



Introduction

The International Red Cross and Red Crescent Movement and the Development of International Humanitarian Law

STEFANIE HAUMER, ROBIN GEIß AND ANDREAS
ZIMMERMANN

I. Introduction

When the International Red Cross and Red Crescent Movement¹ came into being more than 150 years ago in Geneva, it could hardly have been foreseen that it would play, and continues to play, a specific and indeed quite significant role with regard to both the clarification of existing international humanitarian law as well as to the further development of international humanitarian law. It is probably safe to state that no other non-State actor has had such a distinguished impact on the (historic) development of a specific area of international law.² What is even more surprising is that the International Red Cross and Red Crescent Movement was able to have such an impact, and continues to do so, in an area

¹ See generally on the International Red Cross and Red Crescent Movement and its structure H.-P. Gasser, 'International Committee of the Red Cross (ICRC)', in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), vol. V, pp. 445–454; H. Wilms, 'International Red Cross and Red Crescent Movement', in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), vol. VI, pp. 123–125.

² See generally on the role of non-State actors, particularly non-governmental organisations, in international law, and their influence on the development of international law S. Charnovitz, 'Nongovernmental Organizations and International Law' (2006) 100 *The American Journal of International Law*, pp. 348–372; S. Hobe, 'Non-Governmental Organizations', in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), vol. VII, pp. 716–725; J.-P. Lavoyer and L. Maresca 'The Role of the ICRC in the Development of International Humanitarian Law' (1999) *International Negotiation*, pp. 501–525; M. Wagner, 'Non-State Actors', in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), vol. VII, pp. 741–750.

2 STEFANIE HAUMER, ROBIN GEIß AND ANDREAS ZIMMERMANN

which is as State-centred, and which touches upon States' fundamental security interests, as is the case with international humanitarian law, i.e. the *ius in bello*, fundamentally connected with the exercise of the core of State sovereignty.³

While the main perspective of this book and the various contributions contained therein is on the specific role of the International Committee of the Red Cross (ICRC), its role being specifically mentioned, for instance, in Art. 126 paras 1 and 4 Geneva Convention III,⁴ this introduction will focus, albeit briefly, on the role of the other components of the International Red Cross and Red Crescent Movement when it comes to the development of international humanitarian law, namely the respective National Red Cross and Red Crescent Societies, as well as the International Federation of Red Cross and Red Crescent Societies (Federation).

More specifically, this introduction places a particular focus on the relationship between a given State and the respective National Red Cross or Red Crescent Society on its territory, as a further important component of the International Red Cross and Red Crescent Movement in the area of international humanitarian law. The mandate of the respective National Society, while being auxiliary to the public authorities, is also explored, which not only includes the National Society's contribution to the development of international humanitarian law as such, but also analyses its cooperation with the respective government to ensure respect for these rules.⁵

It is almost a mere banality to state that in the realm of international law, States continue to be the core stakeholders – a fact which States have explicitly reiterated in recent years specifically when it comes to the development of international humanitarian law. It is for this very reason that the mandate, which was assigned to the various components of the International Red Cross and Red Crescent Movement with regard to international humanitarian law by States, the cooperation between those components of the universal International Red Cross and Red Crescent Movement and

³ See also on the role of armed non-State groups: T. Marauhn and Z. Ntoubandi, 'Armed Conflict, Non-International', in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), vol. I, p. 634 *et seq.*

⁴ On the content of Art. 126 of the Geneva Convention III, see J. Pictet et al. (eds.), *The Geneva Conventions of 12 August 1949, III Geneva Convention* (Geneva: ICRC, 1960), pp. 602–613; as well as most recently S. R. Ratner and R. Giladi, 'The Role of the International Committee of the Red Cross', in A. Clapham, P. Gaeta, and M. Sassòli (eds.), *The 1949 Geneva Conventions – A Commentary* (Oxford: Oxford University Press, 2015), p. 525 *et seq.*

⁵ See below III.3.

States on the national, as well as on the international level, are of special, even crucial, importance and will hence subsequently be addressed. Indeed, the delegation of the individual mandates from the States to the components of the International Red Cross and Red Crescent Movement creates the very basis for a specific and unique relationship between the States and the components of the International Red Cross and Red Crescent Movement.

II. Historical Development

From the very beginning, the International Red Cross and Red Crescent Movement on the one hand, and international humanitarian law on the other have become closely intertwined. Starting at the roots, it was the founder of the Red Cross and Red Crescent Movement, the Swiss tradesman Henry Dunant, who, in 1862, asked two core questions in his masterpiece *A Memory of Solferino*.⁶ His first consideration was, whether it might not ‘be possible, in time of peace and quiet, to form relief societies for the purpose of having care given to the wounded in wartime by zealous, devoted and thoroughly qualified volunteers.’⁷ Looking back more than 150 years in history, Henry Dunant’s groundbreaking idea seems to have been justified. Dunant enumerated several reasons for his considerations, and in particular the idea that a professional and effective supply with medical care could not be guaranteed, if this was to be only organised spontaneously without prior training of staff and logistics *prior* to the outbreak of an armed conflict.

In addition, he pointed out that diplomatic conferences and congresses are convened and conducted to clarify far less important issues than the fundamental questions of humanity and civilisation involved in trying to humanize the laws of war.⁸ One might wonder what would be Dunant’s reaction, could he see what became of his idea, namely the unique worldwide humanitarian International Red Cross and Red Crescent Movement, encompassing today, as of 2016, 190 National Red Cross and Red Crescent Societies⁹ with their umbrella organisation, the Federation, and the ICRC, each component possessing and exercising its own specific mandate to be

⁶ See on the historical development also Gasser, ‘International Committee of the Red Cross (ICRC)’, p. 445 *et seq.*

⁷ H. Dunant, *A Memory of Solferino* (Geneva: ICRC, 1862, French ed.), p. 101. ⁸ *Ibid.*

⁹ See International Federation of Red Cross and Red Crescent Societies (IFRC), ‘National Societies’, available at: www.ifrc.org/en/who-we-are/the-movement/national-societies.

4 STEFANIE HAUMER, ROBIN GEIß AND ANDREAS ZIMMERMANN

addressed hereinafter. What is more is that, as of today, the International Red Cross and Red Crescent Movement consists of approximately 15 million volunteers, with operations in more than 80 countries and thousands of delegates in the field,¹⁰ which certainly is to be considered a truly stunning development.

The second question Henry Dunant raised constituted the very starting point for the development of what became first the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, in 1906 quite significantly revised and replaced by the 1906,¹¹ and then the 1929 Geneva Conventions,¹² and finally later the 1949 Geneva Conventions and its 1977 Additional Protocols, with the latter instruments still, more than 150 years later, considered to constitute the very core of international humanitarian law. Dunant asked whether '[it] would [...] be desirable that they [i.e. the States representatives] [...] formulate some international principle, sanctioned by a Convention inviolate in character, which, once agreed upon and ratified, might constitute the basis for societies for the relief of the wounded in the different European countries?'¹³ This second idea, namely the development of international legal rules and the continuous adaptation of those rules to an ever-changing reality, while being well advanced, has not been entirely completed to date – and probably never will be. What Henry Dunant proposed already in 1862 was to take advantage of a time of relative calm and quiet to investigate and try to solve a question of enormous and worldwide importance, i.e. the question of how to best address the impacts of war and to mitigate the suffering of its victims. He noted that (already in his days) new and terrible methods of destruction were invented daily and welcomed, or indeed even encouraged, in most – if not all – of the great European States, which already then were engaged in an armament race.¹⁴ It is submitted that over the years Dunant's statement has lost none of its timeliness and urgency. As a matter of fact, until today the human race is most creative in

¹⁰ See www.rcrcmeetings.org/wp-content/uploads/2013/11/EN_Bkg_RCRCMovement_FINAL.pdf.

¹¹ Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, Geneva, 6 July 1906, available at: www.icrc.org/ihl/INTRO/180?OpenDocument.

¹² Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, Geneva, 27 July 1929, available at: www.icrc.org/ihl.nsf/52d68d14de6160e0c12563da005fdb1b/9fb461bd48bb4efac125641e004025e0; Convention relative to the Treatment of Prisoners of War, Geneva, 27 July 1929, available at: www.icrc.org/ihl.nsf/52d68d14de6160e0c12563da005fdb1b/eb1571b00daec90ec125641e00402aa6.

¹³ H. Dunant, *A Memory of Solferino*, p. 111.

¹⁴ H. Dunant, *A Memory of Solferino*, p. 101.

inventing ever new means to damage each other. However, it has already for a long time been recognised as forming part and parcel of customary law that persons who do not (or no longer) directly participate in hostilities must be spared from the impact of these hostilities.¹⁵ Hence, the parties to the conflict must at all times distinguish between those who do not participate in hostilities and the actual fighters. Accordingly, their attacks must not be directed against the former.¹⁶ Besides, it is also beyond doubt that any use of means of warfare by the parties to an armed conflict must be in line with this principle of distinction.¹⁷ Moreover, ever since and until today, the use of means of warfare which are of a nature or meant to cause superfluous injury or unnecessary suffering is similarly prohibited.¹⁸

III. Current Role of the International Red Cross and Red Crescent Movement in the Development of International Humanitarian Law

1. General Questions

Still as of today, two of the main tasks of the International Red Cross and Red Crescent Movement are, on the one hand, to ensure respect for existing legal rules and, on the other, to contribute to the further development of rules applicable in times of armed conflict.¹⁹ This is what the States

¹⁵ See generally on the principle of distinction, Y. Dinstein, 'Warfare, Methods and Means', in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), vol. X, pp. 771–777; H. Krieger, 'Protected Persons' in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), vol. VIII, p. 543 *et seq.* (para. 20); G. D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War* (Cambridge: Cambridge University Press, 2010), p. 250 *et seq.*

¹⁶ See Art. 48 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Concerning the Protection of Victims of International Armed Conflicts, adopted on 8 June 1977 (Additional Protocol I); see generally on this provision H.-P. Gasser and K. Dörmann, 'Protection of the Civilian Population' in D. Fleck (ed.), *The Handbook of International Humanitarian Law* (3rd ed., Oxford: Oxford University Press, 2013), pp. 232–234.

¹⁷ C. Bell and J. Pfeiffer, 'Indiscriminate Attack' in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), vol. V, p. 140 *et seq.*; W. Boothby, 'Weapons, Prohibited' in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), vol. X, p. 841; Y. Dinstein, 'Warfare, Methods and Means', p. 771 *et seq.*; S. Oeter, 'Methods and Means of Combat' in D. Fleck (ed.), *The Handbook of International Humanitarian Law* (3rd ed., Oxford: Oxford University Press, 2013), p. 121 *et seq.* (190 *et seq.*).

¹⁸ Boothby, 'Weapons, Prohibited', p. 841; Solis, *The Law of Armed Conflict*, p. 269 *et seq.*

¹⁹ See Arts. 3 para. 2, 5 para. 2 lit. c) and g), para. 4) lit. a) Statutes. The text of the Statutes of the International Red Cross and Red Crescent Movement is available at: www.icrc.org/eng/resources/documents/misc/statutes-movement-220506.htm.

6 STEFANIE HAUMER, ROBIN GEIß AND ANDREAS ZIMMERMANN

parties to the Geneva Conventions, together with the components of the Red Cross and Red Crescent Movement, assigned the various components of the Movement to do when they adopted the Statutes of the International Red Cross and Red Crescent Movement at the International Conference of the Red Cross and Red Crescent in 1986. More specifically, the International Red Cross and Red Crescent Movement was assigned the mission ‘to prevent and alleviate human suffering wherever it may be found, to protect life and health and ensure respect for the human being, in particular in times of armed conflict and other emergencies.’²⁰ This mission is reflected and developed in more detail in the mandates of the individual Movement components. Hence, it is the States parties to the Geneva Conventions themselves that have established the International Red Cross and Red Crescent Movement, as well as each of its components, with their individual and specific mandates when it comes to the development of international humanitarian law.²¹

2. *Role of the International Committee of the Red Cross*

Taking a look at the various individual components of the International Red Cross and Red Crescent Movement, the role of the ICRC under the Statutes is, in particular, to work for a faithful application of international humanitarian law, to take cognizance of any complaints based on alleged breaches of that law and to prepare any development thereof.²² Not the least, the ICRC has often been tasked by the international community to provide initial drafts for major codification projects, such as e.g. the 1949 Geneva Conventions and their 1977 Additional Protocols.²³ This book will address these various projects in the chapters to come in significantly more detail.²⁴ In addition, and as international law is obviously not only composed of treaty law, the role of the ICRC with regard to the codification and development of customary law will also be scrutinized.²⁵

²⁰ Preambular para. 1 Statutes. ²¹ See Arts. 3, 5 and 6 Statutes.

²² See Art. 5 para. 2 lit. c) and g) Statutes which foresee that the ICRC maintains relations with governmental authorities while recognising the primary role of States in the development of international humanitarian law. See also Art. 5 para. 6 Statutes, as well as operative paragraph 6 of Resolution ‘Strengthening legal protection for victims of armed conflicts’, 31IC/11/R1.

²³ Gasser, ‘International Committee of the Red Cross (ICRC)’, p. 449 (para. 14).

²⁴ For further details, see below IV.3.

²⁵ *Ibid.*; for the contribution of J.-M. Henckaerts, ‘The International Committee of the Red Cross and the Clarification of Customary International Humanitarian Law’, see Chapter 3 of this volume.

3. *Role of National Red Cross and Red Crescent Societies*

National Red Cross and Red Crescent Societies have been mandated by the international community to themselves disseminate, but also to assist their respective governments in disseminating, international humanitarian law.²⁶ Furthermore, they also cooperate with the governments of their respective State to ensure respect for international humanitarian law, as well as to protect the distinctive emblems recognised by the Geneva Conventions and their Additional Protocols.²⁷

When it comes to the respective national level, it is predominantly the contribution of National Red Cross and Red Crescent Societies, and the range of options which exist for States and the respective National Societies to cooperate in regards to the development, implementation and enforcement of international humanitarian law which should not be underestimated. Not the least, one very important tool consists in the cooperation within the National Committee on International Humanitarian Law where such a committee exists in a given State party to the Geneva Conventions.²⁸ To date, 108 countries have established such a National Committee on International Humanitarian Law,²⁹ which generally at least includes representatives of the relevant national ministries such as defence, foreign affairs, internal affairs, justice and education, aiming at the better fulfilment of the State's obligations under the Geneva Conventions, including in the field of dissemination.³⁰ Although neither the Geneva Conventions nor any other international humanitarian law treaty contains a legal obligation to set up such bodies, their number is growing and they are recognised as an important step in ensuring the effective

²⁶ See generally on the question who disseminates the Conventions, E. Mikos-Skuza, 'Dissemination of the Conventions, Including in Time of Armed Conflict' in A. Clapham, P. Gaeta and M. Sassòli (eds.), *The 1949 Geneva Conventions – A Commentary* (Oxford: Oxford University Press, 2015), p. 600 *et seq.*

²⁷ See Art. 3 para. 2 Statutes.

²⁸ See generally on the role and impact of National Committees for the implementation of international humanitarian law, ICRC Advisory Service on International Humanitarian Law/A.-M. La Rosa, 'Preventing and Repressing International Crimes: Towards an 'Integrated' Approach Based in Domestic Practice – Report of the Third Universal Meeting of National Committees for the Implementation of International Humanitarian Law', vol. I, pp. 67–74, available at: www.icrc.org/eng/resources/documents/publication/p4138.htm.

²⁹ See Table of National Committees and other national bodies on international humanitarian law, 30 September 2015, available at: www.icrc.org/en/document/table-national-committees-and-other-national-bodies-international-humanitarian-law.

³⁰ Mikos-Skuza, 'Dissemination of the Conventions, Including in Time of Armed Conflict', p. 601.

8 STEFANIE HAUMER, ROBIN GEIß AND ANDREAS ZIMMERMANN

application of international humanitarian law.³¹ The respective National Red Cross or Red Crescent Society often plays a key role. It may already be instrumental in the formation of a National Committee where no such committee previously existed. In many cases, it may also provide a (executive) secretariat for the respective committee and contribute its expertise through membership, advice and specific knowledge on international humanitarian law. Besides, it also has a specific role to play because of its function as an auxiliary to the state's authorities in the humanitarian field on the basis of its mandate in the field of international humanitarian law.³²

In many countries, senior members of the judiciary and of the armed forces are also members of the respective National Committee on International Humanitarian Law, as are leading academic specialists, representatives of humanitarian organisations, and the media. The aim of such a committee usually is to evaluate national legislation in the light of obligations contained in a range of international humanitarian law instruments.³³ The committee should monitor the application of international humanitarian law by the respective State party, be able to propose new legislation or amendments to existing laws, so as to bring the domestic laws of the respective State party in line with its obligations under international humanitarian law, as well as provide guidance on the interpretation of relevant rules of international humanitarian law. In addition, such National Committees on International Humanitarian Law should also play an important part in promoting a wider understanding of international humanitarian law. Last but not least, and depending on its respective composition, such a National Committee on International Humanitarian Law may also provide a forum for consultation and coordination between the National Red Cross or Red Crescent Society and the various departments and institutions of the government. Current issues and upcoming challenges of international humanitarian law are discussed and views and positions are exchanged and possibly reconciled. Hence, National Committees on International Humanitarian Law bring together State representatives and representatives of the respective National Red Cross or Red

³¹ Mikos-Skuza, 'Dissemination of the Conventions, Including in Time of Armed Conflict', p. 601; A. R. Ziegler and S. Wehrenberg, 'Domestic Implementation' in A. Clapham, P. Gaeta and M. Sassòli (eds.), *The 1949 Geneva Conventions – A Commentary* (Oxford: Oxford University Press, 2015), p. 652 *et seq.*

³² See ICRC, National Committees – Overview, 1 May 2012, available at: www.icrc.org/eng/war-and-law/ihl-domestic-law/national-committees/overview-national-committees.htm.

³³ *Ibid.*

Crescent Society if these are members of the Committee on the national level.

Furthermore, National Red Cross or Red Crescent Societies also quite often work closely together with relevant domestic authorities on a bi- or multilateral level when it comes to the application, implementation and enforcement of international humanitarian law. This encompasses, amongst others, the exchange of experts' views on relevant issues of international humanitarian law, joint publications³⁴ and the organisation and realisation of thematic symposia as well as public events.

As the mandate of National Red Cross or Red Crescent Societies is not restricted to the national level but encompasses the international level as well, a well-coordinated close preparation for international conferences, in particular for the biannual International Conference of the Red Cross and Red Crescent, constitutes a necessary requirement for a trustful cooperation during the Conference. This is especially important for crucial international humanitarian law issues to be addressed by the International Conference concerning questions of implementation and enforcement of international humanitarian law, such as the issue of a better compliance with existing rules of international humanitarian law, an issue that will be discussed in more detail later.³⁵

In addition, National Red Cross or Red Crescent Societies, in fulfilling their obligation to disseminate international humanitarian law, often closely cooperate with the respective State's armed forces in the training and education of soldiers,³⁶ as well as in national and international military exercises. Various courses and seminars on international humanitarian law are offered and addressed to lawyers, trainee lawyers, diplomats and students.³⁷ Publications³⁸ in relevant military and legal journals on

³⁴ To provide but one example, one might *inter alia* refer to the collection of 'Documents on International Humanitarian Law', edited by the (German) Federal Foreign Office, the German Red Cross, and the (German) Federal Ministry of Defence (2nd ed., 2012).

³⁵ See below III. 6. b).

³⁶ To provide one example, one might point to the annual conference of the German Ministry of Defence, the German Red Cross and the Institute for International Law of Peace and Armed Conflict of the Ruhr University Bochum on international humanitarian law, which aims at strengthening the dialogue between the legal advisors of the German armed forces and those of the German Red Cross.

³⁷ One example of a widely recognised course on international humanitarian law is the J. Pictet Competition, which is annually sponsored, amongst others, by a number of National Red Cross Societies. For more information, see www.concourspictet.org/index_en.htm.

³⁸ A prominent example of a publication activity by a National Society is the *Journal of International Law of Peace and Armed Conflict (Humanitäres Völkerrecht – Informationsschriften, HuV-I)*, which is published quarterly by the German Red Cross Headquarters

specific issues of international humanitarian law and providing experts' contributions to military manuals complement the overall picture of the work of National Red Cross or Red Crescent Societies when it comes to international humanitarian law and its dissemination.

4. *Role of the International Federation of Red Cross and Red Crescent Societies*³⁹

The Federation constitutes the third independent component of the International Red Cross and Red Crescent Movement.⁴⁰ According to Art. 6 para. 4 lit. j) of the Statutes of the International Red Cross and Red Crescent Movement, the functions of the Federation in the field of international humanitarian law in turn are rather restricted to 'assist the International Committee [of the Red Cross] in the promotion and development of international humanitarian law and collaborate with it in the dissemination of this law and of the Fundamental Principles of the Movement among the National Societies'.

At the same time, however, the Federation – as the 'peacetime branch' of the Movement – is of immeasurable value for the coordination of efforts in disaster relief and humanitarian aid in emergency situations.⁴¹ Consequently, it also addresses related fields of law as, in particular, the area of international disaster response laws. It is in this specific field that the Federation plays an active role in the codification and continuous development of applicable rules of international law. This is particularly important because a comprehensive legal regime alike to the Geneva Conventions does not yet exist, while the work of the International Law Commission on the matter is still ongoing.⁴² Accordingly, one might state that

and the Institute for International Law of Peace and Armed Conflict of the Ruhr University Bochum. For more information, see www.ifhv.de/index.php/publications/jilpac-huv-i.

³⁹ See generally on the legal status of the International Federation of Red Cross and Red Crescent Societies under international law S. Peterke, *Der völkerrechtliche Sonderstatus der Internationalen Föderation der Rotkreuz- und Rothalbmondgesellschaften* (Berlin: BWV Berliner Wissenschafts-Verlag, 2006), *passim.*; S. Mehring, 'International Federation of Red Cross and Red Crescent Societies', in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2012), vol. V, p. 791.

⁴⁰ Mehring, 'International Federation of Red Cross and Red Crescent Societies', p. 790.

⁴¹ Mehring, 'International Federation of Red Cross and Red Crescent Societies', p. 792.

⁴² See ILC, Draft Articles on the 'Protection of persons in the event of disasters' adopted by the ILC's drafting committee in 2014, Annual Report to the UN 6th Committee, A/69/10 2014, chapter 5.