

## REPORTS AND DOCUMENTS

# The International Committee of the Red Cross's (ICRC's) role in situations of violence below the threshold of armed conflict

Policy document, February 2014

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### Summary

The policy document entitled *The ICRC: its mission and work* defines the mission of the International Committee of the Red Cross as follows:

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance.

The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence. (emphasis added)

This policy document aims to explain exactly what the 'other situations of violence' are that come within the ICRC's field of action: situations in which violence is perpetrated collectively but which are below the threshold of armed conflict. Such situations are characterized in particular by the fact that the violence is the work of one or several groups made up of a large number of people. The other types of

violence (interpersonal or self-directed) are not what the ICRC understands by 'other situations of violence' in the mission statement above.

This policy document also aims to present the criteria that must be met for the ICRC to decide to conduct a humanitarian operation in such situations. Indeed, unlike armed conflict situations, in which the ICRC is always keen and determined to act on the basis of its mandate under international humanitarian law, in other situations of violence the ICRC acts on the basis of its right of humanitarian initiative under the Statutes of the International Red Cross and Red Crescent Movement, and by choice, depending on a number of criteria.

The first of these criteria, the departure point for any ICRC activity, is that the situation of violence has significant humanitarian consequences. The horrific bloodshed of recent decades is the outcome of increasingly diverse and complex situations of violence, many of which, while not reaching the legal threshold of armed conflict, have humanitarian consequences that are as, or even more far-reaching than those of armed conflicts. In such cases, the ICRC does not turn its back on people's suffering on the grounds that it is not the result of violence committed during an armed conflict. Its interest in such situations, which are not governed by international humanitarian law, is not new: the ICRC has conducted humanitarian activities in such situations since its inception (the most common throughout the twentieth century were those carried out for 'political' detainees). Based on this long operational history, the ICRC adapts its policy as the humanitarian environment changes and in the light of its own experience.

In addition to significant humanitarian consequences, there is a second criterion, namely that the humanitarian action being considered by the ICRC constitutes a relevant response to those humanitarian consequences. Indeed, the ICRC's primary objective is to provide an impartial humanitarian response to the needs of the people affected by the violence. In that respect, it must be able to measure the relevance of its humanitarian work on the basis of the anticipated impact on the victims. Acceptance in a given context of the ICRC and of its principles of action (humanity, impartiality, independence, neutrality), the ICRC's expertise in certain specific fields and its capacity to provide a multidisciplinary response, its knowledge of the situation and of the perpetrators of the violence, its capacity to work in partnership, in particular with the National Red Cross and Red Crescent Societies, are some of the many factors enabling it to analyse whether the work it plans to do is indeed relevant.

This policy document also considers the principle of consent from the State on the territory of which the ICRC wishes to carry out a humanitarian operation.

Lastly, in situations of violence below the threshold of armed conflict, the ICRC prefers to work in partnership with others, notably the National Society. The National Society is often the first to respond – and to have the capacity to do so, given that it is already present on the territory – when a country is struck by an emergency; this is especially true in situations of violence below the threshold of armed conflict.

## I. Introduction

The horrific bloodshed of recent decades is the outcome of increasingly diverse situations of violence – which do not necessarily deteriorate into armed conflicts – in terms of the nature of both the perpetrators and the phenomena involved. These sometimes chronic situations of violence, whether spawned by social or political upheaval, identity-related tension and/or repressive or discriminatory State policies, or criminal acts, create dramatic humanitarian situations with consequences that are as, or even more far-reaching than those of armed conflicts. They have emerged against the backdrop of globalization, which in some cases has worsened inequalities within societies, hastened the privatization of violence in the absence of State services in certain contexts or encouraged ‘identitarianism’ or political or social contestation. Phenomena such as easily accessible weapons, climate change, urbanization, migration and the development of communication technologies have accelerated the emergence of violence and play in favour of certain perpetrators. The violence may also be the work of the State, which, through its use of law enforcement, arrests and detentions, etc., itself becomes a perpetrator of the violence.

This policy document endeavours to define the situations of violence entering into the field of action of the International Committee of the Red Cross (ICRC) even though they are below the threshold of armed conflict: violence perpetrated collectively.

The ICRC is a flexible institution and therefore adapts to change. For over 150 years, it has sought to mitigate the suffering of the people affected by situations of collective violence, whether armed conflicts or other situations of violence. It has done so, even in situations of violence that are below the threshold of armed conflict, ever since its inception in the late nineteenth century (when Europe went through a period of political upheaval). Today, it continues to adapt to modern phenomena of collective violence in an endeavour to respond to their humanitarian consequences, within the limits of its capacities and competences.

The ICRC also adapts its policies to take account of these changes. The present text describes the general thrust and principles of its work in situations of violence falling below the threshold of armed conflict. It reaffirms that human suffering is a central concern for the ICRC, which is motivated by the principle of humanity, the first of the Fundamental Principles underpinning the humanitarian work of the International Red Cross and Red Crescent Movement (hereafter the Movement). No matter what the causes or situations, the ICRC asks what it can do to help alleviate human suffering.

This policy document, entitled *The ICRC’s role in situations of violence below the threshold of armed conflict*, provides the reference frame the ICRC needs for its work in such situations of violence. Indeed, the ICRC’s mission and work in armed conflicts are derived from its treaty-based mandate under international humanitarian law (IHL), and it is therefore obviously keen and determined to act in all such situations. The situation is different in the case of other situations of violence. Over the years, the ICRC has therefore established, on the basis of its

operational practice and ‘Red Cross law’, or the law of the Movement, specific criteria for its involvement in such situations. Those criteria are set out in this policy document.

## II. Scope of the policy

The policy document entitled *The ICRC: its mission and work*<sup>1</sup> defines the scope of the ICRC’s work:

1. international or non-international armed conflicts;
2. other situations of violence;
3. natural or technological disasters, or pandemics;
4. other situations.

This policy document covers only the second field of activity.

‘Other situations of violence’ are situations in which acts of violence are perpetrated collectively but which are below the threshold of armed conflict.

The distinction, in particular between non-international armed conflicts and ‘other situations of [collective] violence’, is important when it comes to determining not only the applicable law (see section V below), but also the source of the ICRC’s mission and work in such situations (see section IV below).

This policy document covers situations in which acts of violence are perpetrated collectively but which are below the threshold of armed conflict.

### A. Internal disturbances and tensions

There has never been an agreed legal definition of what constitutes the situations of violence, other than armed conflicts, in which the ICRC acts. Various attempts were made during the twentieth century to define the concepts of ‘internal disturbances’ and ‘internal tensions’, in order to affirm the ICRC’s role in such situations and to determine which acts of violence are not covered by IHL. Both concepts are described in the commentary on Article I of Additional Protocol II:<sup>2</sup>

No real definitions are given. The concept of internal disturbances and tensions may be illustrated by giving a list of examples of such situations without any attempt to be exhaustive: riots, such as demonstrations without a concerted plan from the outset; isolated and sporadic acts of violence, as opposed to military operations carried out by armed forces or armed groups; other acts of a similar

1 Policy document adopted in 2008, available at: <http://www.icrc.org/eng/resources/documents/publication/p0963.htm>.

2 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

nature, including, in particular, large scale arrests of people for their activities or opinions.

(...) the ICRC gave the following description of internal disturbances during the first session of the Conference of Government Experts in 1971: This involves situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness or duration and which involves acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules.

As regards 'internal tensions', these could be said to include in particular situations of serious tension (political, religious, racial, social, economic, etc.), but also the sequels of armed conflict or of internal disturbances. Such situations have one or more of the following characteristics, if not all at the same time:

- large scale arrests;
- a large number of 'political' prisoners;
- the probable existence of ill-treatment or inhumane conditions of detention;
- the suspension of fundamental judicial guarantees, either as part of the promulgation of a state of emergency or simply as a matter of fact;
- allegations of disappearances.

In short, as stated above, there are internal disturbances, without being an armed conflict, when the State uses armed force to maintain order; there are internal tensions, without being internal disturbances, when force is used as a preventive measure to maintain respect for law and order.

These definitions are not contained in a convention but form part of ICRC doctrine. While designed for practical use, they may serve to shed some light on these terms, which appear in an international law instrument for the first time.<sup>3</sup>

According to the above description, the mere fact that there are 'political' detainees or inhumane conditions of detention, that judicial guarantees have been suspended or ill-treatment inflicted, suffices to qualify a situation as one of 'internal tensions'.

The 'acts of collective violence' covered by this policy document share the following characteristics:

- a definite degree of violence;
- the violence is committed by one or several large 'groups' of people;
- the violence has, or may have, humanitarian consequences.

3 Y. Sandoz, C. Swinarski and B. Zimmermann (eds), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ICRC/Martinus Nijhoff Publishers, Dordrecht, 1987, pp. 1354–1355, paras. 4474–4478, available at: <http://www.icrc.org/ihl>.

## B. Why not simply refer to ‘internal disturbances’ and ‘internal tensions’?

The terms ‘internal disturbances’ and ‘internal tensions’ date back to the twentieth century (the term ‘internal disturbances’ was used, for example, in the 1928 version of the Movement’s Statutes; see section IV.B.1 below) and the above ‘description’ to the 1970s.

The phenomenon of collective violence started to diversify in the late twentieth century, and it would be difficult today to qualify every occurrence that is not an actual armed conflict as ‘internal disturbances’ or ‘internal tensions’. Cross-border or international violence would be particularly difficult to qualify as ‘internal’ disturbances or tensions. In addition, the descriptions set out in the commentary above would seem to indicate that ‘internal disturbances’ and ‘internal tensions’ imply the use of force by the State.

Thus, even though the terms ‘internal disturbances’ and ‘internal tensions’ probably continue to cover most situations of collective violence falling below the threshold of armed conflict, care must be taken not to exclude, by using those terms, certain forms of collective violence.

By way of illustration, some situations of violence can be qualified as ‘collective’ but may not necessarily have the characteristics set out in the above descriptions of internal disturbances or tensions: violence between non-State groups based on community, ethnic group, tribe, religion, clan, etc., violence generated by gangs, cartels or mafias which is international in nature, acts of violence carried out as part of a social or trade union struggle, to obtain access to land or resources, etc.

## C. ‘Collective violence’ in the typology of violence

When the ICRC uses the expression ‘armed conflicts and other situations of violence’, the words ‘other situations of violence’ may give the unknowledgeable reader the impression that all situations of violence are part of the ICRC’s field of action. This is not the case. The ICRC concentrates on situations of violence said to be ‘collective’ within the meaning of the typology of violence established by the World Health Organization (WHO) in its *World report on violence and health*.<sup>4</sup>

These situations comprise internal disturbances, internal tensions and other forms of collective violence below the threshold of armed conflict.

They are not always ‘visible’ and are not necessarily played out in public; rather, they can occur entirely behind the discreet walls of places of detention.

4 WHO, *World report on violence and health*, 3 October 2002, available at: [http://whqlibdoc.who.int/publications/2002/9241545615\\_eng.pdf](http://whqlibdoc.who.int/publications/2002/9241545615_eng.pdf). The same typology was used by the International Federation of Red Cross and Red Crescent Societies in *IFRC Strategy on violence prevention, mitigation and response 2011–2020, Strategic directions to address interpersonal and self-directed violence*, available at: <http://www.ifrc.org>.

This is a relatively simple typology comprising three categories: self-directed violence, interpersonal violence and collective violence.<sup>5</sup>

This initial categorization differentiates between violence a person inflicts upon himself or herself, violence inflicted by another individual or by a small group of individuals, and violence inflicted by larger groups such as states, organized political groups, militia groups and terrorist organizations.<sup>6</sup>

#### D. The concept of 'group'

The 'collective' nature of the violence implies that it is committed by a 'group'. The group comprises a large number of individuals and may, or may not, be structured or organized (it may be a very organized State group, or a relatively unstructured crowd of demonstrators). Its members feel that they belong to the group (shared identity, collective purpose, activities carried out jointly, etc.). The degree to which the group is structured or organized will influence the ICRC's analysis of the risks and the types of activities and working procedures to deploy. The ICRC cannot have the same relations with relatively unstructured groups as it does with highly organized groups.

#### E. Concluding remarks

In short, and on the basis of the definitions given above, the form of violence falling within the scope of this policy document is 'collective violence falling below the threshold of armed conflict', which has the following characteristics:

- a definite degree of violence;<sup>7</sup>
- acts of violence committed by one or several large 'groups' of people;
- acts of violence that have, or may have, humanitarian consequences.

Generally speaking, the ICRC analyses the dynamics of the violence and the behaviour of its perpetrators in order to determine what procedures to adopt. Each situation of violence has its own dynamics, which influence the humanitarian needs and the activities carried out in response.

The mere existence of a situation of collective violence does not, in and of itself, suffice for the ICRC to decide to respond to the potential humanitarian

5 The first two are not covered by this policy's field of application, see section III below. According to the WHO definition, 'collective violence' includes armed conflicts and other situations of violence. Only situations of collective violence below the threshold of armed conflict are covered by this policy document.

6 *World report on violence and health*, above note 4, p. 6.

7 The violence may be physical or psychological. Psychological violence refers to acts and behaviour affecting the psychological integrity of a person, a group or a community, such as emotional hostility, insults, threats, withholding information, forced isolation, the destruction of property, intimidation, passive aggression. It is not always easy to clearly distinguish between the humanitarian consequences of acts of psychological as opposed to physical violence, which are often committed at the same time. See also section VI.A.1 below on the humanitarian consequences.

consequences. The decision to act depends on its analysis of the criteria for involvement described in section VI below.

### III. Situations not covered by this policy document

This policy document does not apply to the following situations: armed conflicts,<sup>8</sup> situations of interpersonal or self-directed violence and non-violent situations.

This policy document therefore does not cover acts of violence that are not perpetrated collectively, i.e. acts of violence that WHO has qualified as ‘interpersonal violence’<sup>9</sup> and ‘self-directed violence’.<sup>10</sup>

This policy document also does not apply in situations in which ‘violence’ is not an issue: natural or technological disasters, pandemics and other situations in which the ICRC may act in specific areas of expertise, such as ‘restoring family links’ and spreading knowledge of IHL and the Fundamental Principles, for which it has been given an explicit mandate.

No matter what the type of situation, the ICRC has a ‘right of humanitarian initiative’, conferred by the States and the Movement’s components in Article 5(3) of the Movement’s Statutes. However, only the situations of violence described in section II above are covered by this policy document.

This policy document is not applicable in the following situations:

- international or non-international armed conflicts;
- situations of interpersonal or self-directed violence;
- non-violent situations.

### IV. Sources of the ICRC’s mission and work in situations of violence below the threshold of armed conflict

#### A. The ICRC’s mission and work in situations of violence below the threshold of armed conflict are rooted in its operational history

No sooner had the ICRC been founded than it became concerned about the suffering of victims of situations of violence not covered by IHL. The various

8 In practice, some of the situations of violence covered by this policy document unfold in contexts that are also affected by armed conflicts. In such contexts, this policy document applies only to the situation of violence below the threshold of armed conflict. In addition, a distinct legal framework is applicable (see section V below). For the definition of armed conflicts, see Sylvain Vité, ‘Typology of armed conflicts in international humanitarian law: legal concepts and actual situations’, in *International Review of the Red Cross* (hereafter *IRRC*), Vol. 91, No. 873, 2009, pp. 70–94, available at: <http://www.icrc.org/eng/assets/files/other/irrc-873-vite.pdf>.

9 ‘Family and intimate partner violence (. . .); Community violence – violence between individuals who are unrelated, and who may or may not know each other (. . .)’, *World report on violence and health*, above note 4, p. 6. What sets interpersonal violence apart from collective violence is the fact that the latter is committed by a large number of people, usually for social, political and/or economic reasons.

10 ‘[S]uicidal behaviour and self-abuse’, *ibid.*



insurrections, periods of unrest and revolutions that marked the late nineteenth and early twentieth centuries<sup>11</sup> mobilized its resources, chiefly in support of the National Societies or to facilitate their establishment where they did not exist, but also in the form of assistance activities and visits to ‘political detainees’.

Throughout the twentieth century, the ICRC gradually stepped up its activities in situations in which IHL was not applicable and codified the framework for its activities in such situations in the light of its practice and in internal reference texts. Those internal texts<sup>12</sup> affirm that, in addition to the legal qualification of the situation, ‘the existence or the probability of serious humanitarian situations suffices to justify the offer of services’.<sup>13</sup> The conditions for ICRC action were, at the time, principally the following:<sup>14</sup>

- unrest marked by a ‘degree of seriousness’;
- events that lasted a ‘certain time’;
- parties that were to ‘some degree organized’;
- the existence of ‘victims of the incidents’.

The ICRC’s operational practice at the end of the twentieth century<sup>15</sup> bore out its intention to respond to the humanitarian consequences of situations of violence below the threshold of armed conflict. The ICRC diversified its activities beyond visits to ‘political detainees’, essentially as of the 1980s, and engaged with growing frequency in the distribution of assistance (material, medical, food) and in protection activities outside prison walls. It adapted its policy accordingly, adopting a policy document on ‘internal violence’ in 1992.<sup>16</sup>

The ICRC’s operational practice and internal policies are reflected in Red Cross law, which grants the ICRC a right of humanitarian initiative, including in situations of violence below the threshold of armed conflict (see section IV.B below).

The ICRC has been concerned about human suffering since its inception, even in situations of violence not covered by international humanitarian law. Throughout its history, it has adapted its operational practice and its policy to take account of the humanitarian consequences of such situations of violence.

11 For example, the insurrection in Herzegovina (1875) and the political strife in Hungary (1919), which were both situations of violence below the threshold of armed conflict.

12 For example, policy document D851 of 1965, which confirms the role of the ICRC in ‘internal disturbances’ and formalizes its right of initiative in ‘other cases of intervention’. Cited in Jacques Moreillon, *Le Comité international de la Croix-Rouge et la protection des détenus politiques*, Editions L’Age D’Homme, Lausanne, 1973, pp. 164–166. See also the 1978 policy document entitled *Action du CICR en cas de conflit armé non international, de troubles intérieurs et autres situations* (ICRC action in the event of a non-international armed conflict, internal disturbances and other situations).

13 *Ibid.*, p. 160.

14 See in particular internal report D205 of 1952, cited in *ibid.*, p. 120.

15 The organization became increasingly active outside Europe (Latin America, Asia, Middle East, Africa).

16 The content of this policy was published in the form of an article by its author, Marion Harroff-Tavel, ‘Action taken by the International Committee of the Red Cross in situations of internal violence’, in *IRRC*, No. 294, 1993, available at: <http://www.icrc.org/eng/resources/documents/article/other/57jmhy.htm>.

This historical overview shows that the ICRC has constantly endeavoured to adapt, at times cautiously but often doggedly, to the humanitarian needs generated by situations of collective violence, even though the latter are not armed conflicts governed by IHL. Thus, even though, by virtue of its mandate under the 1949 Geneva Conventions, the ICRC centres its activities on armed conflicts, and even though in practice it carries out most of its activities in such situations, it has never overlooked its right of humanitarian initiative in other situations of collective violence causing human suffering, grounding its decisions in the principle of humanity.

This policy document is part of this ongoing historical process, and changes none of the ICRC's choices and positions of the past few decades.

### **Examples of ICRC activities in situations of violence below the threshold of armed conflict**

#### Herzegovina – 1875 (excerpt from Rapport d'activité 1863–1883)

'Instructions for delegates of the International Committee (...). They shall, to the extent possible, visit such sick and wounded in the various places in which they may be found, and shall endeavour to provide them with the requisite care. (...) They shall seek to organize regular and ongoing assistance for the wounded (...).'

#### Russia – 1918 and Hungary – 1919 (excerpt from Rapport d'activité 1912–1920)

'As a result of the political and social events in Russia since 1917, in Hungary in 1919, the International Committee was called on to play a role it never had before. (...) the International Committee was able to (...) take direct and practical action (...) for political detainees and foreigners deprived of all protection, the sick and children from the civilian population who had suffered especially harshly from the blockade or the economic crisis resulting from the unrest caused by the revolution.'

#### Poland – 1924 (excerpt from Rapport d'activité 1923–1925)

'[The ICRC delegate] visited 20 penal establishments holding 9,000 men and 1,000 women, or nearly one third of the detainees held in the Republic's prisons. Of that number, 870 men and 81 women were political detainees.'

#### Austria – 1934 (excerpt from Rapport d'activité octobre 1930 – juillet 1934)

'[The] delegate of the International Committee travelled to (...) Woellersdorf internment camp. (...) political prisoners, unless detained in police prisons or courts, are concentrated in Woellersdorf camp and number about 4,600.'

#### German Democratic Republic and Federal Republic of Germany – 1957 (excerpt from Annual Report 1957)

'In 1957, with the authorisation of the Government of the German Democratic Republic, the ICRC delegate, accompanied by a representative of the National Red Cross Society, was able to visit three prisons and two penitentiary labour camps. (...) In 1957, [in the Federal Republic of Germany,] a delegate from the ICRC, accompanied by a representative of the National Red Cross Society, visited 19 prisons and penal institutions as well as two penitentiary hospitals.'

South Africa – 1967 (excerpt from Annual Report 1969)

‘In May, [the] ICRC delegates flew to South Africa, where, with the assent of the Pretoria Government, they visited all political prisoners who were serving sentences. The 945 prisoners were interned in 5 prisons, namely, Robben Island, Viktor Voerster, Biendonné, Pretoria Central and Barberton.’

Chile – 1974 (excerpt from Annual Report 1974)

‘By 31 December 1973 [ICRC delegates] had made 114 visits to sixty-one places of detention and met several thousand detainees held by the military authorities. Not only was ICRC action continued in 1974 but its field of activity was considerably extended, particularly with regard to relief.’

Philippines – 1988 (excerpt from Annual Report 1988)

‘At the end of 1988, the ICRC had all but finished its second complete series of visits to the country’s civilian and military prisons. (...) During their visits, the delegates saw people held in connection with insurgency-related incidents (...).’

Haiti – 2005 (excerpt from Annual Report 2005)

‘In light of Haiti’s persistent instability as the country prepared for general elections scheduled for the end of the year, the ICRC continued to focus on protecting victims of armed violence by intensifying its dialogue with all groups involved. It also helped the Haitian Red Cross evacuate hundreds of wounded people from Cité Soleil, one of the most violence-prone shantytowns, where a water and sanitation project initiated with the National Society in 2005 reversed to some extent the increasing marginalization of its residents. ICRC delegates continued to follow individual detainees arrested in connection with ongoing political disturbances.’

Papua New Guinea – 2012 (excerpt from Annual Report 2012)

‘After a study initiated in 2011 confirmed the usefulness of the ICRC’s neutrality in assisting people affected by tribal fighting in the Highlands, the organization focused its action in these areas and developed the dialogue initiated with local leaders and communities in past years, especially on the protection of health facilities and personnel. With the PNG Red Cross, the ICRC provided relief to people affected by incidents of violence in the Highlands and worked with the local authorities to improve health services.’

## B. The ICRC’s mission and work in situations of violence below the threshold of armed conflict are based on ‘Red Cross law’ and thereby crystallize its long-standing operational practice

‘Red Cross law’,<sup>17</sup> which comprises the Movement’s Statutes and resolutions adopted at the Movement’s statutory meetings (International Conferences of the Red Cross and Red Crescent (hereafter International Conferences) and Councils of

17 The term ‘Red Cross law’ designates all the legal and regulatory texts adopted at the Movement’s statutory meetings. ‘Red Cross law’ is ‘soft law’ (non-binding in international law), unlike the ‘hard law’ constituted notably by treaty-based law.

Delegates)<sup>18</sup>, confers roles and mandates on the Movement's components<sup>19</sup> in legal texts drawn up on the basis of prior practice.

The Movement's Statutes constitute the first legal source, the resolutions adopted at the Movement's statutory meetings the second. The ICRC's right of initiative is grounded in the Statutes and those resolutions, allowing it to act in situations that are below the threshold of armed conflict. Lastly, the Seville Agreement and its Supplementary Measures, adopted at the 1997 and 2005 Councils of Delegates respectively, assign the ICRC the role of lead agency in the Movement's international operations in internal disturbances (see section VIII.B below).

### 1) *The Movement's Statutes (from 1928 to 1986)*

From the day they were initially adopted by the 13th International Conference in 1928, and thus by all the participants at the International Conference (States and Movement components), the Movement's Statutes have assigned the ICRC a role in all situations, including situations of violence covered by this policy document. Article 7<sup>20</sup> in particular, concerning the ICRC's attributes, was unanimously adopted. It formalized the ICRC's role on the basis of its practice since its inception (see use of the terms 'continue' and 'remain').

The amended version of the Statutes adopted in 1952 described the ICRC's role in what were essentially the same terms.<sup>21</sup> The present version of the Statutes,<sup>22</sup> adopted by consensus by the States and the Movement's components in 1986, is very similarly worded.

18 For further information on the Movement's statutory meetings, see <http://www.icrc.org/eng/who-we-are/movement/index.jsp>.

19 The Movement's three components are the National Red Cross and Red Crescent Societies, the International Federation of Red Cross and Red Crescent Societies and the ICRC.

20 'Article 7 – The International Committee of the Red Cross (...) shall continue to be a neutral intermediary whose intervention is recognized as necessary, especially in time of war, civil war or civil strife. (...) all questions calling for examination by a specifically neutral body, shall remain the exclusive province of the International Committee of the Red Cross.' See *International Red Cross Handbook*, ninth edition, ICRC/League of Red Cross Societies, Geneva, 1951, pp. 307–308.

21 'Article 6 (...) – 5. As a neutral institution whose humanitarian work is carried out particularly in time of war, civil war or internal strife, [the ICRC] endeavours at all times to ensure the protection of and assistance to military and civilian victims of such conflicts and their direct results. (...) 6. It takes any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary and considers any question requiring examination by such an institution.' See *International Red Cross Handbook*, eleventh edition, ICRC/League of Red Cross Societies, Geneva, 1971, p. 276.

22 'ARTICLE 5: The International Committee of the Red Cross (...) 2. The role of the International Committee, in accordance with its Statutes, is in particular: (...) d) to endeavour at all times – as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife – to ensure the protection of and assistance to military and civilian victims of such events and of their direct results; (...) 3. The International Committee may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution.' See *Handbook of the International Red Cross and Red Crescent Movement*, thirteenth edition, ICRC/International Federation of Red Cross and Red Crescent Societies, Geneva, 1994. The Statutes were subsequently amended in 1995 and 2006 and are available at: <http://www.icrc.org/eng/assets/files/other/statutes-en-a5.pdf>.

When it comes to situations of violence below the threshold of armed conflict, the States and the Movement's components, by adopting the Statutes, thus recognized:

1. that the ICRC has a specific role to play in 'internal strife' (i.e. 'internal disturbances'<sup>23</sup>);
2. that the ICRC has a right of humanitarian initiative in all situations that might benefit from the work of a specifically neutral and independent institution.

No matter what type the situation of collective violence not reaching the threshold of armed conflict (whether internal disturbances or another type of collective violence), the ICRC therefore acts on the basis of its 'statutory' right of initiative under, depending on the case, Article 5.2(d) for internal disturbances and/or Article 5.3 for other situations.

'Red Cross law' also attributes a role in such situations to the National Societies and the International Federation of Red Cross and Red Crescent Societies (hereafter International Federation). That role can be inferred first from the Preamble to the Movement's Statutes, which mentions 'other emergencies' in which the Movement's components discharge their mission. Article 3 of the Statutes also refers to 'other emergencies' to define the mandate of the National Societies in all situations, including in contexts of violence as defined in this policy document, both on their national territory and in international operations. Article 6.3 of the Statutes, for its part, confirms that the role of the International Federation is to assist the National Societies 'at all times'. The general and specific mandates of the National Societies in situations of violence, no matter what type, are also defined in resolutions adopted by the Movement's statutory meetings.

## *2) Resolutions adopted by the Movement's statutory meetings: the International Conference and the Council of Delegates*

Under Article 5.2(h) of the Movement's Statutes, one of the ICRC's tasks is 'to carry out mandates entrusted to it by the International Conference'. Those 'mandates' are set out, not only in the above provisions of the Movement's Statutes, but also in a number of resolutions adopted at International Conferences and attributing a specific role in situations of violence below the threshold of armed conflict to the ICRC and a more general role to the Movement.

In 1921, Resolution XIV<sup>24</sup> broached the subject by explicitly recognizing the role of the 'Red Cross' in general, first and foremost the National Societies, in situations of 'civil war and social and revolutionary disturbances'. The role of the ICRC in particular was confirmed in Resolution XIV of 1938,<sup>25</sup> entitled 'Role and

23 The French term 'troubles intérieurs' can be translated as either 'internal disturbances' or 'internal strife' in English; the two are considered to be synonymous.

24 For an English translation of the resolution, see François Bugnion, *The International Committee of the Red Cross and the Protection of War Victims*, ICRC/MacMillan, Oxford, 2003, pp. 260–262.

25 See *Sixteenth International Conference of the Red Cross, London, June 1938, Report*, The British Red Cross Society, London, 1938.

activity of the Red Cross in time of civil war<sup>26</sup>. In 1981, Resolution VI<sup>27</sup> referred to the ICRC's activities 'in internal disturbances and tensions'. Other resolutions<sup>28</sup> consider the roles of the ICRC and the Movement's other components in situations of violence below the threshold of armed conflict in the framework of generic mandates conferred on them over the course of various International Conferences and Councils of Delegates.

Among the regulatory texts adopted by the Movement, the Seville Agreement<sup>29</sup> and its Supplementary Measures<sup>30</sup> are especially noteworthy. They define the attributes of the ICRC – and of the Movement's other components – principally on the basis of the Movement's Statutes (for further information, see section VIII.B. below).

## V. The law applicable in situations of violence below the threshold of armed conflict

One of the fundamental reasons for distinguishing between 'armed conflicts' and 'other situations of violence' is to determine the branch of law that applies. The legal status of situations of violence has major legal ramifications because, in situations of armed conflict, IHL stipulates rules that are adapted to the specific nature of armed conflicts and which all the parties to the conflict must obey. In other situations of violence, IHL is not applicable. The non-State protagonists of the violence are not 'parties' bound by obligations under international law and, generally speaking, the State continues to hold a *de jure* monopoly on legitimate violence in such situations. The State's actions are governed in particular by international human rights law and domestic legislation.<sup>31</sup>

The fundamental rules protecting persons in situations of violence below the threshold of armed conflict are to be found in domestic legislation and international human rights law.

International humanitarian law is not applicable in such situations.

A distinction had to be made between non-international armed conflicts and other situations of violence when the rules of IHL applicable in non-international armed conflicts were developed (as of 1949 in Article 3 common to the

26 At the time, notably because there was no IHL applicable in 'civil wars' (the IHL governing non-international armed conflicts was codified in 1949), the term 'civil war' also covered situations of violence below the threshold of armed conflict, in particular 'internal disturbances'. See J. Moreillon, above note 12, pp. 58, 96 and 103.

27 See *Handbook of the International Red Cross and Red Crescent Movement*, above note 22, p. 751.

28 See, for example, Resolution XX of 1948, Resolution XIX of 1957 and Resolution XXXI of 1965.

29 Agreement on the organization of the international activities of the components of the International Red Cross and Red Crescent Movement, Council of Delegates, Seville, November 1997, available at: <http://www.icrc.org/eng/resources/documents/misc/57jp4y.htm>.

30 Supplementary measures to enhance the implementation of the Seville Agreement, Annex to Resolution 8, Council of Delegates, Seoul, November 2005, available at: <http://www.icrc.org/eng/resources/documents/resolution/council-delegates-resolution-8-2005.htm>.

31 Insofar as domestic legislation is in conformity with international human rights standards.

1949 Geneva Conventions). Additional Protocol II, adopted in 1977 specifically to strengthen IHL in non-international armed conflicts, deals explicitly with the threshold between non-international armed conflicts and other situations of violence (Protocol II uses the term ‘internal disturbances and tensions’), clearly stipulating that IHL does not apply in the latter (Article 1.2<sup>32</sup>).

The fundamental rules protecting persons in situations of violence that are below the threshold of armed conflict are for the most part contained in international human rights law and domestic legislation.<sup>33</sup>

## VI. Criteria for involvement

According to the policy document entitled *The ICRC: its mission and work*:<sup>34</sup>

the ICRC endeavours to take action in situations where international humanitarian law is applicable and carefully considers the advisability of taking action in the context of the direct results of these situations and in other situations of violence (...). (emphasis added)

The policy document further states:

the ICRC offers its services if the seriousness of unmet needs and the urgency of the situation warrant such a step. It also considers whether it can do more than others owing to its status as a specifically neutral and independent organization and to its experience.

When the ICRC considers undertaking humanitarian work in a situation of violence below the threshold of an armed conflict, it carefully examines the following criteria:

- the situation of violence is having significant humanitarian consequences;
- the humanitarian action being considered by the ICRC constitutes a relevant response to those consequences.

If both those conditions are met, the ICRC, after weighing the risks, decides to act, directly or in support of the National Society, to alleviate the victims’ suffering.

This section aims to explain what the ICRC considers when it undertakes to determine whether to conduct a humanitarian operation, and the type of operation,

32 The commentary on that article reads as follows: ‘Internal disturbances and tensions are not at present within the field of application of international humanitarian law; the ICRC has carried out activities in this field on an ad hoc basis. However, this does not mean that there is no international legal protection applicable to such situations, as they are covered by universal and regional human rights instruments.’ See Y. Sandoz, C. Swinarski and B. Zimmermann (eds), above note 3, p. 1356, para. 4479.

33 According to the International Court of Justice, these fundamental rules include general principles, such as elementary considerations of humanity, which must be respected in all circumstances, in peace as in war (see *Corfu Channel Case (Merits)*, ICJ Reports 1949, p. 22, and *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, ICJ Reports 1986, p. 102, para. 215).

34 See above note 1.

in response to the humanitarian consequences of a situation of violence that is not an armed conflict. It describes the analytical stages that must precede the ICRC's decision to act in such situations.

### A. Criterion for involvement 1: the situation of violence is having significant humanitarian consequences even though it is not an armed conflict

Before proposing to conduct activities in response to the humanitarian consequences of a situation of violence, a humanitarian organization such as the ICRC must assess those consequences, identify the persons affected and determine their needs. The assessment also takes account of anticipated humanitarian consequences if the situation is likely to deteriorate.

Humanitarian needs arise notably from attacks on life and physical and psychological integrity and from the specific vulnerabilities of people subject to arbitrary acts or deprived of essential services because of the situation of violence and its effects on people, services and infrastructure.

#### *1) The nature of the humanitarian consequences*

The nature of the humanitarian consequences informs the institution about the needs of the people affected and helps it identify those people. The list below is a non-exhaustive compilation of the direct or indirect humanitarian consequences that the situations covered by this policy document can generate (as can be seen, they are often pretty similar to those of armed conflicts):

- dead and wounded, in particular by firearms;
- physical and psychological, including sexual, violence;
- kidnappings, hostage-taking, human trafficking and poor conditions of confinement, ill-treatment, sexual violence, sexual slavery, forced labour;
- involvement of children in armed groups (including gangs);
- disappearances, especially enforced disappearances, summary executions, unidentified bodies;
- ill-treatment, including torture, in places of detention;
- arbitrary detention, political detention, denial of judicial and procedural guarantees, poor conditions of detention;
- constraints on the response to the needs of those affected or on their access to essential services arising from acts of violence against the medical mission (health personnel and infrastructure) or humanitarian practitioners in general;
- problems of access – which have an impact on health (epidemics, etc.) – to water, health care, food, essential goods, education, etc., because of restrictions on movements (resulting from insecurity, the climate of fear, discriminatory policies, etc.) or the absence of State services (notably because of the situation of violence);



- displacement and migration implying loss of livelihoods (work, land, etc.), owing *inter alia* to insecurity, a climate of fear, discriminatory policies or the above-mentioned problems of access;
- stress and needs specific to victims' families, especially as a result of a separation or disappearance;
- destruction or damage of goods, in particular those affecting essential services (water supply system, health centres, private property such as shops, warehouses, offices, livestock, crops, dwellings, means of transportation).

These different types of humanitarian consequences affect, depending on the case, various categories of people. Identifying those people and their needs is an essential component of the analysis of the humanitarian consequences. Generally speaking, this concerns *inter alia*: people who are at the mercy of an authority they oppose or that perceives them as the enemy, and the members of their families and communities; people in a hostile environment who are not protected from the acts perpetrated against them; people who are unable to meet their basic needs because of the situation of violence (detainees, displaced persons, restrictions on movements). In order to determine how to respond, the ICRC analyses the specific vulnerabilities of those affected and any resilience mechanisms in place or to be developed.

A number of the humanitarian consequences listed above stem from violations of international human rights laws of which the people concerned are victims. Typical violations of the law include:

- discrimination;
- attacks on life, physical and psychological integrity, dignity;
- violation of the rules governing the use of force;
- access to minimum conditions for survival (water, food, health care, etc.) restricted or denied;
- attacks on family unity, including disappearances;
- infringements of freedom of movement (displacements, transfers, restricted movements);
- unlawful or arbitrary deprivation of property;
- arbitrary or unlawful arrest or detention and failure to respect judicial and procedural guarantees.

The ICRC analyses, case by case, not only the humanitarian consequences for the people affected and their needs, but also the causes of the problems and any survival strategies in place (in order to determine how to respond).

## 2) *The severity and magnitude of the humanitarian consequences*

Severity refers to the gravity of the humanitarian consequences and the urgency of the response required, given that the impact on the people affected and on their families and communities can vary.

Magnitude refers to the number of people affected by and the duration of the humanitarian consequences, which do not have the same impact (and therefore require a different response) if they are of short duration, affect only a small group of people or, on the contrary, are widespread.

### 3) *Conclusion*

The ICRC recognizes that its analysis cannot be based on quantitative criteria alone and therefore examines, case by case, the humanitarian consequences arising from the situation of violence for the people affected in order to determine whether they justify action on its part.

The nature, severity and magnitude of the humanitarian consequences are analysed so as to determine their importance and the type of action to be taken by the ICRC.

That analysis also serves to determine the urgency and level of mobilization required. Indeed, the needs may be chronic in nature (and may require a structural response) or, on the contrary, call for urgent action.

Depending on the nature of the consequences, the type of persons affected, their needs and the activities planned in response, the ICRC's work is guided by more specific reference texts (see section VII below).

## B. Criterion for involvement 2: the humanitarian action being considered by the ICRC constitutes a relevant response to the humanitarian consequences identified

When the analysis described above (criterion 1) has established that the situation of violence below the threshold of armed conflict is having significant humanitarian consequences, the ICRC assesses in what way its action in particular would be justified in the context, alone or in support of the activities of other protagonists, chiefly from the point of view of the anticipated impact on the people affected.

This section outlines some of the indicators used to analyse the relevance of the humanitarian action being considered by the ICRC.

### 1) *The ICRC's identity and specific nature*

The ICRC is an internationally recognized humanitarian organization. Its adherence to the Fundamental Principles<sup>35</sup> of humanity, neutrality, independence and impartiality is particularly important from the operational point of view. The ICRC is also recognized for its confidential approach.<sup>36</sup>

<sup>35</sup> See section X below.

<sup>36</sup> See 'The International Committee of the Red Cross's (ICRC's) confidential approach', in *IRRC*, Vol. 94, No. 887, Autumn 2012, pp. 1135–1144, available at: <http://www.icrc.org/eng/assets/files/review/2012/irrc-887-confidentiality.pdf>.

What is more, the ICRC's world-wide reputation as a credible, effective and professional humanitarian organization can facilitate its work in certain situations.

The Fundamental Principles mentioned above, to which all the Movement's components adhere in all situations (armed conflicts, other situations of violence, disasters, etc.), usually facilitate an effective humanitarian response. As stated in the policy document entitled *The ICRC: its mission and work*,<sup>37</sup> those principles offer

the best chance of being accepted during an armed conflict or other situation of violence, in particular given the risk that actors at a local, regional or international level may become polarized or radicalized.

The relevance of the action being considered by the ICRC must be analysed in the context and in the light of its anticipated impact on the people concerned.

Relevance depends on several possible factors linked to the ICRC's identity, its specific competences, resources and expertise, its position and level of access in the context concerned and the partnerships it can forge within the Movement.

The analysis also takes into account the activities of partners the ICRC can support or mobilize, and those of other protagonists.

## 2) *The ICRC's specific qualities in the response being considered: competences, resources and expertise*

In view of the humanitarian consequences and the needs identified (see section VI.A above), the ICRC will consider various means of response. In that regard, it can call into play a number of advantages, such as:

- the resources required for a rapid and good quality humanitarian response, with, if necessary, a commitment over time (human, logistical and financial resources);
- specific competences and expertise relevant in the context (from security management to the handling of sensitive and confidential information, from forensics to activities in a prison environment, and so on);
- an integrated and multidisciplinary approach (broad range of activities).

## 3) *The ICRC's position in the context concerned*

The ICRC's intrinsic qualities cannot be 'presupposed'. The analysis of its relevance must provide information on the way in which the ICRC is perceived locally and

<sup>37</sup> See above note 1.

what would make it an effective participant in the response to the humanitarian consequences of the situation of violence.

If the ICRC is already present when a new situation of violence erupts, that very fact could consolidate its position in the context and facilitate its decision to act. The analysis of the ICRC's identity in such contexts may indicate *a priori* that the work it plans to do will be accepted or, on the contrary, be viewed with reluctance or even opposition.

The ICRC's potential advantages in a given context may include:

- its acceptance by the people affected;
- its acceptance by the authorities and the perpetrators of the violence, including its capacity to influence their conduct;
- its credibility and predictability in the context;
- its knowledge of the context and influential stakeholders;
- trust (from the authorities, those responsible for violations, civil society);
- its local history;
- the quality of its partnership with the National Society.

All these elements may make it easier for the ICRC to obtain access to the people affected, be it direct or indirect (for example, via the National Society).

#### 4) *The Movement's potential*

The ICRC is rarely alone in wishing to respond to the humanitarian consequences of a situation of violence below the threshold of armed conflict. The National Society in the context concerned (the operating National Society) is, given the chance, the means and the will, a key and major participant in the humanitarian response. In most cases, an operation by the operating National Society or the ICRC alone is less effective than an operation conducted in partnership (see section VIII below). That partnership is therefore a decisive factor of the relevance of the ICRC's work.

Mobilization of the Movement's other components (other (or participating) National Societies, International Federation) can also bolster the relevance of an ICRC operation.

The ICRC's strength may therefore lie in its membership of the Movement, the operating National Society's proximity to and position with its catchment population and the authorities, and the greater number of resources and expertise that the Movement as a whole can mobilize.

#### 5) *Analysis of the response of other protagonists*

The analysis of the relevance of the ICRC's planned action takes into account the response of others to the humanitarian consequences of the situation of violence.

The first thing to remember is that the State bears primary responsibility for meeting humanitarian needs (in particular for taking preventive action and for protecting and assisting the persons affected) on its territory. From a structural

point of view, it puts in place control (or regulatory) mechanisms,<sup>38</sup> and it carries out, in the light of the circumstances, concrete activities for the benefit of the persons affected by the situation of violence in question.

In addition to the Movement's humanitarian protagonists mentioned in the previous section, other local (non-governmental, civil society, religious or community organizations) or international protagonists (non-governmental, United Nations or other organizations) may conduct humanitarian activities. The ICRC must therefore analyse their humanitarian response, in order to choose the most relevant areas of action in the context and the most appropriate strategies for action (including determining the modes of action: support, substitution, persuasion).<sup>39</sup> In particular, if the humanitarian response involves several participants, the possibilities for coordination (or partnership) between them and the ICRC will be a key factor of the analysis.

The final purpose of the analysis is to establish the 'quality' of the response to the humanitarian consequences of the situation of violence so as to determine whether the needs of the persons affected are being met, notably with impartiality, and, ultimately, whether the ICRC has a relevant role to play as a humanitarian actor to that end.

### C. Risks to analyse before the ICRC decides to act

If the two criteria for involvement described above have been met, it can be presumed that the ICRC will choose to act in response to the humanitarian consequences of the situation of violence that is not an armed conflict. Before moving ahead, however, the ICRC will weigh the various operational and institutional risks at local and global level liable to influence its decision (which may be to take no action for the time being) or the choice of activity and working procedure (including its modes of action).

In terms of security, for example, the ICRC has years of operational experience in armed conflicts and other situations of violence that are particularly fraught from the security point of view. It therefore analyses security risks as a matter of routine.

It is nevertheless useful to analyse certain risks arising in situations of violence the characteristics of which vary from one context to another and of which the ICRC has less experience. For example, the essentially 'criminal'<sup>40</sup> nature of the environment in which it is considering becoming involved must be specifically analysed in order to orient the ICRC's frame of intervention.

38 'Control or regulatory mechanism' refers in particular to local or national mechanisms that are political (e.g. parliamentary), judicial or administrative (e.g. inspection) in nature, and to appeal mechanisms (ombudsman, national observer, human rights commission).

39 For more information on the ICRC's modes of action, see 'ICRC Protection Policy', in *IRRC*, Vol. 90, No. 871, September 2008, pp. 751-775, available at: <http://www.icrc.org/eng/resources/documents/article/review/review-871-p751.htm>.

40 Situations of violence that are not armed conflicts do not have a monopoly on criminality – or on the main perpetrators of the violence being criminals. This is also a feature of some situations of armed conflict. The

The analysis of security risks considers not only the security of the ICRC and its staff, but also that of its local partners, in particular the National Society, and of the persons affected by the violence.

There is no such thing as a risk-free humanitarian operation, especially in situations of violence. The prior analysis of potential risks is not intended to prevent humanitarian action or limit the capacity to act, but rather to identify the risks so as to gauge their importance and, if necessary, adapt the response or adopt measures to minimize or avoid them.

## VII. ICRC humanitarian activities in situations of violence below the threshold of armed conflict

The ICRC mission statement<sup>41</sup> stipulates:

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance.

The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence. (emphasis added)

This mission obliges the ICRC to centre its work on the 'victims', i.e. on the people affected by the situation of violence. This is why it must adapt its protection, assistance, prevention and cooperation activities in the light of the analysis of the humanitarian consequences (see section VI.A above). That analysis will have identified the people affected, the principal needs, the most severe consequences, the various degrees of urgency, etc.

The analysis of the relevance of the response being considered by the ICRC (see section VI.B above) will have identified what specific assets the ICRC possesses, including expertise, experience or resources, to respond effectively to the needs, and the factors that could hobble its development of activities.

The ICRC draws up its strategies for action on the basis of these analyses and with a view to being as effective as possible. In so doing, it will establish specific priorities and objectives with due regard for the principle of impartiality.<sup>42</sup>

criminal nature of the environment, or the fact that those responsible for the violence are criminals, has no impact on the legal qualification of situations of violence.

41 See the policy document entitled *The ICRC: its mission and work*, above note 1.

42 According to this Fundamental Principle, the Red Cross 'makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress'. See the Fundamental Principles of the Red Cross proclaimed in Vienna in 1965, at the Twentieth International Conference of

Whenever possible, the strategies for action will address not only ‘the direct consequences of problems, but also (...) their origins and causes’.<sup>43</sup>

When drawing up strategies for action, the starting points should be first and foremost the persons affected and their needs, analysed from the holistic and systemic points of view in order to determine what combination of activities and what modes of action would be most effective.

When deciding on its activities and establishing strategies for action, the ICRC considers all factors in order to determine not only what coordination may be required with other protagonists, but also what partnerships, especially within the Movement, it may conclude to heighten the impact of its planned activities (see section VIII below).

One of the ICRC’s main assets is its wide range of expertise in the fields of protection, assistance, prevention and cooperation. The relevance of its response is often tied to its multidisciplinary approach, which allows it to combine the four types of activity in order to maximize, so far as possible, the anticipated impact on the persons affected.

The choice of modes of action (raising awareness of responsibilities: persuasion, mobilization, denunciation; support; substitution) and how they are combined are other elements determined by the strategies for action.<sup>44</sup>

The strategies for action incorporate consideration of what motivates those responsible for the violence. Acts of violence can be committed for various reasons, in particular social, political and/or economic. In practice, it is usually extremely difficult to classify situations of violence in distinct categories based on the motivation of the perpetrators. Quite often, one situation of collective violence will encompass economic, social and/or political motives. It is nevertheless important to analyse these possible motives so as to incorporate them into the analysis and thus deploy appropriate strategies. Indeed, the ICRC will not necessarily approach the perpetrators of the violence in the same way if their motivation is political, social or purely economic. The form and content of its dialogue with them will be very different depending on the nature of the groups. Criminal environments<sup>45</sup> in particular pose a number of additional challenges for ICRC action.

The humanitarian consequences may require an urgent response (acute phase of the crisis), a sustainable response (chronic crisis) or a residual response (after the acute phase, for example for persons deprived of liberty or missing persons).<sup>46</sup>

the Red Cross, available at: <http://www.icrc.org/eng/resources/documents/misc/fundamental-principles-commentary-010179.htm>.

43 Policy document entitled *The ICRC: its mission and work*, above note 1.

44 For more information on the ICRC’s modes of action, see ‘ICRC Protection Policy’, above note 39.

45 In particular if the violence is the work of ‘organized crime’ (including ‘transnational organized crime’ within the meaning of the United Nations Convention against Transnational Organized Crime, 15 November 2000), defined as all unlawful activities carried out by criminal organizations and territorial gangs, including activities that result in resort to armed violence.

46 The policy document entitled *ICRC Assistance Policy*, in *IRRC*, Vol. 86, No. 855, 2004, available at: <http://www.icrc.org/eng/resources/documents/misc/66dez7.htm>, discusses these time-related aspects. See also M. Harroff-Tavel, ‘Do wars ever end? The work of the International Committee of the Red Cross when the

The strategies for action take account of these various kinds of response in order to position them in time. In particular, if the ICRC is considering a long-term commitment from the outset, it must have the will to maintain that commitment over time with the necessary resources. It must also discuss the duration of its activities transparently with the authorities. By the same token, it must think about an 'exit strategy' and the hand-over to other protagonists, in particular the operating National Society, from the outset, and re-assess them throughout the operation's implementation.

The principle on which any humanitarian activity must be predicated is that it must continue to be of relevance – in the long term – in meeting the needs of the people affected. Over time, that relevance, which may have been clear at the start, can gradually wane. The ICRC must take account of this, notably by periodically reviewing its strategy for action, subjecting it to an updated analysis of the humanitarian consequences, the relevance of its operation and the risks involved.

The ICRC's protection,<sup>47</sup> assistance,<sup>48</sup> prevention<sup>49</sup> and cooperation<sup>50</sup> activities are governed by numerous reference texts. No type of activity in the ICRC's multidisciplinary range is, as such, specifically intended to be deployed in one situation of violence rather than another (there are no activities<sup>51</sup> 'reserved' for armed conflicts or other situations of violence). However, the way in which those activities are conducted and their content vary depending on the specific characteristics of the context and those responsible for the violence.<sup>52</sup>

guns fall silent', in *IRRC*, Vol. 85, No. 851, 2003, available at: [http://www.icrc.org/eng/assets/files/other/irrc\\_851\\_haroff-tavel.pdf](http://www.icrc.org/eng/assets/files/other/irrc_851_haroff-tavel.pdf).

- 47 'ICRC Protection Policy', above note 39; 'International Committee of the Red Cross (ICRC) policy on torture and cruel, inhuman or degrading treatment inflicted on persons deprived of their liberty', in *IRRC*, Vol. 93, No. 882, 2011, available at: <http://www.icrc.org/eng/assets/files/review/2011/irrc-882-policy-torture.pdf>; J. Pejic, 'Procedural principles and safeguards for internment/administrative detention in armed conflict and other situations of violence', in *IRRC*, Vol. 87, No. 858, 2005, available at: [http://www.icrc.org/eng/assets/files/other/irrc\\_858\\_pejic.pdf](http://www.icrc.org/eng/assets/files/other/irrc_858_pejic.pdf); A. Aeschlimann, 'Protection of detainees: ICRC action behind bars', in *IRRC*, Vol. 87, No. 857, 2005, available at: [http://www.icrc.org/eng/assets/files/other/irrc\\_857\\_aeschlimann.pdf](http://www.icrc.org/eng/assets/files/other/irrc_857_aeschlimann.pdf); *Enhancing protection for civilians in armed conflict and other situations of violence*, ICRC, 2012, available at: <http://www.icrc.org/eng/resources/documents/publication/p0956.htm>. See also *Professional standards for protection work carried out by humanitarian and human rights actors in armed conflict and other situations of violence*, ICRC, 2013, available at: <http://www.icrc.org/eng/resources/documents/publication/p0999.htm>.
- 48 The policy document entitled *ICRC Assistance Policy*, above note 46.
- 49 'International Committee of the Red Cross: prevention policy', in *IRRC*, Vol. 91, No. 874, 2009, available at: <http://www.icrc.org/eng/resources/documents/article/review/review-874-p415.htm>.
- 50 Policy document entitled *Policy on ICRC Cooperation with National Societies*, 2003, available at: [http://www.icrc.org/eng/assets/files/other/policy\\_cooperationicrc\\_ns\\_ang.pdf](http://www.icrc.org/eng/assets/files/other/policy_cooperationicrc_ns_ang.pdf); certain specific aspects of co-operation within the Movement are also discussed in other reference texts, for example 'ICRC Protection Policy' (above note 39), *ICRC Assistance Policy* (above note 46), *The ICRC: its mission and work* (above note 1), and 'The International Committee of the Red Cross's (ICRC's) confidential approach' (above note 36).
- 51 'Activities' is used here in the broad sense. Of course, certain specific ICRC activities may be reserved for certain types of situation; visits to 'prisoners of war', for example, can only take place in international armed conflicts.
- 52 For example, IHL is not an appropriate legal framework for an operational dialogue (in terms of prevention or protection) with the perpetrators of violence in a situation of violence below the threshold of armed conflict; or, in a situation of violence with a strong criminal component, the ICRC cannot engage in



## VIII. At the heart of the ICRC's strategies for action in situations of violence below the threshold of armed conflict: partnerships

### A. Cooperation with Movement partners: the ICRC's preferred option at all phases of humanitarian action in situations of violence below the threshold of armed conflict

The policy document entitled *Policy on ICRC Cooperation with National Societies*<sup>53</sup> emphasizes two points: the strengthening, at all times, of the capacity of National Societies to act in specific fields in which the ICRC has expertise; and the encouragement of operational interaction with the Movement's other components, in particular the operating National Society, in the course of humanitarian work.

The Movement is made up of the ICRC, the International Federation and the National Societies. Its components work together to the same end: to alleviate human suffering, protect life and health and ensure respect for human dignity at all times and in all circumstances.

The National Societies form a network comprising several million volunteers working to attain that shared goal. At national level, the operating National Societies are the first able to respond to the humanitarian consequences of emergency situations, including situations of violence.

At international level, National Societies with the requisite capacity and will can contribute to or participate in the Movement's international operations with a view to heightening their impact on the persons affected (participating National Societies). In an armed conflict or internal disturbances, the ICRC or, in some situations, the operating National Society directs and coordinates the Movement's international response, if there is one (see section VIII.B below).

Before the situation of violence breaks out, or just as it is starting, the ICRC conducts preparedness activities and evaluates needs. When possible, it does so jointly with the operating National Society, so as to facilitate an effective Movement response when the time comes to take humanitarian action. The ICRC also endeavours to strengthen the capacity of operating National Societies through support programmes such as the Safer Access approach.<sup>54</sup>

During humanitarian operations in situations of violence below the threshold of armed conflict, and depending on the type of activity, the ICRC ensures that its activities complement those of the operating National Society and the other Movement components active in the context. The aim is to ensure optimum and transparent humanitarian action by the Movement as a whole, with

In situations of violence below the threshold of armed conflict, the ICRC seeks possible partnerships to implement its humanitarian action.

dialogue with the criminals on matters related to the protection of the population in the same way that it might engage in dialogue on protection of the civilian population with a rebel group in an armed conflict.

53 See above note 50.

54 See <http://www.icrc.org/saferaccess>.

due regard for the mandates and roles of its different components as defined in the applicable statutory and regulatory framework (see section VIII.B below). The ICRC should thus be able to strengthen its capacities and those of the operating National Society by exchanging expertise and experiences and to take full advantage of the operating National Society's operational capacities, its roots in the communities affected and its privileged position with the public authorities and, in some cases, with the other protagonists of the violence.

In situations in which the operating National Society is unable or does not have the capacity to perform or take part in impartial humanitarian work, the ICRC can run its own operation for the people affected by the violence.

When the ICRC withdraws from a specific context or activity, the operation, or some aspects of it, may be handed over to the operating National Society. In that case, the ICRC must ensure that the operating National Society concerned is duly involved in the ICRC's activities, insofar as that corresponds to its – the operating National Society's – objectives and capacities.

Whenever possible, the ICRC seeks partnerships within the Movement. It endeavours to coordinate its work with the operating National Society and to promote exchanges of expertise and experience in order to build the National Society's and its own capacities. By the same token, it seeks coordination with the Movement's other components present in the context.

For some activities, the ICRC may also act in partnership with the authorities or with local, national or international organizations.

The decision to develop a humanitarian operation in partnership is taken after an in-depth analysis of the specific risks, notably in terms of the quality of the operation being conducted. In all cases, the operation's impact is decisive. The ICRC will decide to act alone when doing so renders its response to the humanitarian needs identified more effective.

## B. Legal framework for partnerships within the Movement

The Movement's Statutes and the rules adopted by the Movement on the coordination of its international activities (notably the Seville Agreement<sup>55</sup> and its Supplementary Measures<sup>56</sup>) are the reference texts defining the conditions governing how the ICRC works with its Movement partners. The Seville Agreement and its Supplementary Measures specify the respective role of each of the Movement's components, in particular by assigning a lead agency for each type of situation.

Thus, the Seville Agreement assigns the role of lead agency ('the general direction and coordination of an international relief operation') to the ICRC in

55 See note 29 above.

56 See note 30 above.

situations of internal strife (and in armed conflicts), including their direct results. The lead agency concept ‘applies primarily in emergency situations (...) where rapid, coherent and effective relief is required in response to the large-scale needs of the victims, on the basis of an evaluation of these needs and of the capacity of the National Society concerned to meet them’<sup>57</sup> (Seville Agreement, Article 4).

The Supplementary Measures, for their part, specify that the operating National Society ‘may also assume the role of Lead Agency in some situations and when not, it always is the “primary partner” of the Lead Agency’ (section 1.2).

Section 1.7 of the Supplementary Measures specifies that, ‘[a]s a primary partner of the Lead Agency, the host National Society is consulted on all aspects of the Movement’s response’.

The Supplementary Measures further stipulate that ‘in situations of armed conflict, internal strife and their direct results (...) there are two institutions (the host National Society and the ICRC) with an *explicit mandate* to meet the needs of the people affected’ (Section 1.12, emphasis in the original).

### C. Cooperation with other partners so as to heighten the anticipated impact on the people affected and with due regard for the Fundamental Principles

Although the ICRC prefers to engage in partnerships with operating National Societies when conducting humanitarian operations, it may also form partnerships with other governmental or non-governmental organizations (especially local ones) or mobilize other protagonists to provide aid to people affected by a situation of violence.

It is the primary responsibility of the State to respond to the humanitarian consequences of a situation of violence on its territory, using its own services and/or enabling local or international humanitarian practitioners to act in order to provide a better response to the needs of the people affected. In that framework, the ICRC can take action and carry out humanitarian activities. Acting as a substitute, or in addition to its privileged partnership with the operating National Society, the ICRC can, in certain circumstances, carry out activities in partnership with State services (local authorities, health, education and security services, etc.) and/or with local (non-governmental, civil society and other organizations) or international organizations. The aim of such partnerships is to heighten the impact of the humanitarian activities by improving access, obtaining specific expertise, planting local and lasting roots for the activity, etc.

In all cases, the ICRC ensures that its activities and modes of operation do not contravene the Fundamental Principles.

57 On the ground, some operating National Societies are increasingly acting as lead agency in situations of violence.

## **IX. State consent for the ICRC's humanitarian activities in a situation of violence below the threshold of armed conflict**

No matter what the circumstances in which the ICRC is working in a given context, it ensures that it has the consent of the State to implement its humanitarian activities. Those circumstances may vary widely. The ICRC may plan to take humanitarian action in response to a situation of violence below the threshold of armed conflict in a State in which it is already present (because it is already carrying out activities related to an armed conflict, or for other reasons). In some contexts in which the ICRC is considering new activities in response to such a situation, agreements on its presence and/or activities may have already been signed in the past (headquarters agreements, memoranda, agreements on visits, etc.). Conversely, it may plan humanitarian activities in a context in which it is not present and in which it has concluded no agreement with the authorities.

ICRC action in situations of violence below the threshold of armed conflict does not constitute interference in the internal affairs of the State concerned and has no impact on the legal status of those responsible for the violence or the people affected.

The ICRC is open with the authorities concerned, whom it informs about the reasons why it wishes to be involved and about the nature of its involvement.

Because of this variety of contexts, the ICRC adapts the content and form of its dialogue to obtain the State's consent for its planned activities on a case-by-case basis.

Should the State refuse to allow the ICRC to carry out its planned humanitarian activities, the ICRC endeavours to pursue the dialogue with a view to convincing the authorities that its offer of services is justified, that its humanitarian work is purely impartial, neutral and independent and that its activities are needed to respond to significant humanitarian needs. The ICRC's offer of services has no impact on the legal classification of the situation or on the status of those responsible for the violence; it in no way constitutes interference in the internal affairs of the State, given that its action is purely humanitarian and has no underlying political agenda.

When it can contact or engage in dialogue with them, the ICRC is also open with any non-State perpetrators of the violence.

## **X. The ICRC's neutral, independent and impartial humanitarian action in situations of violence below the threshold of armed conflict**

The ICRC's status as a 'neutral institution' is mentioned in connection with its specific role in armed conflicts and internal disturbances (Movement Statutes, Art. 5.2(d)). What is more, its 'role as a specifically neutral and independent

institution and intermediary' also constitutes the basis for its work in all situations (whether violent or not) (Movement Statutes, Art. 5.3).

The ICRC's status as a neutral and independent institution is one of its intrinsic characteristics and facilitates the application, in humanitarian action, of the principles of neutrality, independence and impartiality.<sup>58</sup>

In certain situations of violence below the threshold of armed conflict, the principle of neutrality may at first sight appear ill-suited if it is construed in terms of armed conflicts and the ICRC's role as a neutral intermediary between two parties to an armed conflict.<sup>59</sup> Indeed, in certain situations, for example in situations in which the violence is predominantly criminal, it is not always appropriate to highlight the role of 'neutral intermediary' that the ICRC can play in some circumstances. It is nevertheless true that, even in such cases, the ICRC remains a 'neutral institution'. As such, it does not take part in political discussions or disputes in the context concerned, it does not take a position in favour of or against a government policy, etc. Its quality as an (apolitical) 'neutral institution' that does not necessarily play the part of 'neutral intermediary' between the parties to the violence can help it win the trust of both the authorities and other perpetrators of the violence and thus facilitate access to affected areas and people that would be off limits to other humanitarian practitioners.

This does not mean that the ICRC can never refer to its role as a 'neutral intermediary' in a situation of violence below the threshold of armed conflict. Depending on the nature and the characteristics of the violence, in particular when it is perpetrated by non-State groups fighting each other (e.g. polarized intercommunity violence), the ICRC can position itself as a neutral intermediary between those groups and thus win acceptance from all those responsible for the violence and conduct humanitarian activities impartially and effectively.

## Concluding remarks

The aim of this policy document is to affirm and explain the ICRC's role in situations of violence below the threshold of armed conflict. Indeed, the ICRC may mistakenly be perceived as having a role to play only in armed conflict situations. This document demonstrates that this has never been the case, whether in respect of the legal sources underpinning the ICRC's work and mission or its past operational practice.

In addition, this document implicitly confirms that armed conflicts remain at the heart of the ICRC's scope of action, which nevertheless also comprises other situations of violence, as defined in this document (i.e. those in which the violence is collective but remains below the threshold of armed conflict). The ICRC decides to

58 The policy document entitled *The ICRC: its mission and work* (above note 1) states that the ICRC's neutral, independent and impartial humanitarian action 'offers the best chance of being accepted during an armed conflict or other situation of violence'.

59 In armed conflicts, it is a principle that the belligerents are equal before IHL. That principle does not exist in other situations of violence, in which IHL is not applicable.

act in such situations of violence only after having engaged in a specific process of analysis based on simple criteria for involvement: the existence of significant humanitarian consequences generated by the situation of violence and the relevance of the humanitarian action it is considering in response. This policy document also recalls that, in this type of situation in particular, the ICRC ensures that it has the consent of the State for its work and that it strives to work in partnership with other, preferably local, players, above all, if possible, with the National Society.