

***Information on the Status of the Additional Protocols
relating to the protection of victims of armed conflicts,
as well as
on measures taken to strengthen the existing body of international
humanitarian law, inter alia, with respect to its dissemination and full
implementation at the national level.***

Resolution 61/30 of the General Assembly

*Contribution by the International Committee of the Red Cross
(Geneva, 23 June 2008)*

Period under review: August 2006 to June 2008

Significant developments at the international level

1. The year 2006 was a significant milestone in the modern development of international humanitarian law (hereafter IHL), as the four Geneva Conventions of 1949 achieved universal acceptance following the accession of the Republic of Nauru and the Republic of Montenegro to these international instruments. As of 1 June 2008, 194 States were party to the four Geneva Conventions. The participation by the States in other IHL instruments also progressed steadily during the period under review. Two IHL instruments entered into force in the past two years, namely Protocol V (to the 1980 Convention on Certain Conventional Weapons) on Explosive Remnants of War and Protocol III additional to the 1949 Geneva Conventions and relating to the adoption of an additional distinctive emblem.
2. The period under review was marked by the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance. The Convention, which constitutes the first international instrument to explicitly ban practices leading to enforced disappearance, requires States to take, both in times of peace and in times of armed conflict, a range of measures to prevent enforced disappearance and to prosecute and punish under their domestic criminal law the perpetrators of such acts. The Convention also enshrines the right of families to know the fate of their relatives, one of the pillars of international law regarding missing persons.
3. The period under review was also marked by the formal adoption of the Convention on Cluster Munitions in Dublin on May 30, 2008. The Convention establishes a new norm of international humanitarian law prohibiting the use, production, stockpiling and transfer of cluster munitions. It requires State Parties to destroy existing stocks within eight years, and commits States to the clearance of areas contaminated with unexploded cluster munitions and the provision of assistance for victims and their communities. The Convention will be opened for signature in Oslo in December 2008 and will enter into force when 30 States have deposited their instruments of ratification with the UN Secretary General. Within the year following entry into force, States Parties will begin meeting annually to oversee the Convention's implementation and promote its universal application.

4. Another significant event during the period under review was the 30th International Conference of the Red Cross and Red Crescent, held in Geneva in November 2007, which brought together all States party to the 1949 Geneva Conventions and all components of the Red Cross and Red Crescent Movement. The Conference agenda included a wide range of items and subjects pertaining to IHL. Among other decisions and commitments undertaken by the participants, the Conference adopted by consensus a resolution on the "Reaffirmation and Implementation of International Humanitarian Law" (Resolution 3). This resolution reasserts the relevance of IHL and stresses in particular the fundamental guarantees provided under this law for all persons in the power of a party to an armed conflict. It also reaffirms the basic principles of IHL governing the conduct of hostilities and contains a series of provisions on achieving effective implementation. Participants also undertook a wide range of individual and collective Pledges pertaining to IHL and its incorporation in domestic law and practice.

Initiatives taken by the ICRC to reaffirm, clarify and strengthen the body of IHL

5. ***IHL and the challenges of contemporary armed conflicts:*** The International Conference also provided the ICRC with an opportunity to present its thinking and work on a range of legal issues to a very broad audience through a report on IHL and the challenges of contemporary armed conflicts. This report follows up on a report submitted to the 28th International Conference and provides an overview of new and emerging legal issues such as IHL and "terrorism", procedural principles and safeguards that should govern internment or administrative detention, the conduct of hostilities, including challenges posed by asymmetric warfare and the notion of "direct participation in hostilities", non-international armed conflicts, the regulation of private military and security companies, occupation and other forms of administration of territory, cluster munitions and the role of sanctions. Some of these issues are detailed in the following sections:
6. ***Direct participation in hostilities:*** During the period under review, the ICRC pursued a research project intended to clarify the concept of "direct participation in hostilities". This informal process, initiated in 2003, in collaboration within the TMC Asser Institute and involving over 40 international experts from governments, the military, NGOs and academic circles, will be brought to a conclusion by late 2008 with the publication of an "Interpretative Guidance", endeavoring to present a consistent interpretation of the concept of "direct participation in hostilities".
7. ***Cluster munitions:*** During the period covered by this report, the ICRC continued to call on States to urgently negotiate a legally binding instrument that prohibits the use, production, transfer and stockpiling of inaccurate and unreliable cluster munitions, addresses the problem of existing contamination by cluster munitions, and provides for victim assistance. Accordingly, the ICRC produced an information kit highlighting its call to outlaw such cluster munitions and the need to take decisive action on this issue at both national and international levels. The ICRC actively participated in international negotiations within the framework of both the CCW and the Oslo Process, the latter being marked by the adoption of the Convention on Cluster Munitions on May 30, 2008.
8. ***Procedural principles and safeguards on internment or administrative detention:*** In 2007, the ICRC continued disseminating its institutional position on the procedural principles and safeguards applicable to internment of administrative detention in armed conflict and other situations of violence. The text was widely distributed at a number of governmental and academic conferences and was used by ICRC field delegations. In September 2007, the ICRC regional delegation for the United States and Canada, together with Case Western Reserve University (Cleveland, Ohio), organized a two-day

expert seminar aimed at soliciting the views of governmental, academic and NGO experts on the legal and practical issues that arose when persons were imprisoned for security reasons.

9. ***Private military and security companies:*** In response to the increasing number of private contractors that have become part of the reality of modern warfare, the ICRC is taking part in an initiative by the Swiss government to emphasize and discuss the existing international framework of law concerning the activities of private military and security companies and the responsibilities of the States in this respect. A series of intergovernmental meetings have been held since 2006. The purpose of these meetings has been to produce a document reaffirming the relevant international legal obligations of the States and to provide guidance, based on best practices, for the States in their dealings with private military and security companies. In particular, this guidance includes adoption of a national legal framework to regulate the activities of such companies when operating within the State's jurisdiction or when exporting their services abroad.
10. ***Occupation and other forms of administrating foreign territory:*** In 2007, the ICRC initiated a project on the law of occupation to study questions arising in connection with recent situations involving occupation and other forms of administrating foreign territory. The project includes both consultations with key actors and meetings of experts. The ICRC intends to analyse whether, and if so to what extent, the rules of occupation law might need to be strengthened, clarified or developed.
11. ***Study on customary international humanitarian law:*** The ICRC continued to promote the Study on customary international humanitarian law. In 2007, the Arabic translation of Volume I was launched in Cairo at a conference organized with the League of Arab States. Similarly, the French translation was launched at a colloquium in Paris organized with the support of the Universities of Paris II and XI, the French Red Cross and the *Organisation internationale de la Francophonie*. Lastly, the Chinese translation was presented in Beijing at an event organized together with the Chinese Society of International Law. The Spanish translation was launched in 2008 in Bogotá (Colombia). The ICRC teamed up with the British Red Cross in 2007 on a project to update the practice contained in Volume II of the Study.
12. ***Improving compliance with IHL in non-international armed conflict:*** In 2007, the ICRC finalized a document on increasing respect for IHL in non-international armed conflicts that was presented at the 30th International Conference as part of its report on IHL and the challenges of contemporary armed conflicts. This text, the outcome of a broader internal ICRC study of the issues, provides States and non-State armed groups, humanitarian players and others with suggestions for ways in which the law could be better implemented. It outlines a range of legal tools - from special agreements under Common Article 3 of the 1949 Geneva Conventions to strategic argumentation - that can be used to persuade parties to non-international armed conflicts to abide by the law. This document was issued as a stand-alone publication in 2008.
13. ***Increasing respect for IHL and the role of sanctions:*** In 2006, the ICRC launched a consultation of experts intended to further analyze the role of sanctions in ensuring greater respect for IHL on the battlefield and in deterring violations. This reflection focuses on a number of issues such as: the nature and characteristics of sanctions; the characteristics of the perpetrators; the various factors liable to influence the behaviour of arms carriers in a given environment; transitional justice as an accompanying measure; and victims' issues. Following a series of expert seminars and an inter-regional meeting of experts held in November 2007, the conclusions drawn from this process – including guidelines and principles intended to help the national authorities concerned to set up an integrated system of sanctions in order to enhance compliance with IHL – will be published by the end of 2008.

Promoting international humanitarian law

14. The ICRC continued its work to promote knowledge of and compliance with IHL and to promote that law's incorporation in training programmes intended for military personnel and other weapon bearers. ICRC programmes directed towards civilian schools and universities were also actively pursued. At the time of writing, the ICRC's educational module "Exploring Humanitarian Law" was being developed within the secondary school curriculum of some 70 States around the world.

Legal and technical assistance for development and national implementation of international humanitarian law

15. Throughout the period under review, ICRC legal experts attended numerous conferences, seminars and courses and provided States, intergovernmental organizations, NGOs and other interested bodies with expertise on a variety of IHL-related topics. The primary aim of these activities was to promote IHL, to stress the importance of its provisions in contemporary armed conflicts, and to explain the specific role and mandate of the ICRC.
16. The ICRC is working to provide national authorities with technical assistance for adoption of the legislative, regulatory and administrative measures needed to ensure observance of IHL at the national level and its full implementation in domestic law. The ICRC continued over the past two years to provide advice on the ratification and implementation of the 1949 Geneva Conventions, their Additional Protocols of 1977 and 2005, and various other IHL instruments. Support was also provided for the amendment or adoption of national implementation measures in various areas, such as the status and rights of missing persons and their families, repressing war crimes, protecting the distinctive the red cross, red crescent and red crystal emblems, protecting cultural property, and implementing the 1997 Convention on the Prohibition of Antipersonnel Mines and on their destruction.
17. The ICRC also continued to make better known the mandate of the International Fact-Finding Commission and to foster cooperation between States party to Additional Protocol I and that Commission.

Support for National Committees on international humanitarian law

18. The ICRC has pursued its support for the setting up of effective national inter-ministerial Committees on IHL and the fulfillment of their mandate to advise and assist the national authorities concerned in promoting IHL in domestic law and practice. In March 2007, the ICRC hosted in Geneva the second universal meeting of National Committees on IHL. The event, which involved representatives of some 70 National IHL Committees and government experts from over 20 additional States invited as observers, focused mainly on the role of National Committees in the adoption of national measures to prevent disappearances in the event of an armed conflict, to establish the fate of missing persons and to assist their families. The number of national committees increased steadily during the period under review. As of 30 June 2007, National Committees entrusted with the national implementation of IHL were working in 84 countries.

International and regional meetings

19. The ICRC organized or contributed to a wide range of international and regional conferences, seminars and workshops, all with a view to familiarizing the authorities of various States with IHL and the measures needed to incorporate this international body of law in domestic law and practice. These events included a number of meetings organized to encourage consultation and exchange of experience and best practices between governmental experts. They included meetings of experts in Beijing, Colombo, Jakarta, Mexico City, New Delhi and Pretoria to mark the 30th anniversary of the 1977 Additional Protocols. A series of regional meetings of governmental experts was also held *inter alia* in Budapest, Cairo, Brasilia, Buenos Aires, Phnom Penh, Moscow, Rabat, Tunis, Vilnius and Wellington.
20. In order to mark the 10th anniversary of the Convention on the Prohibition of Antipersonnel Mines (Ottawa Convention), the ICRC actively participated in a wide variety of events held in 2007 in various regions of the world. In addition, the organization hosted two regional meetings in Kuwait and Tunisia on landmines and explosive remnants of war. These meetings, together with a communication strategy implemented by ICRC delegations in the Middle East, promoted adherence to the Ottawa Convention in the region. They also supported regional participation in the Eighth Meeting of States Parties to the Convention, which was held at the Dead Sea in Jordan in November 2007.
21. The ICRC also actively participated in the conferences and expert group meetings held in the framework of the Convention on Certain Conventional Weapons (CCW). This included the Third Review Conference of High Contracting Parties held in Geneva in November 2006, which included a special plenary session held to mark the entry into force of Protocol V on Explosive Remnants of War. A particular focus of CCW work in 2006 and 2007 was anti-vehicle mines and cluster munitions.
22. The ICRC also took part in and contributed to the meetings of States party to various IHL treaties and related instruments, such as the 1954 Hague Convention on Cultural Property (and its Second Protocol of 1999), the 1997 Ottawa Convention, and the 1998 Rome Statute of the International Criminal Court.

Cooperation and dialogue with other organizations

23. The ICRC continued its cooperation with various international and regional organizations such as the Commonwealth, the League of Arab States, the Organization of American States, the Council of Europe, the European Union, the Inter-Parliamentary Union and the Inter-Parliamentary Assembly of the Commonwealth of Independent States. While scrupulously remaining within the bounds of its mandate and operational procedures, the ICRC also maintained its dialogue with various international, regional and mixed judicial institutions assigned to try international crimes. Close contacts were also maintained with various non-governmental organizations, in particular the Coalition for the International Criminal Court, the Coalition to Stop the Use of Child Soldiers and different organizations working for the prohibition or regulation of the use of certain weapons.

Documentation and tools

24. In order to support the national authorities in the process of incorporating IHL in domestic law, the ICRC continued to produce specialized documentation in the form of model laws and recommendations on the national implementation of IHL norms. New guidelines for the adoption of national legislation to prevent people from becoming unaccounted for as a result of armed conflict and to protect missing persons and their families were produced and distributed. The ICRC's model law on the emblems and its model Geneva Conventions Act for common law States were updated to take into account Protocol III additional to the Geneva Conventions. A commentary on Protocol III was drafted and published in the *International Review of the Red Cross*. In 2006, the ICRC published a *Guide to the legal review of new weapons, means and methods of warfare* outlining measures needed to implement Article 36 of Additional Protocol I to the 1949 Geneva Conventions. A year later, the ICRC also published a "practical guide" for applying international humanitarian law criteria in arms transfer decisions.
25. Finally, work is currently under way to prepare a new Handbook on National Implementation of IHL for national authorities. Further progress was achieved during the period under review in developing and updating the ICRC's database on national legislation and case law.