate sanction, an analysis of the aims and objectives of the sanction inevitably leads to the situation being examined in concrete terms with regard to the three aspects “truth–reparation–reconstruction”. As a result, the sanction is no longer confined by exclusively penal constraints. On the contrary, it can incorporate elements to help the state in the process of reconstruction: pacification, reconciliation (acceptance of the other), restoration of the place of each within society, restoration of the rule of law and confidence in the legal system. This also means that the competences of the ad hoc bodies must lead to a multidimensional approach to the sanction that is “compatible” with the requirements of international humanitarian law. This is certainly one of the most sensitive questions to deal with, giving rise to queries and controversy.

Fourth, the choice of ad hoc bodies cannot be made without taking into consideration the resources available and the prospects for the success of the

process on the ground. The establishment of such a body must not be considered a panacea or a miracle cure. It is imperative to arrive at a precise and rigorous definition of the competences, procedures and powers of the ad hoc body and to specify its tasks on the basis of the factors particular to every post-conflict situation. This approach is likely to vary from the traditional standards for sanctions, as laid down in the original system of the Geneva Conventions.

This rethinking of the competence of the traditional bodies or the bodies established on an ad hoc basis leads us to raise a number of questions regarding the creation of a competence specific to such bodies.

Is it possible for these ad hoc bodies to be entrusted with tasks identical to those established by the legal texts when it comes to sanctions and the repression of grave violations of international humanitarian law? In particular, how are we to manage the potential conflicts between the characteristics of these institutions and the general principles of criminal law: non-retroactivity, proportionality of the sanction in relation to the charges and so on?

Can the definition of competence in favour of an ad hoc body be made in favour of an extended range of sanctions, including for example the pecuniary or moral responsibility of the perpetrators? Is it possible to include the absence of penal sanctions and to enshrine a certain form of immunity from prosecution?

How are we to apportion precisely the division of competences between the traditional jurisdictional bodies (criminal courts) and the transitional bodies (truth and reconciliation commissions)? Where do we draw the dividing line and who will decide this? What are the criteria for selecting the competent body?

Should traditional bodies (i.e. customary law structures) be incorporated into the sanctions and reconstruction system by granting them new competences? Under what conditions? Is it possible to assess the risks of such a formula (e.g. by looking at the *gacaca* courts in Rwanda and the resulting blunders)?

What is the status of these institutions with regard to general international law and international humanitarian law? Is their competence compatible with the requirements of the fight against impunity, and the prosecution of perpetrators of international crimes? If so, how? Don't these institutions create a no-man's-land in terms of the rationale for sanctions against grave violations of international humanitarian law? Don't they constitute a solution that is easy for the present but that mortgages the future, especially if they turn out to be a failure?

In spite of its fundamentally technical nature and its numerous variants, the division of competences can no longer be considered a subject of secondary importance when seeking to understand the difficulties associated with the effectiveness of sanctions in international humanitarian law. It is an important element of the process that leads to sanctions being pronounced. This subject is being neglected as no debate is taking place on the matter. It is absolutely essential to recognize its true significance if we wish to have a comprehensive debate on sanctions.