

# HUMANITARIAN LAW & POLICY



## War, law and humanity: the role of the ICRC in international armed conflicts

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*The international armed conflict between Russia and Ukraine has seen the involvement of several humanitarian organizations on the ground – including the International Committee of the Red Cross (ICRC) – working hard to alleviate the suffering of those caught up in hostilities.*

*In this post, ICRC Legal Adviser Melina Fidelis takes a closer look at the role of the ICRC during times of international armed conflict, explaining the organization’s mandate and the activities it can carry out.*

ICRC Humanitarian Law & Policy Blog · War, Law and Humanity: The Role of the ICRC in International Armed Conflicts

Born out of an appeal to introduce a minimum of humanity into warfare, the ICRC was *founded in 1863* as a neutral and impartial organization, capable of working on all sides of frontlines to aid those enduring the hardships of war. Over the last hundred and sixty years, the ICRC has carried out its work in many international and non-international armed conflicts, developing its activities as the needs arose, seeking to find solutions for victims of armed conflicts.

Many of these activities have been enshrined in the 1949 Geneva Conventions (GCs). In particular, the Conventions mandate the ICRC to undertake certain key activities in international armed conflicts (IACs) for the protection of prisoners of war (PoWs) and civilians. Additionally, as an impartial humanitarian organization, the ICRC also benefits from a ‘right of humanitarian initiative’, enabling it to carry out a variety of humanitarian activities during IACs, for the protection and relief of affected populations. This post aims to provide an overview of the ICRC’s activities in IACs.

### The ICRC’s legal mandate under the Geneva Conventions

In the wake of WWII, the international community once again realized that the rules of war were in urgent need of revision. Rallied into action by the ICRC, States adopted the seminal 1949 Geneva Conventions. Under these important treaties, the ICRC was bestowed with a supervisory function: the right to visit PoWs and civilians finding themselves in enemy hands, to supervise whether they are being treated in accordance with the Conventions.

The ICRC's legal mandate in this regard is established in *Art. 126 of GC III* and *Art. 143 of GC IV*, which explicitly foresee that, in times of IAC, States must permit the ICRC to access PoWs and protected civilians, wherever they may be, and allow the ICRC to converse with them freely and without witnesses.<sup>[1]</sup> The ICRC may also freely select the places it wishes to visit. Parties to an IAC may not – save under exceptional circumstances, exclusively concerning reasons of imperative military necessity, and then only for a limited period of time – impede the ICRC's access to such individuals, nor may they predicate access upon assurances of *reciprocity* by the opposing side.

In furtherance of this role, it is clear that the ICRC must maintain a meaningful dialogue with the Parties to an IAC, enabling it to remind them of their IHL obligations and raise its concerns with them bilaterally. To maximize the efficiency of this dialogue, the ICRC has adopted *confidentiality* as its preferred *working modality*. Through bilateral and confidential representations, the ICRC fosters a relationship of trust with its interlocutors, which is essential for its work. The ICRC's operational discretion is a tool which enables the ICRC to discharge its role as effectively and consistently as possible.

By instituting the ICRC's supervisory role, States introduced a critical humanitarian safeguard into the Conventions. This is all the more so in light of the universal ratification enjoyed by the Geneva Conventions: every State in the world has committed itself to allowing the ICRC to fulfil this supervisory function, but also – by virtue of *Common Art. 1 to the Geneva Conventions* – to ensuring that every *other* State in the world equally respects IHL, including the ICRC's role.

In addition, the Geneva Conventions welcome initiatives by other organizations to carry out humanitarian activities during times of armed conflict. For example, *Art. 125 GC III* and *Art. 142 GC IV* foresee the possibility of relief societies visiting PoWs and protected civilians, namely in order to distribute relief supplies and material from any source, intended for educational, recreational or religious purposes, and for assisting them in organizing their leisure time within places of internment or PoW camps. Such visits, however, should not be conflated with, and may never substitute, the visits carried out by the ICRC under *Art. 126 GC III* and *Art. 143 GC IV*; indeed the ICRC's visits under the latter provisions are carried out in the framework of the supervisory mechanism envisaged by the Geneva Conventions, and their main objective is to ensure that PoWs and protected civilians are being treated in accordance with the IHL standards laid out in *GC III* and *GC IV* respectively. In acknowledgment of the ICRC's distinct role, *Art. 125 of GC III* and *Art. 142 of GC IV* emphasize that 'the special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times'.

The importance of the ICRC's role in IACs is further underscored by the relative abeyance of the system of *Protecting Powers* (PPs) – arguably intended as the primary supervisory mechanism under the Geneva Conventions – in the decades following WWII. Since the adoption of the Conventions, PPs have only been appointed five times,<sup>[2]</sup> whereas the ICRC has maintained a working presence in virtually every IAC since 1949. As such, if not for the ICRC, there would effectively be no institution legally mandated by the Geneva Conventions to supervise their faithful application by the Parties to an IAC.<sup>[3]</sup> Moreover, in the absence of PPs, the ICRC has often been called upon, or allowed, by States to take on activities that are primarily foreseen for PPs; this has been the case, for example, when it comes to the role envisaged for PPs in PoW trials (see, e.g., *Art. 104, 105, 107 GC III*) or in the transmission of information between the Parties.<sup>[4]</sup>

Essentially, the ICRC's legal mandate delineates the boundaries between what the ICRC can be permitted to do, and what the ICRC must be *allowed* to do. Granting the ICRC access to PoWs and protected civilians during IACs is a legal obligation for States, which may not be subject to political equivocation or instrumentalization. To prevent the ICRC from performing its role would erode the overarching humanitarian objectives of the Conventions, namely to protect those who are not or no longer taking part in the fighting, and might also result in an IHL violation.

## The ICRC's 'right of initiative' as a pathway to humanitarian action

While the Geneva Conventions carve out a specific supervisory role for the ICRC, they do not preclude or restrict the organization from undertaking additional humanitarian activities. Such activities are based on the ICRC's long-standing '*right of humanitarian initiative*', a treaty-based right, enshrined in all four Geneva Conventions, granting impartial humanitarian organizations the right to *offer* humanitarian services, subject to the consent of the Parties concerned.<sup>[5]</sup> The right of initiative is central to the ICRC's role in IACs, providing a crucial pathway for the organization to broaden its scope of action and respond to the needs that arise during war; in fact, the vast majority of activities carried out by the ICRC during IACs are based on this right, which long predates the organization's legal mandate under the 1949 Geneva Conventions.<sup>[6]</sup>

The Geneva Conventions do not specify what sort of activities can be proposed under the right of initiative, apart from clarifying that they must be geared at the 'protection' and 'relief' of concerned beneficiaries.<sup>[7]</sup> As such, the ICRC enjoys a wide margin of discretion in the activities it can propose and undertake during IACs. For example, the ICRC may distribute *humanitarian aid*, engage in the provision of *health-care services*, offer *forensic expertise*, undertake activities relating to *water and habitat* infrastructure, or deploy *weapon contamination* experts. On the other hand, when it comes to 'protection activities', the ICRC can make *representations to authorities on their IHL obligations*, deliver IHL trainings to armed forces, or lend its good offices to the Parties to facilitate the implementation of any agreement between them, such as, e.g., on the repatriation of PoWs or dead combatants. As a neutral intermediary, it can also offer to facilitate the safe passage of civilians out of conflict-affected zones, propose the conclusion of a ceasefire agreement or facilitate the registration of PoWs at their point of capture.

The right of initiative is not restricted to the ICRC; rather, it can be exercised by any ‘impartial humanitarian organization’, such as NGOs or National Red Cross and Red Crescent Societies. Nevertheless, the ICRC remains the only actor referred to explicitly by name in the relevant provisions, as a clear example of an impartial humanitarian organization. In fact, it is worth observing that there are several such references to the ICRC throughout the Geneva Conventions and their Additional Protocols (see, for example, *GC III, Art. 75* and *GC IV, Art. 59*); usually, they serve to suggest activities which the Parties could task the ICRC with, as an impartial humanitarian organization, especially when they are unable to carry out the relevant task themselves. These references will often guide the activities which the ICRC may propose to Parties under its right of initiative, in line with the *fundamental principles* of the Red Cross/Red Crescent Movement.

## The ICRC’s CTA in IACs

Another crucial role played by the ICRC during IACs, comes in the form of its *Central Tracing Agency (CTA)*, which dates back to a first agency that the ICRC set up in the Franco–Prussian war in 1870. The CTA is an integral, permanent structure of the ICRC, deriving its mandate in IACs directly from the Geneva Conventions and their First Additional Protocol. It helps prevent people from going missing and restore family links, by ensuring that a trace of their whereabouts is kept and shared. One of the CTA’s most important tasks in IACs is to collect and centralize information on the fate and whereabouts of PoWs, civilians deprived of their liberty and other protected persons, including fallen soldiers in the hands of the enemy. As part of its role as a neutral intermediary, it then transmits this information to the Parties and to the families concerned.

While the ICRC’s CTA can gather information through various sources, a key pathway envisaged by the Geneva Conventions for information to arrive to the CTA and the families is the *National Information Bureaux* of the Parties to an IAC. It is therefore crucial that Parties engaged in an IAC establish, and diligently operate, their respective NIBs, so that the information pathway envisaged by the drafters of the Geneva Conventions can function properly, and the ICRC’s CTA can fulfil its important humanitarian role.

## A prophecy fulfilled: the enduring commitment of the ICRC

In 1862, in his *Memory of Solferino*, Henry Dunant proposed the creation of a neutral relief society, which would be capable of bringing some humanity onto the battlefield. He presciently observed that: ‘Humanity and civilization call imperiously for such an organization (...)’.

Over the last 160 years, the ICRC has unwaveringly committed itself to this appeal, working steadfastly within the framework of its legal mandate and right of initiative, to protect and assist people affected by armed conflict. Today, amidst the enduring realities of war, Dunant’s appeal still echoes strongly.

[1] The right of the ICRC to visit people detained in relation to IACs has also been recognized as a customary rule of international law. See ICRC CIHL Study, Vol. I, *Rule 124*.

[2] See ICRC, Updated Commentary to GC III, 2020, para. 1297.

[3] This key function of the ICRC is also established under Art. 5(1)(c) of the Statutes of the *International Red Cross and Red Crescent Movement*, of which the ICRC makes up one of the constituent parts.[3] The Movement is a worldwide, humanitarian network comprised of the ICRC, the IFRC and the National RCRC Societies, and its main mission is to prevent and alleviate human suffering wherever it may be found. The Movement’s Statutes elaborate on the respective roles of its components, ascribing certain functions to each. These functions also form part of each Movement component’s respective mandates. In the case of the ICRC, the role envisaged for it under the Statutes of the Movement, also form part of its mandate, complementing the supervisory function reserved for the ICRC under the Geneva Conventions.

[4] See ICRC, Updated Commentary to GC III, 2020, para. 50–51.

[5] See Common Art. 9/9/9/10 of the 1949 Geneva Conventions. The ICRC’s ‘right of initiative’ is also established under the *Statutes of the Red Cross and Red Crescent Movement*.

[6] See *Art. 88*, 1929 Geneva Convention on Prisoners of War.

[7] See also, ICRC, Updated Commentary to GC III, 2020, paras. 1319 – 1333.

### See also:

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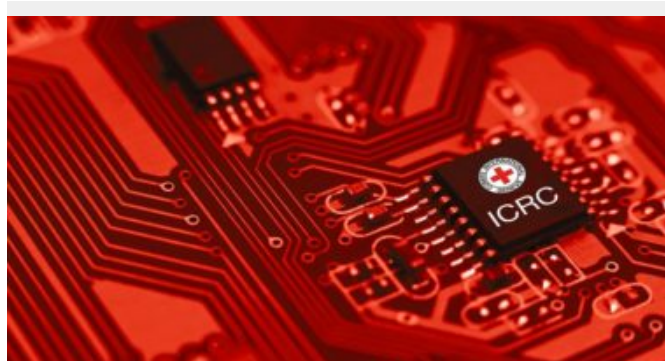


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