



## Contemporary challenges to international humanitarian law

### Commission B

#### Background

The contemporary environment in which armed conflicts are taking place is becoming increasingly complex. This complexity arises from a number of factors and poses a series of challenges for the applicability and application of existing international humanitarian law (IHL). Among those factors are:

- the continuing multiplication and fragmentation of parties to armed conflicts;
- the growing tendency towards foreign intervention in armed conflicts, including through multinational forces;
- the protracted nature of some conflicts, coupled with the growing inability to resolve them politically;
- the continuing territorial expansion and regionalization of armed conflicts;
- the open rejection of IHL by some parties to armed conflicts, in particular by some non-State armed groups;
- the strengthening of counterterrorism measures and discourses;
- the politicization of the debate surrounding humanitarian access and assistance;
- the increasing expectation that State armed forces conduct not only combat operations but also law-enforcement operations;
- the rapid advances in technologies of warfare; and
- the increasing tendency to conduct hostilities in urban settings.

**Applicability of IHL.** Some of these factors have a particular bearing on whether IHL applies. For instance, the multiplication and fragmentation of parties to armed conflicts and the protracted nature of some armed conflicts with varying levels of intensity make the determination of the beginning and end of IHL applicability particularly difficult. However, making this determination remains essential, conditioning what rules apply, for instance, to the use of force, detention and the delivery of humanitarian assistance, whether in international or non-international armed conflict. In addition, the territorial expansion and regionalization of armed conflicts have prompted questions about the extent of the territorial reach of IHL (e.g. the “battlefield” or the entire territory of the State where the conflict began). Furthermore, the open rejection of IHL by some parties to armed conflicts and the strengthened counterterrorism measures in response raise issues concerning the relationship between IHL and the legal regime governing acts of terrorism; these measures may, in some instances, affect the activities of neutral, independent and impartial humanitarian organizations.

**Multinational forces.** The increase in operations involving multinational forces in theatres of armed conflict – including under the auspices of international and regional organizations – also raises complex questions. Some recent peace operations have raised discussions as to whether IHL would apply at all, would apply differently, or would apply only as a matter of policy

to such multinational forces. In addition, contemporary peace operations have shown that multinational forces often intervene in pre-existing non-international armed conflicts by providing support to the armed forces of the State in whose territory the conflict is occurring. Such support may take various forms and it raises important legal questions related to the legal status of these forces under IHL and the applicability of IHL to these scenarios.

**Humanitarian access and assistance.** The multiplication and fragmentation of parties to armed conflicts and the inability and/or unwillingness of some of them to meet the needs of populations under their control have led to humanitarian needs on an epic scale and have brought legal issues surrounding humanitarian access and assistance sharply into focus. IHL treaties and customary rules provide a fairly detailed framework for regulating access to people in need of humanitarian assistance and protection in situations of armed conflict, including the right of impartial humanitarian organizations to offer their humanitarian services. However, certain issues still generate debate, notably on aspects relating to the need to obtain the “consent” of the parties concerned to be able to provide such services.

**Use of force under IHL and international human rights law.** State armed forces, especially in non-international armed conflicts, are increasingly confronted with situations where the traditional division between the “conduct of hostilities” and “law enforcement” paradigms is not so easily drawn. This may be the case, for instance, when parties to a conflict are facing a rioting crowd comprising both lawful targets and civilians resorting to violence unrelated to the conflict. Determining which paradigm applies may have a crucial impact on the humanitarian consequences of operations. The interplay between IHL and international human rights law is also of practical importance for training and equipping armed forces and police forces, as armed forces may be called upon to conduct law-enforcement operations and police forces may be called upon to take a direct part in hostilities in situations of armed conflict.

**New technologies of warfare.** The rapid advances in new technologies used as means and methods of warfare, such as cyber warfare and autonomous weapon systems, have underscored the urgency of considering the legal, humanitarian and ethical challenges associated with these developments. Although new technologies of warfare are not specifically regulated by IHL treaties, they must be capable of being used in compliance with IHL. In this regard, legal reviews of new weapons are a critical measure for States to ensure respect for IHL. However, difficulties in interpreting and applying IHL to new technologies of warfare may arise in view of their unique characteristics, the intended and expected circumstances of their use, and their foreseeable humanitarian consequences.

**The use of explosive weapons in populated areas.** Finally, the growing tendency to conduct hostilities in populated areas by means of explosive weapons with a wide impact area is a major cause of civilian death and injury and of destruction of and damage to civilian residences and critical civilian infrastructure, and has dire short- and long-term humanitarian consequences. This raises, in particular, issues with the IHL rules prohibiting indiscriminate and disproportionate attacks, notably when considering the use of certain types of inaccurate explosive weapons or of weapons with a large destructive radius relative to the size of the military objective. It also raises questions with regard to the effects of attacks using explosive weapons in populated areas that the attacker must take into account in assessing the expected incidental civilian harm in relation to the concrete and direct military advantage anticipated when attacking a military objective.

**Generating respect for IHL.** Aside from the challenges for the applicability of IHL posed by the complexity of armed conflicts, the most important challenge to IHL continues to be the need for greater respect for it, which would lessen human suffering and the humanitarian needs caused by armed conflict. In order to generate respect, everyone must be familiar with and understand IHL. This raises questions about the role that States, components of the International Red Cross and Red Crescent Movement and other actors can continue to play and the measures they can take to ensure the dissemination of IHL and generate the political will and commitment needed for the respect of this body of norms. Some issues to consider are: the importance of multidisciplinary approaches; methods for ensuring broad dissemination, including through the use of new media technologies; existing initiatives to increase respect for IHL; and possible ways forward.

## Objectives

The Commission will provide an opportunity for people with different perspectives – including representatives of States and National Red Cross and Red Crescent Societies as well as academics and others – to exchange views on pressing contemporary challenges to IHL, and on how the ICRC and other Conference participants can address them.

The ICRC has submitted its own reading of a selection of the ongoing challenges to IHL (including the ones described above) to the International Conference of the Red Cross and Red Crescent in its fourth report, entitled “International humanitarian law and the challenges of contemporary armed conflicts.” **While the ICRC report may serve as a reference for better understanding the main contemporary challenges to IHL, the objective is not to discuss the report, which only represents the ICRC’s views, but rather to engage in an open debate on the topic.**

That said, due to time constraints, it is proposed to exclude certain challenges to IHL that may be addressed elsewhere in the Conference programme – in particular challenges concerning the specific protection of medical personnel, facilities and transports. Likewise, there will not be time to examine the wide range of existing weapons issues that are discussed in other forums. Thus, it is proposed to limit the discussion on weapons to new technologies used as means and methods of warfare – in particular cyber warfare and autonomous weapons – and to the particular challenges posed by the use of explosive weapons in populated areas.

The Commission will:

1. **Gather** the views of Conference participants on the most pressing challenges posed by contemporary armed conflicts for IHL;
2. **Examine** ways in which the ICRC and other Conference participants can address challenges for IHL;
3. **Encourage** Conference participants to demonstrate their commitment to addressing challenges for IHL by submitting **individual or joint voluntary pledges**.

## Guiding questions

1. What, in your view, are the factors in the contemporary armed conflict environment that affect IHL application and applicability the most?
2. Does this concept note adequately identify those challenges? Are there any other challenges to IHL that you can think of?
3. What, in your view, are the greatest challenges to IHL posed by contemporary armed conflicts?
4. How are you addressing challenges to IHL in your current work and how do you intend to address them in the years to come? How can States, components of the International Red Cross and the Red Crescent Movement and others cooperate in this regard? How can the ICRC assist in addressing challenges to IHL?

## Chairs and panellists

**Chair:** Richard Rowe, Australian Red Cross, former Senior Legal Adviser in the Australian Department of Foreign Affairs and Trade and senior member of Australian government delegations to previous International Conferences of the Red Cross and the Red Crescent

### Panellists:

- Cordula Droege, Head of the Legal Advisers to Operations Unit, ICRC headquarters, Geneva
- Marie Jacobsson, International Law Commission, Special Rapporteur for the protection of the environment in relation to armed conflicts
- Sandesh Sivakumaran, Professor of Public International Law, University of Nottingham

## Practical details

There will be two sessions of this plenary commission; both will use the same guiding questions and format. The only difference will be the language groupings.

### Timing and rooms:

- Session 1: Wednesday, 9 December, 3:45 p.m. – 5:45 p.m., room 1
- Session 2: Thursday, 10 December, 9:30 a.m. – 11:30 a.m., room 2

### Language groupings:

- Session 1: English, French, Arabic
- Session 2: English, Spanish, Russian

### Format:

Please note that **no PowerPoint presentations** will be allowed, and contributions will be limited to **five minutes** per speaker.

## Links to official working documents

“International humanitarian law and the challenges of contemporary armed conflicts,” report prepared by the ICRC, October 2015, Doc. 32IC/15/11. For more information, see the full report, available at: <http://rcrcconference.org/international-conference/documents/>