Civil Defence 1977-1997: from law to practice[1]

by Stéphane Jeannet

Concern has been expressed recently that the rules of international humanitarian law pertaining to civil defence[2] have been somewhat neglected since 1977 and that, 20 years on, the time has come to assess whether these rules are sufficiently realistic and have retained their validity. The purpose of civil defence rules is clear, i.e. "to mitigate the losses, damage and suffering inflicted on the civilian population by the dramatic developments of the means and methods of warfare".[3] But while the primary purpose of civil defence rules may be formulated quite simply, the means of achieving it are naturally far more complex, indeed increasingly so given the effects of the ever more destructive methods of warfare as well as the changing nature of conflicts, which is resulting in a larger proportion of civilians being killed. It has also been recognized that the rules governing civil defence would remain a dead letter if they were not made known to those for whom they are intended. The current lack of awareness has therefore made efforts to spread knowledge of these rules a matter of necessity.

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[1] A shorter version of this article was published in the *International Civil Defence Journal*, Vol. X, N° 4, December 1997, pp. 25-27. The full report of the meeting, S. Jeannet (ed), *1977 - 1997, Civil Defence: From Law to Practice*, 1997, 89 pages (in English, with a French summary), can be obtained either from the ICDO or from the ICRC.

[2] Articles 61 to 67 of Protocol I, which grant civil protection a status comparable to that of medical units. See below, Section 1.

[3] See 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, Geneva, 1987, para. 2319.

The International Civil Defence Organization (ICDO) and the International Committee of the Red Cross (ICRC) therefore jointly organized a meeting of experts on the implementation of international humanitarian law relating to civil defence. Held from 30 June to 2 July 1997 in Gollion, Switzerland, the meeting was prompted by Resolution 2 (A[j]) of the 26th International Conference of the Red Cross and Red Crescent (1995), which "invites States party to Additional Protocol I to implement and disseminate the rules of the Protocol regarding civil defence and recommends that the [ICRC], in collaboration with [ICDO], encourage international cooperation in this field and the inclusion of this question in international meetings on international humanitarian law".[4]

Before examining the main findings of the meeting of experts, it may be useful to briefly outline the legal framework dealing with civil defence.

The legal framework: Protocol I, Part IV, Section I, Chapter VI[5]

Civil defence organizations are intended to protect the civilian population against the dangers presented by war and other disasters and to help it recover from their immediate effects, as well as to ensure the conditions necessary for its survival (warning, evacuation, shelters, rescue, medical services, fire-fighting, public services, etc.). These organizations and their personnel are entitled to carry out their tasks in all but cases where imperative military necessity makes this impossible. Civil defence personnel must be respected and protected. Objects used for civil defence purposes may not be destroyed or diverted from their proper use except by the State to which they belong.[6] These rules also apply to occupied territory, where civil defence organizations must receive from the authorities the facilities needed to carry out their tasks. The occupying power may not requisition buildings or equipment belonging to civil defence organizations nor divert them from their proper use.[7] The same rules apply to the civil defence organizations of neutral States operating on the territory of a party to the conflict with the consent and under the control of that party.[8]

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[4] Reprinted in *IRRC*, No. 310, January-February 1996, p. 62.

[5] Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I). - Regarding Section I, see Jean de Preux, "Protection of civilian populations against the effects of hostilities", Synopsis II, *IRRC*, No. 246, May-June 1985, pp. 153-160.

[6] Protocol I, Articles 61 and 62.

[7] Protocol I, Article 63

[8] Protocol I, Article 64.

This protection ceases only if civil defence organizations are used to commit, in addition to their rightful tasks, acts harmful to the enemy, and then only after an appropriate warning with a reasonable time limit has been given and disregarded. Civil defence organizations may be formed along military lines, cooperate with military personnel or placed under the direction of military authorities and incidentally benefit military victims. None of these may be considered as a harmful act. The same applies to the carrying of light individual weapons by civilian personnel for the purpose of maintaining order or for self-defence.[9] The distinctive emblem of civil defence organizations is an equilateral blue triangle on an orange background.[10]

Members of the armed forces and military units permanently and exclusively assigned to civil defence organizations must be respected and protected, provided that the conditions stated above are observed and that those individuals prominently display the international, distinctive civil defence emblem. If they fall into enemy hands, they become prisoners of war.[11]

1977-1997: the changing nature of the world

Those taking part in the Gollion meeting expressed the view that our world, and the way it was perceived, had changed considerably since Protocol I was signed in 1977. New factors included the following:

- a much stronger United Nations presence in the field, i.e. peacekeeping and humanitarian operations;
- a proliferation of NGOs involved in humanitarian work;
- an apparent lessening of the threat of nuclear conflict and therefore less attention devoted to it by civil defence organizations;
- a shift in the type of conflicts being fought, which had resulted in problems different from those encountered at the time when the Protocol was signed;
- a change in the manner in which civil defence itself was perceived, particularly in Eastern Europe, where it was now less closely linked to military structures.

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[9] Protocol I, Article 65.

[10] Protocol I, Article 66 and Annex I.

[11] Protocol I, Article 67.

The participants felt that civil defence organizations had in the past sometimes had an important role to play in the event of armed conflict. But that role — in particular as set out in international humanitarian law — was relatively unknown, even within the ICRC. Not enough had been done to promote knowledge of that role.

The Gollion meeting went on to draw the following conclusions.

Tasks assigned to civil defence

A distinction had to be drawn between the civil defence tasks set out in Protocol I — and performed by a number of different organizations — and the civil defence organizations themselves. The list of tasks laid down by the Protocol was fairly comprehensive, though this view was not shared by all. Activities such as protecting the environment and cultural objects were not covered by Protocol I, Art. 61, but nor were they precluded. The list of tasks enumerated in that provision therefore remained valid. It must moreover be understood that tasks and priorities would vary according to different conditions in different regions and at different levels of economic development, and thus be interpreted and carried out in different ways as a result. While civil defence organizations could engage in all kinds of work in peacetime, it was necessary that their tasks in times of conflict — those protected by international law — be clearly defined. Any work that could be viewed as having military implications could not be expected to enjoy protection in wartime. In long-lasting conflicts, repairs to damaged housing — as opposed to the building of temporary shelters (the usual method) — was an approach requiring further discussion but did not appear incompatible with the function of civil defence.

Action by outside organizations

In many situations, there was international support for national civil defence activities but this rarely functioned as intended by Protocol I, i.e. that foreign organizations should take action under the direction of the national civil defence body. The reality was that international support tended to take the form of relief work or peace-keeping. The United Nations humanitarian organizations (in particular the UNHCR), the ICRC and various NGOs often worked in support of local civil defence organizations, with the international bodies essentially retaining their separate identities. This seemed preferable since if they allowed themselves to be identified with a civil defence organization when carrying out certain

tasks, confusion might result. A shared identity would then present more disadvantages than advantages.

Such cooperation should be developed and encouraged in wartime. In peacetime, there was often cooperation with National Red Cross and Red Crescent Societies on such matters as first-aid training. It was important that the various organizations recognize each other's existence and act in complementary fashion, not as rivals.

Role of the military

Consideration must also be given to the possible use of military personnel for civil defence activities. The placing of civil defence organizations under the direction of — or even merging them with — the military (which is tolerated by Protocol I) would seem to entail a number of disadvantages since it would then be more difficult to discern a separate role for civil defence, and there would be a greater temptation to use civil defence organizations for military purposes. In addition, the impression given to the outside world would make it more difficult for them to obtain protection. There was therefore a broad view that emphasis should be laid on the civilian nature of civil defence organizations. The trend in Russia and other Eastern European countries — to switch from military to civilian control over civil defence — was noted with approval at Gollion.

Nevertheless, placing civil defence under military command, which was increasingly the case in Africa in particular, might also present some advantages because of the facilities and means available to the armed forces. The Gollion meeting felt that this matter required further investigation, especially as it was not clear in such cases who would replace the military for conventional civil defence tasks in the event of armed conflict.

Security issues

There was debate in Gollion about whether civil defence organizations should be armed. While their members were entitled under Protocol I to carry light weapons, it was felt that this might give them a false sense of security, especially as they could easily forfeit their protection under humanitarian law by using their weapons inappropriately. Moreover, the bearers of those weapons might be viewed as a threat and become targets for military attack. It was therefore recommended that the arming of civil defence personnel should, as far as possible, not be considered.

The safety of the personnel of both civil defence and humanitarian organizations remained a delicate problem, in particular in situations where State structures had collapsed. No ideal or simple solutions were available; each present-day conflict had its specific nature and must be considered separately in an attempt to find a solution.

Non-international armed conflicts

Non-international armed conflicts were today the most widespread type of conflict. However the international rules applying to them did not specifically include protection for civil defence work, though they did not prohibit those activities either. Clearly, certain provisions applicable to international conflicts (such as those regarding occupied territories) were not, strictly speaking, applicable to internal conflicts, but the general trend was to apply these *mutatis mutandis* and confer similar protection in the case of internal conflict. This trend should obviously also be encouraged with regard to provisions on civil defence, in keeping with Article 18 of Additional Protocol II, which deals with relief societies and relief operations in non-international armed conflicts.

In most cases, civil defence organizations were State entities and it was therefore difficult for them to continue performing their duties on territory controlled by a dissident party engaged in an internal conflict. They should nevertheless do their utmost to do so. If this was not possible, civil defence services should be provided by the dissident party.

Another even more acute problem was that of conflicts in which basic humanitarian rules were themselves called into question and civil defence activities (as well as humanitarian action generally) ran counter to military objectives. This arose in cases involving forced displacement of entire populations and genocide. The problem was obviously a very broad one and went beyond the realm of civil defence. It would require further analysis, in particular regarding its root causes. Under international humanitarian law, the only possible way to deal with this was through action of a preventive nature: promoting respect for and compliance with the basic rules and principles of that law. Such programmes should also aim at raising the awareness of members of civil defence organizations regarding the meaning of their mission in such conflicts. Though civil defence workers were often employees of the State, they had a humanitarian role, i.e. one with a moral content. This fact should be greatly stressed.

Promoting compliance

Civil defence rules must be known and complied with and the international emblem for that activity must be widely recognized. Public awareness of the rules regarding civil defence work should therefore be raised.

It was important that national legislation clearly set out the steps to be taken to protect civil defence organizations in wartime and that measures to repress violations of international humanitarian law include the field of protection for civil defence work.

Cooperation between civil defence organizations from different countries was also desirable and there should be an exchange of ideas regarding promotional activities. The ICDO could serve as a link for this.

Regarding compliance with the rules by armed forces, stress was laid on promoting knowledge of those rules and the meaning of the emblem as part of general dissemination by the States. Emphasis was also laid on ensuring adequate knowledge of the rules and the emblem among the members of United Nations forces. The United Nations Department for Peace-keeping Operations had a role to play in this respect by reminding States providing peace-keeping contingents of their responsibilities in this area.

In order to reassure their potential enemies, the States should be invited to declare clearly and publicly (possibly through a notification circulated by the depositary among the States party to Protocol I) that their civil defence organizations would carry out the tasks laid down in Art. 61 of that treaty and comply with the rules of international humanitarian law. This could be done even by States not yet party to Protocol I.

Regarding the role of the organizations that had convened the Gollion meeting, the ICRC should place greater emphasis on civil defence and its emblem in the ICRC's work to promote knowledge of the law. It could also share its expertise in such matters. As the umbrella body for the various civil defence organizations around the world, the ICDO had an important role to play in promoting the sharing of experience between its members and promoting knowledge of the international emblem.

Civil defence emblem

No additions should be made to the emblem, referred to in Protocol I as "the international distinctive sign". Governments that had made additions should be asked not to do so and to amend their legislation.

If States not party to the Protocol wished to use the emblem, they should be allowed and encouraged to do so provided that they accepted the entire civil defence chapter of Protocol I. The importance was strongly emphasized of adopting appropriate national legislation to regulate use of the emblem and impose penalties for misuse. It was agreed that the States party to Protocol I should be reminded of that obligation. National legislation might be modelled on the law regarding the red cross and red crescent emblem.

There was lengthy discussion of the use by civil defence personnel of other emblems in addition to the international civil defence emblem. It was clear that medical services operated by civil defence organizations should indicate that they were protected by displaying either the red cross or red crescent emblem or the international civil defence emblem. Other emblems would not afford protection under international humanitarian law.

On the question of whether the international civil defence emblem should be the only one used in peacetime, it was stated that existing symbols and identification marks aroused strong feelings of identity among the members of certain organizations. Private organizations working officially in the civil defence field should therefore not be forbidden to use their own signs or symbols — which were often a long-standing means of identification and recognized nationally — in addition to the international emblem. It was noted in passing that the logo of the ICDO was different from the international emblem.

It should be made clear, however, that only the international civil defence emblem provided protection. The civil defence authorities should therefore ensure that the international emblem was used only when justified by the activities undertaken.

The peacetime range of civil defence activities actually carried out was broader than that entitled to protection. It was noted that care must be taken to ensure that, in wartime, the emblem was displayed only in connection with activities entitled to protection under Protocol I.

Regarding the need to improve the visibility and recognition of the protective emblem, it was agreed that States should be invited to adopt relevant measures and conclude agreements as specified in Protocol I and that the ICRC, which had done considerable work on the subject in connection with the red cross emblem, should be asked to exchange information with the ICDO on the subject.

General conclusions

An item on the Gollion agenda asked whether the rules on civil defence were sufficiently realistic and had retained their validity in modern wars. The experts' conclusion was that the rules remained valid and that efforts must be made to implement them. Those rules should therefore be reaffirmed in order to dispel any doubt and ensure that they remained the basis for future action.

There was agreement that, in contrast with the provisions regarding Red Cross and Red Crescent activities, the rules laid down in Articles 61 to 67 of Protocol I were not well enough known, even in civil defence circles. There was therefore a need for broader and more determined work to spread knowledge of them. The Red Cross and Red Crescent Movement's dissemination work was well known but other specialized institutions in this field (such as the International Institute of Humanitarian Law, which held courses for military personnel in particular, and the ICDO) should be encouraged to give greater attention to the rules regarding civil defence activities for the protection of conflict victims.

Finally, some States not party to Protocol I had agreed, for humanitarian reasons, to implement and include in national legislation the rules set out in that Protocol. Other States in a similar position should be encouraged to do likewise.

Public statement by the ICRC on the situation in Kosovo

The ICRC has a long-standing policy of approaching parties to a conflict in a confidential manner, if it deems it necessary to draw their attention to violations of international humanitarian law or to issues which are otherwise unacceptable from a humanitarian standpoint, and to ask those responsible to change course. However, the ICRC has always kept open the option of making a public statement on conditions in a conflict situation, if the circumstances so require. This is normally the case when its delegates are faced with particularly serious humanitarian problems caused or aggravated by repeated or ongoing violations of fundamental humanitarian obligations.

On 15 September 1998, the ICRC published its "position on the crisis in Kosovo". The Review *brings this document to the attention of its readers, as an example of a public statement made in a situation of conflict or internal strife.*

ICRC position on the crisis in Kosovo

Events in Kosovo have taken a turn for the worse. The International Committee of the Red Cross (ICRC) is convinced that the situation in the region has reached a critical stage in terms of its humanitarian implications for the civilian population, forcing all those involved in the conflict to face up to their responsibilities.

At this very moment, as has been the case for several weeks now, tens of thousands of civilians are caught up in a devastating cycle of attacks and displacements. They are exposed to violence, including threats to their lives, destruction of their homes, separation from their families and abductions. Thousands of them have nowhere left to go and no one to turn to for protection.

From a humanitarian perspective, it has become apparent that civilian casualties are not simply what has become known as "collateral damage". In Kosovo, civilians have become the main victims — if not the actual targets — of the fighting. The core issue to be addressed immediately is that of the safety of, and hence respect for, the civilian population. First and foremost, this means that every civilian is entitled to live in a secure environment and to return to his or her home in safe and dignified conditions.

The authorities of the Federal Republic of Yugoslavia have pledged to facilitate the return of displaced persons to their villages and have designated a dozen locations where aid will be distributed with their support. For their part, Western governments have in recent weeks put forward a number of proposals aimed at encouraging return to selected areas in Kosovo. In principle, all measures that can contribute to improving security conditions and building confidence are welcome. Indeed, a number of people are reported to have made their way back to some villages in central and western Kosovo.

However, a significant discrepancy has emerged between the policy of favouring returns and the very nature of the operations carried out by the security forces in past weeks. These operations have led to further killings and wounding of civilians, to large-scale destruction of private property and to further mass displacements. They have also created a climate of deep and widespread fear.

These latest events have added to the heavy price already paid by the civilian population, including the killing of dozens of Serb civilians and the abduction of over a hundred more, whose fate remains unknown.

The discrepancy between the policy of inviting the displaced to return to their homes and the manner in which operations are being conducted is illustrated by certain practices witnessed by ICRC delegates in the field.

Large-scale operations have been carried out against villages and other locations where displaced people have sought refuge. These have had the following consequences:

- The killing or wounding of civilians, large-scale destruction of property, and the flight of vast numbers of residents and people who had already been displaced. This was the situation on 10 September between Istnic and Krusevac, where panic-stricken civilians were forced to take to the roads once again just when the authorities were planning to open an additional aid centre in that very place.

- Fleeing civilians becoming trapped in remote areas or very exposed terrain. Some of them have suffered further attacks, for example the shelling on 29 August of people sheltering in a gorge near Sedlare.
- The screening of entire population groups for the stated purpose of identifying individuals having taken part in operations against the security forces, ill-treatment and intimidation during interrogation, and failure to notify families of the whereabouts of those being held. For instance, this happened in Ponorac on 5 September, when several dozen men were taken away. Their families are without news of them to date.
- Difficulties in securing access to medical treatment for the wounded and the sick in hospitals in Kosovo.

Today, thousands of civilians — Albanians, Serbs and others — are living in a climate of extreme insecurity and fear. The ICRC therefore wishes to state the following:

- Responsibility for ensuring the safety of and respect for the civilian population lies with the Serbian authorities. They must take every possible measure to protect civilians. Specifically, the ICRC calls on the Serbian authorities to put an end to the disproportionate use of force and to specific acts of violence directed against civilians, including the wanton destruction of property. The ICRC renews its appeal for rapid access, in accordance with its recognized working procedures, to all persons arrested in connection with the events in Kosovo.
- The ICRC calls on Albanian political representatives and on the UCK (Kosovo Liberation Army) to do everything possible to help put an end to the reported killings, and to enter into a meaningful dialogue on, and provide information about, the fate and whereabouts of abducted Serbs in Kosovo.
- Beyond the humanitarian implications lies the issue of the political settlement of the crisis. The ICRC is convinced that the international community needs to draw lessons from the experience gained in this respect elsewhere in the Balkans. The ICRC considers it crucial to keep the political and the humanitarian dimensions of the crisis clearly separate.

Displaced persons have only one wish, and that is to return home. They should be allowed to do so freely. However, until the conditions are created that enable them to do so, they should receive assistance wherever they are, and the places where humanitarian aid is provided ought not be limited to particular sites.

The ICRC is well aware of its responsibility to use all available means to reach civilians both in remote areas and in their own villages, to attempt to gain access to persons arrested, to establish the whereabouts of those abducted, and to ensure that the wounded and the sick receive adequate treatment. The ICRC currently has 17 expatriates and some 50 locally recruited staff operating under difficult conditions throughout Kosovo. It has the additional responsibility of mobilizing resources within the broader context of the International Red Cross and Red Crescent Movement.

The ICRC will vigorously pursue its efforts to establish a dialogue with the Yugoslav authorities and the representatives of the Albanian community with a view to finding the most appropriate humanitarian response to the present crisis. It will seek to maintain close coordination with other humanitarian agencies in the field, such as UNHCR. It will also continue to coordinate and cooperate closely with the International Federation of Red Cross and Red Crescent Societies and with the Yugoslav Red Cross.

All those involved in the conflict must acknowledge and assume their respective responsibilities. This is a prerequisite if they are to succeed in alleviating the widespread insecurity and fear and in avoiding a potentially disastrous deterioration in the situation.

International Committee of the Red Cross
15 September 1998

The ICRC Advisory Service on International Humanitarian Law will henceforth be publishing a biannual update on legislation and jurisprudence relating to national measures for the implementation of humanitarian law.

This new column forms part of the mandate entrusted to the Advisory Service. Indeed, in addition to offering advice to States, the aim of the Service is to promote the widest possible exchange of information regarding the implementation of humanitarian law, pursuant to the Recommendations of the Intergovernmental Group of Experts for the Protection of War Victims adopted by the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1995).[1]

The update will feature legal texts and court decisions obtained by the Advisory Service documentation centre. We hope that this new section will be as comprehensive as possible and we invite governments and individuals to inform us (see address below) of new developments in national legislation and case law relating to the implementation of international humanitarian law. The Advisory Service also publishes an annual report.

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[1] *IRRC*, No. 310, January-February 1996, pp. 58 ff.; Recommendations of the Intergovernmental Group of Experts for the Protection of War Victims, Recommendation VI, *ibid.*, p. 86.

Implementation of international humanitarian law
Biannual update of national legislation and jurisprudence
January to June 1998

A. Legislation

Canada

The Canadian National Committee on International Humanitarian Law was set up in March this year pursuant to the memorandum of understanding of 18 March 1998 between the Departments of Foreign Affairs and International Trade, National Defence and Justice, the Royal Canadian Mounted Police, the Canadian International Development Agency and the Canadian Red Cross Society.

Colombia

Decree No. 860, issued on 8 May 1998, provides for the protection and use of the Red Cross name and emblem and for the protection of Red Cross activities. It also facilitates the delivery of humanitarian services in Colombia.

France

On 25 June 1998 the National Assembly unanimously adopted an Act aimed at banning antipersonnel mines,[2] based expressly on the Ottawa Convention of 3 December 1997. This Act supplements the Act of 1 July 1998 authorizing ratification of the Convention.[3]

Besides prohibiting the development, manufacture, stockpiling, supply, transfer and use of anti-personnel mines, the Act provides for the destruction of existing stocks by 31 December 2000. A national committee for the banning of anti-personnel mines will monitor enforcement of the Act, which will come into effect on the date of the Ottawa treaty's entry into force on 1 July 1999.

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[2] Loi n° 98-564 du 8 juillet 1998 tendant à l'élimination des mines antipersonnel, *Journal officiel*, 9 July 1998, p. 10/456.

[3] Loi n° 98-542 du 1er juillet 1998 autorisant la ratification de la Convention sur l'interdiction de l'emploi, du stockage, de la production et du transfert des mines antipersonnel et sur leur destruction, *Journal officiel*, 2 July 1998, p 10/078.

Germany

The Act relating to cooperation with the International Criminal Tribunal for Rwanda was issued on 4 May 1998.[4] It is almost identical to the Act of 10 April 1995 on cooperation with the International Criminal Tribunal for the former Yugoslavia. Both refer to the Act on mutual international assistance in criminal matters (*Bundesgesetzblatt*, I, 1537), which becomes widely applicable by analogy.

Italy

On 16 February 1998 the Minister for Foreign Affairs issued a Decree[5] establishing the Italian National Committee for International Humanitarian Law. The Committee was set up to examine measures necessary to adapt domestic law to the rules of international humanitarian law. The Decree makes specific reference to the measures to stem from the decision of the July 1998 Rome Diplomatic Conference to establish a permanent international criminal court.

Peru

The Official Gazette of 21 February 1998 published Act No. 26/926 modifying various articles of the Penal Code and incorporating a chapter on crimes against humanity.[6] The crimes covered include genocide, forced disappearance and torture.

Switzerland

On 20 March 1998 the Federal Assembly modified the Federal Act relating to military *materiel*.[7] The purpose of the amendment is to bring the definition of anti-personnel mines, prohibited under Article 8 of the Act, in line with that contained in Article 2 of the Ottawa Convention. No date has yet been set for the amendment's entry into force.

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[4] Gesetz über die Zusammenarbeit mit dem Internationalen Strafgerichtshof für Ruanda (Ruanda-Strafgerichtshof-Gesetz) vom 4. Mai 1998, *Bundesgesetzblatt*, 1998, I, No. 25, 8 May 1998.

[5] Decreto del Ministro degli Affari Esteri n° 215 bis del 16 febbraio 1998, hitherto unpublished.

[6] Ley que modifica diversos artículos del Código Penal e incorpora el Título XIV-A, referido a los delitos contra la humanidad, *El peruano — diario oficial*, 21 February 1998, No. 6450, p. 157/575.

[7] Loi fédérale sur le matériel de guerre, Modification du 20 mars 1998, *Feuille fédérale*, 31 March 1998, p. 1159.

Tajikistan

On 21 May 1998 Tajikistan adopted a new Penal Code containing various provisions regarding the implementation of international humanitarian law. Articles 403 to 405 punish grave breaches of humanitarian law committed in either international or internal armed conflicts. Article 333 states that abuse of the emblem and name of the Red Cross/Red Crescent is a punishable offence. The Code entered into force on 1 September 1998.

B. National jurisprudence

Belgium

In a highly criticized decision,[8] the Brussels Military Court on 17 December 1997 confirmed the acquittal of two Belgian servicemen belonging to the Belgian contingent of the UNOSOM II operation in Somalia in 1993. They had been charged with threatening and committing assault and battery on Somali children at a checkpoint. The Court held that the Act of 16 June 1993 relative to the punishment of grave breaches of the Geneva Conventions of 12 August 1949 and their two additional Protocols was not applicable since these international instruments themselves did not apply. According to the Court, the situation in Somalia in 1993 could not be defined as an international armed conflict because the United Nations troops were conducting a peace-keeping mission and could not be deemed a party to the conflict or an occupying power. The Court further held that the events in Somalia in 1993 could not be regarded as a non-international armed conflict within the meaning of Article 3 common to the four Geneva Conventions, since the hostilities did not take place between organized armed forces, but between irregular factions behaving in an anarchical manner without an established chain of command.

In a subsequent decision handed down on 7 May 1998,[9] the Military Court found a Belgian sergeant posted with the UNOSOM II troops guilty of assault and battery, threats and racial discrimination with regard to a Somali child, as well as incitement to immorality and indecent assault in a military camp. The Court remained silent as to the applicability of international humanitarian law to the situation in Somalia.

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[8] Military Court, Brussels, 17 December 1997, *Journal des tribunaux*, 4 April 1998, pp. 286-289

[9] Military Court, Brussels, 7 May 1998, hitherto unpublished.

France

On 6 January 1998 the Court of Cassation[10] quashed a decision of the Indictment Division of the Nîmes Court of Appeal in the judicial investigation regarding W. Munyeshyaka, a Rwandan national charged with genocide and crimes against humanity. The Indictment Division had ruled that this case did not lie within the jurisdiction of the investigating judge, arguing that the alleged acts were crimes of genocide committed abroad by a foreigner on foreigners and that the Code of Penal Procedure contained no provisions regarding the jurisdiction of the French courts for such a case. The Court of Cassation held that the Indictment Division had violated the law by limiting its criminal charges to genocide, whereas the acts perpetrated could also be deemed crimes of torture, for which universal jurisdiction is provided for under Article 689-2 of the Code of Penal Procedure. The Court's decision referred the case to the Indictment Division of the Paris Court of Appeal.

Olivier Dubois
Advisory Service on
International Humanitarian Law

[10] Criminal Division of the Court of Cassation, 6 January 1998.

To mark the 50th anniversary of the 1949 Geneva Conventions

ICRC testing opinions on war to prompt worldwide debate

From November 1998 to August 1999, the International Committee of the Red Cross (ICRC) will be gathering the opinions of thousands of people in a dozen countries who have been directly affected by armed conflict. They will be asked to share their views on the limits to warfare set by international law and on how to improve compliance with the Geneva Conventions and other humanitarian treaties. These will be published along with the results of a parallel survey conducted in countries at peace. The participants' personal stories will be portrayed in publications, the media and on an interactive web site. The project is intended to increase awareness around the world of the rules that already exist to protect people in wartime and to encourage discussion of humanitarian law in the context of modern-day conflict.

In Colombia, the first round of the study is currently being conducted among displaced civilians, former hostages, soldiers, guerrillas, security detainees, medical personnel and members of the general public. The interviews conducted so far have yielded a fascinating insight into how people perceive the conflict in Colombia and its consequences for their country, as well as their views on the limits set by humanitarian law and the dilemmas that arise in practice.

The project, entitled "People on war", reflects the ICRC's desire to give a voice to those who have personal experience of war as well as to stimulate discussion. It will also mark the 50th anniversary of the Geneva Conventions, on 12 August 1999. For the ICRC, the anniversary is an opportunity for the world to reflect on what has occurred in the half-century since the Conventions were adopted, to take stock of the present and to consider the future of international law and humanitarian action.

The survey in each country will result in an individual report published both locally and worldwide. The findings will then be summarized in a final report drawn up at the end of the process. This will be presented at the 27th International Conference of the Red Cross and Red Crescent, scheduled to take place in Geneva in November 1999. (The International Conference brings together the 188 States party to the Geneva Conventions, 175 Red Cross and Red Crescent Societies, the International Federation of those Societies, and the ICRC itself.)

The various surveys will be conducted by means of a questionnaire among a representative sample (involving at least 1,000 individuals in each country) of the populations concerned. The opinions of people directly affected by conflict — refugees, prisoners of war, relatives of missing people, soldiers, war-wounded, etc. — will also be sought by means of detailed interviews and group discussions. This work will be carried out by ICRC staff and volunteers from the respective National Red Cross or Red Crescent Society, supported and assisted by local professional agencies. The ICRC has engaged an international opinion-survey specialist to advise it on methods, to help draft the questionnaires and to analyse the results.

International Committee of the Red Cross
Press release 98/36
10 November 1998

Henry Dunant Medal

The idea of having a medal bearing the name of the founder of the International Red Cross, which later became the International Red Cross and Red Crescent Movement, was submitted to and approved in principle by the Council of Delegates, meeting on the 100th anniversary of the Red Cross in 1963. Thanks to the generosity of the Australian Red Cross, the Henry Dunant Medal was established by the International Red Cross Conference in Vienna in 1965. The first awards were made at the next Conference, held in Istanbul in 1969.

The purpose of the Medal is to acknowledge and reward outstanding service and acts of great devotion by a member of the Movement to the Red Cross and Red Crescent cause. The Standing Commission of the Red Cross and Red Crescent is the body that selects recipients and, as a general rule, not more than five awards are made every two years. This enhances the Medal's value and maintains its prestige as the highest honour the Movement can bestow upon one of its members.

The Standing Commission proceeds according to regulations adopted in 1965 and revised in 1981. Whether it decides to recognize a single outstanding act or dedicated service over the years, under the regulations the Standing Commission has to give special weight to the international significance of the act or service. If this dimension is lacking, the Commission would tend not to select the individual concerned, whose merits, though no doubt great, should be recognized rather by his or her National Society.

In recent years, owing to the large number of staff involved in international operations and the growing insecurity in the contexts where those operations are conducted, there has been a sharp increase in deaths and injuries among members of the Movement. Since the regulations relating to the Henry Dunant Medal specifically allow for the possibility of posthumous recognition, and in that case the number of awards is obviously not limited to five, a large proportion of the Medals awarded (or almost

all of them, as was the case during the Council of Delegates in Seville in 1997) go to individuals who have died recently.

There is a growing body of opinion, including among the members of the Standing Commission, that this tendency to use the Medal as a means of honouring the memory of deceased staff members is changing the nature of the award. The Standing Commission feels that it would be preferable to devise other ways of expressing the gratitude of the Movement's components[1] to men and women who have perished or whose health has been severely affected in the service of the Red Cross and Red Crescent. The Standing Commission does not, however, support the establishment of a new medal or other type of award applicable to all members of the Movement.

The Standing Commission feels it is important — except in certain cases — that those who receive the Medal know why they have been selected. They should be looked up to as examples to be followed during their lifetime. It is thus the wish of the Standing Commission that priority be given to individuals still in active service or having recently retired, and that most of the awards should go to persons in this category. There is no intention, however, to overlook the tragedies for which the Medal has been awarded so often in the past. On the contrary, the components of the Movement (National Societies, the ICRC and the Federation) are invited to set up their own procedures, if they have not already done so, to pay tribute to their staff members who have lost their lives or have suffered bodily or psychological harm in the course of their duties. This would also make it easier to respect local custom. Depending on its situation, resources and traditions, each component of the Movement will certainly find the most appropriate solution, whether in the form of medals, certificates, commemorative plaques, publications or artistic events, gardens or other places for quiet reflection. In any case, it is important that the event receive due publicity.

In accordance with the regulations, it will still be possible to make a posthumous award of the Henry Dunant Medal. However, the components of the Movement, all of which should henceforth establish other forms of recognition in such circumstances, should submit posthumous nominations for the Henry Dunant Medal only in truly exceptional cases.

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[1] National Red Cross and Red Crescent Societies, International Federation of Red Cross and Red Crescent Societies, International Committee of the Red Cross.