

**THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND
HUMANITARIAN PRACTICES OF ARMS CONTROL AND
DISARMAMENT**

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ABSTRACT

This study problematizes the International Committee of the Red Cross's claim that it has addressed the problem of weapons for almost a century. This study questions, how has the International Committee of the Red Cross addressed the problem of weapons? What are its implications for the actor itself and the broader field of arms control and disarmament? In addressing these two questions, this study provides a genealogical account of the ICRC's engagement with the problem of weapons from the late nineteenth century to the present times.

This study argues that the ICRC has crafted an *effects based approach* to weapons. An effects based approach to weapons focuses on the effects of weapons used in armed conflicts on victims and practices that strive to strike a balance between the demands of military necessity and unnecessary suffering to regulate and prohibit particular weapons. It is based on a triad of strategies described as practices of legalization (development of international humanitarian law), medicalization (representation of suffering) and testimonialization (testimonies of witnesses). The deployment, interplay and effects of these three strategies

is demonstrated as the ICRC tries to regulate and prohibit the use of chemical, nuclear and certain conventional weapons such as landmines.

This study finds that an effects based approach to weapons enables the ICRC to position itself as a powerful humanitarian actor vis-à-vis nation-states in the field of arms control and disarmament. The practices of testimonialization enable the ICRC to claim a moral authority as it claims to represent the victims, practices of legalization endow it with a sense of professional competence and practices of medicalization suggest a functional necessity for purposes of efficiency. The routinisation and codification of these practices generates a sense of normalization within the field of arms control and disarmament. This experience of normalization becomes acute as the language of an effects based approach to weapons proliferates and is represented as a force of transformation in the field of arms control and disarmament. The dangers accompanying these practices of normalization suggest a need for greater reflexivity on humanitarian actors and their practices of arms control and disarmament.

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With all the guidance and support that I have received, it is only with humility that I accept responsibility for any shortcomings in this dissertation.

Thank you.

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ICRC's Authorization for use of photos

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LIST OF ABBREVIATIONS

ABCC	Atomic Bomb Casualty Commission
ACD	Arms Control and Disarmament
ARC	American Red Cross
CCW	Convention on Conventional Weapons
CMC	Cluster Munitions Campaign
IALNA	International Association of Lawyers against Nuclear Weapons
IANSA	International Action Network on Small Arms.
ICBL	International Campaign to Ban Landmines
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IFRC	International Federation of the Red Cross
IHL	International Humanitarian Law
IRC	International Red Cross

JRC	Japanese Red Cross
LoN	League of Nations
MoU	Memorandum of Understanding
PoW	Prisoner of War
UN	United Nations
WMD	Weapons of Mass Destruction

LIST OF ILLUSTRATIONS

ICRC Photos on chemical weapons, nuclear weapons and conventional weapons respectively. These photos depict the effects of the use of these weapons on the victims and efforts of the Red Cross to come to the assistance of these victims.

- File: V-P-hist-03503-17a.jpg
Italo-Abyssinian war, 1935-1936. Burns caused by poison gas.

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Italo-Abyssinian war, 1935-1936. Burns caused by chemical weapons.

- File: v-p-hist-03306-12.jpg
La Croix-Rouge allemande procédant à des exercices de secours en cas d'attaque par les gaz. (Simulation exercises conducted by the German Red Cross to provide relief to the victims of gas warfare)

- File: V-P-hist-00261-02a.jpg

World War II. Hiroshima. In one of the hospitals after the explosion of the atom bomb.

- File: v-p-de-e-00044.jpg

Simulation d'exercice de protection contre la radio-activité, blessé ayant reçu les premiers secours évacué de la zone radio-active. (Simulation exercise conducted by the Red Cross to evacuate and protect victims from radioactivity resulting from atomic warfare)

- File: v-p-ru-n-00045-04.jpg

Grozny, hôpital No 12. Jeunes victimes de mines antipersonnel. (Children as victims of anti-personnel mandmines)

- File: V-P-pk-d-00126.jpg

Quetta, ICRC surgical hospital. A victim of an antipersonnel mine.



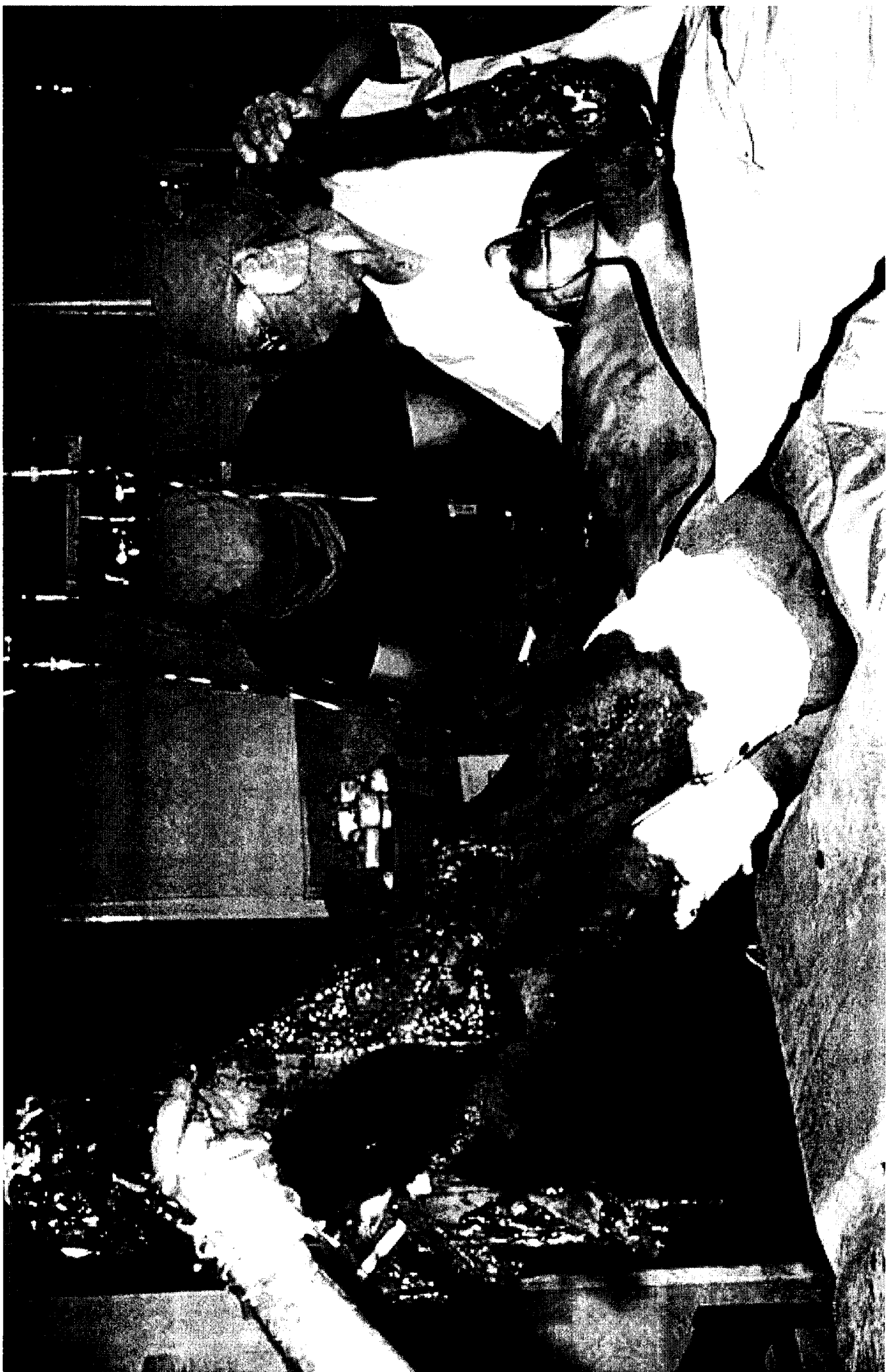












CHAPTER ONE - INTRODUCTION

In recent decades, the significant presence of the International Committee of the Red Cross in the campaigns to abolish the use of anti-personnel landmines and cluster munitions has been visible. This visibility comes through the ICRC positioning itself as a witness to the suffering of victims threatened by inhumane weapons violating the principles of international humanitarian law. The Committee's visibility as a witness, as a guardian of international humanitarian law, decrying the sufferings of the victims, on the international stage to regulate and prohibit the use of particular weapons incites consideration of whether this particular presence is an instance of "an acute manifestation of a ritual of power" practiced by the humanitarian actor in the field of arms control and disarmament.¹

This visibility is further embellished by the ICRC's claim that, "The questions of arms and their use has been a concern of the International

¹ David Campbell, *Writing Security-United States Foreign Policy and the Politics of Identity*, (Minneapolis: University of Minnesota Press, 1998), 5-6

Committee of the Red Cross (ICRC) since its establishment in 1863.”² Despite this claim, the existing literature in the field of arms control and disarmament gives credit to the ICRC only for the Geneva Protocol of 1925 prohibiting the use of asphyxiating and poisonous gases in war. Thus for several decades preceding 1925 and after 1925 until the last decade of the twentieth century there is an acute silence on how the ICRC has addressed the problem of weapons.

Despite the claims and credit given to the ICRC in regulating and prohibiting particular weapons, it is difficult to find a single scholarly book in the field of humanitarianism, international law, arms control and disarmament on the subject of ICRC’s engagement with the problem of weapons. At best one finds a sentence or two in reference to the actor’s engagement with the problem of a particular weapon and, rarely, a single chapter written exclusively on the ICRC’s engagement with the problem of landmines or nuclear weapons. These contributions are made by those

* The ICRC constitutes the nucleus of the Red Cross movement comprising national Red Cross societies and the International Federation of Red the Cross. To study the organization and management of the Red Cross movement and the status of the ICRC in particular within this movement see David P. Forsythe and Barbara Ann J. Rieffer-Flanagan, *The International Committee of the Red Cross - A Neutral Humanitarian Actor*, (London, New York: Routledge, 2007)

² ICRC Activities in the field of Weapons. Official Statement 21-07-05
<http://www.icrc.org/Web/eng/siteeng0.nsf/html/weapons-ihl-210705>

currently or previously employed by the ICRC, but rarely the academic community.

Given this conundrum of visibility and invisibility in accounting for the ICRC's engagement with the problem of regulating and prohibiting weapons, this study is a genealogy of the ICRC's engagement with the problem of regulating and prohibiting weapons from the late nineteenth century until the present. It focuses on how the ICRC presents itself as a witness of violence and suffering in order to constitute laws that regulate and prohibit the use of particular weapons. It studies the effects of these practices on the humanitarian actor itself and on the broader field of arms control and disarmament. It is an attempt to consider an alternative approach to engaging with the problem of regulating and prohibiting weapons.

In this endeavour, this chapter is an initial attempt to locate the ICRC within the field of arms control and disarmament by visiting its premises in Geneva and engaging in a dialogue with its practitioners on its approach to the problem of weapons. For four months I worked in the ICRC archives and conducted interviews with past and present employees. I visited the landmark ICRC Museum a number of times, observing the

architecture of the buildings, sculptures of the founding members, and past presidents of the ICRC that decorated the public spaces in the city of Geneva. These experiences compounded my awareness of the actor's history and interviews with its representatives, introduced me to several intellectual puzzles and the question: *How to interpret ICRC's engagement with the problem of weapons?* The expressions "problem of weapons" and "arms control and disarmament" are used interchangeably. The meanings attached to these expressions are inclusive of use, manufacturing, stockpiling and proliferation of weapons and their effects on people.

Spaces in Geneva

To glean some clues from the actor's past, I visited the ICRC Museum in Geneva. This museum is notable for the carefully crafted silence that voices its message in a very discreet manner. A silence that is reminiscent of the one that shrouds the ICRC's engagement with the problem of regulating and prohibiting weapons. The exhibits of the museum are located in a bunker-like basement made of undecorated concrete walls. Like inscriptions on tombs, carved on slabs of stone is a chronological account of the main developments in the actor's history. Religious texts

from which are derived messages of peace, codes of honour and ethics in armed conflicts are quietly displayed in subdued lighting. A womb of darkness and silence envelops me as I walk from one exhibit to the other. The darkness and silence are relieved only by a flash of white light as short silent films unroll on screens to depict man's struggle in war. No voice speaks, no place or name is given in any of the films or exhibits. An exhibit depicting the problem of anti-personnel landmines and a special temporary exhibition on the Hiroshima holocaust is also on display. On a table, carefully preserved, is a piece of parchment, the testimony of Henry Dunant, the paternal figure of the ICRC.

The luxurious house of Gustave Moynier overlooking Lake Geneva that previously served as the office of the ICRC is a potent reminder of the power and wealth of Dunant and his colleagues. As in life, so in death, Dunant's statue occupies a very humble place in the old city of Geneva. Standing almost inconspicuously in an obscure corner of the great walls of the city under the shadow of a large tree is a sculpture of Dunant. His colleagues on the other hand, are conspicuously on display, striding a powerful horse in the central square or seated on tall pedestals in the gardens of Geneva. This paradox of visibility and invisibility in the public eye made me dwell on the relationships and contributions of Dunant and

especially his colleague Moynier in shaping ICRC's engagement with the problem of weapons.

It is also interesting to note the location of the ICRC headquarters vis-à-vis other international organizations. Face to face with the ICRC headquarters is the headquarters of the United Nations office in Geneva. Flags from the main offices of both the buildings fly asserting their independence and identity. The ICRC headquarters is positioned on a hill, overlooking the headquarters of the UN. A constant to and fro between the ICRC and the UN is especially notable when a session on arms control and disarmament issues is in progress. Several cars from diplomatic missions located in Geneva are regularly parked on the ICRC premises at all hours as their inhabitants engage in meetings with representatives of the ICRC. On the other side of the ICRC is the headquarters of the World Health Organization. The triangulated situation of the ICRC vis-à-vis these actors in a geographical space provides an opportunity to reflect on its relationship with these actors and their predecessors in addressing the problem of weapons.

Particularity of Language

While these silent moorings, helped me situate what I had read in books in concrete surroundings, I awaited an opportunity for access and dialogue with the ICRC representatives themselves.³ Several months of encouraging correspondence with archivists and administrators made me hopeful that such meetings will be possible. I was not disappointed as my first visit to the ICRC headquarters resulted in a meeting with Dr. Robin Coupland.⁴ As I introduced my research project and mentioned the title of my dissertation, Dr. Coupland's first response was to make me conscious of the particularity of the ICRC's language on weapons and the need to differentiate it from the general language, the language of arms control and disarmament used by other actors in the international system. Dr. Coupland argued that ICRC's engagement with the problem of weapons should only be conceived as an issue concerned with "what is seen in the field" and not grouped with arms control and disarmament.⁵ Unlike the humanitarian problem of weapons, this latter category resides in the political sphere, entails a legal-diplomatic process and is an extension of

³ The names of only those individuals that gave their express consent during the interviews have been revealed. In other cases where no express consent was given, expressions such as 'ICRC representative' and 'ICRC observer' have been used in the text.

⁴ Interviews with Dr. Robin Coupland, ICRC Medical Surgeon, 2nd May, 2008 and 6th May 2008. This interview took place in two parts on two different days.

⁵ Interviews with Dr. Robin Coupland, ICRC Medical Surgeon, 2nd May, 2008 and 6th May 2008.

international humanitarian law (IHL).⁶ He admits that there is considerable overlap between the languages of IHL, and arms control and disarmament (ACD).

I encountered this same emphasis on the distinctiveness of the ICRC's language on weapons in my meetings with some other ICRC representatives. For Peter Herby, "given the definition and purposes of widely used arms control and disarmament practices in the United Nations" the ICRC is not involved in ACD.⁷ Herby, head of the Arms Unit within the ICRC, insists that the ICRC differentiates between IHL, and ACD.⁸ He explains this difference to me in the following manner: it exists because of the different purposes of IHL and ACD. The purpose of ACD is arms limitation and reduction of threats from arms races. It focuses on national security, balance of power and establishment of regimes to limit the availability of particular weapons in particular parts of the world. On the other hand, the purpose of IHL is protection of civilians and combatants. It is to insist that rules be observed in the use of weapons. It is not to ban every weapon. The ICRC's approach to weapons is based on IHL and its position with regard to arms control and disarmament is "a

⁶ Interviews with Dr. Robin Coupland.

⁷ Interview with Peter Herby, Head of Arms Unit, ICRC, 25th June, 2008

⁸ Interview with Peter Herby

generic position to support efforts to reduce and limit arms buildup.”⁹ After explaining the differences in the purpose of IHL and ACD, Herby suggests “IHL initially focused on use but is now using other elements of arms control and disarmament as different starting points” and that, “ACD serves IHL objectives.”¹⁰ This is possible because the IHL rules are vague and imprecise. There is need for more precision and application to particular problems. Herby acknowledges that there is “convergence” between the approaches to IHL and ACD in addressing the problem of chemical and biological weapons.¹¹ He also acknowledges that interventions and treaties made on conventional and nuclear weapons are based on IHL rules and have “elements of disarmament.”¹² In a further effort to expand on ICRC’s position in addressing the problem of weapons, Herby argues that this position is, “not only based on IHL but also on waste of resources.”¹³ He observes that the problem of weapons “will not be served by change of words, the problem is bigger than words” and needs a change in attitude.¹⁴

⁹ Interview with Peter Herby

¹⁰ Interview with Peter Herby

¹¹ Interview with Peter Herby

¹² Interview with Peter Herby

¹³ Interview with Peter Herby

¹⁴ Interview with Peter Herby

ICRC representatives insist that, as humanitarians, they are interested in the “effects” of weapons on civilians and soldiers, unlike states with their interest in maintaining “balance” among the armed forces.¹⁵ Both Dr. Coupland and Herby argue that ICRC’s efforts in addressing the problem of weapons could not be categorized as ACD. They insist on describing ICRC’s engagement with the problem of weapons as integral to its interest in the development of IHL. They argue that ACD practices are vested in power relationships among nation-states and, therefore, it would not be advisable to associate the practices of the ICRC on weapons with practices of ACD. Another ICRC representative argued that the ICRC’s contribution to ACD is only “indirect” because it collects information from the field on the use of weapons and feeds that into policy dialogues.¹⁶ The ICRC initiates a dialogue on the humanitarian consequences of the use of weapons under IHL, and when this dialogue is “handed over” from the ICRC to the UN it leads to ACD.¹⁷

¹⁵ Interview with Peter Herby and Dr. Coupland.

¹⁶ Interview with ICRC Representative on 7th May, 2008

¹⁷ Interview with ICRC Representative on 7th May, 2008

Multiple Vocabularies

Given the emphasis on IHL, I questioned ICRC representatives on the relationship of the ICRC vis-à-vis Geneva Conventions and the Hague Laws. In simple terms, the Geneva Conventions seek to secure protection of combatants and civilians in war and the Hague Laws seek to regulate and prohibit the methods and means of combat. These are two separate bodies of laws of war, which are now collectively labeled as IHL. One former ICRC representative claimed that the Geneva Conventions is “our baby” and the ICRC’s position on the Hague Laws has been ambiguous for several decades.¹⁸ This representative argues that the distinction between the two bodies of law was maintained because it gave the ICRC “freedom of action.”¹⁹ On being prodded whether this selective discrepancy in the ICRC’s approach to these two bodies of law has led the actor to prioritize the needs of victims accordingly, the question elicited a shocked silence and then a rebuttal, “No, I don’t think so...prioritizing victims.”²⁰ The representative continues to explain to me that the ICRC has been reluctant to accept responsibility for the Hague Laws because it is extremely complex to collect information and monitor the violation of this body of

¹⁸ Interview with ICRC Representative on 18th June, 2008

¹⁹ Interview with ICRC Representative on 18th June, 2008

²⁰ Interview with ICRC Representative on 18th June, 2008

law. It is difficult to establish on the ground “what exactly happened with the use of a weapon” in a particular situation.²¹ This can usually be ascertained only after the victims arrive in our field hospitals. During armed conflicts, these victims arrive in large numbers and the urgency of their needs makes it difficult to collect such information. On the contrary under the Geneva Conventions it is easier to visit prisoners of war in camps. These explanations are quickly followed by assertions that with the Additional Protocols to the Geneva Conventions any ambiguity about the relationship between these two bodies of law has been dispelled as both these bodies of law have been merged and are now collectively recognized as the IHL.

Similarly another ICRC representative presents the paradox of humanitarian assistance under the Geneva and Hague laws. This paradox presents itself in discriminating between protecting and assisting the victims. While there is a legal distinction between the two bodies of law, in practice it is difficult for a humanitarian, to classify victims in accordance with these laws to mete out assistance and protection. To quote an ICRC representative, “We spend eighty to ninety percent of our budget fulfilling the mandate under the Geneva Conventions but to tell a

²¹ Interview with ICRC Representative on 18th June, 2008

victim that I attend to you because of Geneva Conventions and when bombarded by Hague Law...I cannot make this distinction.”²² Yves Sandoz of the ICRC agrees that with the Additional Protocols the discrepancy between the Geneva Conventions and Hague Laws has been addressed but provides an interesting narrative about the rationale for this development. Sandoz notes that it is correct to assume that, with the passage of the Additional Protocols, the ICRC’s approach to the problem of weapons has become more legalistic. But prior to this, “the weapons problem was a moral issue and not a legal issue for the ICRC.”²³ Sandoz claims that the ICRC issued moral appeals against the use of chemical and nuclear weapons. It realized that the problem of weapons of mass destruction was being deliberately discussed within the framework of disarmament, as powerful countries possessing these weapons did not want their control over these weapons constrained in any manner. The disarmament framework is weak and the “ICRC was less relevant in disarmament conferences.”²⁴ Its mandate under the Geneva Conventions did not offer much scope to address the problem of weapons. The ICRC confronted this problem as it prepared the Draft Rules in 1956-57 and resorted to the language of protection of civilian populations without mentioning from

²² Interview with ICRC Representative on 27th June, 2008

²³ Interview with Yves Sandoz, former ICRC Director of International Law and Cooperation and currently an engaged as advisor to the ICRC 23rd June 2008

²⁴ Interview with Yves Sandoz

nuclear weapons explicitly. However resistance from powerful countries to any attempt by the ICRC to engage with the Hague Laws whether on weapons of mass destruction or aerial bombardment made it imperative for the ICRC to craft an alternative strategy. This strategy was to refrain from addressing the problem of weapons of mass destruction and seek an amalgamation of Geneva and Hague Laws in the form of Additional Protocols. This helped reinforce the principles of laws of war and made their application a legal exercise useful in demanding regulation and prohibition of weapons. This insightful observation on the ICRC's strategy for addressing the problem of weapons is helpful in exploring the subtle shifts in language with their emphasis on moral and legal standpoints.

The puzzle on the language used to describe ICRC's engagement with the problem of weapons, as international humanitarian law or arms control and disarmament, as direct or indirect became an interesting focal point for investigation in this study. Despite the insistence of several ICRC representatives that its engagement with the problem of weapons is only an extension of IHL, there are other ICRC representatives that in their regular communications with armed forces find it easier to use the

expression “laws of war” instead of “international humanitarian law.”²⁵ They reason that the latter is a recent incarnation of the laws of war and has not gained much currency or acceptance among military professionals. Some ICRC representatives are aware that the laws of war precede IHL but are unsure of ICRC’s engagement with this transformation in the labeling of laws. They state that, “historically it is not clear how IHL comes after law of armed conflict.”²⁶ They also feel that the word “humanitarian” has different connotations among the armed forces of different countries and “dialogues go astray with language of international humanitarian law not with the law of armed conflict.”²⁷

Similarly, those belonging to the medical profession within the ICRC consider the language of IHL opaque and incomprehensible. Dr. Coupland acknowledges that the concept of “unnecessary suffering” frequently used in the language of IHL, is a “no-brainer” to him as a medical professional.²⁸ It was only during his interactions with legal professionals within the ICRC that he came to recognize it as a technical term in a legal vocabulary, but it was his experiences in the field treating victims of

²⁵ Interview with ICRC Representatives on 20th June 2008

²⁶ Interview with ICRC Representatives on 20th June 2008

²⁷ Interview with ICRC Representatives on 20th June 2008

²⁸ Interview with Dr. Coupland

landmines in the borders of Afghanistan-Pakistan and Thailand-Cambodia, that assured him that he had “seen” it caused by landmines.²⁹ Other medical professionals within the ICRC argue that the distinction between civilian and combatant is only a legal distinction as no such distinction is made in the medical treatment of victims. The medical profession is not interested in the question whether the suffering of a victim is caused because of the use of legal or illegal weapons but only in the treatment of injuries inflicted by a particular weapon. These helpful observations by ICRC representatives made it imperative that in undertaking this research I trace the emergence, transformation and interplay of different vocabularies spoken by military, legal and medical professionals as they engage with the problem of weapons.

Despite the differences in the languages used both inside and outside the ICRC, Dr. Coupland insists that ICRC’s use of language is centered on its concern with “what happens to people as a result of the use of weapons” and actions in the field.³⁰ It is this concern with victims that generates a dialogue among the professionals on IHL, arms control and disarmament

²⁹ Interview with Dr. Coupland

³⁰ Interview with Dr. Coupland

experts, a dialogue which he describes as “sterile.”³¹ Dr. Coupland is sentient to arguments on legality and illegality of weapons gauged with the help of IHL but is quick to resist any inference that the ICRC is engaged in sanctioning the legality or illegality of a weapon. To quote Dr. Coupland, “It is not that weapons get Red Cross stamp of legality.”³² Similarly, Peter Herby suggests that IHL contributes to the debate on a legality of a weapon but this is not to suggest that it is “a Red Cross weapon or this weapon is okay with IHL.”³³ Another ICRC representative observes that, “We don’t know where the fine line is but we recognize that there are legitimate weapons. We have this problem. We never give out manuals saying these are legitimate weapons. IHL is made by states.”³⁴ The argument on the legitimacy or *raison d’être* of ICRC’s engagement with the problem of weapons is a potent one and not to be dismissed easily by any of my interlocutors within the ICRC

Historical Legacy

These arguments are based not only on the ICRC’s mandate under IHL but also as Dr. Coupland suggests from Dunant’s book *A Memory of*

³¹ Interview with Dr. Coupland

³² Interview with Dr. Coupland

³³ Interview with Peter Herby

³⁴ Interview with ICRC Representative on 27th June 2008

Solferino.³⁵ He cites the last paragraph in this book to make the case that the very founding father of the ICRC, as a witness to the Battle of Solferino, expressed concern on the subject of developments in the field of weapons. This enables Dr. Coupland to suggest that, “this institution was founded on the basis of weapons development...notion of caring for wounded is only a partial truth from the beginning we are involved.”³⁶ But then in a muted tone of resignation he states that, “most people working with this institution do not know its history.”³⁷

The lack of historical knowledge among ICRC representatives concerning its engagement with the problem of weapons is attributed to several possibilities. Peter Herby suggests that the ICRC has historically engaged with the problem of weapons but during the Cold War it became difficult for the ICRC to intervene.³⁸ It is possible that this might have contributed to dearth of consciousness within the organization. For another ICRC representative the problem of weapons is not a major area of activity for the ICRC. This representative observes that less than fifteen people out of a total of approximately 900 are at present fully engaged with the

³⁵ Henry Dunant, *A Memory of Solferino*, (Geneva: ICRC, 1986)

³⁶ Interview with Dr. Coupland

³⁷ Interview with Dr. Coupland

³⁸ Interview with Peter Herby

weapons issue within the headquarters.³⁹ Other representatives argue that that the problem of weapons within the ICRC has long been treated as a “specialized” issue.⁴⁰ To illustrate this argument, a former ICRC representative reminisces that when he joined the ICRC in 1970 it was “not a professional organization” and working with the ICRC was considered only a temporary stopover before pursuing another career.⁴¹ During his years in the field, even as he observed victims at orthopaedic field hospitals established by the ICRC in Jordan, Vietnam and Cambodia, he was not conscious of the ICRC’s engagement with the problem of weapons. The expert reports sent by the headquarters on the Additional Protocols for the benefit of the field delegates were dismissed with an attitude that the “Legal Division is taking care of it. It is a specialized activity.”⁴² Even after this representative got promoted within the hierarchy of the Legal Division the problem of weapons was considered to be the specialization of another ICRC representative and he had little to do with it. The cumulative effect of the temporary conditions of employment and selective engagement with issues by its representatives became a source of embarrassment for the ICRC as it engaged with government representatives in armed conflicts. These developments

³⁹ Interview with ICRC Representative on 7th May 2008

⁴⁰ Interview with ICRC Representative on 6th June 2008

⁴¹ Interview with ICRC Representative on 6th June 2008

⁴² Interview with ICRC Representative on 6th June 2008

spurred greater professionalism within the organization and its engagement with the problem of weapons. These observations by ICRC representatives underscore the importance of providing a historical narrative that accounts for historical and political developments in the actor's concern with specialization and expertise in addressing the problem of weapons.

On the subject of specialization, Dr. Coupland goes further in arguing that, "This organization's role is to witness" and "I have a role as a witness, an expert witness so to speak."⁴³ But his capacity to speak is restricted by the institution's diktat that will enable him to talk about what he does on the field but not articulate "what we see" to others.⁴⁴ Other ICRC representatives suggest the same and emphasize the need for confidentiality in addressing the problem of weapons. Attentiveness to the vulnerability of the victims should not marginalize the vulnerability of the ICRC representatives themselves. The significance of this fractured vision is compounded by the awareness that the testimony from the field is to be scrutinized by the audience located in the headquarters. The effectiveness

⁴³ Interview with Dr. Coupland

⁴⁴ Interview with Dr. Coupland

of this testimony is contingent on the decisions made by authorities seated in Geneva.

It is only in his capacity as a medical expert that Dr. Coupland observes and attends to the sufferings of the victims. To him, the treatment, prevention of injuries caused by the use of weapons is a public health issue. The data collected on the injuries suffered by the victims is scientific data to calibrate unnecessary suffering vis-à-vis the demands of military necessity. Another ICRC medical representative argues that the data collected by both humanitarians and militaries is biased.⁴⁵ The military data includes only the suffering of wounded military personnel and excludes any account of civilian suffering. The humanitarian data includes those that come to humanitarian field hospitals for help and excludes those that do not seek such assistance. As such these professional exertions have their limitations in calculating human cost.

It is also limited by the consideration that the success of efforts to regulate and prohibit the use of weapons is often based on an individual and a public sense of abhorrence and moral outrage. Dr. Coupland as a

⁴⁵ Interview with ICRC Representative on 15th May, 2008

professional witness admits that the experiences of violence and suffering in the field can be emotionally personal and powerful. He speaks cautiously on the possibility of recording and communicating these experiences with others. These actions can be interpreted as a political exercise and therefore the need for confidentiality. To illustrate his argument, Dr. Coupland refers to the political storm that Dunant's written testimony generated in the late 19th century Europe after the Battle of Solferino was fought between the Austrian and French forces in 1859. For Dr. Coupland, "refuge" for the ICRC from these political currents is to be found in the Red Cross principles such as neutrality.⁴⁶ Similarly, Dr. Sommaruga mulls over how he interpreted the Red Cross principles and doctrines "in a way that I would be allowed to speak out a lot."⁴⁷ This is followed by, Dr. Sommaruga recollecting experiences with colleagues and diplomats informing him that, "I went too far in a general call to ban landmines" and his conclusion that, "I was criticized for talking too much."⁴⁸ Another ICRC representative having observed the effects of weapons on numerous victims believes that under the circumstances, "it is a challenge to stay human and sane."⁴⁹ In terms of professional help within the organization itself there is little available to the delegates

⁴⁶ Interview with Dr. Coupland

⁴⁷ Interview with Dr. Cornelio Sommaruga, former ICRC President, 1st July, 2008

⁴⁸ Interview with Dr. Cornelio Sommaruga

⁴⁹ Interview with ICRC Representative on 20th June, 2008

returning from the field. The Personnel Health Unit was established only in 1992. These insights provided by ICRC representatives accompanied by moments of shared silence provide sufficient space to pause and reflect on the identities and spaces constituted by actors situated in a panoply of ethical and political currents and the power of their testimonies.

Inside/Outside

The ICRC successfully deployed the testimonies of several victims of landmines in its public campaign to demand the prohibition of these weapons. It was obvious that in the post-Cold War climate the ICRC had engaged itself more vigorously with the problem of landmines. This development is described as a “new wave” by Dr. Coupland.⁵⁰ During the Cold War the problem of landmines had been situated as a problem “within” an armed conflict but with the dismantling of the Cold War architecture it was possible to move this problem “outside” the domain of particular armed conflicts.⁵¹ This made it possible for the ICRC to address it as a global humanitarian problem. Furthermore the ICRC as a guardian of IHL has greater insider access to governments and receives much

⁵⁰ Interview with Dr. Coupland

⁵¹ Interview with Dr. Coupland

funding from them unlike several other human rights organizations. To illustrate this sense of inclusion and exclusion, ICRC representatives observe that the ICRC is the only humanitarian organization to have gained access to military laboratories of particular countries to collect data for its studies on the problem of weapons. However, this sense of difference does not rid the ICRC representatives of the consciousness that for a long time the ICRC has been an “inward” looking organization that has been hesitant to develop a global approach to the problem of weapons.⁵² Yves Sandoz comments that it is a “delicate balance” that the ICRC has to strike between being an insider and an outsider as it moves from traditional inter-governmental forums established within the UN to other multilateral forums of disarmament outside the UN.⁵³ To strike this balance, the ICRC “observes if there is a critical mass” in support of a particular action and only then it pursues a particular course of action.⁵⁴ The careful attention to inside and outside in the way the ICRC locates itself and engages with the weapons issue is an interesting point of deliberation.

⁵² Interview with ICRC Representative on 7th May, 2008

⁵³ Interview with Yves Sandoz

⁵⁴ Interview with Yves Sandoz

ICRC representatives acknowledge that within the ICRC headquarters itself there have been numerous instances of dissension among the different divisions and individuals on addressing the weapons issues. Peter Herby observes that “Within the ICRC, the decision making process is split” among those who want to address the problem of weapons with the help of IHL and those that consider the organization’s core mandate to be assistance and consider it “dangerous” to engage with the weapons issues pro-actively.⁵⁵ Herby attributes this to a “cultural inertia” within the organization.⁵⁶ As one representative stated, “there is lack of ownership within the ICRC on the weapons issue.”⁵⁷ This problem also stems from the consideration that the Legal, Medical and Operational Divisions at the headquarters operate as independent “silos” and much depends on individual networking within the organization to pursue any action on weapons.⁵⁸ It is commonly acknowledged that a “big fight” took place within the ICRC before then President Sommaruga decided to push forward with the landmines campaign.⁵⁹ The information provided by the Medical Division on victims of landmines was relevant but the Operations Division concerned with the safety of the delegates on the field opposed such an undertaking and the conservative Legal Division was reluctant to

⁵⁵ Interview with Peter Herby

⁵⁶ Interview with Peter Herby

⁵⁷ Interview with ICRC Representative on 7th May, 2008

⁵⁸ Interview with ICRC Representative on 7th May, 2008

⁵⁹ Interview with Dr. Cornelio Sommaruga

make any new proposals that did not fit within the existing law. Thus the question how the ICRC represents the problem of weapons is dependent on how the different divisions within the ICRC seize control over this issue.

In the meantime, there is a growing consciousness among the small percentage of those engaged with the problem of weapons at the headquarters that there is need for a more coherent and consistent institutional approach to address the problem of weapons. The success of the landmines campaign presented them with an opportunity to make the case within the ICRC for sustained institutional effort. It became possible for the Mines Unit created in 1995 to be labeled the Arms Unit in 1998 and move out from the wing of the Communications Division to the Legal Division. Dr. Cornelio Sommaruga observes that, "the legal structure within the ICRC is very strong and it was difficult to create an Arms Division on top, so it was established within the Legal Division."⁶⁰ On the other hand, the Weapons Contamination Unit (WCU) got shunted from the Communications division to the Operations division. It now provides technical expertise on de-mining and micro-credits to facilitate rehabilitation of the victims. It is possible that these institutions will

⁶⁰ Interview with Mr. Cornelio Sommaruga, former President of the ICRC, 1st July, 2008

serve as “triggers” for ICRC’s future engagement with the problem of weapons.⁶¹

One ICRC representative informed me that the budget of the Weapons Contamination Unit in 2007 was approximately 737,000 Swiss francs.⁶² The annual budget of the Arms Unit can only be gauged to be approximately anywhere between one to five million dollars. There is a visible reluctance among the senior professionals within the ICRC to give exact figures and the estimates vary from one individual to another. This information is not disclosed in the publicly available reports on ICRC’s annual budgets. Dr. Cornelio Sommaruga observes that, “We never allocated specific budget” for the Arms Unit “but left it within the headquarters budget of the legal division. We needed flexibility to accommodate needs.”⁶³ The funding provided to these units comes from the general budget of the ICRC and Mr. Herby clarifies, “We never accept from governments funds ear-marked for specific weapons.”⁶⁴ Peter Herby observes that the work of the Arms Unit has helped dispel the feeling within the organization that “the Arms Unit was just looking for weapons

⁶¹ Interview with ICRC Representative on 7th May, 2008

⁶² Interview with ICRC Representative on 9th May, 2008

⁶³ Interview with Mr. Cornelio Sommaruga, former President of the ICRC, 1st July, 2008

⁶⁴ Interview with Peter Herby

to ban.”⁶⁵ Its work on training and monitoring arms carriers to prevent abuses, its ability to propose legal criteria and address questions of legality on the use of weapons in the field, follow developments in weapons technology and resist efforts to launch campaigns against particular weapons in the absence of sufficient data have helped build this confidence

Despite these developments, those engaged with the problem of weapons within the ICRC describe its approach at present as “ad-hoc” and “opportunistic” and hope that this study will show the limitations of this approach.⁶⁶ There is also a sense of isolation within the ICRC from the rest of the Red Cross movement comprising of the ICRC, national Red Cross and Red Crescent Societies and their Federation. The representatives of the ICRC acknowledge that they have received some support from individual national Red Cross societies but this has been intermittent. The support from the national Red Cross societies depends on their own priorities and relationship with their governments and the latter’s stance on particular weapons issue. Dr. Sommaruaga notes how the American Red Cross Society and the British Red Cross societies were

⁶⁵ Interview with Peter Herby

⁶⁶ Interview with ICRC Representative on 7th May, 2008

initially extremely critical of the ICRC and reluctant to support the landmines campaign although the position of the latter changed with a change in its government's position.⁶⁷ Dr. Sommarugga states bluntly, "National Red Cross societies have their own priorities and will not always follow the ICRC."⁶⁸

One ICRC representative claims that the ICRC is a "field driven organization."⁶⁹ As such a study on the problem of weapons should take the ICRC's field experience into account. In the field the "cross-cutting" delegations work successfully to implement a policy decision.⁷⁰ An ICRC representative explained to me how the ICRC collects data from the field.⁷¹ The ICRC has country specific forms. These forms have two parts. One part of the form is used to record what happened on the ground in terms of geographical location, number of bodies and the other part of the form is used to record the details of the source of information such as public health worker etc. This type of data collected from post-conflict areas infested with particular types of conventional weapons has been especially useful to the ICRC in making a case for a preventive approach

⁶⁷ Interview with Mr. Cornelio Sommaruga, former President of the ICRC, 1st July, 2008

⁶⁸ Interview with Mr. Cornelio Sommaruga

⁶⁹ Interview with ICRC Representative on 27th June 2008

⁷⁰ Interview with ICRC Representative on 7th May 2008

⁷¹ Interview with ICRC Representatives on 20th June 2008

to weapons and assist by providing information to mine clearance operations undertaken by other actors such as the UN. The ICRC has organized field workshops on the proper use of weapons in accordance with IHL. At the same time on the field, the ICRC's image as the "powerful" and "aloof" actor concerned with not identifying itself too closely with other actors is changing as its representatives now participate in the meetings organized by other actors.⁷²

Professional Humanitarians

ICRC representatives take great pride in their professionalism, which they claim differentiates them from other actors in the international system. One ICRC representative argues that in order to remain compassionate and to cope with the suffering that one endures as one observes others suffer, the distance and training that professionalism imparts is necessary. The ICRC representatives recognize that contrary to the existing view among outsiders that respect them as "experts", they do not possess much in-house expertise on weapons issues and are interested in filling these lacunae by hiring technical experts. The Arms Unit of the ICRC comprises

⁷² Interview with ICRC Observers on 21st July and 12th August 2008

of several lawyers, a medical specialist on wounds ballistics, a physicist with expertise and training on technical issues within the Swiss military. ICRC representatives cite examples of expert meetings organized by the ICRC on weapons and suggest that they encourage “reality based discussions.”⁷³ Another ICRC representative argues that these expert meetings cover a spectrum of issues and “set the tone” for guiding further steps in regulating and prohibiting particular weapons.⁷⁴ Invitations to these expert meetings are claimed to be much coveted for which great diplomatic maneuvering ensues among nation-states and the NGO community.

In contrast, the meetings organized by international non-governmental actors are described by an ICRC representative as “scooter house meetings” making numerous declarations for disarmament and attended by those sharing a “naive” view of disarmament.⁷⁵ This ICRC representative proceeds to argue that the resolutions, declarations and meetings on arms control and disarmament organized by INGOs are not taken seriously by governments. No words are eschewed to claim that the “ban bunnies” attending these meetings are often typically highly educated university

⁷³ Interview with Peter Herby on 25th June, 2008 at the ICRC headquarters in Geneva

⁷⁴ Interview with ICRC on 27th June, 2008

⁷⁵ Interview with ICRC Representative on 7th May, 2008

graduates with degrees in law or politics possessing second or third hand information on the use of weapons.⁷⁶ It is the meetings convened by the ICRC that are taken seriously by governments. The ICRC is represented as being “realistic” and “pragmatic” because it is attentive to the professional needs of the military.⁷⁷ Peter Herby asserts that the question of ICRC’s intervention on the problem of weapons is hardly contested by governments anymore. On the contrary it is “encouraged” and “they want us to get involved on issues they are promoting.”⁷⁸ These observations lead to questions as to why and how governments take the ICRC seriously on weapons issues and a further investigation of its relationship with military professionals in this study.

Several external observers located in Geneva, and sympathetic to the ICRC, concur with the above observations. They have worked in close cooperation with the ICRC as the landmines and the cluster munitions treaties materialized in the last decade. They observe the ICRC participates actively in the formal and informal meetings that take place on arms control and disarmament issues. They cite several instances when the ICRC representatives have chaired and participated in active close

⁷⁶ Interview with ICRC Representative on 7th May, 2008

⁷⁷ Interview with ICRC Representative on 7th May, 2008

⁷⁸ Interview with Peter Herby

door meetings with governments and NGOs addressing arms control and disarmament issues. The NGOs might be barred from these meetings but not the ICRC. The visible presence of the ICRC representatives on the podium of plenary sessions convened to declare the emergence of new arms control and disarmament treaties too receives considerable attention from its observers. They give specific examples of arms control and disarmament treaty documents where the ICRC has been specifically mentioned. They are aware that the Arms Unit of the ICRC has provided legal, technical and humanitarian advice on every possible weapons issue with the exception of nuclear weapons. They are also cognizant of the lobbying process to secure a seat at the expert meetings organized by the ICRC. The ICRC is “tough” in issuing invitations and making a selection of expert presentations as these meetings “influence the process of drafting arms control and disarmament treaties.”⁷⁹ The external observers are also conscious of the internal battles waged within the headquarters of the ICRC to pursue the agenda on weapons but express faith in the tenacity of those working within the organization on weapons issues to push forward.

⁷⁹ Interview with ICRC Observer on 17th July, 2008

Despite these numerous instances demonstrating the ICRC's active engagement in arms control and disarmament forums and processes, these observers describe the ICRC as being "unusual", "peculiar", "pragmatic", "expert" and "legalistic" in its approach to the problem of weapons. They are uncertain how to describe a shift that they observe in the language that the ICRC uses to address the problem of weapons. One individual suggested that although the ICRC's current language on weapons cannot be described as "a move away from IHL," there is "a different way of saying it."⁸⁰ Another observed that "IHL may include everything that we think about in arms control and disarmament."⁸¹ To this another argues that "One cannot avoid linkages between humanitarianism and disarmament so the ICRC is linked, engaged."⁸² The ICRC stands at the intersection of IHL and disarmament as they are "cross-cutting" fields.⁸³ The external observers describe the ICRC's voice on the problem of weapons, as one of "clarity and firmness", a "special voice" but one that "errs on the conservative side."⁸⁴ They recognize that the ICRC is "not passionate about disarmament or peace."⁸⁵ Despite this, these observers

⁸⁰ Interview with ICRC Observer on 10th June, 2008

⁸¹ Interview with ICRC Observer on 3rd July, 2008

⁸² Interview with ICRC Observer on 17th July, 2008

⁸³ Interview with ICRC Observer on 3rd July, 2008

⁸⁴ Interview with ICRC Observer on 3rd July, 2008

⁸⁵ Interview with ICRC Observer on 3rd July, 2008

agree that, “the linkage of humanitarian considerations has grown stronger with the development of weapons.”⁸⁶

These observers disagree with respect to whether the ICRC is at the forefront in bringing the perspective of the victims to arms control and disarmament treaty negotiations. Some suggest that the ICRC is not a significant voice asserting the voice of the victim, that this task has been overshadowed by its expertise on IHL and the presence of other humanitarian INGOs capable of collecting and disseminating this information. Comparing the behaviour of humanitarian INGOs and the ICRC these observers suggest that the former often “overplayed” their role unlike the ICRC which strives for “balance.” The ICRC does not easily abandon one international forum for another and is hesitant to use the language of “human rights” and “human security”. The ICRC representatives state that they do not use the concept of human security because it is inadequately defined and politicized. They assert that IHL and not human rights is their mandate and human rights law is politicized. To my observation that the expression “human dignity” has often been used by the ICRC and other actors comprising the Red Cross movement as a consonant to the expressions on human rights by other organizations and

⁸⁶ Interview with ICRC Observer on 17th July, 2008

their advocacy campaigns, Peter Herby is amused, and suggests that perhaps the concept of human dignity was coined at the International Red Cross conferences. The concept of “human dignity is a convenient slogan for our movement but not much thought is given to it.”⁸⁷ This observation is further reinforced by the claim that, “our work might entail advocacy but this is not political.”⁸⁸

Interestingly, Susan Strange observes that with the success of the landmines campaign, the ICRC’s language has “spread to other actors” and “other NGOs too are using the IHL language now.”⁸⁹ She develops this observation by suggesting that, “anyone working in humanitarian situations has to know about IHL whether in precise details or not is a different matter.”⁹⁰ She lists other international humanitarian organizations that are developing in-house technical expertise on weapons and on IHL. They are now touting their professional expertise and take pride in sharing the knowledge that “governments contact us for technical expertise.”⁹¹ The fact that other INGOs have received the Nobel Peace

⁸⁷ Interview with Peter Herby

⁸⁸ Interview with Peter Herby

⁸⁹ Interview with Susan Strange, former Deputy Head of Handicap International, currently working as an independent Advisor on Humanitarian Affairs & Disarmament to governments and INGOs, 12th August, 2008

⁹⁰ Interview with Susan Strange

⁹¹ Interview with Susan Strange

Prize in their efforts to ban landmines has also helped to establish their credibility vis-à-vis the ICRC.⁹² Strange's observations signify a powerful development, as she informs me that, "In the early 1990s, NGOs did not deal with disarmament. It was considered a specialized issue for the militaries and think-tanks to address. In the field we are just humanitarians, not political."⁹³ Strange has served as a humanitarian worker for several decades, working in close cooperation with the ICRC in the field. She was barely aware of the ICRC's work on disseminating IHL. She shares with me anecdotal data on the fights between the ICRC and other humanitarian INGOs both in the field and at the headquarters on equipment used for the treatment of landmine victims and establishment of emergency care and prosthetic centres. She recollects that the ICRC was perceived as a threat by other actors as "the big, rich ICRC can do anything they want, they are powerful. They pay high salaries although not as high as the UN."⁹⁴

Contrary to the threat perception harbored by the representatives of other humanitarian INGOs for several decades, one ICRC representative

⁹² The International Campaign to Ban Landmines (comprising of six international non-governmental organizations such as the Human Rights Watch, Handicap International, Medico International, Physicians for Human Rights, Vietnam Veterans of America Foundation and Mines Advisory Group) received the Nobel Peace Prize in 1997 for its efforts to ban landmines.

⁹³ Interview with Susan Strange

⁹⁴ Interview with Susan Strange

acknowledges the existence of other humanitarian organizations as a “challenge” to the ICRC in a “positive sense.”⁹⁵ But this ICRC representative is “amused” when some of these organizations present their data in the language of IHL because “it is politically motivated interpretation of IHL to fit their broader humanitarian concerns.”⁹⁶ On the contrary this ICRC representative asserts that, “we have an authoritative legal interpretation on IHL, acknowledged by states.”⁹⁷ On my probing this representative further on the interpretation of “political” within the ICRC, this representative argues that, “We are not political in the sense that we are politically motivated. We read and are aware of political developments.”⁹⁸ This thought is further expanded by conceding that, “Indirectly we are doing politics but if you have to work with people doing politics everyday then you are involved in humanitarian diplomacy which is part of larger political diplomacy. Some delegates leave after two years because we are too political.”⁹⁹ This keen insight provided with an amused laugh is complemented by Dr. Cornelio Sommaruga’s somber

⁹⁵ Interview with ICRC Representative on 27th June, 2008

⁹⁶ Interview with ICRC Representative on 27th June, 2008

⁹⁷ Interview with ICRC Representative on 27th June, 2008

⁹⁸ Interview with ICRC Representative on 27th June, 2008

⁹⁹ Interview with ICRC Representative on 27th June, 2008

thought, “I was surprised that my work at the ICRC was more political and less directly engaged with typical Red Cross assistance work.”¹⁰⁰

Despite these observations and developments, the external observers, are not particularly perturbed about the spread of ICRC’s language of international humanitarian law or its accountability. Susan Strange comments, “I think the ICRC is crucial. I don’t question them at all.”¹⁰¹ They insist that the ICRC speaks “robustly” to governments in its close door meetings with them on weapons issues.¹⁰² Others suggest that one should focus on the accountability of powerful governments and the UN in addressing the problem of weapons.¹⁰³ One individual working within the UN argues that given the difficulties in achieving a common position on arms control and disarmament issues within the UN that leads to the issuance of generic statements by the Secretary General, “We value the ICRC’s position and use it, sell it, refer it to our principal actors.”¹⁰⁴ The external observers express faith in the ICRC and its nuanced and restrained approach in addressing the problem of weapons. They are confident that the “ICRC definitely does its political calculations” before

¹⁰⁰ Interview with Dr. Cornelio Sommaruga, former President of the ICRC, 1st July, 2008

¹⁰¹ Interview with Susan Strange

¹⁰² Interview with ICRC Observer on 17th July, 2008

¹⁰³ Interview with ICRC Observer on 12th June 2008

¹⁰⁴ Interview with ICRC Observer on 17th July, 2008

attempting to address the problems of particular weapons and express concern about the hostility and “risk” that the actor endures from powerful nation-states when it tries to be pro-active on the problem of weapons.¹⁰⁵ Almost all external observers are concerned that disclosing too much information and quoting them in this study might affect their future working relationship with the ICRC. They urge me to be discreet, seek prior permission before specifically quoting them in text and to be “kind” and “gentle” in evaluating the ICRC and its efforts on arms control and disarmament.¹⁰⁶

Experience of Responsibility

I observed that the professionals currently occupying senior positions within the ICRC insist on keeping a safe distance from the field of ACD. But there is little hesitation among some of the former, experienced ICRC representatives and its new recruits in claiming kinship with practices of ACD. However, access and conditions of anonymity have to be met before engaging in a dialogue with some of them. Some young recruits honestly

¹⁰⁵ Interview with ICRC Observer on 3rd July 2008

¹⁰⁶ Interview with ICRC Observer on 12th June 2008

admit that they have not given much thought to ICRC's non-use of terms such as arms control and disarmament. They recognize that disarmament is a "political issue" and consider it "a question of technology."¹⁰⁷ They argued that it is in assessing the vulnerability of victims that assessment of use of weapons technology has to be integrated. Others had no qualms in talking at length about ICRC's engagement with arms control and disarmament or openly admitting that this is what they do. To quote one ICRC representative, "The ICRC is involved with arms control and disarmament. That is my role, my work."¹⁰⁸ These representatives possess a clear grasp of several arms control and disarmament treaties and texts. Books and papers in their offices, which they willingly show and generously share with me, give every indication that they are researching on weapons, arms control and disarmament treaties. A small party with a great deal of festivity takes place on the premises of the ICRC headquarters to celebrate the success of the cluster munitions treaty in 2008.

But at the same time, almost all the ICRC representatives, often openly admit that powerful states do not like the ICRC to talk about weapons.

¹⁰⁷ Interview with ICRC Representative on 9th May 2008

¹⁰⁸ Interview with ICRC Representative on 9th June, 2008

One ICRC representative shrewdly observes: “talking directly about weapons creates the impression that we are attacking them.”¹⁰⁹ These representatives often cite the US as the key opponent to ICRC’s interventions in the field of weapons. One ICRC representative informs me that there is an internal debate within the ICRC on its responsibility with regard to diplomacy, mobilization and drafting of treaties that regulate and prohibit particular weapons. On the question of responsibility with regard to making, implementing and monitoring these laws, an ICRC representative insists that, “The ICRC is interested in the creation of legal instruments. We are not part of these legal instruments, governments take part.”¹¹⁰ Similarly, Herby suggests that “We describe the problem, the governments have to propose solutions take responsibility for where it works.”¹¹¹ The ICRC is dependent on states for funding, access to victims and as such the humanitarian actor has to exercise caution in the language it uses to engage with the problem of weapons. This caution comes to the fore in attributing or accepting responsibility for addressing the problem of weapons.

¹⁰⁹ Interview with ICRC Representative on 27th June, 2008

¹¹⁰ Interview with ICRC Representative on 6th June, 2008

¹¹¹ Interview with Peter Herby, Head of ICRC Arms Unit, 25th June 2008.

The recent success of its efforts in regulating and prohibiting the use of landmines and cluster munitions has boosted the goodwill, professional prestige, funding and recognition enjoyed by the ICRC on the international stage. This is appealing to its representatives. But not all of them share the same sense of responsibility in addressing the problem of weapons. They admit that the problem of weapons is addressed in different ways within the ICRC and everyone shares some kind of responsibility but the experience of responsibility differs among different individuals. For one ICRC representative, it is simply a “specific, functional responsibility” to be interpreted in terms of the particular tasks that they perform. As such this individual is quick to assert, “I do not feel responsible” in addressing the problem of weapons beyond my scope of specific functions.¹¹² Another ICRC representative asserts that, in undertaking this work, one has to “believe that something is changing. You have to believe that you will change something.”¹¹³ Yet others, such as, Dr. Coupland experience “a greater sense of responsibility” to learn “what’s happening out there.”¹¹⁴ They are appalled and “hurt” by the sufferings of those who do not get treatment for their wounds, those whose wounds do not heal and become chronic often leading to death.¹¹⁵

¹¹² Interview with ICRC Representative on 9th May, 2008

¹¹³ Interview with ICRC Representative on 27th June, 2008

¹¹⁴ Interview with Dr. Coupland

¹¹⁵ Interview with ICRC Representative on 6th June 2008

They are shocked by the indifference in military schools of most governments that do not offer any courses on management of war wounded and by the dearth of literature on “civilian traumatology.”¹¹⁶ They are “humbled” and “ashamed” as they witness the sufferings of the victims of particular weapons such as landmines and want to make a difference.¹¹⁷ They make “sacrifices” in their personal lives driven by a consciousness that their work has an effect on the lives of the victims.¹¹⁸ It is these individuals with several years of service that come to personify the ICRC in the public domain sharing its vision, principles and modus operandi. They are inspired by Dunant’s message and are not hesitant to participate in a debate on whether the ICRC is a moral influence in the world?

It is this experience of responsibility that sometimes determines the longevity of an ICRC representative’s service with the ICRC. From my conversations with several ICRC representatives it became obvious that several individuals after years of service have left the ICRC precisely because of their differences on how the actor should address particular weapons issues. While it was possible to gather this information through

¹¹⁶ Interview with ICRC Representative on 15th May 2008

¹¹⁷ Interview with Dr. Coupland

¹¹⁸ Interview with ICRC Representative on 6th June 2008

casual conversations, no one was willing to address this problem in interviews or provide further insights on individual cases. My attempts to contact these individuals often met with total silence. One of them agreed to be interviewed and described his experience and decision to quit as both “frustrating” and the “best work experience.”¹¹⁹ In undertaking this study as a piece of academic writing and to secure an academic degree, I have often questioned my own experience of responsibility. It has often been possible to treat this study from a functional ethic as it has encountered setbacks and led me to wonder if it is time to quit. But time and again experiences of ethical responsibility surfaced as I read and engaged with individual and collective accounts of sufferings of victims, testimonies of witnesses and tried to make sense of practices described as IHL or ACD.

Intellectual Puzzles

To summarize, the gamut of intellectual puzzles and challenges, that the above conversations introduced in undertaking this study suggest the following: Firstly, there is a *lacuna of a historical trajectory* within

¹¹⁹ Interview with former ICRC Representative on 12th June, 2008

which the actor's engagement with the problem of weapons could be situated. The fragmented records of the actor's engagement with the problem of different types of weapons make it difficult to consider whether the practices pursued by the actor are entirely ad-hoc, contingent to particular circumstances or whether it is strategic. Second, is the *problem of labeling* the ICRC's engagement with the problem of weapons. The use of different labels such as extension and development of international humanitarian law or arms control and disarmament, is attributed to mandate under different bodies of law, different available definitions and specific historical circumstances such as the outbreak of the Cold War and so on. Third, the *multiplicity of languages* available to address the problem of weapons itself deserves consideration. On the one hand, is the professional vocabulary of IHL, shared by military professionals, medical personnel and lawyers. It is a language where these different professionals are still engaged in ascertaining the meaning of certain concepts such as unnecessary suffering and military necessity. On the other hand, is a language of testimony of witnesses representing the violence and suffering experienced in wars with the use of particular weapons. This language does not claim to be a professional vocabulary but provides the necessary moral justification to legitimate its claims for intervening in the regulation and prohibition of weapons. Fourth, is the *experience of responsibility* that is expressed both in a language of

expertise based on professional pragmatism and also as a response to the appeal of the victims.

These intellectual puzzles facilitated framing of two principal research questions: How has the ICRC, as a humanitarian actor, addressed the problems of arms control and disarmament? What are the effects of the ICRC's practices on the actor itself and on the broader field of arms control and disarmament? The guiding assumptions for this study are the following: The ICRC has deliberately constituted the problem of arms control and disarmament as a humanitarian problem instead of simply a domain of national and international security of sovereign nation-states. The ICRC has made a political choice in constituting itself as a particular type of witness to the problem of arms control and disarmament. The ICRC's representation of the suffering of victims is susceptible to considerations of existing IHL. The ICRC's exercise of responsibility in addressing the problem of weapons is guided by tactical and strategic considerations of power vis-à-vis other actors. The ICRC's struggle for arms control and disarmament reinforces the status-quo of sovereign nation-states and makes only incremental changes in the international system.

In response to these questions and working assumptions, this study suggests that particular attention be devoted to practices of *testimonialization, medicalization and legalization* pursued by the ICRC to develop an *effects-based approach to weapons*. An effects based approach to weapons takes into account particularly crafted testimonies of witnesses on the suffering and violence experienced by the victims with the use of particular weapons in war; it considers preparations made to offer possible medical palliatives available to ameliorate this suffering. This approach also explores the possibilities and limitations of existing legal frameworks in regulating and prohibiting the use of particular weapons. This study traces the emergence of an effects based approach to the regulation and prohibition of weapons from the mid-19th century to late 20th century by focusing on the ICRC as a particular humanitarian actor. It explores how the practices of testimonialization, medicalization and legalization are intricately interwoven as the ICRC engages with the problem of chemical, nuclear and conventional weapons respectively.

For this purpose, this study is organized into eight main chapters including this introduction. The two succeeding chapters are an attempt to investigate the relationship between practices of humanitarianism by focusing on the ICRC and practices of ACD insofar as it takes into

account humanitarian actors and their practices. These chapters argue that only cursory attention has been devoted to the ICRC's contribution in the field of regulating and prohibiting weapons. They demonstrate that human security, disarmament as humanitarian action and social constructivist approaches are not suitable for undertaking a study of this type. They suggest that critical security studies approach embedded in post-structuralism is helpful in undertaking this study but is at a very nascent stage of development in analyzing humanitarian practices of arms control and disarmament.

Chapter four is an attempt to trace the intellectual roots of a critical security studies approach and articulate the relevance of a post-structural approach to this study. This chapter focuses on Foucault's ideas on writing a history of the present and the body of methodological literature that has emerged in the wake of his writings. It is with the help of this literature and an inter-disciplinary approach to critical social, political and legal theory that this chapter articulates a framework for study. This framework is a triad of particular strategies described as practices of legalization, medicalization and testimonialization that constitute an effects-based approach to weapons. It is these practices that normalize ICRC's engagement with the problem of weapons as argued in the

following four chapters that trace the actor's history with regard to weapons from the late nineteenth century to the present.

Chapter five questions how the ICRC has engaged with the problem of weapons from 1863 till the outbreak of the First World War. It explores Henry Dunant's testimony on the battle of Solferino to trace his position on the problem of weapons. It then explores the effects of this testimony on his audiences in Geneva and abroad. The effects are studied in terms of practices of medicalization that result in the constitution of the ICRC as a humanitarian organization providing medical relief to the victims on the battlefield and practices of legalization that produce the Geneva conventions of 1864 and the Hague Laws of 1899 and 1907. This chapter presents the argument that Dunant's testimony and the practices of medicalization and legalization during this period provided the groundwork for the ICRC to make its initial forays in the field of disarmament vis-à-vis other actors in the international system. However, accepting the burden of responsibility for disarmament was not the priority of the ICRC during this period.

Chapter six focuses on how the ICRC has engaged with the problem of chemical weapons and to what effect. In response to this question, this

chapter traces the transformation of the ICRC from a “living witness” with a testimony to a “good Samaritan” that practices silence. It also dwells at length on the efforts made by the humanitarian actor to explore both medical and legal possibilities to secure protection of civilian populations from this form of warfare. The cost of medical preparations and the Geneva Protocol of 1925 did not succeed in protecting civilian populations from this form of warfare but it did establish a weak norm against the use of these weapons. The experiences in regulating and prohibiting the use of these weapons, made the ICRC wary of the problems of verification that beset efforts to regulate and prohibit the use of these weapons for several decades.

Chapter seven deals with the question of how the ICRC has engaged with the problem of nuclear weapons and to what effect. To explore this question, this chapter studies the testimonies of ICRC delegates in Hiroshima. The difficulties in providing any medical relief to the victims of radiation led the humanitarian actor to consider health based approach to weapons and to devote its energies towards developing legal instruments to regulate and prohibit the use of weapons. These efforts are represented in the form of considering expansion of the ambit of the Geneva Protocol of 1925, the Draft Rules of 1957 and the position of the

ICRC vis-à-vis the 1996 Advisory Opinion of the International Court of Justice on the legality of the use of nuclear weapons. This chapter demonstrates how these efforts of the ICRC were constrained due to considerations of expertise and competence.

Chapter eight questions how the ICRC has addressed the problem of conventional weapons and to what effect. This chapter argues that the lessons learned by the ICRC in addressing the problem of weapons of mass destruction generated a willingness in the actor to consider alternative discourses, alliances, forums and strategies to regulate and prohibit the use of conventional weapons. To buttress this claim, this chapter focuses on the diplomatic conferences that produced the Additional Protocols to the Geneva Conventions and the 1980 Conference on Conventional Weapons that established legal qualifications on the use of these weapons. But the limited achievements of these legal stipulations mobilized the ICRC to resort to publicizing testimonies of victims to represent their suffering. Thus an effects based approach to weapons realized its full potential in producing the Ottawa Treaty banning the use of anti-personnel landmines.

The arguments presented in each of these chapters, are an effort to contribute towards an understanding of the ICRC's contributions towards ACD. It is to suggest that practices of ACD need to be studied, defined and interpreted to include the perspective and practices of non-state humanitarian actors. The inclusion of these perspectives and the depiction of the complex interplay of practices of testimonialization, legalization and medicalization to regulate and prohibit both conventional and weapons of mass destruction suggest the possibility of a serious engagement with an effects-based approach to weapons.

CHAPTER TWO - STEREOTYPING THE ICRC?

Introduction

The success of the International Committee of the Red Cross and other humanitarian actors in securing the regulation and prohibition of anti-personnel landmines and cluster munitions through the Ottawa Treaty and the Cluster Munitions Treaty has generated interest among scholars to study practices of humanitarianism and arms control and disarmament respectively and how they intersect with each other. The International Committee of the Red Cross has received considerable attention by scholars as they have mulled over the possibilities of “Transformed Humanitarianism” and suggested labeling “disarmament as humanitarian action.”¹

¹ Michael Barnett, “Humanitarianism Transformed,” *Perspectives on Politics*, 3, no.4 (2005):723-739; John Borrie, “Disarmament as Humanitarian Action-From Perspective to Practice,” in *Disarmament as Humanitarian Action- From Perspective to Practice*, ed. by John Borrie et al.(Geneva: UNIDIR, 2006), 7-22.

The purpose of this chapter is to undertake a brief survey of the existing literature on the ICRC to appreciate the possibilities and problems within this literature in addressing the humanitarian actor's approach to the problem of weapons. A survey of this literature will show how the problem of weapons has been addressed among the available histories of the ICRC. The contending perspectives among scholars on competent authorship and how to write a history of the ICRC has a bearing on the considerations given to the actor's engagement with the problem of weapons. It shows how certain stereotypes have emerged and continue to operate in understanding ICRC's engagement with the problem of weapons. A brief survey of these historical records will also indicate a variety of sources from which pieces of intellectual puzzles can be gleaned in accounting for ICRC's engagement with the problem of regulating and prohibiting weapons. The results of a survey of the existing literature on the International Committee of the Red Cross are best captured in the words of John Hutchison that, "the vast majority of the hundreds of books" on the Red Cross fall into "two categories: laudatory and didactic biographies of Henry Dunant, and self-serving institutional histories written to describe and record the charitable work of the Red Cross in this or that war or disaster."² As such this survey will

² Hutchison, *Champions of Charity- War and the Red Cross*, (Colorado: Westview Press, 1996), 2

not engage in describing the contents of these works at length but in articulating the considerations that guide these works and their effects as they sometimes directly and sometimes implicitly help address the problem of weapons as envisaged by the ICRC.

Founding Fathers

In surveying the literature on the ICRC one comes across several histories that pay homage to the founding members of this humanitarian organization especially Henry Dunant and Gustave Moynier. An understanding of the differences among these founding members of the ICRC in terms of both their personal and professional experiences is important in grasping how the problem of weapons is situated within the practices that shape the agenda of humanitarianism pursued by the ICRC. The cursory introductions to these founding members found in the history texts can be supplemented with biographies and their own writings. In this respect, Henry Dunant's *A Memory of Solferino*, is of utmost significance as it gives an account of his experiences as a witness to the battle between

France and Austria in 1863.³ In giving an account of this battle, Dunant makes some critical observations on the use of particular weapons in wars, the effects of these weapons on their victims and expresses concern about the technological sophistication in the development of weapons spurred by arms races among the powerful nation-states. It is with great passion and a sense of pathos that Dunant conveys a powerful image of the weapons used in this battle and the sufferings they inflicted on the victims and their witnesses. In this book, Dunant makes some creative proposals on the need to provide assistance to victims of wars and pursue a preventive approach to war. Henry Dunant is today acknowledged as the founding father of the ICRC and it is this testimony that serves as the mission statement of the ICRC as a humanitarian organization. However, the full potential of Dunant's testimony, particularly his concern with the growing arsenal of lethal weapons possessed by nation-states has not received due consideration by scholars to envisage a comprehensive programme of action for humanitarianism.

Scholarly attention has been obsessed with the differences between Dunant and his colleagues especially Gustave Moynier. This has led to a proliferation of rival clubs and writings zealously investigating into the

³ Henry Dunant, *A Memory of Solferino*, (Geneva: ICRC, 1986)

differences between Dunant and Moynier. For instance, Martin Gumpert's biography on Dunant is a very comprehensive and critical account of the conditions and constraints within which Dunant struggled to establish the ICRC.⁴ It is deeply sympathetic to Dunant as it explores his growth from a humanitarian to a pacifist after he had been publicly discredited and abandoned by the ICRC. Similarly Jean de Senarclen's recent biographical study on Gustave Moynier has filled a void in the English language literature, by providing useful insights into his thoughts and experiences as President of the ICRC for several decades and contesting claims that have been made regarding his personal ambitions and actions to persecute and wrest power from Dunant.⁵ This book also gives insights into Moynier's efforts to establish the Geneva Conventions as the new law of war. These biographies provide insights into the experiences and observations of the founders of the ICRC but are mired in seeking credit for Dunant and Moynier as "father" and "master-builder" of the ICRC respectively.⁶ These works are of interest as they shed light on the deeply ethical orientation of Dunant the witness vis-a-vis the consistently

⁴ Martin Gumpert, Dunant- *The Story of the Red Cross*, (New York: Oxford University Press, 1938)

⁵ Jean de Senarclens, *The Founding of the Red Cross-Gustave Moynier its Master Builder*, trans. by Jane Brooks, (Geneve: Slatkine, 2005)

⁶ ⁶ Martin Gumpert, Dunant- *The Story of the Red Cross*, (New York: Oxford University Press, 1938) and Jean de Senarclens, *The Founding of the Red Cross-Gustave Moynier its Master Builder*, trans. by Jane Brooks, (Geneve: Slatkine, 2005)

legalistic orientation of Moynier in developing the laws of war. These differences in orientation have a significant influence on the strategies pursued by the ICRC in addressing the problem of weapons.

Authorized Histories

The existing histories of the ICRC provoke interesting comments on authorship and style among scholars as they help configure how the ICRC has addressed the problem of weapons for more than a century. It is important to take note of these debates among scholars and practitioners as they suggest the possibilities and limitations of these undertakings and consequently the information derived from them on the ICRC's approach to weapons. The contending perspectives among scholars encourage reflections on who writes the history of the ICRC, how is this history written and for what purpose?

At present there exist two authoritative volumes on the history of the ICRC. The first volume covers the history of the ICRC from Solferino to

Tsushima and the other from Sarajevo to Hiroshima.⁷ Both these texts have been written by individuals closely affiliated with the working of the ICRC and at the request of the ICRC. To buttress this claim, Pictet insists, “*Only a member of the Red Cross world was capable of telling the story.*”⁸ Both these books written in the form of traditional chronological narratives serve as reference texts on the growth and development of the ICRC and the Red Cross movement as a whole. These authoritative volumes on the ICRC’s history list a chronological sequence of developments such as Dunant’s experiences in the battle of Solferino, the signing of the Geneva conventions and their implementation in the successive wars waged during these periods. In these authorized histories one comes across passages on the ICRC’s appeal against the use of chemical weapons in the First World War and the text of the ICRC’s appeal against the use of nuclear weapons in the Second World War

The significance of these authorized historical accounts is three fold. First, these narratives are simple matter-of-fact recording of events. Jean Pictet’s observation on Andre Durand’s, *History of the International*

⁷ Andre Durand, *History of the International Committee of the Red Cross from Sarajevo to Hiroshima*, (Geneva: Henry Dunant Institute, 1984), Pierre Boissier, *History of the International Committee of the Red Cross from Solferino to Tsushima*, (Geneva: Henry Dunant Institute, 1985)

⁸ See Foreword by Jean Pictet in Durand, *Sarajevo to Hiroshima*, 8 (italics inserted)

Committee of the Red Cross from Sarajevo to Hiroshima acknowledges that:

This book is not a history of war. On the contrary, it is the *record of an institution...The book describes how, as weapons became more sophisticated, as warfare became more inhumane, as repression and oppression increased, the ICRC tried to find new ways of helping those affected...*⁹

This encourages Hutchison to observe that, “the history of philanthropy and humanitarianism, indeed of the Red Cross itself, is still in its infancy” and “suspect(s) this is because so many philanthropic institutions have conceived of writing their histories as a matter of recording their (often impressive) achievements.”¹⁰ These historical narratives lack any critical sensibility in dwelling on the practices, or the effects of these practices, on the actor itself and on the broader field of ACD. Hutchison insists that it is, “realistic to expect that an outsider will ask different

⁹ See Foreword by Jean Pictet in Durand, *Sarajevo to Hiroshima*, 7 (italics inserted)

¹⁰ Hutchison, *Champions of Charity*, xiii

questions from someone who is initiated into the movement and who therefore feels compelled to put its interests first.”¹¹

While Pictet as an insider applauds the histories written by Boissier and Durand as insiders conversant with the ideals and practices of the organization, Hutchison as an outsider, is interested in questioning the emergence and growth of the ICRC in the period between the 1860s and World War I. Focusing on this time period, Hutchison explores, “How and why did it survive the war to end all wars? What light does its history shed on relations between states, philanthropy, war and medicine?”¹² In addressing these questions, Hutchison’s purpose is to write a history of the Red Cross that can provide “a clearer understanding of the relationship between organized charity, war, and the state.”¹³ In addressing these questions, Hutchison provides an extremely critical and absorbing account of the debates among leading humanitarians in the late-19th century, such as Henry Dunant and Florence Nightingale on the role of humanitarian organizations and their relationship with nation-states. Hutchison explores the internal dynamics of power competition within the ICRC and other actors comprising the Red Cross movement. It is his

¹¹ Hutchison, *Champions of Charity*, 4

¹² Hutchison, *Champions of Charity*, 2

¹³ Hutchison, *Champions of Charity*, 4

account of the politics involved in the agenda and venue of the International Red Cross conferences that provide interesting clues to how the subject of weapons was initially treated within the movement. Hutchison's account is an animated and absorbing exploration compared to the dull, didactic, documented narratives provided by the historians of the ICRC.

In tracing the politics associated with efforts to organize charity in wartime Hutchison examines "the process by which organized charity, instead of making war more civilized, became militarized and adapted to the needs of belligerent nations, who soon became champions of this different conception of wartime charity."¹⁴ In the aftermath of the First World War, Hutchison dwells on the frail efforts to "reorganize the Red Cross as a force for peace," to restore the original spirit of charity that had initiated this movement.¹⁵ Hutchison's book provides crucial insights into how technological innovations in the development of weapons and medicine made it difficult to humanize war. The efforts of humanitarian actors to keep pace with totalizing war made it difficult for them to

¹⁴ Hutchison, *Champions of Charity*, 6

¹⁵ Hutchison, *Champions of Charity*, 5

question and resist the arms race among the great powers during this period.

Second, Pictet emphasizes that in writing institutional histories, these historians focus on “situating the Red Cross records within their historical context, *presenting them carefully and objectively, free of emotion or embellishment*, more interested in producing a *factual account* than in captivating the reader.”¹⁶ This emphasis on objectivity and lack of emotion stands in sharp contrast to Dominique Junod’s scrutiny of the communication styles adopted within the ICRC. Dominique Junod makes a distinction in the communication practices of the field delegates and those located at the headquarters of the ICRC. She describes the reports prepared by field delegates in close proximity to the victims as capable of transmitting “emotion” as “under the pressure of their work, they often wrote their reports in haste, subjectively and impulsively.”¹⁷ These reports served as an outlet for emotions that could not be expressed in the field where considerations of neutrality require that they exercise “the greatest discretion in any circumstances that might endanger the accomplishment

¹⁶ See Foreword by Jean Pictet in Durand, *Sarajevo to Hiroshima*, 8

¹⁷ D. Junod, *The Imperilled Red Cross & The Palestine-Eretz-Yisrael Conflict 1945-1952*, (London & New York: Kegan Paul International, 1996), 49

of their mission.”¹⁸ On the contrary, the ICRC’s official language is “wooden” giving the impression that “the victims were a theoretical notion rather than human beings whose suffering must arouse, as it had in Henry Dunant, indignation and emotion. For the ICRC leaders, even indignation over the plight of victims could be too ‘political.’”¹⁹

Dominique Junod attributes this to, “the distance between the Committee in Geneva and the battlefield, the fear of censure, and perhaps the Calvinist culture, which considered emotion as a sign of weakness.”²⁰ Thus the ICRC places considerable effort in expressing itself in “a neutral, impartial language, making skillful use of litotes, euphemisms, omissions, allusions, extrapolations, and abstractions.”²¹ Dominique Junod further argues that this is because, “caution” is “the watchword in the internal, well-regulated expression of political intentions.”²² Occasionally, at moments of crisis, these intentions appeared clearly; but for the most part they remained hidden. To those who served the ICRC, being “political” was suspect; and if they were constrained to maintain an internal policy, such as the one establishing a relation between actual

¹⁸ D. Junod, *The Imperilled Red Cross*, 49

¹⁹ D. Junod, *The Imperilled Red Cross*, 47

²⁰ D. Junod, *The Imperilled Red Cross*, 46

²¹ D. Junod, *The Imperilled Red Cross*, 49

²² D. Junod, *The Imperilled Red Cross*, 46

practice and its codification in law, it was with a sort of reluctance; better to talk about it as little as possible and keep it in the form of “ulterior motives.”²³ Only humanitarianism in its pure, essentially noble, state deserved to be formulated, high-lighted, and retained for posterity.²⁴

As such Junod urges scholars to “show intuition and a certain boldness in interpreting these papers. Comparing documents, they must, in a word, decode these archives and take the corresponding risks.”²⁵ These risks are discussed at considerable length in chapter four as it describes the effects of practices of legalization, medicalization and testimonialization that the ICRC deploys in its struggle to regulate and prohibit particular weapons. These risks can also be more simply understood as the challenge of interpreting the suffering of persecution, isolation and marginalization experienced by ICRC representatives such as Dunant, Brown and Junod as they witness and seek to address the problem of weapons. These experiences are more concretely illustrated in subsequent chapters.

²³ D. Junod, *The Imperilled Red Cross*, 46

²⁴ D. Junod, *The Imperilled Red Cross*, 46

²⁵ D. Junod, *The Imperilled Red Cross*, 49

Third, is the emphasis in these institutional histories on providing a narrative on a humanitarian ideal that manifests itself in the form of the ICRC. It is this humanitarian ideal of helping the victims of war that has fostered arguments on the growth and expansion of the national Red Cross societies and their federation. It is this ideal of humanitarianism in the midst of war that has constituted a universal movement, undertaking a wide range of activities such as development of IHL, for protecting the victims of war.

But Hutchison questions the assumption that, “what was created and carried out in the name of the Red Cross faithfully reflected the charitable aspirations of its founders” and encourages reflection on whether,

The seed Dunant planted was indeed the seed of humanitarianism and that the growth of the Red Cross since 1863 is, before all else, evidence of a continuing and deepening commitment to humanitarian principles on the part of those countries that have signed the Geneva Conventions

and officially recognized their national Red Cross (or Red Crescent) society.²⁶

The strong vein of skepticism that one finds in Hutchison's book is interestingly complemented by David Forsythe's description of the ICRC as a "very political animal" during the period of the Cold War resorting to particular strategies and tactics in order to fulfill a humanitarian agenda.²⁷ To reinforce this observation, Forsythe argues that, "whether one is talking about what the ICRC actually does or what it should be doing, one is talking about humanitarian politics—the struggle to implement humanitarian values as part of public policy."²⁸

This idea of humanitarian politics is further developed by Forsythe by arguing that, "humanitarian organizations need a policy, that is, a specific set of ends and means, based on strategy, that is, a general conception of goals and roles, in order to make a humanitarian impact on parties

²⁶ Hutchison, *Champions of Charity- War and the Red Cross*, (Colorado: Westview Press, 1996), 346 (italics inserted)

²⁷ David P. Forsythe, *Humanitarian Politics- The International Committee of the Red Cross*, (Baltimore & London: John Hopkins University Press, 1977), 45

²⁸ Forsythe, *Humanitarian Politics*, 3

operating on the basis of realpolitik and partisan politics.”²⁹ To this end, humanitarian actors must be willing to engage in cooperation and conflict with other actors in the political process, “in a context of realpolitik and partisan politics imposed by other actors,” but seek to “maintain consistent action motivated by humanitarian values.”³⁰ However, in the practice of humanitarian diplomacy, Forsythe concludes that,

The ICRC has discovered by trial and error what governments will permit and what they will not, and in pursuing what can be done on the basis of governmental consent *it has built its reputation for responsible action—with responsibility defined by governments.*³¹

Forsythe’s study offers some brief observations on the ICRC’s engagement with the problem of weapons to the effect that, “for much of its history, the ICRC regarded weapons as somebody else’s business, unless there was an exceptional reason to view the subject otherwise” and suggests that “the ICRC has been intermittently active with regard to the

²⁹ Forsythe, *Humanitarian Politics*, 3

³⁰ Forsythe, *Humanitarian Politics*, 3

³¹ Forsythe, *Humanitarian Politics*, 3

weapons question. When active, the substance of ICRC lobbying has verged on the radical, so radical, indeed, that certain observers were led to question the political astuteness of the institution.”³²

Forsythe comments on the ebb and flow of ICRC’s engagement with the problem of weapons in terms of strategic and tactical gestures and attributes these to the general political climate and the conservative nature of the organization. To quote Forsythe,

As for the substance of ICRC tactical stands, this varies considerably. As noted on the weapons question, the ICRC in the 1950’s had a radical stand aimed at making all high-yield nuclear weapons illegal; by the 1970’s this had changed to no concrete policy stand at all, but rather a general endorsement of legislative efforts against weapons that might cause unnecessary suffering or have indiscriminate effects.³³

³² Forsythe, *Humanitarian Politics*, 117

³³ Forsythe, *Humanitarian Politics*, 121

Furthermore, Forsythe suggests that the ICRC has played the role of a “drafting legal secretariat” able to exercise some influence in the drafting of articles and commentaries but is dismissive of ICRC’s efforts towards facilitating arms control and disarmament as it does not possess “ in-house experts on the subject” and does not resort to overt lobbying.³⁴ This is because the ICRC finds that “intermediate goals pursued by discretionary means leads to some improvement, in the sense of increased attention to humanitarian issues” and “there are other groups seeking total change through public and controversial behaviour.”³⁵ The ICRC resorts to being a “friendly legal adviser” and engages in ad-hoc diplomacy to defuse problems such as the Cuban missile crisis.³⁶ The problem of weapons as addressed by the ICRC does not receive any systematic treatment by Forsythe as the latter asserts that “its role was a very quiescent one” and accommodates it to the extent that it fits into a chronological account of Cold War politics.³⁷ Forsythe summarizes any effort by the ICRC to address the problem of weapons by suggesting that, “the time had not come for governments to respond positively to ICRC overtures on this subject”³⁸

³⁴ Forsythe, *Humanitarian Politics*, 112

³⁵ Forsythe, *Humanitarian Politics*, 39

³⁶ Forsythe, *Humanitarian Politics*, 56, 101

³⁷ Forsythe, *Humanitarian Politics*, 119-120

³⁸ Forsythe, *Humanitarian Politics*, 118

It is important to note here that it is this picture, painted by Forsythe of the ICRC's intermittent efforts to address the problem of weapons during the period of the Cold War, that has dominated efforts to understand the participation of humanitarian actors especially the ICRC even after the Cold War in the field of arms control and disarmament. But Forsythe's study treats the ICRC only as a minor appendage to state practices. It makes no effort to trace how this particular humanitarian actor has crafted its own language and strategies to exercise power vis-à-vis states to regulate and prohibit particular weapons.

Legal Competence

Nevertheless, the complexity of Hutchison and Forsythe's accounts of the ICRC are interesting to read in comparison to Berry's insipid and simplistic consideration of the politics that requires the ICRC to keep "quiet" about its new anti-war agenda.³⁹ According to Berry, this new anti-war agenda that has surfaced in the aftermath of the Cold War, is not

³⁹ Nicholas O. Berry, *War and the Red Cross-The Unspoken Mission*, (New York: St. Martin's Press, 1997), 3

restricted, to protection of victims of war but also insists on eradicating the “efficacy” of war.⁴⁰ To this end, it is imperative that the ICRC “sublimates its political role” in order to have access to all warring parties, secure the cooperation of governments and donor agencies.⁴¹ In this effort, Berry also observes that the ICRC is at, “the forefront of formulating, gaining adherence to, and disseminating international humanitarian law” but, “one area of this body of law not yet analyzed adds further proof to the antiwar political effects of the ICRC. That area is the banning of weapons.”⁴²

Berry does not undertake any exploration of the ICRC’s efforts to ban weapons but provides a brief uncritical account of the ICRC’s efforts to ban the use of chemical weapons, landmines and laser weapons under IHL. Similarly, Hutchison claims that, “the negotiation and revision of the Geneva Convention are part, but only part of the story told here” but claims to possess “no expertise in international law and so have chosen to concentrate on assistance to the sick and wounded rather than on the protection of prisoners of war.”⁴³ Both Hutchison and Berry refer to the

⁴⁰ Berry, *War and the Red Cross*, 3

⁴¹ Berry, *War and the Red Cross*, 3, 5

⁴² Berry, *War and the Red Cross*, 46

⁴³ Hutchison, *Champions of Charity*, 5

ICRC's efforts in constituting and disseminating international humanitarian law but cite lack of expertise in international law to provide any critical account of this law. However, their observations signify the value of legal narratives concerning the mandate and practices of the ICRC.

The ICRC's study on *Customary International Humanitarian Law* devotes forty-six pages explicating the application of this law to weapons, means and methods of war.⁴⁴ This study, deliberately undertaken a year after the problem of nuclear weapons was under consideration at the International Court of Justice, is organized into twelve chapters and details seventeen rules of customary law covering ten different types of weapons including: poison, biological weapons, chemical weapons, expanding bullets, exploding bullets, weapons primarily injuring by non-detectable fragments, booby-traps, landmines, incendiary weapons and blinding laser weapons. This study has received considerable attention by legal scholars in its treatment of the problem of weapons vis-à-vis customary international humanitarian law for several reasons.

⁴⁴ Jean Marie Henckaerts & Louise Dowald Beck, eds, *Customary International Humanitarian Law*, (Geneva: ICRC, 2005)

These reasons are clearly articulated by Steve Haines in his deliberations on this study with specific focus on weapons.⁴⁵ First, the study deliberately excludes study of customary international humanitarian law with respect to nuclear weapons citing the fact that it is a problem under study by the International Court of Justice during this period. The possibility of studying the status of nuclear weapons under international law has long been a subject of debate in international law and the decision of the ICRC to refuse to include this subject in its study at this critical juncture sparked a widespread debate on the question of responsibility shown by the humanitarian actor in addressing this problem. In refusing to address the problem of nuclear weapons explicitly in this study, some scholars are of the view that the ICRC acted politically and shirked its responsibility while others concur with the decision of the ICRC. Second, the study has been further critiqued on grounds that it exercises considerable freedom in its interpretation of general principles. For example, Steven Haines suggests that the study should have made a distinction between the inherent nature of weapons and the consequences of their use in inappropriate ways leading to superfluous injury or unnecessary suffering.⁴⁶ The ICRC does not accept this argument of

⁴⁵ Steven Haines, "Weapons, means and methods of warfare," in *Perspectives on the ICRC Study on Customary International Humanitarian Law*, ed. Elizabeth Wilmhurst et al. (Cambridge: Cambridge University Press, Chatham House, British Institute of International & Comparative Law, 2007), 258-281

⁴⁶ Haines, "Weapons, means and methods of warfare," 263-265

making a distinction between inherent nature of weapons and consequences of their use in ascertaining unnecessary suffering as it reasons that their interpretation of “‘method’ refers to how the ‘means’ (the weapons) is actually used.”⁴⁷ Furthermore, the ICRC has shrewdly maintained that the rules included in this study are not exhaustive and that there could be customary rules not included within its ambit. The third point of contention among scholars and the ICRC with regard to this study is that,

The number of treaty rules that are considered in the Study to have already achieved customary status is perhaps surprising. Indeed, one is inclined to wonder if the authors of the Study found it instinctively difficult to accept that some of the Rules suggested may not have developed beyond *de lege ferenda*.⁴⁸

Scholars acknowledge that this study considers various weapons treaties as a first point of reference in identifying customary rules. However,

⁴⁷ Haines, “Weapons, means and methods of warfare,” 265

⁴⁸ The expression *de lege ferenda* refers to what the law ought to be rather than what it is. Haines, “Weapons, means and methods of warfare,” 262

consideration of the fact that “many of the relevant treaty weapons conventions are relatively recent instruments” makes it imperative to question “the extent to which the customary rules based on recent treaty provisions could have developed within such a short space of time.”⁴⁹ As such, this study, with regard to its interpretation of customary IHL in the context of weapons, has failed to persuade many legal scholars.

Despite the limitations and critiques of the ICRC’s study on customary IHL it serves as an important source book for scholars pursuing legal interpretations on regulating and prohibiting existing weapons and those seeking to understand the ICRC’s position on this subject. The subject of weapons, IHL and the ICRC has also generated some observations in a lengthy text by Hans Haug and his co-authors.⁵⁰ Haug observes that, “At least since the First World War the Red Cross has given its attention over and over again to the prohibition or restriction of the use of given weapons and in general to disarmament under effective international law.”⁵¹ To make this argument, Haug’s book devotes a small section to the ICRC’s statements on disarmament and in another section explicates

⁴⁹ Haines, “Weapons, means and methods of warfare,” 262

⁵⁰ Hans Haug, *Humanity for All- The International Committee of the Red Cross & Red Crescent Movement*, (Berne: Paul Haupt Publishers, 1993)

⁵¹ Haug, *Humanity for All*, 590

certain provisions of IHL on the choice of methods and means of warfare. No explanation is provided in the book for two different sections, one on IHL and the other on peace within which the problem of weapons is addressed by the author.⁵² In waging its struggle for disarmament Haug insists that the ICRC has always been guided by its adherence to the principle of neutrality.⁵³

A clear understanding of the history of codification of humanitarian principles such as neutrality championed by the ICRC in all its endeavours is to be gained from a commentary by Jean Pictet written during the period of the Cold War.⁵⁴ The context of the Cold War when conflicting ideologies and nuclear weapons arms race divided the world is significant in the light of the following observation by Pictet, "The Red Cross world was *determined at that time* to provide itself with a true charter, as the fruit of a century of experience and the lasting basis for its future activity."⁵⁵ Pictet elaborates in detail on the philosophical considerations and practical applications of each of the seven principles of humanity, impartiality, neutrality, independence, voluntary service,

⁵² Haug, *Humanity for All*, 537-549, 590-591

⁵³ Haug, *Humanity for All*, 591

⁵⁴ Jean Pictet, *The Fundamental Principles of the Red Cross-Commentary*, (Geneva: Henry Dunant Institute, 1979)

⁵⁵ Pictet, *The Fundamental Principles of the Red Cross*, 8 (italics inserted.)

unity and universality to be followed by the ICRC. Pictet cautions that these principles serve to inspire the ICRC as a “private institution” and must be differentiated from the principles of IHL that have an “official character” to regulate the conduct of nation-states vis-à-vis each other during war.⁵⁶ Pictet qualifies this observation by conceding that certain principles followed by the ICRC as a humanitarian organization are in common with those agreed between states under IHL because the latter have their “origin in the ideal of the Red Cross, which continues to stimulate its development.”⁵⁷

It is interesting to follow Pictet’s observations with a reading of Geoffrey Best’s book, *War and Law since 1945*.⁵⁸ This book offers two interesting arguments on the principles of the ICRC and IHL. The first argument offers an alternative perspective on the origins and relationship between the principles of the Red Cross and the principles of IHL followed by nation-states. Best argues that the doctrine of “belligerent equality” or “equal application” with its insistence on according equal status and treatment to victim and aggressor finds its place in the distinction made

⁵⁶ Pictet, *The Fundamental Principles of the Red Cross*, 8

⁵⁷ Pictet, *The Fundamental Principles of the Red Cross*, 8

⁵⁸ Geoffrey Best, *War and Law since 1945*, (Oxford: Oxford University Press, 1994), Also see, Geoffrey Best, *Humanity in Warfare- The Modern History of the International Law of Armed Conflict*, (London” Weidenfeld & Nicolson, 1980)

between jus ad bellum (law of war) and jus in bello (law in war).⁵⁹ The latter, that is the law in war, grounds the doctrine of equal application in contemporary IHL and considering that the ICRC is embedded in the “IHL’s brickwork” it is possible to suggest that the fundamental principles of the Red Cross and Red Crescent movement depend on it too.⁶⁰ Best clearly states that, “the definition of neutrality drops anchor in the equal-application doctrine.”⁶¹ The second argument follows from the first. It suggests that while the doctrine of equal application enables the ICRC to pursue its humanitarian activities in all other fields it restricts the scope of its practices in the field of arms control and disarmament. This is because the doctrine of equal application makes it difficult to contend with the logic of military necessity. It also generates ambiguity with regard to the meaning of concepts such as “humanitarian” and “civilian” making them susceptible to manipulation for generating ever expanding categories of actors and practices.⁶² This makes it imperative that practices of ACD appear as a discrete set of practices working towards goals similar to IHL. It is important to keep in mind these observations on the humanitarian principles championed by the ICRC and

⁵⁹ Best, *War and Law since 1945*, 236-237; to study the historical and legal differences between jus ad bellum and jus in bello several texts are available. See Christopher Greenwood, *Essays on War in International Law*, (London: Cameron May, 2006); Michael Walzer, *Just and Unjust Wars- A Moral Argument with Historical Illustrations*, (New York: Basic Books, 1977)

⁶⁰ Best, *War and Law since 1945*, 236-237

⁶¹ Best, *War and Law since 1945*, 237

⁶² Best, *War and Law since 1945*, 237

their relationship with the laws of war as they have a bearing on describing and classifying its practices to regulate and prohibit weapons as IHL or ACD.

The effects of humanitarian principles and development of IHL in regulating and prohibiting the use of particular weapons by the ICRC receives further consideration by Baudendistel as he is intrigued by his own experiences as a delegate in Ethiopia in 1984 that compel him to investigate the past. To quote Baudendistel:

I discovered that many issues of humanitarian aid in the Italo-Ethiopian war were similar to those I had encountered fifty years later. *Chief amongst them were whether an organization like the ICRC should speak out against violations of international humanitarian law or remain silent in the interest of the victims...*⁶³

⁶³ Baudendistel, *Between Bombs and Good Intentions-The Red Cross and the Italo-Ethiopian War-1935-1936*,(New York & Oxford: Berghahn Books, 2006) , xvi

Baudendistel's study on the ICRC's engagement in the Italo-Ethiopian War 1935-1936, offers insights into the practices of the ICRC during this war as its delegates witness aero-chemical warfare, attend to the suffering of the victims and remonstrate with those at the headquarters in Geneva to take effective action. It is an unrelenting and comprehensive critique of the response of the ICRC to the problem of aero-chemical warfare in this war. The information provided in this text is based on multiple archival sources and is able to provide perspectives and practices of all the main actors engaged in this conflict including the ICRC. In undertaking this study it was possible to verify some of these sources at the archives of the ICRC. It is impossible to study ICRC efforts towards regulation and prohibition of the use chemical weapons without devoting considerable attention to this work. It is the only study on ICRC's engagement with a particular armed conflict that devotes considerable attention to the use of particular weapons such as chemical weapons. The arguments presented in this text are discussed at length in the chapter on chemical weapons. At present the reference to this text is only to draw attention to the problem of choice that the ICRC experiences in terms of exercising its voice or remaining silent against violations of IHL.

Conclusion

To summarize the lessons of the literature on the ICRC, several points need to be noted. First, cursory attention has been paid, in this body of literature, to the ICRC's engagement with the problem of weapons. Second, careful thought has to be given to how history is written and interpreted on the ICRC's efforts to regulate and prohibit weapons. The insights provided by Hutchison and Pictet through their comments on the existing written histories are helpful in highlighting the pitfalls and dangers of chronological, fact-based, recorded accounts of the ICRC's history if they are to be more than reference books. Third, the existing literature on ICRC, IHL and weapons also requires one to be sentient of the legal discourses within which observations on the ICRC's efforts to address the problems of weapons is subtly embedded. Fourth, the powerful legal discourse should not deflect attention from exploration of how the ICRC as a humanitarian actor has crafted its own language to give voice to its practices to regulate and prohibit weapons. This study will address these gaps in the existing literature on the ICRC and its efforts to address the problem of weapons. However, any effort to address these gaps will also have to take into account the attention devoted to the contribution of humanitarian actors in the existing literature on ACD.

CHAPTER THREE - RETHINKING ARMS CONTROL & DISARMAMENT

Introduction

In an effort to understand how practices of humanitarianism and practices of arms control and disarmament intersect with each other, it is important to survey the existing literature on arms control and disarmament especially insofar as it engages with humanitarian actors especially the ICRC. This chapter argues that the existing literature on ACD is constrained in its appreciation of the creative discourses deployed by the humanitarian actors such as the ICRC to address the problem of weapons. It makes this argument by taking into account possibilities and limitations of the social constructivist, disarmament as humanitarian action and human security approaches to addressing the problem of regulating and prohibiting weapons. This chapter will suggest that the emerging literature on critical security studies suggests possibilities that can be helpful in undertaking this study but to constitute a helpful framework of analysis one has to trace the intellectual roots of this approach as it is embedded in post-structuralism.

Hague Conferences

To understand practices of humanitarianism vis-à-vis practices of ACD as they emerged in the late 19th century it is helpful to begin by pursuing studies on the Hague conferences of 1899 and 1907. These two conferences serve as landmarks for tracing the development of ACD as a distinct field of study. These conferences explicitly convened on humanitarian grounds to curtail the heavy expenditure on armaments, secured multilateral agreements among European powers on regulating and prohibiting the use of expanding bullets, the discharge of projectiles and explosives from balloons and asphyxiating gases. These conferences thus laid the groundwork for subsequent arms control and disarmament practices in the twentieth century. Several studies situate the humanitarian proposals put forth by the ICRC representatives the context of the realpolitik of convening and negotiating arms limitation at the Hague Conferences. These studies provide comments on the representation of these conferences in the media and note the aspirations and strategies of the pacifist movements.⁶⁴ But scholars agree that the subject of arms

⁶⁴ Andrew D. White, *The First Hague Conference*, (Boston: The World Peace Foundation, 1912); Joseph H. Chaote, *The Two Hague Conferences*, (Princeton: Princeton University Press, 1913), Frederick W. Holls, *The Peace Conference at the Hague and its Bearings on International Law & Policy*, (London: The Macmillan Company, 1900); William I. Hull, *The Two Hague Conferences and their Contributions to*

limitation and disarmament became a victim of realpolitik at these conferences. Although the First Hague Conference was explicitly convened to address the problem of armaments, the conference did not deliberate on the subject of armaments until “a month after the opening of the conference, and a month before its adjournment”; the participants were of the view that it was important “to reserve until the last those questions on which an agreement appeared more difficult of formation. It is by harmony that we should desire to arrive at harmony.”⁶⁵ The First Hague Conference was condemned as a failure as it did not meet popular aspirations for disarmament. Among the several reasons attributed for its failure some were of the view that the conference,

had taken up the question of armaments “at the wrong end”, that it had devoted itself chiefly to the balancing of ship against ship and tonnage against tonnage, and had consequently fallen into a hopeless *technical tangle and mathematical snarl*; that *what was needed was a thorough study of the economic and political aspects of the question.*⁶⁶

International Law, (First published in Boston: Ginn & Company, 1908, reprinted in New York: Kraus Reprint Co.1970), 69

⁶⁵ Hull, *The Two Hague Conferences*, 55

⁶⁶ Hull, *The Two Hague Conferences*, 69 (italics inserted)

In convening the Second Hague Conference arms limitation and disarmament was not high on the agenda and similar time delay tactics were deployed to such effect that the problem of armament was not raised until after eight weeks, at the fourth plenary session leading to a resolution that it would be considered at the Third Hague Conference. In summarizing the treatment meted out to the problem of armaments at these two conferences Baron de Bildt observed, "When the results of our deliberations shall become known, there will arise, notwithstanding all that has been done for arbitration, the Red Cross, etc., a great cry: 'It is not enough!'"⁶⁷

Chemical Weapons

In keeping with this sentiment, in addressing the problem of chemical weapons, Frederic Brown cautions against the use of a decision making model tailored to a mechanistic model of rational action and "the pitfalls

⁶⁷ Hull, *The Two Hague Conferences*, 63

of over concentration on technical characteristics of the weapon.”⁶⁸ Brown encourages study of weapons by taking license with “military and scientific terminology” in order to make the subject of study more easily accessible.⁶⁹ Brown’s purpose is not to disclose “any fundamental laws of restraint” but to “develop an understanding of the nature of restraints that prevent employment of a weapon in war.”⁷⁰ To this end, Brown devotes a few paragraphs to studying the effects of the ICRC’s appeal against the use of asphyxiating and poisonous gases in the First World War along with its efforts to regulate and prohibit the use of this weapon during the inter-war period in the form of moral propaganda and preparations for civil defence.

The observations made by Brown can be supplemented with Richard Price’s genealogy on the *Chemical Weapons Taboo*.⁷¹ Price’s genealogy of the chemical weapons taboo is an attempt to historicize “the accepted moral interpretations of weapons technologies and the place of chemical weapons within this moral domain.”⁷² Price traces the emergence of a norm prohibiting the use of chemical weapons from the Hague

⁶⁸ Frederic J. Brown, *Chemical Warfare-A Study in Restraints*, (Princeton, New Jersey: Princeton University Press, 1968), xviii

⁶⁹ Brown, *Chemical Warfare*, xviii

⁷⁰ Brown, *Chemical Warfare*, xv

⁷¹ Richard Price, *The Chemical Weapons Taboo*, (Ithaca & London: Cornell University Press, 1997)

⁷² Price, *The Chemical Weapons Taboo*, 8

Conferences with their discourses on civilizational practices prohibiting the use of asphyxiating shells to the sufferings of soldiers gassed in the First World War. In this effort, Price makes four significant arguments that suggest but do not explore the important contributions of humanitarian actors to the development of moral discourses surrounding chemical weapons. In fact the identity of humanitarian actors and their practices are always peripheral in Price's framing of his arguments on the development of the chemical weapons taboo.

First, Price simply registers ICRC's appeal against the "abolition of gas warfare" as a voice encroaching on practices of avoidance or official silence observed by government authorities.⁷³ Price makes no effort to scrutinize the voice or the language of the appeal issued by the ICRC but is content to note that, "It was the humanitarian discourse of shortening and eliminating wars—and thus reducing suffering—that was invoked in order to make the commitment to unlimited technological innovation appear at once natural, inevitable, and beneficent."⁷⁴ This monolithic representation of "the humanitarian discourse" by Price is problematic as

⁷³ Price, *The Chemical Weapons Taboo*, 62-63

⁷⁴ Price, *The Chemical Weapons Taboo*, 40

he makes no effort to distinguish between pacifists and humanitarian identities and practices in addressing the problems of war and weapons.

Second, Price suggests that humanitarian discourses enabled military strategists to “marry the logic of the pursuit of unlimited technological efficiency with the avoidance of war and the amelioration of suffering.”⁷⁵

The sufferings of the soldiers compounded fears of the lack of any suitable defense for civilians against gas warfare. Price recognizes the argument that, there was no defence against gas warfare was short-lived and all efforts were made to find defensive measures to normalize the use of this weapons technology. But, Price makes no effort to explore how humanitarian discourses circulated among specific actors, or how their practices contributed to normalizing the pursuit of technical and legal means for defensive measures against this form of warfare.

Third, Price argues that the argument on protection of civilian populations as a distinct category, flourished as the practices of non-use against civilians was reinforced in the Second World War. This development is again attributed by Price to “politicization of gas warfare” in the inter-

⁷⁵ Price, *The Chemical Weapons Taboo*, 40

warfare period “at the international level by organizations such as the Red Cross and the League of Nations.”⁷⁶ But Price makes little effort to study these organizations or explore how their efforts contributed to making civilian populations, as a distinct category, deserving protection against chemical warfare.

Fourth, Price observes, “the invention of nuclear weapons has perpetuated and reinforced the chemical weapons taboo via the discourse of mass destruction.” He concludes that the effect of the inclusion of chemical weapons in the category of weapons of mass destruction have resulted in “a further closure of the once controversial humanitarian aspect of the chemical weapons discourse. The invention of nuclear weapons has to this point not made gas seem less horrible and more humane.”⁷⁷ It is precisely these observations and arguments advanced by Price, justifying categorization of weapons into discrete categories to stifle humanitarian arguments on the regulation and prohibition of weapons, that serve as a premise for questioning and investigating the politics of deliberate closure of humanitarian practices of ACD.

⁷⁶ Price, *The Chemical Weapons Taboo*, 71-74

⁷⁷ Price, *The Chemical Weapons Taboo*, 162

Nuclear Weapons

Similarly, Nina Tannenwald traces the evolution of the nuclear taboo during the Cold War in two distinct stages.⁷⁸ The first stage focuses on the first fifteen years after Hiroshima, and the second stage on the period after the Cuban missile crisis. The insights provided on the earlier period are of particular interest to my study.

Tannenwald argues that the use of nuclear weapons by the US administration in a war that had diminished the force of the laws of war was considered as legitimate by the US government. The US public, subject to anti-Japanese propaganda, accepted the bombing as justifiable in terms of safeguarding national interests. When evidence of the radiation effects caused by the use of nuclear bombs became available, its circulation contributed, slowly, to generating a public consciousness on the health, medical and environmental effects of these weapons. Tannenwald further argues that the US government tried to suppress this information, practiced surveillance of peace groups and resorted to pro-

⁷⁸ Nina Tannenwald, *The Nuclear Taboo- The United States and the Non-Use of Nuclear Weapons since 1945*, (Cambridge, New York: Cambridge University Press, 2007); Nina Tannenwald, "Stigmatizing the Bomb Origins of the Nuclear Taboo," *International Security*, 29 no.4, (Spring 2005), 24

nuclear propaganda through its policy of “conventionalization.”⁷⁹ This policy of conventionalization entailed “integrating tactical nuclear weapons more fully into military planning at the operational level, and waging a concerted public relations effort to make use of such weapons politically acceptable.”⁸⁰ US political and military leaders developed “alternative moral and legal interpretations of nuclear weapons, ones that emphasized their similarities, rather than differences, with other kinds of weapons.”⁸¹

These observations by Tannenwald provoke three important considerations. First, Tannenwald’s definition of “conventionalization” appears to be narrow and discrete considering the effects it has in encouraging “normalization” of the use of nuclear weapons.⁸² It encourages juxtaposition of the concept of conventionalization vis-à-vis normalization. This juxtaposition encourages consideration of conventionalization as a tactical tool for norm promotion whereas

⁷⁹ Tannenwald, “Stigmatizing the Bomb” 24.

⁸⁰ Tannenwald, “Stigmatizing the Bomb” 24.

⁸¹ Tannenwald, “Stigmatizing the Bomb,” 25

⁸² To understand the concept of normalization see, Michel Foucault, *Discipline and Punish - The Birth of the Prison*, trans. Allen Lane, (London & New York: Penguin Books, 1977), 183. Foucault describes “normalization” as a practice that “imposes homogeneity; but it individualizes by making it possible to measure gaps, to determine levels, to fix specialties and to render the differences useful by fitting them one to another. It is easy to understand how the power of the norm functions within a system of formal equality, since within homogeneity that is the rule, the norm introduces, as a useful imperative and as a result of measurement, all the shading of individual differences.”

normalization might be conceived as a strategy exploring the possibilities and limits of norm promotion itself.

Second, Tannenwald emphasizes the role of international organizations, the global anti-nuclear weapons movements, and non-nuclear states in the development of the nuclear taboo. The particular identities of these actors and their practices do not receive any significant attention from the author. The practices of these actors are simply classified as acts of “moral consciousness raising” among the public and are lumped into a general, abstract category of “bottom up process” to which the author refers occasionally to cite some instances to develop her arguments on how the nuclear taboo developed in global politics and US policy.⁸³

Third, Tannenwald’s suggestion of the efforts made by the US government to discredit the efforts of the anti-nuclear movement only serve to reinforce in retrospect reminders of the strength of this movement. My study contributes to the arguments presented by Tannenwald by illustrating the effects of the practices of the US government on the ICRC and its efforts to engage with the problem of nuclear weapons. The

⁸³ Tannenwald, “Stigmatizing the Bomb,” 24.

absence of any reference by Tannenwald on the ICRC and the Red Cross movement in developing the nuclear taboo is notable considering this actor's delegates were among the first to witness the scenes of tragedy in Hiroshima, engage with the US authorities, raise questions on the legality and illegality of the use of nuclear weapons in accordance with the laws of war and prepare the Draft Rules of 1957 to prohibit the future use of nuclear weapons.

Apart from the critiques leveled against the particular arguments presented by constructivist scholars such as Price and Tannenwald, there are also two important considerations to be taken into account regarding the constructivist approach. First, social constructivist studies are still very state-centric in their orientation towards understanding practices of ACD. Price and Tannenwald are focused on the US as the principal actor and its policies and practices constitute the centrifugal point of attention for grasping the development and effects of restraints and norms on the use of chemical and nuclear weapons respectively. For example, Tannenwald suggests that the purpose of her study is to follow the "role of anti-nuclear discourse and politics in the creation of the taboo" but then insists that the purpose of the study is to analyze "how the taboo has influenced US decision-making in specific instances" and "what accounts

for the rise of the taboo and how it developed in global politics and US policy.”⁸⁴ Price is aware that, “as insightful as the constructivist research program has been, *the object of such analyses still has often been the state.*”⁸⁵ But he justifies this on grounds that “*the state is the institutional site of the most notable political specialists in defining and providing for security*—government and the military typically do wield preponderant influence over the other societal actors.”⁸⁶

In giving priority to the state, social constructivist scholars concede that by “focusing solely on the state as an actor diverts attention from other sources of agency and socialization.”⁸⁷ It further denigrates “the role of nonstate actors in generating international norms and defining state interests have typically focused on nonsecurity or new issue areas such as human rights and the environment.”⁸⁸ This further invites the critique of post-structural scholars that the constructivists assume the existence of the state as a “volitional agent reigning supreme” located “outside the

⁸⁴ Tannenwald, “Stigmatizing the Bomb” 7

⁸⁵ Richard Price, “Reversing the Gun Sights- Transnational Civil Society Targets Landmines,” *International Organization*, 52, no.3, (1998), 614-615

⁸⁶ Price, “Reversing the Gun Sights”, 614-615 (italics inserted)

⁸⁷ Price, “Reversing the Gun Sights”, 614-615 (italics inserted)

⁸⁸ Price, “Reversing the Gun Sights”, 614-615

domain of constitution.”⁸⁹ This impoverishes understanding of the mutually constitutive processes that shape the identities and practices among state and non-state actors. This instrumental view of agency neglects the operation of “politics and power...at the level at which the subject and its agency are articulated and made possible” through “performativity” and “that agency is always and only a political prerogative.”⁹⁰

Second, social constructivist scholars often resort to studying, “the hard case of the role of transnational non-state actors working through issue networks to affect how states prepare for and wage war.”⁹¹ As such the interest of social constructivist scholars in “other” actors is only insofar as these actors can help generate norms that can socialize state practices regarding regulation and prohibition of weapons. Furthermore the study of the practices of these actors can easily fit into a universal catalogue of activities promoted through “networks” such as information gathering and advocacy. As such, it is the study of networks that takes precedence over the identities and practices of particular non-state actors themselves. It is

⁸⁹ David Campbell, *Writing Security- United States Foreign Policy and the Politics of Identity*, (Minneapolis: University of Minnesota Press, 1998), 218-219

⁹⁰ Campbell, *Writing Security*, 218-219

⁹¹ Price, “Reversing the Gun Sights” 614

useful to note here in brief that, in the study of norms some constructivists develop adapted versions of the framework developed by Kathryn Sikkink and her co-authors on transnational advocacy networks while others are influenced by the genealogical method articulated by Foucault as discussed in the next chapter.⁹²

Critical Security Studies

Unlike the social constructivist approach, a critical security studies approach is not complacent about the “prevailing social and power relationships and the institutions into which they are organized” such as the relationship of the ICRC vis-à-vis nation-states in regulating and prohibiting weapons.⁹³ A critical security studies approach instead calls these relationships into “question by concerning itself with their origins and how and whether they might be in the process of change.”⁹⁴

⁹² Margaret E. Keck and Kathryn Sikkink, ed, *Activists Beyond Borders: Advocacy Networks in International Politics*, (Ithaca: Cornell University Press, 1998); Thomas Risse, et al, eds. *The Power of Human Rights: International Norms and Domestic Change*, (Cambridge: Cambridge University Press, 1999)

⁹³ Keith Krause and Michael C. Williams, *Critical Security Studies- Concepts and Cases*, (Minneapolis: University of Minnesota Press, 1997),viii

⁹⁴ Robert Cox, “Social Forces, States and World Orders: Beyond International Relations Theory,” in *Neorealism and Its Critics*, ed. by Robert Keohane, et al, (New York: Columbia University Press, 1986), p.208

A critical security studies welcomes “perspectives that have been considered outside of the mainstream of the discipline” to encourage intellectual dialogue and debate.⁹⁵ It encourages scholars to examine substantive issues in security studies on weapons, war and peace and take into account both state and non-state actors and their practices. It shows a willingness to take into account current transformative trends such as the growing engagement of humanitarian organizations with problems of arms control and disarmament and problematizes “issues and questions that have been taken as the subject matter of security studies.”⁹⁶

To configure change as more durable than just a one-time miracle, a critical security studies approach, encourages grounding of actors and their practices in concrete historical conditions.⁹⁷ To reinforce the importance of this historical grounding, Keith Krause asserts that, “the historical dimension of contemporary developments can be ignored only with peril.”⁹⁸ A long term historical perspective helps restores perspective “to a subject too often seen in the light of day to day transactions” and

⁹⁵ Krause and Williams, *Critical Security Studies*, xi

⁹⁶ Krause and Williams, *Critical Security Studies*, viii

⁹⁷ Keith Krause, *Arms and the State: Patterns of Military Production and Trade*, (Cambridge: Cambridge University Press, 1992),5

⁹⁸ Krause, *Arms and the State*, 3

instead provides a picture of the “life cycle” of the ICRC and humanitarian practices of arms control and disarmament.⁹⁹ A study of this life cycle makes it possible to note the contingency of events and practices and provides “a better guide with which to make more specific judgments on the ability of an actor to manipulate its role in the system and achieve its policy goals.”¹⁰⁰ It focuses on the constitution of actors and processes that render actors “capable of conscious transformation through the process of critical reflection.”¹⁰¹

It is in this process of critical reflection, critical security studies scholars seek to reinsert the political by not being complacent about the centrality of the state in the field of arms control and disarmament as given but invoke the question “how the state resolves the problem of political order itself?”¹⁰² In response to this question, these scholars suggest that to address the problem of political order, nation-states show a willingness to accommodate other actors and their practices that do not constitute a

⁹⁹ Krause, *Arms and the State*, 3

¹⁰⁰ Krause, *Arms and the State*, 4

¹⁰¹ Keith Krause and Michael C. Williams, “From Strategy to Security: Foundations of Critical Security Studies,” in *Critical Security Studies- Concepts and Cases*, ed. by Keith Krause et al, (Minneapolis: University of Minnesota Press, 1997), 50

¹⁰² Krause & Williams, *Critical Security Studies*, x

threat to their sovereignty.¹⁰³ The practices of accommodation of non-state actors such as the ICRC and its humanitarian practices of arms control and disarmament practices have to be grounded in a “contextual understanding and practical knowledge” capable of addressing questions, “how (under what circumstances, with what consequences) and studying the effects of “rhetorical choice.”¹⁰⁴

This is possible by interpreting historical and contemporary discourses as inter-penetrating texts in which the ICRC is embedded and by investigating practices that enable this humanitarian actor to constitute a contingent identity and interests. In this interpretive exercise, critical security studies scholars are attentive to the “dramaturgical dynamics” of “articulation, interpellation, framing and enactment” that produce a particular text in which an actor and its practices are situated.¹⁰⁵ In examining these texts, critical security studies scholars are alert to a system of controls that determines, “What is made possible by this framing and, perhaps more importantly, what is rendered as external to

¹⁰³ Keith Krause, “Critical Theory and Security Studies- The Research Programme of ‘Critical Security Studies,” *Cooperation & Conflict*, 33, no.3, (1998), 305-317

¹⁰⁴ Krause, “Critical Theory and Security Studies,” 305-317

¹⁰⁵ Andrew Latham, “ Constitutive Theory and Humanitarian Practice: Toward a Narrative Explanation of the Laws of War” in *Theory in Practice: Critical Reflections on Global Policy*, ed. by Kyle Grayson and Cristina Masters, (Toronto: Centre for International & Security Studies, York University, 2003),52

the frame and thereby hidden.”¹⁰⁶ A study of how historical contingency and productivity through which a system of controls come into existence is possible through an exploration of “the ways that the problem and the issue are produced.”¹⁰⁷ David Mutimer describes these framing practices as “technologist rendering” of weapons into binary categories as licit/illicit weapons, humane/inhumane weapons, accurate/inaccurate weapons, discriminate/indiscriminate weapons, and weapons that cause necessary/unnecessary suffering and emphasizes the need to study their effects.¹⁰⁸

In studying the effects of these framing practices it is also important to take note of the existing asymmetries in power among actors and their practices of ACD.¹⁰⁹ These asymmetries of power are demonstrated when humanitarian actors actively participate in agenda setting, negotiating, monitoring of ACD but are constrained by a perception of their role as “outsider groups” in the field.¹¹⁰ This contributes to a growing perception that the humanitarian language is “not quite the radical departure from the

¹⁰⁶ David Mutimer, “A Serious Threat to Peace, Reconciliation, Safety, Security- An Effective Reading of the United Nations Programme of Action,” *Contemporary Security Policy*, 27, no.1, (2006), 34

¹⁰⁷ Mutimer, “A Serious Threat to Peace,” 34

¹⁰⁸ Mutimer, “A Serious Threat to Peace,” 40

¹⁰⁹ Neil Cooper, “Putting Disarmament Back in the Frame,” *Review of International Studies*, 32, (2006), 353-369; Neil Cooper, “What’s the Point of Arms Transfer Controls?” *Contemporary Security Policy*, 27, no.1, (2006) 131

¹¹⁰ Cooper, “Putting Disarmament Back in the Frame,” 368

status-quo they are often characterized as, but, in many respects, an element of it.”¹¹¹

This can contribute to an “anthromorphizing impulse” in the humanitarian campaigns to regulate and prohibit the use of particular weapons.¹¹² The anthropomorphizing impulse ascribes nominal agency to weapons. A particular weapon becomes a referent object of taboo, a humanitarian scourge to be assessed in terms of the principles of international humanitarian law. The principles of international humanitarian law with their consideration of military necessity, and ability to discriminate between combatants and non-combatants are conceived as parameters of legitimacy within which weapons are cast as agents “but without completing the anthropomorphical turn that would inscribe them also as sites of ethical responsibility.”¹¹³ In other words, “the ascribed agency of weapons puts out of sight the vitally important role of human operators who, at some point, select targets, input guidance information, and make

¹¹¹ Kennedy?

¹¹² Marshall Beier, “Disarming Policy: Arms, Agency, and the (post) Politics of Disarmament Advocacy,” in *Exceptional Measures for Exceptional Times: The State of Security Post 9/11*, ed. by Colleen Bell & Tina Managhan, (Toronto: York Centre for International & Security Studies, York University, 2006), pp. 213-224; Marshall Beier, “Siting Indiscriminacy-India and the Global Movement to Ban Landmines,” *Global Governance*, 8 (2002), 306

¹¹³ Beier, “Disarming Policy,” 220

the crucial decision to fire.”¹¹⁴ Marshall Beier argues that this ambiguity in the exercise of ethico-political responsibility encourages a “post-political terrain of engagement” where it is possible to imagine a bifurcated subject of which, “the severed whole has become something less than the sum of its parts in the alienation of the purposive subject from the operant site of agency: a crucial element of whole subjectivity is lost to the extent that a deep ambivalence about responsibility is engendered.”¹¹⁵ As a result, the difficulties in easy identification of whole subject positions results in “mystification of sites of responsibility” in practices of arms control and disarmament with “dire human consequences.”¹¹⁶

Beier cautions on the effects of this possibility by suggesting that the effectiveness of humanitarian actors and their practices will become contingent to “a re-emergent discriminatory norm and the advent of weapon agents.”¹¹⁷ Another effect will be to “preclude thinking about ways in which the indiscriminacy attributed to them (weapons) might be attenuated in order to preserve some measure of legitimacy for their

¹¹⁴ Beier, “Disarming Policy,” 216

¹¹⁵ Beier, “Disarming Policy,” 220

¹¹⁶ Beier, “Disarming Policy,” 223

¹¹⁷ Beier, “Disarming Policy,” 223

use.”¹¹⁸ Furthermore, it might also lead to dissociation of critiques of particular practices of violence from one another and provide grounds for legitimizing a particular practice of violence at the expense of another.¹¹⁹ These nascent insights from critical security studies scholars are helpful in analyzing the problems of arms control and disarmament as they emphasize the importance of historical grounding of actors, practices of framing, asymmetrical power relations and ethics but do not provide any articulate framework with which to undertake this study. These insights have emerged only as they have focused on specific recent campaigns to regulate and prohibit particular conventional weapons.

Conventional Weapons

In tracing the history of the landmines campaign scholars usually note the following:

The movement to ban antipersonnel landmines (APLs) is rooted in concerns raised by the International Red Cross in

¹¹⁸ Beier, “Disarming Policy,” 223-224

¹¹⁹ Beier, “Disarming Policy,” 223-224

the 1950s, but these concerns were quite marginal to the global agenda until the 1990s, when members of non-governmental organizations (NGOs) working in mine infested countries became aware of the toll APLs were taking on civilian populations, and began to suffer casualties themselves.¹²⁰

These cursory observations in general do not probe into the *raison d'être* of the ICRC's engagement with the problem of landmines in the 1950s and neither do they make any attempt to make a comparative study of the similarities and the differences in addressing the problem of landmines in these two different time periods. Mike Croll makes a brief attempt by offering some reflections on this subject. Croll argues that the Second World War had inured people to suffering and they phlegmatically accepted the loss of civilian casualties from landmines as the after-effects of war. Furthermore the fact that minefields were easier to locate as they had been placed in a recorded and recognizable format and the speed with which mine clearance was achieved with the help of prisoners of war did not make this a subject of "excess of indignation" as experienced in the

¹²⁰ Richard A. Matthew, 'Human Security and the Mine Ban Movement I: Introduction', in *Landmines and Human Security-International Politics & War's Hidden Legacy*, ed. By Richard A. Matthew, et al, (New York: State University of new York, 2004), 5-6

1990s.¹²¹ During the interim period, the ICRC's efforts to engage with the problem of landmines are described as limited to generating mine awareness, providing medical assistance and organizing prosthetic workshops to provide artificial limbs and rehabilitation to mine victims.

Croll briefly traces the ICRC's engagement with the problem of landmines in the aftermath of the Second World War. It was the ICRC that objected to the use of prisoners of war (PoW) for the purpose of mine clearance by suggesting that the provisions of the Geneva Convention of 1929 forbid the PoW from engaging in "dangerous" work.¹²² The lack of a specific legal clause on this subject led signatories to the Geneva Conventions to argue that mine clearance could not be classified as dangerous work as it was entrusted to soldiers trained for this purpose. As the arguments on "dangerous" or not were traded back and forth approximately "between 8 and 17.5 percent of all such mine clearers were killed or injured in the period 1945-46."¹²³ It was only when mine clearance had been achieved that an official agreement was possible to close the legal loophole in the revised Geneva Conventions of 1949 that expressly forbade the use of POWs for mine clearance but did not restrict the use of landmines.

¹²¹ Mike Croll, *The History of Landmines*, (Barnsley, Great Britain: Leo Cooper, 1998), 129-130

¹²² Croll, *The History of Landmines*, 88

¹²³ Croll, *The History of Landmines*, 89

In the 1990s, the ICRC is seen as a latecomer to the ongoing efforts to secure a ban on landmines and its efforts are seen as only complementary to the efforts of the International Campaign to Ban Landmines (ICBL). While the ICBL launched its campaign to ban landmines in 1992, it took the ICRC another two years before it decided to launch its independent campaign calling for a ban on landmines. The meeting of experts convened by the ICRC in 1994 in an effort to balance military and humanitarian considerations failed to produce any agreement among those that believed that landmines should be banned and mine protagonists. Due to the growing momentum towards making “a moral issue out of a practical problem” initiated by other humanitarian organizations, and “angered by the grievous nature of mine injuries,” the ICRC accelerated its decision to seek a ban against anti-personnel landmines.¹²⁴

Croll’s study further suggests that the publicity campaigns against landmines “distorted the size and the shape of the problem.”¹²⁵ This became possible as it was impossible to accurately estimate the number of

¹²⁴ Croll, *The History of Landmines*, 136; *Anti-Personnel Landmines- Friend or Foe?* (ICRC: Geneva, 1996), 11

¹²⁵ Croll, *The History of Landmines*, 136

mines on the ground. In an effort to secure a ban on landmines and mobilize donor funding for mine clearance “any magnification of the figures could be justified” and “the more reasonable estimates by specialists on the ground were ignored by the press and anti-mine campaigners.”¹²⁶

Under these circumstances, the publication of the ICRC study *Anti-personnel Landmines- Friend or Foe?* served to usher in a degree of authenticity to these statistical debates.¹²⁷ The ICRC commissioned this study to Brigadier Patrick Blagden, got it endorsed by a group of independent military experts acting in their personal capacities and suggested that only editorial support was provided by Peter Herby and Louise Doswald Beck the in-house ICRC experts on weapons. The ICRC further claimed that it undertook this study with the purpose of examining “the military case for the continued use of AP mines, and how this case compares with the success achieved by the use of these mines in practice.”¹²⁸ It concluded that these weapons claim approximately 2,000 victims a month and 900 of these monthly casualties result in death.¹²⁹

¹²⁶ Croll, *The History of Landmines*, 132

¹²⁷ *Anti-Personnel Landmines- Friend or Foe?* (ICRC: Geneva, 1996)

¹²⁸ *Anti-Personnel Landmines*, 12

¹²⁹ *Anti-Personnel Landmines*, 9, see footnote 3

These statistical figures along with the language of indiscriminate and blind weapons stemming from international humanitarian law acquired a rhetorical force in waging public campaigns to regulate and prohibit landmines. It gave force to the ICRC's position that,

“the limited military utility of AP mines is far outweighed by the appalling humanitarian consequences of their use in actual conflicts. On this basis their prohibition and elimination should be pursued as a matter of utmost urgency by governments and the entire international community.”¹³⁰

An entire chapter by Stuart Maslen, a former ICRC delegate, focusing on the role of the ICRC in this movement is available in an edited volume on the global movement to ban landmines and deserves special consideration.¹³¹ In the very first sentence, Maslen claims that, “This chapter traces the development of international humanitarian law governing weapons, particularly anti-personnel mines.”¹³² This opening

¹³⁰ *Anti-Personnel Landmines*, 73

¹³¹ Stuart Maslen, “The Role of the International Committee of the Red Cross,” in *To Walk Without Fear-The Global Movement to Ban Landmines*, ed. by Maxwell A. Cameron, et al, (Oxford, Toronto, New York: Oxford University Press, 1998), 80-98

¹³² Maslen, “The Role of the International Committee of the Red Cross,” 80

sentence itself is interesting in its attempt to categorize the efforts of the ICRC as belonging to the domain of IHL and implicitly not ACD. The second sentence claims that these efforts aim “to translate medical field of experience into international policy, and the successful adoption and signature, in 1997, of the Ottawa Treaty.”¹³³ In other words the medicalization practices of the ICRC have a significant role to play in the making of ACD agreements. Thus, the very introduction to this article underscores the importance of practices of legalization and medicalization in the ICRC efforts to address the problem of weapons. Both these practices are discussed at length in the next chapter. The deliberate strategy to represent these efforts as not constitutive of practices of ACD serves as a provocation to undertake this study.

In undertaking this study, one finds that the focus on the ICRC and other transnational civil society actors becomes even more acute in the field of arms control and disarmament as they address problems of several types of conventional weapons such as landmines, cluster munitions, small arms, and light weapons. This has led scholars to observe that, “The Mine Ban Treaty represents a significant change for the NGO role in arms

¹³³ Maslen, “The Role of the International Committee of the Red Cross”, 80

control negotiations.”¹³⁴ They suggest that attention be focused on “how NGOs will be incorporated into future international negotiations and policy making” and seek to draw on lessons from one campaign to wage other successful campaigns against particular weapons “especially those with a dubious military strategy or utility.”¹³⁵

Humanitarians and Weapons

In summarizing the lessons learned from these campaigns, activists and scholars emphasize the importance of keeping the focus “on the humanitarian aspects of the issue, not the arms control or security aspects.”¹³⁶ This is because the framework of humanitarianism enables multiple issue linkages such as human rights or development aid. Second, humanitarian appeals find greater resonance among a wide variety of audiences sufficient to influence public opinion. Third, it encourages “government officials dealing with development and aid issues to take the

¹³⁴ Kenneth R. Rutherford, “Nongovernmental Organizations and the Landmine Ban,” in *Landmines and Human Security-International Politics & War’s Hidden Legacy*, ed. By Richard A. Matthew et al, (New York: State University of New York, 2004), 61

¹³⁵ Rutherford, “Nongovernmental Organizations and the Landmine Ban,” 61

¹³⁶ Stephen Goose and Jody Williams, “The Campaign to Ban Antipersonnel Landmines: Potential Lessons,” in *Landmines and Human Security-International Politics & War’s Hidden Legacy*, ed. by Richard A. Matthew, et al, (New York: State University of New York, 2004), 242

lead in, or at least be part of, diplomatic delegations, rather than those with military or disarmament issues.”¹³⁷ Fourth, it encourages scholars and practitioners to explore possibilities of rethinking multilateral negotiations by considering “disarmament as humanitarian action” undertaken with the help of “new diplomacy.”¹³⁸ This new diplomacy promotes strategic and tactical cooperation among actors such as the ICRC, UN, NGOs and middle powers encompassing geographical diversity, able to operate “outside the UN system (when necessary), willing to forego consensus rules to generate and foster ‘moral norms driven by humanitarian concerns.’”¹³⁹ These practices of new multilateralism and new diplomacy find resonance in the ICRC’s practices of “humanitarian diplomacy” that entail promotion of knowledge, understanding and, when appropriate, the development of IHL by maintaining relations with a wide range of contacts, including States, non-state actors and international organizations.¹⁴⁰ Through dialogue, it explains its positions on issues of humanitarian concern and multiplies contacts to facilitate field operations and raise awareness of the needs of

¹³⁷ Goose and Williams, “The Campaign to Ban Antipersonnel Landmines,” 242

¹³⁸ John Borrie, “Rethinking Multilateral Negotiations: Disarmament as Humanitarian Action,” in *Alternative Approaches in Multilateral Decision Making-Disarmament as Humanitarian Action*, ed. by John Borrie and Martina Randin, Geneva: UNIDIR, 2005), 7-38; Goose and Williams, “The Campaign to Ban Antipersonnel Landmines: Potential Lessons,” p.246

¹³⁹ Stephen Goose and Jody Williams, “The Campaign to Ban Antipersonnel Landmines: Potential Lessons,” 246

¹⁴⁰ Cornelio Sommaruga, “Humanitarian Challenges on the Threshold of the Twenty-First Century,” *International Review of the Red Cross*, 36, 1996, 20-35

those affected by armed conflict and violence. It strives to defend and promote impartial, neutral and independent humanitarian action and to guard against the use of humanitarian activities for military or political ends.¹⁴¹

This growing ferment on representing the problem of weapons as a humanitarian problem has initiated interesting studies on the strategies pursued by humanitarian actors. The pursuit of different strategies by humanitarian actors has led scholars to order them into different categories. Michael Barnett has classified humanitarian actors as Dunantists and Wilsonians.¹⁴² Unlike the Wilsonians, the Dunantists enjoy a great degree of political cooperation and financial support from states. Thomas G. Weiss identifies four types of humanitarian actors: classicists, minimalists, maximalists and solidarists.¹⁴³ The humanitarian actors are placed in each of these categories "according to their degree of political involvement and their willingness to respect traditional principles."¹⁴⁴ The ICRC fits the bill of being a classicist and a Dunantist. The pursuit of different strategies by humanitarian NGOs especially with regard to

¹⁴¹ "Humanitarian Diplomacy and Communication," ICRC Website, accessed March 6, 2011 <http://www.icrc.org/eng/what-we-do/other-activities/humanitarian-diplomacy/index.jsp>.

¹⁴² Michael Barnett, "Humanitarianism Transformed," *Perspectives on Politics*, 3, no.4, (2005), 728

¹⁴³ Thomas G. Weiss, "Principles, Power and Politics," *Ethics and International Affairs*, 13 (1999), 1-23

¹⁴⁴ Weiss, "Principles, Power and Politics," 3

addressing the problem of arms trade has led Anna Stavrainakis to classify these actors as reformists and transformists.¹⁴⁵ The reformists as insiders “seek to mitigate the worst excesses of the arms trade through tighter governmental control and regulation.”¹⁴⁶ It is possible that their efforts might yield incremental results as the actor and its practices remain within the acceptable parameters established by governments. On the other hand, the transformists as outsiders seek “a radical overhaul of the arms trade as a system, as opposed to regulating away its worst excesses within the existing system.”¹⁴⁷ However, their ability to produce systemic change is minimalnaught as they do not wield much power or influence over the powerful actors.

Stavrianakis shrewdly observes the interplay between the reformists and transformists to suggest:

What is rarely taken into consideration is that outsider organizations are disadvantaged by the activity of insider organizations. Outsider groups may be rendered ineffective

¹⁴⁵ Anna Stavrianakis, *Taking Aim at the Arms Trade- NGOs, Global Civil Society and the World Military Order*, (London & New York: Zed Books, 2010), 9-10

¹⁴⁶ Stavrianakis, *Taking Aim at the Arms Trade*, 9-10

¹⁴⁷ Stavrianakis, *Taking Aim at the Arms Trade*, 9-10

above and beyond their own weakness. By seeming reasonable and constructive, the more mainstream agencies monopolize political space available for NGO activity.

This is not, however, just a question of strategy; it is also an issue of complementarity between NGO agendas... While NGO workers are conscious of the need for complementarity of approaches, with outsiders keeping up political pressure for insiders to make headway, what they rarely consider is that reformist visions can undermine transformist ones.¹⁴⁸

The problem with these practices of classification is that on the one hand they are labeled as champions of progressive liberal values and on the other critiqued as “propagators of hegemonic liberal ideas” unable to sustain a “transgressive vision.”¹⁴⁹ These practices of labeling are based on a list of arbitrary activities pursued or not pursued by particular humanitarian actors in a particular field. The problem with such typologies as discussed above is their lack of historicity and their binary frameworks which present either/or choices in which an actor is to be situated. These typologies do not leave enough room to explore the

¹⁴⁸ Stavriankais, *Taking Aim at the Arms Trade*, 84-85, 92

¹⁴⁹ Stavriankais, *Taking Aim at the Arms Trade*, 163

movement of an actor as an insider/outsider in a historical continuum in which it experiences and shapes its own autonomy and pursues particular strategies. It leads to an implicit assumption that an actor belongs to one category and remains static. These systems of classification themselves have a disciplinary effect in cataloguing actors and their practices.

Stavrianakis further suggests that, “the unexpected everyday agency of more radical individuals is not to be underestimated.”¹⁵⁰ In a further attempt to gauge the “emotional force” necessary to catapult disarmament issues as humanitarian issues the existing literature on these campaigns against particular conventional weapons is interspersed with accounts of victims and their testimonies.¹⁵¹ For example, the effect of listening to the testimonies of victims such as Ken Rutherford, a landmine victim is described “as among the most moving experiences of my Senate career” by Senator Patrick Leahy.¹⁵² The emotional effect of listening to this and other testimonies translates into the introduction of a legislation prohibiting the export of mines from the US to other countries. The fact that several of these NGOs claim to address the sufferings of the victims

¹⁵⁰ Stavrianakis, *Taking Aim at the Arms Trade*, 182

¹⁵¹ Stavrianakis, *Taking Aim at the Arms Trade*, 182

¹⁵² Foreword by Senator Patrick Leahy in *Landmines and Human Security-International Politics & War's Hidden Legacy*, ed. by Richard A. Matthew et al, (New York: State University of New York, 2004), xxi

by devoting themselves to the task of physical rehabilitation of victims has led to claims of expertise in this area. It is this gamut of experiences and expertise shared by a diverse group of actors represented under advocacy networks such as the ICBL, CMC or IANSA able to articulate their concerns in one voice that has empowered their efforts to wield authority in regulating and prohibiting weapons.

Two Alternative Frameworks

The emergence of several transnational advocacy networks in the field of arms control and disarmament has generated suggestions on two alternative frameworks to regulate and prohibit the use of weapons. A brief survey of both these approaches will show the possibilities and limitations of engaging with these approaches to address the problem of regulating and prohibiting weapons. John Borrie's suggestion of reframing practices of "disarmament as humanitarian action" constitutes one such alternative.¹⁵³ Borrie suggests that this will help change perceptions of self-interest, foster "enlightened self-interest" as the human costs incurred with the deployment and use of weapons is brought to the

¹⁵³ Borrie, "Disarmament as humanitarian action," 7-22

attention of authorities by civil society actors.¹⁵⁴ Borrie observes that, “It is no coincidence that the arms control processes which have made most progress over the last decade are ones in which those involved have been able to see challenges and responses in humanitarian terms.” In an effort to reframe “disarmament as humanitarian action”, Borrie is dismissive of the “academic literature” as it “does not seem to explain convincingly how the roles and influence of transnational civil society actors in the multilateral context can be explained, although they have clearly had an impact” and proceeds to argue that, “In all likelihood, specific ways to engineer further progress on disarmament and arms control related issues in the multilateral context will have to come from practitioners themselves, especially from diplomats.”¹⁵⁵

The other alternative put forth by scholars and practitioners is the “human security” approach in addressing the problem of arms control and disarmament.¹⁵⁶ The lack of a precise definition of human security is no longer considered to be an insurmountable problem and although “a

¹⁵⁴ John Borrie, “Tackling Disarmament Challenges,” in *Banning Landmines-Disarmament, Citizen Diplomacy, & Human Security*, ed. by Jody Williams et al, (Lanham, Maryland: Rowman & Littlefield Publishers, Inc, 2008), 275

¹⁵⁵ John Borrie, “What do we mean by “Thinking Outside the Box” in Multilateral Disarmament and Arms Control Negotiations?” in *Thinking Outside the Box in Multilateral Disarmament and Arms Control Negotiations*, ed by John Borrie and Vanessa Martin Randin, (Geneva: UNIDIR, 2006), 5

¹⁵⁶ Kanti Bajpai, ‘The Idea of Human Security,’ *International Studies*, 40, no.3, (2003), 195-228

myriad of human security definitions have emerged” over the decades, “there is no general agreement about what the term means in functional terms, let alone how it should be applied.”¹⁵⁷ There is a general understanding that the primary security referent within the discourse on human security is the individual. The state is important to the extent that it acts as an instrument responsible for the security of the individual. There is no clear consensus on the conditions of security under this new approach. Some would like to widen the security agenda and accord importance to problems of under-development and deprivation, while others seek to focus on “human costs of violent conflict.”¹⁵⁸ The latter on grounds of clarity and priority in policy making, accord primacy to threats from manmade physical violence which can occur due to problems of proliferation of weapons which cause violent death, disablement and dehumanization.¹⁵⁹

To reconcile these differences scholars have tried to classify these threats as direct and indirect sources of violence which have to be interpreted in terms of their context as they may be global in nature but may differ in

¹⁵⁷ Borrie, “Rethinking multilateral negotiations,” 8

¹⁵⁸ Barry Buzan, “Rethinking Security after the Cold War,” *Cooperation & Conflict*, 32, no.1,(1997),5-28; Amitav Acharya, ‘Human Security- East Versus West’, *International Journal*, 56, no.3, (2001), 442-460

¹⁵⁹ “Canada, Norway Change Their Ways- New Approach Bases Foreign Policy on Human Issues,” *Ottawa Citizen*, 28 May 1998, A18

their impact from country to country. The idea of human security encompasses proliferation of weapons, violent death, and disablement as conditions of direct violence but refrains from making any cause-effect linkages or according any primacy to the issue.¹⁶⁰ Nevertheless, it makes it possible to frame the issue of weapons, violent death, disablement and dehumanization from direct and indirect sources of violence. Thus, when humanitarian actors insist on the need to ban landmines, they frame the issue primarily in terms of the weapon's ability to disable and kill the victim and also in terms of the loss of economic livelihood.

Jody Williams acknowledges that, "the process of banning landmines helped fuel thinking on human security" but in considering the feasibility of developing a human security approach to practices of arms control and disarmament observes,

...it is curious that there was so little discussion about human security with the NGOs that have been instrumental in the ban movement. While the process of banning landmines helped fuel thinking on human security, human security was

¹⁶⁰ Bajpai, "The Idea of Human Security," 217-218

not explicitly part of discussions before or during the Ottawa Process itself—either between governments and NGOs or among NGOs themselves.¹⁶¹

This is because the civil society actors are too caught up in their fervor of achieving immediate campaign goals while the bureaucrats have a vested interest in consulting them only on specific issues. Williams is critical of the capacity of bureaucrats and civil society actors in developing a human security framework as “a viable multifaceted approach to security”. She observes that engagement between civil-society actors and the bureaucrats has been only ad-hoc and fragmented.¹⁶² It lacks strategic thinking and little effort has been devoted to develop the idea of human security as an alternative to existing “national security only” concept of global security.”¹⁶³

Thus, both these alternative models of conceiving “disarmament as humanitarian action” and the framework of “human security” to regulate

¹⁶¹ Jody Williams, “New Approaches in a Changing World: The Human Security Agenda,” in *Banning Landmines-Disarmament, Citizen Diplomacy, & Human Security*, ed. by Jody Williams et al, (Lanham, Maryland: Rowman & Littlefield Publishers, Inc, 2008), 291

¹⁶² Williams, “New Approaches in a Changing World,” 293

¹⁶³ Williams, “New Approaches in a Changing World,” 292

and prohibit weapons appear to be clarion calls urged by a sporadic and temporary change of currents in international politics. As such, they seem to generate abstract and humungous range of issues and approaches that are not situated in any concrete historical circumstances. Furthermore in suggesting these alternative frameworks, the emphasis is on treating them as “supplements” to the existing “national security approaches” in addressing the problems of arms control and disarmament.¹⁶⁴ To quote John Borrie:

They do not need to be viewed as exclusive alternatives to national security approaches in order to assist negotiating practitioners and can help build common ground in responding to collective challenges in security, especially as states are responsible for contributing to their citizens’ security in individual and communal terms, as well as from external threats posed by other states.¹⁶⁵

¹⁶⁴ Borrie, “Rethinking multilateral negotiations,” 8

¹⁶⁵ Borrie, “Rethinking multilateral negotiations,” 8; Borrie, “Disarmament as humanitarian action,” 13

Thus, these two approaches are not persuasive in engendering alternative frameworks in addressing the problem of arms control and disarmament. Their attempt is at best to act as supplements to the existing approaches with their emphasis on nation-states as the dominant actors in the field of arms control and disarmament. These approaches are not based on any sustained study of the history and practices of humanitarian actors in their effort to regulate and prohibit weapons. The ICRC has for more than a century sustained a humanitarian presence in the field of ACD with an avowed interest in addressing the problem of weapons. By focusing on the history and practices of this humanitarian actor in addressing the problem of weapons, this study will seek to provide an alternative framework for rethinking the problem of framing ACD.

Conclusion

In surveying the above literature on arms control and disarmament this study notes the following shortcomings. First, it finds that despite a century worth of effort, little attention has been paid to the contribution of the ICRC in the field of ACD. Only a few sentences, paragraphs or at the most one chapter are devoted to the ICRC's contribution in this field and this too has largely been the effort of those working within the

organization itself. Second, the contributions made by the ICRC in regulating and prohibiting particular weapons is often classified under practices of IHL and not ACD. Little effort has been made to explore the politics behind these practices of classification. In order to unravel the politics behind these practices of classification, acute attention has to be devoted to the language used by the humanitarian actor in its efforts to regulate and prohibit weapons. Third, there are serious limitations to undertaking this study with the help of a social constructivist approach. The existing literature on social constructivism demonstrates an interest in tracing the emergence of taboos concerning the use of particular weapons by reinforcing the state-centric practices of inclusion and exclusion. It marginalizes and categorizes particular humanitarian actors such as the ICRC, clubs humanitarian actors under a universal category of moral entrepreneurs and explicates their strategies in terms of generic models of networking to be adopted in terms of their effectiveness in shaping state behavior especially of the US. This simple categorization and marginalization does not encourage detailed explorations of the constitution of identities and practices pursued by particular humanitarian actors such as the ICRC in regulating and prohibiting weapons. Fourth, calls for focusing on human security and disarmament as humanitarian action suggest an expansionist agenda for security studies but are simple ad-hoc suggestions based on principles of substitution. They do not help

configure change in understanding of humanitarian actors and their practices of ACD. These approaches are restrictive in their understanding of humanitarian actors and their practices as supplements to the status-quo.

Given these limitations, this author finds the consciousness of the humanitarian impulses in the critical security studies literature most appealing. The insights from critical studies scholars arouse a consciousness within this scholar to historically situate the ICRC and its practices to regulate and prohibit particular weapons. In tracing the life-cycle of such practices, attention is paid to factors such as: historical contingency and productivity in the constitution of particular identities and interests; the asymmetries of power between the ICRC and other actors in their practices of ACD are noted; and effort is made to expose the human consequences of technologist renderings of weapons to demystify sites of ethico-political responsibility. In this endeavour, the language deployed by the ICRC to address the problem of weapons helps explicate particular strategies that facilitate an alternative, effects based, approach, to regulating and prohibiting weapons. It is this importance of languages and strategies deployed by the ICRC in its efforts to regulate and prohibit weapons that are expounded in the next chapter.

CHAPTER FOUR - THEORETICAL FRAMEWORK OF STUDY

Introduction

An intellectual framework suitable for studying the ICRC's approach to the problem of weapons is to be premised on a clear understanding of methodology. Methodological differences are the subject of intense debate among social constructivist and critical security studies scholars in International Relations espousing ontological and epistemological understanding of subjects and their practices.¹ A critical security studies approach asserts the importance of epistemology in understanding the constitution of subjects and their practices. It denounces an ontological approach that while paying lip service to intersubjectivity in the constitution of actors and their identities asserts the significance of the nation-state as a principal actor and consigns the identity of other actors and their practices to the periphery.² The focus on ontological

¹ Martin Hollis and Steve Smith, *Explanation and Understanding in International Relations*, (Oxford: Clarendon Press, 1990); Jim George and David Campbell, "Patterns of Dissent and the Celebration of Difference- Critical Social Theory and International Relations," *International Studies Quarterly*, 34, no.3, 1990, 269-293; Richard Price and Christian Reus-Smit, "Dangerous Liaisons? Critical International Theory and Social Constructivism," *European Journal of International Relations*, 4, no.3, 1998, 259-294

² Roxanne Lynn Doty, "Aporia: A Critical Exploration of the Agent-Structure Problematique in International Relations Theory," *European Journal of International Relations*, 3, no.3, 1997, 365-392

considerations does not encourage efforts to articulate the experiences of marginalized actors, permitting their voices to be heard only insofar as their practices can serve as supplements to the existing status-quo. A critical security studies approach further cautions against an interpretive approach to history that seeks to rationalize the past and the present through the use of process tracing techniques. The ethics of this approach is not restricted to the demands of configuring the constitution of universal networks and universal taboos to regulate the conduct of actors and their practices. It recognizes that any analysis premised on these methods is constrained in its scope by the demand to measure the effectiveness of these actors and their practices in socializing state behaviour.

A critical security studies approach, with its emphasis on epistemology, insists on the need to distance oneself from the above-mentioned methods of study. An appreciation of this distance is necessary to this study in several respects. First, to grasp the differences between an interpretive approach to history and a genealogy or a critical and effective history that interrogates the present. Second, to identify an episteme of concepts that arouse a consciousness of the language used by particular actors and the effects of its proliferation. Third, to develop an understanding of power that enables one to differentiate between universality of norms and

practices of normalization that questions homogenization. Fourth, to allow for contingencies and gaps between the pre-institutional moments and institutional moments that interrupt coherent accounts of institutionalized understandings of actors and their practices. Fifth, to realize the value of an ethics that does not seek to assert any universal standards or categories but encourages reflexivity on how particular actors can delimit, define and affirm their own responsibilities in a network of relations.

It is attentiveness to these methodological inputs described as genealogy or critical and effective history, episteme, normalization and ethics in the production of knowledge that is demonstrated in this chapter. This chapter expounds on these methodological inputs derived from the writings of Foucault, Mitchell Dean and William Connolly.³ It discusses these methodological insights at length in the remaining text and elucidates how they are deployed in understanding ICRC's engagement with the problem of weapons from the late nineteenth century to the present times.

This chapter then delineates a clear framework based on a triad of particular strategies described as practices of legalization, medicalization

³ Michel Foucault, *Discipline and Punish-The Birth of the Prison*, trans. by Allen Lane, (London & New York: Penguin Books, 1977); Mitchell Dean, *Critical and Effective Histories- Foucault's Methods and Historical Sociology*, (London & New York: Routledge, 1994); William E. Connolly, *The Terms of Political Discourses*, (New Jersey, Princeton: Princeton University Press, 1983)

and testimonialization that the ICRC's deploys in regulating and prohibiting the use of weapons. A description of these three practices in this chapter will help contextualize, signify and describe the arguments presented in the other chapters. Each succeeding chapter demonstrates how these three practices are deployed by the ICRC with varying degrees of success and failure in addressing the problem of particular weapons. An understanding of the interplay of these three practices provides insights into how the ICRC in specific historical circumstances has contributed to the field of arms control and disarmament by effectively making a case for an effects-based approach to regulating and prohibiting weapons.

Critical & Effective Histories

A study of an effects based approach to weapons is possible only if we first question the air of complacent inevitability that surrounds the ICRC's contemporary engagement with the problem of weapons such as landmines and cluster munitions. This act of questioning to uncover possibilities of a ritualistic exercise of power is to be undertaken by pursuing a genealogical approach towards the ICRC. This obviously raises the question, what is a genealogy? A genealogy is described as a "history of the present" or "critical and effective

histories.”⁴ A “critical and effective history” is to be understood as “a mode designed to expose the motives, institutional pressures, and human anxieties which coalesce to give these unities the appearance of rationality or necessity.”⁵ It is to help “bring out the constructed character of our most basic categories, aim at opening up new possibilities of reflection, evaluation and action.”⁶

This is possible if we grasp the differences between an interpretive approach to history and a genealogy. These differences are encapsulated in the following observation:

*genealogies represent a reversal of the project of interpretation. While interpretation seeks to bring out the rationale implicit in the practices...partly to allow us to come to grips more reflectively with the underlying priorities and standards in our own way of life, genealogy strives to distance us from the rationale implicit in past and present practices.*⁷

⁴ Foucault, *Discipline and Punish*, 30-31; Dean, *Critical and Effective Histories*, 1-4

⁵ Connolly, *The Terms of Political Discourses*, 232

⁶ Connolly, *Political Discourses*, 232

⁷ Connolly, *Political Discourses*, 232 (italics inserted)

An understanding of this difference is critical to this project as it distinguishes itself from existing histories of the ICRC that seek to rationalize its past and present. A genealogical approach allows us to enquire how an actor such as the ICRC and its humanitarian practices in the field of arms control and disarmament are “constructed and the forces which bind the constructions together.”⁸ It encourages one to question whether the constructions are to be “experienced as arbitrary impositions to be opposed, evaded and resisted.”⁹ In this endeavour genealogies permit us to explore and “appeal to the aspect of our experience which is contained, subjugated or excluded by these constructions.”¹⁰

To further delve into the marginalized and subjugated experiences of the ICRC in the field of arms control and disarmament, a genealogical approach requires “use of historical resources to *reflect upon the contingency, singularity, interconnections, and potentialities of the diverse trajectories* of those elements which compose present social arrangements and experience.”¹¹ This approach adopted towards the fragmented records that help construct a particular account

⁸ Connolly, *Political Discourses*, 232

⁹ Connolly, *Political Discourses*, 232

¹⁰ Connolly, *Political Discourses*, 232 (italics inserted)

¹¹ Dean, *Critical and Effective Histories*, 2, (italics inserted)

of the ICRC's history in addressing the problem of weapons can make "*intelligible the possibilities in the present* and so can yield to neither universalist concepts of rationality and subjectivity nor metanarratives of progress, reason, or emancipation.¹²

In other words, a genealogical approach to investigate the experiences of marginalized actors such as the ICRC in the field of ACD, rests on five considerations. Firstly, in order to write a critical and effective history an attitude of vigilance and skepticism must be adopted to interrogate that which is "held to be given, necessary, natural, or neutral."¹³ Secondly, an attempt should be made to grasp the singularity of events and processes. Thirdly, the approach to documents should not be a "reconstitution of the world of which the document seeks" or simply interpretive.¹⁴ Problematization of documents entails the organization of the document, division, distribution, arrangement, selection of relevant elements to order, define, and describe relations in a historical context. Fourthly, attention should be devoted to regularities in the formation of a discourse; embeddedness of that discourse in institutional practices and power relations; and the relation of such practices to ones concerning the self and forms of ethical conduct. Fifthly, it is not enough to describe the systems of

¹² Dean, *Critical and Effective Histories*, 2

¹³ Dean, *Critical and Effective Histories*, 20

¹⁴ Dean, *Critical and Effective Histories*, 15

formation of a discourse. There is need to ascertain effectiveness in terms of “how far a specific language can be used” to disturb existing narratives of progress and reconciliation by raising questions and generating openness to possibilities of change and transformation.¹⁵

It is attentiveness to the particularity of language deployed by the ICRC in addressing the problem of weapons that is central to this project. This alertness towards the ICRC’s language engendered through a dialogue with its own representatives is further reinforced by the consideration that language is not a “neutral medium” but is “an institutionalized structure of meanings that channels political thought and action in certain directions.”¹⁶ It recognizes that “to adopt without revision the concepts prevailing in a polity is to accept terms of discourse loaded in favour of established practices.”¹⁷ Thus to engage in a discourse on arms control and disarmament focusing on concepts such as sovereignty, national interest and national security makes it difficult to account for the practices of other actors in the field of arms control and disarmament except nation-states. While not discounting the relevance of these concepts it is pertinent to distinguish and differentiate the “political life of a community”

¹⁵ Dean, *Critical and Effective Histories*, 2

¹⁶ Connolly, *Political Discourses*, 2

¹⁷ Connolly, *Political Discourses*, 232

represented by the ICRC in addressing the problem of weapons.¹⁸ To this end, one must be willing to, “understand the conceptual system within which that life moves.”¹⁹ As such it is important to deliberate on the “vocabulary commonly employed” by the ICRC to regulate and prohibit weapons.²⁰ The vocabulary used by the ICRC carries “meanings” that “set the frame for political reflection” and sanctions “a range of judgments and commitments embodied in it.”²¹

In investigating this humanitarian discourse a deliberate effort is further made to identify the particular episteme of concepts and strategies of power deployed by the ICRC to constitute a universal humanitarian discourse in the field of arms control and disarmament. An episteme is “a system of concepts that defines knowledge for a given intellectual era.”²² The concepts that are central to the ICRC’s discourse on weapons are “witness” with a testimony, the use of violence under the pretext of “military necessity” and the outcry against “unnecessary suffering.” This study traces the meaning and significance of each of these concepts as they are reiterated and effectively deployed by the ICRC repeatedly to regulate and prohibit chemical, nuclear and conventional weapons.

¹⁸ Connolly, *Political Discourses*, 39-40

¹⁹ Connolly, *Political Discourses*, 39-40

²⁰ Connolly, *Political Discourses*, 2

²¹ Connolly, *Political Discourses*, 2

²² Gary Gutting, “Introduction-Michel Foucault: A User’s Manual,” in Gary Gutting, ed., *The Cambridge Companion to Foucault*, (Cambridge: Cambridge University Press, 2005) 9

These clusters of concepts constitute an episteme that condition possible understandings of humanitarian practices of arms control and disarmament.

The meaning and deployment of particular concepts or a cluster of concepts by the ICRC, is subject to contestation by other actors. The political significance of these contestations can be gained by situating these concepts in specific historical circumstances to gain "some sense of the historical development of the concept and the function it plays."²³ This is possible if we recognize that the humanitarian actor partaking of these concepts "play(s) an active role in refining, adjusting, modifying the concepts and practices that make up the game in the very process of interpreting those arrangements."²⁴ These modifications are demonstrated in the following chapters as they study for instance the efforts of the ICRC to transform the laws of war into international humanitarian law.

The contestation of meanings associated with particular concepts among actors is based on a recognition that "changes in those concepts, once accepted by a significant number of participants, contributes to changes in political life itself. It follows further that proposals for revision in some dimensions of our concepts

²³ Connolly, *Political Discourses*, 183-184

²⁴ Connolly, *Political Discourses*, 183-184

carry similar import for political practice.”²⁵ The ICRC recognizes that the, “cumulative weight of such debates and judgments over a period of years can have a massive effect on the very structure of the game.”²⁶ This is best demonstrated in claims to reinforce customary international humanitarian law to regulate and prohibit the use of particular weapons and the efforts to help ascertain the meaning of military necessity vis-à-vis unnecessary suffering and their application to regulate and prohibit particular weapons. However, the tenuous link between conceptual revision and political change is to be tempered by the consideration that “conceptual revision is not, then, a sufficient condition of political change, but it is indispensable to significant political change.”²⁷ The conceptual revisions generate the possibility of reconstituting “standards of responsibility” that participants in politics and even those humanitarians who claim to be apolitical are expected to meet.²⁸

The standards of responsibility in practices of arms control and disarmament are determined by calculating how considerations of humanity are to be balanced vis-à-vis considerations of military necessity. This results in an exercise of power that operates in a “network of relations, constantly in tension, in

²⁵ Connolly, *Political Discourses*, 180

²⁶ Connolly, *Political Discourses*, 183-184

²⁷ Connolly, *Political Discourses*, 194-203

²⁸ Connolly, *Political Discourses*, 194-203

activity.”²⁹ This “technology of power” deployed by military and humanitarian “experts” is used to calculate how principles of humanity such as proportionality, discrimination, unnecessary suffering can be measured vis-à-vis considerations of military necessity.³⁰ This exercise of power to render war humane, described as “man-measure” by Foucault represents, “an inability to find a rational foundation for a “penal arithmetic” and establishes a “dubious relation” as no definite meaning is given to the principle of humanity but which is nevertheless regarded as “insuperable.”³¹ It is thus possible to conceive of “humanity” as another guise for economic rationality that seeks to regulate the effects of power through “meticulous calculations”, “hardness of heart”, “ferocity induced by familiarity” or “ill-founded feelings of pity and indulgence.”³²

It is in this network of relations that the “strategic position” of the ICRC, and its practices have to be understood in terms of “dispositions, maneuvers, tactics, techniques, functionings” that, “define innumerable points of confrontation, focuses of instability, each of which has its own risks of conflict, of struggles,

²⁹ Foucault, *Discipline and Punish*, 26-27

³⁰ Foucault, *Discipline and Punish*, 30

³¹ Foucault, *Discipline and Punish*, 74, 91

³² Foucault, *Discipline and Punish*, 91-92

and of at least temporary inversion of power relations.”³³ The power exercised is productive as it produces knowledge on the use of weapons and their effects on the victims that is itself “an instrument and vector of power.”³⁴ Furthermore, to regulate the effects of power, “law must appear to be a necessity of things” and the disciplinary practices of codification “partitions as closely as possible time, space, movement” to yield functional sites such as the ICRC with a mandate under the Geneva Conventions to meet the exigencies of war.³⁵ Foucault observes, “out of discipline, a medically useful space was born” such as Red Cross hospitals that address the medical needs of the victims in armed conflicts and collect data on their suffering.³⁶

The production of functional sites “is modeled through the *circulation of representations* rather than through the casual sequencing of actions.”³⁷ An understanding of the circulation of the representations in the textual life of the ICRC is possible if we allow for,

³³ Foucault, *Discipline and Punish*, 26-27

³⁴ Foucault, *Discipline and Punish*, 27-31

³⁵ Foucault, *Discipline and Punish*, 105-106, 136-137

³⁶ Foucault, *Discipline and Punish*, 145

³⁷ James Dawes, *The Language of War-Literature and Culture in the US from the Civil War through World War II*, (Cambridge: MA, Harvard University Press, 2002), 166, (italics inserted)

a *break* between a preinstitutional and an institutionalized moment that interrupts and sometimes changes an existing pattern of historical interaction; follow a progressive *movement* across that break to register an image of systemic integration and comprehensiveness; and encapsulate practices of *repetition* and exclusion that sustain and transform the momentum of that movement into the institution.³⁸

The exercise of disciplinary power is therefore “no longer simply an art of distributing bodies, of extracting time from them and accumulating it, but of composing forces in order to obtain an efficient machine.”³⁹ This efficiency is possible through practices of standardization that help constitute the “normal.”⁴⁰

As an instrument of power,

Normalization imposes homogeneity; but it individualizes by making it possible to measure gaps, to determine levels, to fix specialties and to render the differences useful by fitting them one to another. It is easy to understand how the power of the

³⁸ David Kennedy, “The Move to Institutions,” *Cardozo Law Review*, 8, no.841, (1986-87), 841-988, (italics inserted)

³⁹ Foucault, *Discipline and Punish*, 164

⁴⁰ Foucault, *Discipline and Punish*, 182-183

norm functions within a system of formal equality, since within homogeneity that is the rule, the norm introduces, as a useful imperative and as a result of measurement, all the shading of individual differences.⁴¹

Foucault expounds on the concept of normalization through an investigation of practices of surveillance, displays, documentations and elicitations. In this study, the practices of “normalization” are to be understood principally as three distinct practices of standardization or strategies of “legalization”, “medicalization” and “testimonialization” deployed by the ICRC and other actors in the field of ACD. Each of these practices is discussed at length in the subsequent section. The significance of the practices of legalization, medicalization and testimonialization and their effects can be further understood by recognizing that these are practices of power that are embedded and distributed throughout complex social networks.

The configuration and reconfiguration of these practices of normalization can also demonstrate how practices of humanitarianism and arms control and disarmament intersect with each other to “display structural differences they

⁴¹ Foucault, *Discipline and Punish*, 183

embody, and to some extent to document the parallels between contemporary shifts in several discursive formations.”⁴² Attentiveness to these practices will help demonstrate how power circulates through practices, rituals and generates possibilities of constituting heterogeneous alignments between the ICRC and other actors in the field of arms control and disarmament. A study of these formal and informal alignments suggest that, “the present actions of a dominant agent count on the future actions of the aligned agents being similar to their past actions. But this faith in a future whose path can be charted entails that the dominant agent not act in a way that challenges the allegiance of his aligned agents, for only through their actions can that future be made actual.”⁴³ It is also possible to argue that, “the actions of the peripheral agents in these networks are often what establish or enforce the connections between what a dominant agent does and the fulfillment or frustration of a subordinate agent’s desires.”⁴⁴ Both these insights are helpful in understanding the considerations that frame ICRC’s interventions as a peripheral actor vis-à-vis nation-states as dominant actors in the field of ACD. The nation-states recognize the responsibility of the ICRC as a humanitarian actor to provide relief to victims of war as inscribed in international laws of war but it is possible that when the ICRC is increasingly frustrated in meeting this responsibility due to the growing

⁴² Joseph Rouse, “Power/Knowledge” in *The Cambridge Companion to Foucault*, ed. by Gary Gutting, (Cambridge: Cambridge University Press, 2005), 16

⁴³ Rouse, “Power/Knowledge” 110

⁴⁴ Rouse, “Power/Knowledge” 110

lethality of weapons used by nation-states that it will try to make interventions to regulate and prohibit the use of weapons.

The re-enactment and reproduction of these power relationships can be effectively resisted if it is possible to explicate the strategies and tactics adopted by these actors. It is this knowledge that has to be grounded not in the form of codes of conduct but as an ethical obligation to reflect on contingent historical circumstances that gave rise to these actors; the practices of normalization adopted by these actors to facilitate inclusion and exclusion of others; and the opportunities for transgressions that these actors encounter when faced with limits.⁴⁵ It is these encounters in concrete historical circumstances that demand creativity to strengthen human solidarity in order to transcend claims of necessity. This ethics is to be understood,

as a process in which the individual delimits that part of himself that will form the object of his moral practice, defines his position relative to the precept he will follow, and decides on a certain mode

⁴⁵ James W. Bernauer & Michael Mahon, "Michel Foucault's Ethical Imagination" in *The Cambridge Companion to Foucault*, ed. by Gary Gutting, (Cambridge: Cambridge University Press, 2005), 151

of being that will serve as his moral goal. And this requires him to act upon himself, to monitor, test, improve, and transform himself.⁴⁶

It is this understanding of ethics articulated by Foucault that guides this study with its focus on the ICRC and humanitarian practices of legalization, medicalization and testimonialization to address the problem of weapons. These three strategies triangulate the space within which the ICRC delimits, defines and affirms its own responsibility towards regulating and prohibiting weapons. It is therefore necessary to focus at length on the possibilities and limits of each of these intersecting strategies that constitute an integral component of an effects based approach to weapons.

Practices of Legalization

The interface between law and violence is encapsulated by the expression “legalization.” An understanding of the practices of legalization will facilitate comprehension of the arguments presented in the succeeding chapters on the ICRC’s efforts to address the problem of weapons by asserting the need to

⁴⁶ Bernauer and Mahon, “Michel Foucault’s Ethical Imagination” 151

develop and reinforce the authority of international humanitarian law. The practices of legalization understood with the help of writers such as James Dawes and David Kennedy, a key exponent of critical legal studies and its implications in the field of humanitarianism, will enable reflection on the efficacy of practices of legalization in regulating and prohibiting the use of particular weapons.

Dawes in expounding his ideas on the “language of war” suggests that, “the laws of war are derived from the notion that language, deployed in a particular fashion, can be made equivalent to force—or, rather, can so effectively inhibit the reflex toward violence that disputes can be resolved.”⁴⁷ How is this language of the laws of war deployed and to what effect is examined by Dawes especially in the context of the Hague Laws and the Geneva Conventions. The effectiveness of these laws of war to resist violence is calculated in several ways. First, these laws of war are negotiated and they establish “universally accepted standards and vocabularies” that can be deployed as critiques against those responsible for violating them.⁴⁸ Second, these laws of war are “imbricated” in communal interaction through “a structure of repetition and a

⁴⁷ Dawes, *The Language of War*, 207

⁴⁸ Dawes, *The Language of War*, 207

style of comprehensiveness and referential clarity.”⁴⁹ The process of rhetorical repetition and dissemination serves as a “morally coercive discourse” to disrupt the flow of violence.⁵⁰ Third, the laws of war confer special status to visible symbols such as the Red Cross and constitute categories of persons, actions and objects that encourage a sense of discrimination and control in the chaos of war. Fourth, these laws of war are voluntary agreements among states and as such are binding and oblige them to conduct themselves in a particular manner. These considerations become acutely notable in the succeeding chapter as they explore how Gustave Moynier and Max Huber, legal professionals by training, preside over the ICRC and are confronted with the problem of general disarmament and the use of chemical weapons in wars respectively. They help us to appreciate the importance of international humanitarian law in regulating and prohibiting the use of particular weapons.

But Dawes cautions that the above possibilities and experiences should be tempered with an understanding that:

⁴⁹ Dawes, *The Language of War*, 207

⁵⁰ Dawes, *The Language of War*, 207

The conventions are a *porous discourse*: they set boundaries to the play and ‘motion’ of meaning but, at the same time, avoid consolidating an impermeable epistemic power. That is, they remain adaptive to context and susceptible to change both in their application (by creating a communicative structure within and between belligerent parties where alternative interpretations can be tested) and in their development (by establishing a tradition of revisability that is based upon a consensus-oriented dialogue between nations) - but they do so within a practice of referential fixity.⁵¹

David Kennedy observes that this “professional vocabulary” of international humanitarian law, with its shared assumptions, routine terms used to propose, defend, criticize, demarcate arguments and make specific commitments is similarly “porous.”⁵² In other words, the boundaries between arguments negotiated with the help of this vocabulary of professional expertise are grounded in “expressing deeper or larger commitments-to humanitarian values, to victory, to one or another political objective.”⁵³ In presenting their arguments

⁵¹ Dawes, *The Language of War*, 210 (italics inserted)

⁵² David Kennedy, *The Dark Sides of Virtue- Reassessing International Humanitarianism*, (Princeton & Oxford: Princeton University Press, 2004), 125

⁵³ Kennedy, *The Dark Sides of Virtue*, 266-267

both military professionals and humanitarians make no claims to absolute mayhem or absolute pacifism respectively but are interested in calculating a relatively acceptable position on regulating and prohibiting particular weapons.⁵⁴ However, despite these efforts, humanitarian and military professionals experience, “ambivalence about how precisely to apply the new vocabulary to particular situations.”⁵⁵ It is this experience of ambivalence generated through the porosity of the language of international humanitarian law that is demonstrated most explicitly in the ICRC’s efforts to address the problem of nuclear weapons.

This argument is further supplemented by Kennedy’s observation, particularly on the ICRC, to the effect that, “from the start, the law in war, like the International Committee of the Red Cross with which it is prominently associated, has prided itself on its pragmatic relationship with military professionals.”⁵⁶ This observation leads to the suggestion that insofar as international laws of war are concerned, it is “common to associate the entire legal universe with the International Committee of the Red Cross.” As Kennedy studies the professional histories and specialized vernaculars of the military and humanitarian professionals, he concludes that the ICRC as a humanitarian actor

⁵⁴ Kennedy, *The Dark Sides of Virtue*, 267

⁵⁵ Kennedy, *The Dark Sides of Virtue*, 271

⁵⁶ David Kennedy, *Of Law and War*, (Princeton: Princeton University Press, 2006), 84

is deeply embedded in the twentieth century practices of “lawfare.”⁵⁷ Lawfare is a term used to refer to “waging of war by law” to restrict the use and violence of military force. In other words,

Lawfare - managing law and war together - requires a strategic assessment about the solidity of the boundary between war and peace all the time, insisting on the absolute privilege to kill or the inviolability of those outside combat when it seems more advantageous than an assessment of proportionality and vice versa.⁵⁸

These practices of lawfare configure law as a tool for communicative action, a vocabulary for judgment and a symbol of legitimacy. The effects of these practices are that they shape our ethical sensibilities on conduct in war or *jus in bello*. The principles of proportionality, distinction and necessity in the laws of war are subject to discretion rather than limitation in the use of violence. These

⁵⁷ Kennedy, *Of Law and War*, 12

⁵⁸ Kennedy, *Of Law and War*, 125

principles embody the idea of “recognizing the inevitable” and the need to provide a “vocabulary to limit” the flow of violence.⁵⁹

This has been possible because humanitarian actors, such as the ICRC, and their practices are grounded in a logic of pragmatic intentions, pragmatic consequences and a fluctuating desire to move beyond pragmatism. The language of pragmatism attunes humanitarian actors to the policy making process at the international level. The ICRC believes that it is “more realistic simply to accept that war would occur, and work to blunt its impact through rules painstakingly wrung from the military itself.”⁶⁰ In this policy making process, the expert vocabulary of international humanitarian law serves as a shared vocabulary amongst humanitarians, military and political professionals that enables these actors to foster a “strategic relationship” between law and politics.⁶¹ This shared vocabulary does not preclude differences in interpretation or meaning in particular contexts but subjects them to a constant process of negotiation and renegotiation. It is this process of “disputation” and “legitimacy” that reinforces the shared vocabulary of expertise.⁶² It provides humanitarian actors, “access, clarity and power” necessary to “participate in

⁵⁹ Kennedy, *The Dark Sides of Virtue*, 269

⁶⁰ Kennedy, *The Dark Sides of Virtue*, 257

⁶¹ Kennedy, *The Dark Sides of Virtue*, 237

⁶² Kennedy, *The Dark Sides of Virtue*, 266-267, 274

making policy” instead of standing “outside” as a mere observer with some ethical commitments.⁶³ Furthermore, the participation of humanitarian actors in policy-making processes is often conceived and represented by these actors as temporary, exceptional, and technical intervention restricted to advisory, interpretive and implementation capacities.⁶⁴ For example, as this study will show in the succeeding chapters, particularly chapter four on chemical weapons, how the ICRC’s interventions, to regulate and prohibit the use of these weapons was often represented by the actor itself as being only “technical” and “exceptional.”⁶⁵ The chapter further explores this “common idea” that ICRC’s “intervention is a periodic and exceptional activity” to the effect that it “encourages neglect of the policy maker’s baseline engagement in the status-quo ante and discourages careful assessment of the costs and benefits of doing nothing.”⁶⁶

It becomes increasingly difficult to differentiate between humanitarian language used to evaluate and protest against particular acts of violence and humanitarian language as an ideological tool for statecraft. This problem is complicated because,

⁶³ Kennedy, *The Dark Sides of Virtue*, 268

⁶⁴ Kennedy, *The Dark Sides of Virtue*, 115

⁶⁵ Kennedy, *The Dark Sides of Virtue*, 115

⁶⁶ Kennedy, *The Dark Sides of Virtue*, 115

In order to preserve their public neutrality and maintain the confidence of national military leaders the ICRC has traditionally reported only to governments, and only on the basis of confidentiality. It has been more comfortable monitoring compliance with precise rules rather than broad standards. It has thought itself unique in recognizing the need for partnership with the military, for tempering humanitarian commitments for application to the real world of statecraft.⁶⁷

Moreover, Kennedy observes that, “despite their rather different professional cultures, military lawyers and lawyers from the Red Cross are often able to find common ground with surprising ease. They attend the same conferences and speak the same language, though they may differ on this or that interpretation or detail.”⁶⁸

⁶⁷ Kennedy, *The Dark Sides of Virtue*, 260-261

⁶⁸ Kennedy, *Of Law and War*, 84

Therefore, it is sometimes difficult to respond to the question of “who is talking?”⁶⁹ To address this question, the succeeding text is attentive to the “constant internal debate” within the ICRC on whether or not to address the problem of weapons and how to engage with this problem.⁷⁰ In this internal debate several considerations come into play, such as:

Build our legitimacy or spend it? Interpret humanitarian standards broadly or narrowly? Gains now or gains for the longer term humanitarian campaign? The metric is the expected reaction of the various publics—will a strict interpretation alienate statesmen and military planners? Will it please our humanitarian constituency?⁷¹

In an attempt to restore their legitimacy in the public eye, humanitarian professionals might resort to tactics such as an ethical tone of judgment, advocacy and sometimes refrain from participating in such conversations.⁷² This is possible because both humanitarian and military professionals, engaged in these practices of lawfare, insist on retaining “the option to an exception.” This enables these professionals to strategically engage in acts of denunciation to

⁶⁹ Kennedy, *The Dark Sides of Virtue*, 282

⁷⁰ Kennedy, *The Dark Sides of Virtue*, 279-280

⁷¹ Kennedy, *The Dark Sides of Virtue*, 279-280

⁷² Kennedy, *The Dark Sides of Virtue*, 281

express moral outrage or make nuanced instrumental calculations to demarcate special spaces for their operations. In other words, “to speak as a humanitarian means to use a common vocabulary in a particular way—blending principle and strategy while defaulting toward principle and adopting a posture outside power.”⁷³

The significance of these practices of legalization can be further gauged from their effects on the humanitarian actor itself and its practices to regulate and prohibit weapons. These effects are listed as the following: first, is the possibility that humanitarians will “defer reckoning with hard consequences until some future date when our favourite institutions have been built and our practices will have become routine.”⁷⁴ It was precisely this deferment as articulated in the next chapter that led humanitarian actors to focus so emphatically on the need to develop an institutional framework of international humanitarian law before addressing the problem of ACD. Second, the focus on “compiling documents than developing solutions” and the canonical insistence on “procedures” can transform them into “rituals” to substitute for effective ethical action.⁷⁵ It is precisely to these dangers of compiling documents and ritualistic procedures that the chapters on chemical and nuclear weapons

⁷³ Kennedy, *The Dark Sides of Virtue*, 338

⁷⁴ Kennedy, *The Dark Sides of Virtue*, xxiii-xxiv

⁷⁵ Kennedy, *The Dark Sides of Virtue*, xx-xxi

highlight. Third, is the danger in this process humanitarians can get obsessed with “rule following”, the rules formulated “may well criticize too little” and “legitimate” rather than “contain force?”⁷⁶ Fourth, is the tendency among humanitarian actors to deny their own power and responsibility for outcomes? This denial stems from the tension that a humanitarian actor experiences “between his pragmatic consciousness and his principled utterance.”⁷⁷ This tension is generated by a humanitarian actor’s awareness that too much emphasis on pragmatism might undermine ethical legitimacy and that resistance to pragmatic calculations stands to undermine the actor’s practical legitimacy. Fifth, is the risk that the suffering victim “can be lost in the shuffle or be created in the image of the grievance we understand” with the help of the expert vocabulary.⁷⁸ Sixth, these practices of legalization seem to suggest that, “one can never get enough of international law-but that one always already has an excess of politics.”⁷⁹ Kennedy argues that, “humanitarians should be concerned about precisely the reverse problem.”⁸⁰ Seventh, fragments of “humanitarian law” vernacular proliferate from “the narrow group of experts associated with the International Committee of the Red Cross to politicians, to media commentators, human rights activists and military strategists.”⁸¹ Eighth, these

⁷⁶ Kennedy, *Of Law and War*, 85-86

⁷⁷ Kennedy, *The Dark Sides of Virtue*, 313

⁷⁸ Kennedy, *The Dark Sides of Virtue*, xxiii

⁷⁹ Kennedy, *The Dark Sides of Virtue*, 141

⁸⁰ Kennedy, *The Dark Sides of Virtue*, 141

⁸¹ Kennedy, *The Dark Sides of Virtue*, 236-237

practices of legalization reinforce the authority of humanitarian and military professionals, generate an “upward spiral” that establishes international humanitarian law as a “dominant vocabulary” for decision-making on regulation and prohibition of weapons.⁸² This makes it “difficult to imagine how else one would talk about the use of force” if not in a language of discrimination, proportionality and necessity.⁸³ It was precisely these problems with regard to proliferation of the expert vernacular on humanitarian law and excess of law that are demonstrated and addressed in the succeeding text especially in the chapter on conventional weapons.

In order to be able to address the dangers generated by the professional vocabulary of international humanitarian law and its porousness, it is pertinent to ask: “[a]re the conventions tools to minimize violence or weapons to justify it? Is there, finally, any way to tell the difference?”⁸⁴ Dawes provides a nuanced response to these questions by suggesting that the treatment of these laws of war is what renders them finally effective or ineffective in disciplining violence or emancipating from violence. This is so because if these laws of war are treated “as real in the overlapping consensus of a non-exclusionary intersubjective discourse, they become real: real without coercion, and with the key feature of

⁸² Kennedy, *The Dark Sides of Virtue*, 276-277

⁸³ Kennedy, *The Dark Sides of Virtue*, 294

⁸⁴ Dawes, *The Language of War*, 215

susceptibility to argument.”⁸⁵ But Kennedy’s response is a little different. Kennedy urges us to recognize that, “Humanitarianism has become an increasingly dominant vocabulary for thinking about military strategy and tactics” and that “numerous global policy initiatives have sprung from numerous humanitarian motives, often with compelling results in such area as arms control.”⁸⁶ To this end, he insists that humanitarian actors themselves must show a willingness to come to grips with the politics of their own vernacular. They must display a greater degree of consciousness towards their own experience of responsibility and power, instead of simply substituting it with instrumental reason and pragmatism.⁸⁷ It is both these possibilities suggested by Dawes and Kennedy that are explored in this study.

The succeeding chapters deliberate on these practices of legalization at length. The initial two chapters explicate the *raison d’être* for the ICRC’s initial interest and approach towards practices of legalization but it is only in addressing the problem of nuclear and conventional weapons that the possibilities and limitations of the practices of legalization and their effects become more explicit. The possibilities and limitations of the practices of legalization need to be clearly grasped as discussed here in order to comprehend

⁸⁵ Dawes, *The Language of War*, 218

⁸⁶ Kennedy, *The Dark Sides of Virtue*, xxv, 111

⁸⁷ Kennedy, *The Dark Sides of Virtue*, 125, 347-357

the context and the arguments presented in the succeeding chapters on the ICRC's efforts to regulate and prohibit weapons. It is only this comprehension that can help us grasp the problem of how the fabric of legal norms can deflect attention from ethical and political concerns. These legal norms can successfully focus global attention, "on this or that excess, while armoring the most heinous human suffering in legal privilege redefining terrible injury as collateral damage, self-defense, proportionality, or necessity."⁸⁸ It is this concern about the dubious effect of practices of legalization in numbing recollection of, "the horrors of warfare, the dead and mangled bodies, the lives and families ripped apart, the intense anxiety and suffering on and off the battlefield, the pain felt by a single wounded child" that take us a step further in grasping the complementary practices of medicalization pursued by the ICRC in addressing the problem of weapons.⁸⁹

Practices of Medicalization

The concept of human suffering is integral to the ICRC's practices of medicalization.⁹⁰ The ICRC, as a humanitarian organization, is committed to

⁸⁸ Kennedy, *Of Law and War*, 167

⁸⁹ Kennedy, *The Dark Sides of Virtue*, 322

⁹⁰ The concept of medicalization is borrowed from Kali Tal, *Worlds of Hurt-Reading the Literatures of Trauma*, (Cambridge: Cambridge University Press, 1996), 6

providing medical relief to the victims of war. It is the practice of transforming the suffering endured by the victims of war due to injuries and wounds inflicted by particular weapons into a medical problem that is described as practices of medicalization in this study. Kali Tal defines practices of medicalization as strategies of “cultural coping” that “focuses our gaze upon the victims of trauma, positing that they suffer from an ‘illness’ that can be ‘cured’ within existing or slightly modified structures of institutionalized medicine and psychiatry.”⁹¹ The practices of medicalization capture the trauma of suffering endured by the victims of weapons of war through practices of classification and codification privileging some form of suffering over others. The practices of medicalization undertaken by the ICRC has at times received an uncritical applause by scholars such as Martha Finnemore and on the other hand been a subject of severe critique by other actors claiming that it strives to humanize war and its efforts render suffering more acceptable and inevitable. Both these arguments receive considerable attention in the other chapters especially in the next chapter focusing on the arguments of the pacifists vis-à-vis the humanitarians.

Martha Finnemore in her study on norms and war provides a snapshot of the ICRC’s history to argue that states agreed to provide humanitarian aid to the

⁹¹ Tal, *Worlds of Hurt*, 6

wounded on the battlefield with the help of the ICRC, not because of instrumental calculations, but based on considerations of mutual reciprocity or military efficiency.⁹² Finnemore argues that it was discussions based on “duties, responsibility, and identity” that produced the first Geneva Convention.⁹³ To substantiate this claim, Finnemore suggests that the ICRC from its very inception as a humanitarian organization has tried to “protect individuals from suffering caused by state violence.”⁹⁴ This has been possible with the establishment of national Red Cross societies and “international treaty guarantees” to “ensure humane standards of treatment and neutrality status for noncombatants, particularly medical personnel, the wounded, and civilians.”⁹⁵ She notes how developments in weapons technology kept pace with developments in medical technology to change the relationship between the wounded, military hospitals and the army but does not make any further critical investigation of these practices and their effects. Finnemore declares that,

The humanitarian claims of the ICRC are of special significance because they have focused on the aspect of state power most central to the essence of sovereignty itself—the state use of violence. It is

⁹² Martha Finnemore, *National Interests in International Society*, (Ithaca & London: Cornell University Press, 1996), 69-88 (italics inserted)

⁹³ Finnemore, *National Interests in International Society*, 87

⁹⁴ Finnemore, *National Interests in International Society*, 70

⁹⁵ Finnemore, *National Interests in International Society*, 70

precisely the control over the *use of arms* that states guard most jealously. In the classic Weberian definition, the defining element of the state is its monopoly on the legitimate use of force within a given territory. ICRC claims for the protection of individuals from the effects of state violence are claims that the exercise of that essential monopoly must be limited. Claims that states must restrain their use of violence in wartime should be particularly difficult for humanitarians to establish.⁹⁶

On the other hand, Craig Calhoun's account of a shift from value rationality to instrumental rationality in humanitarian discourse is helpful to grasp critiques of the ICRC's practices of medicalization.⁹⁷ Calhoun argues that value rationality is inspired by a sense of obligation towards the less fortunate and often the selected course of action was self-righteous and self-serving it was "never simply reducible to self-interest."⁹⁸ On the other hand, instrumental rationality is inspired and strives for efficiency, universality and effectiveness. For Calhoun, this shift demonstrates Foucault's argument that, "humanitarian reform brought with it new forms of managerial orientation and governmentality

⁹⁶ Finnemore, *National Interests in International Society*, 72 (italics inserted)

⁹⁷ Craig Calhoun, "The Imperative to Reduce Suffering- Charity, Progress, and Emergencies in the Field of Humanitarian Action," in *Humanitarianism in Question- Politics, Power, Ethics*, ed. by Michael Barnett and Thomas G. Weiss, (Ithaca and London: Cornell University Press, 2008), 73-97

⁹⁸ Calhoun, "The Imperative to Reduce Suffering," 77

in which a variety of agencies took on the challenge of producing order.”⁹⁹ This shift occurred in the late nineteenth century, when wars with their increasing violence and destructiveness generated feelings of shame and guilt that encouraged a rational “reliance on institutional mechanisms to ensure predictable behaviour” to ameliorate suffering.¹⁰⁰ This paved the way for a process that led to the founding of the ICRC and the Geneva and Hague Conventions. At the same time, efforts of humanitarian actors to mitigate suffering are connected to states and remain “centrally a state project” given the overwhelming dependence of humanitarian organizations on states for funding and negotiating access to victims.¹⁰¹ Under these circumstances, the question remains whether the shift towards instrumental rationality can regard the urgency of saving lives in humanitarian action as self-justifying or demand that it be calibrated “alongside action that can change the conditions that produce conflicts, and atrocities in conflicts.”¹⁰²

To further investigate ICRC’s claims that use of arms must be restrained in order to protect individuals, it is helpful to consider Cynthia Halpern’s question,

⁹⁹ Calhoun, “The Imperative to Reduce Suffering,” 77

¹⁰⁰ Calhoun, “The Imperative to Reduce Suffering,” 73

¹⁰¹ Calhoun, “The Imperative to Reduce Suffering,” 89

¹⁰² Calhoun, “The Imperative to Reduce Suffering,” 73-97

“Why is suffering political?”¹⁰³ In response to this question, Halpern explores the context or the conditions that enable a differentiation between necessary and unnecessary or superfluous suffering with the help of Hannah Arendt’s writings. The three conditions or processes that enable this categorization of suffering are considerations of a person being inside or outside the protection of existing law, succumbing to a sense of moral despair, which facilitates a shift in focus from the significance of individual suffering to collective suffering. The language of necessary and unnecessary suffering is representative of “market talk” where “what is necessary is determined by the end or purpose in mind.”¹⁰⁴ This is negotiated among actors with, “several different perspectives that do not agree with each other, although they may depend on a necessary opposite stage, position or meaning for their own articulation.”¹⁰⁵ Both “technologies that produce and manufacture new kinds of suffering” and “techniques developed to shape, represent, and communicate it” are open to negotiation.¹⁰⁶ Their effect is to privilege certain forms of suffering over others. It is this market talk and its effects that become visible in the chapters on chemical, nuclear and conventional weapons as the ICRC tries to secure an extension of the existing

¹⁰³ Cynthia Halpern, “Why is Suffering Political?” Paper presented at the Joint Annual Conference of International Studies Association-North East and Northeast Political Science Association, Boston, USA, 9-11 November, 2006; Also see, Cynthia Halpern, *Suffering, Politics, Power: A Genealogy in Modern Political Theory*, (Albany: State University of New York, 2002)

¹⁰⁴ Halpern, “Why is Suffering Political?”, 10-11

¹⁰⁵ Halpern, *Suffering, Politics, Power*, 2

¹⁰⁶ Halpern, *Suffering, Politics, Power*, 2

legal categories and rules to protect victims described as civilians from these weapons.

An important effect of this market talk on military necessity and unnecessary suffering is that it encourages practices of codification of suffering to be appropriated for political purposes.¹⁰⁷ Edkins observes how practices of medicalization represent efforts by the state to reinsert survivors into structures of power.¹⁰⁸ Edkins suggests that this is undertaken in the following manner,

Survivors are helped to verbalize and narrate what has happened to them; they receive counseling to help them accommodate once more to the social order and re-form relationships of trust. In the case of the military these days, those suffering from symptoms of traumatic stress are treated swiftly with the aim of being returned to active service within a matter of hours or days. If this fails, then the status of victim of post-traumatic stress disorder serves to render the survivor more or less harmless to existing power structures. In

¹⁰⁷ Jenny Edkins distinguishes between politics and political. The political can be located to particular moments that bring changes replace one social-legal order with another; it encourages consideration of social reality as constituted and provisional, and studies the production and reproduction of a social and symbolic order in everyday practices. Politics constitutes the accepted agendas and frameworks of an existing social order. See Jenny Edkins, *Trauma and the Memory of Politics*, (Cambridge: Cambridge University Press, 2003), 12-13

¹⁰⁸ Edkins, *Trauma and the Memory of Politics*, 9

contemporary culture victimhood offers sympathy and pity in return for the surrender of any political voice.¹⁰⁹

It is this attempt to reinsert the voices of the victims suffering from landmines by the ICRC in the existing structures of power that regulate and prohibit the use of weapons that is demonstrated in the chapter on conventional weapons.

Dawes further asserts that the effort at codification and appropriation of suffering is rendered possible with the “rise of statistics as an epistemological framework.”¹¹⁰ As an epistemological tool, statistics is “an essential tool in the emergency” that helps to establish organizational control and “slams language into immediate contiguity with mass”, facilitating, compelling urgent action and yet these numbers can “stagger the imagination.”¹¹¹ At the same time, “if the bodies behind the numbers are not kept in mind” then they can be reduced to “mere” numbers that reduce the sphere of human contact and act as an emotional distancing mechanism.¹¹² This problem is compounded because counting facilitates classification of the victims suffering into discrete categories of different types of wounds. For example, the Red Cross wound classification

¹⁰⁹ Edkins, *Trauma and the Memory of Politics*, 9

¹¹⁰ Dawes, *The Language of War*, 25

¹¹¹ Dawes, *The Language of War*, 31-32

¹¹² Dawes, *The Language of War*, 43-44

system provides a classification scheme for different types of wounds. In this scheme of classification, are included grade 3 wounds suffered as a result of particular weapons designed to cause permanent disfigurement and disability in the suffering victim. But in configuring these schemes of wound classification and the number of victims to be allocated in each category, there is a possible danger of a “paralysis of sympathy” and “a craftsman’s enthusiasm for identifying and mastering certain types of wounds.”¹¹³ Another possibility in the realm of statistical derealization or alienation from suffering is that,

Traumatic wounds initiate a perceptual-narrative breakdown. *The wound’s visual incomprehensibility sunders it from the weapon; its obscene intensity, its demand to focus on the now of pain, makes causality irrelevant, makes the wound, so to speak, historyless.* Furthermore, it is difficult to cement the weapon to a particular narrative purpose; its plenitude of materialization stifles. The weapon’s solidity, cleanliness, and order (the conical simplicity of an unexploded shell, the elegant, handlike pointing of a gun) is so seemingly incompatible with and disproportionate to the wet,

¹¹³ Dawes, *The Language of War*, 44

gaping disorder of the wound that the two can only be held together in the mind with difficulty.¹¹⁴

But the “incommensurability and pure subjectivity of pain cannot be made to fit into the doctor’s category-oriented worldview.”¹¹⁵ This demands that the act of counting which simplifies, abstracts and transforms individual identities into categories be resisted with the act of naming that introduce us to “a human being with historical volume” to arouse us from a sense of complacency, generate feelings of care and sympathy, to restore dignity to the individual victim.¹¹⁶ It is in this endeavour to name that for “those working through the trauma of war, through the aversiveness of witnessing, acknowledging, and enduring pain” that “language is in the end the most powerful of tools.”¹¹⁷ To quote Dawes, “the intractable bodily phenomena of traumatic stress disorders are contested by the redescriptive power of words, by the transformation into familiar communicability of events experienced as alien to communication.”¹¹⁸

¹¹⁴ Dawes, *The Language of War*, 97 (italics inserted)

¹¹⁵ Dawes, *The Language of War*, 44

¹¹⁶ Dawes, *The Language of War*, 31

¹¹⁷ Dawes, *The Language of War*, 100

¹¹⁸ Dawes, *The Language of War*, 100

It is this experience of trauma endured by witnesses such as Dunant that engenders subjects such as the ICRC and shapes the humanitarian organization's "rhetorical construction and conceptual framing" to combat with the problem of weapons.¹¹⁹ The trauma induces dangerous possibilities of paralysis of sympathy and craftsman's enthusiasm in attending to the victims, that ICRC delegate, Dr. Junod experiences among the experts that accompany him as he observes the sufferings of the victims of Hiroshima. It is the growing efforts to de-link causality from effect in encouraging nation-states to engage with the problem of regulating and prohibiting weapons that is demonstrated repeatedly in the other chapters. It is this attentiveness to these dangerous possibilities and the experiences of trauma in the testimony provided by witnesses as they observe the sufferings of victims inflicted with the help of weapons that is described as practices of testimonialization discussed below.

Practices of Testimonialization

In exploring the practices of testimonialization, the purpose is not to describe or debate the pros and cons of the typologies of different types of witnesses provided by scholars and test their application with regard to the history of the

¹¹⁹ Dawes, *The Language of War*, 146-147

ICRC in order to verify their authenticity. At the same time, it is important to note that, in conceptualizing the ICRC as a witness, the emphasis is not on an understanding of “witness in a court of law” but on witness “who has lived through something and can therefore bear witness to it.”¹²⁰ In other words, the focus is on the ICRC as an ethical witness and not as a legal witness. This is also consistent with contemporary existing practices of international law, according to which the ICRC cannot be requested to act as a legal witness in an international court of law unless exceptional circumstances warrant and the ICRC itself concedes to this request. The purpose here is it to simply gain an understanding of how the ICRC represents itself as an ethical witness with a testimony? To facilitate this understanding, the effort here is to pose some simple questions: Who is a witness? What constitutes a testimony? How is a testimony deployed and to what effect? A response to these questions will help us gain an understanding of the characteristics of an ethical witness with a testimony.

In addressing these questions, it is helpful to refer to the writings of scholars such as, James Hatley, Jenny Edkins and Kali Tal that have deliberated at length

¹²⁰ Edkins, *Trauma and the Memory of Politics*, 205

on conceptualizing witnesses and their testimonies.¹²¹ It is with the help of their deliberations that it will be possible to contextualize and argue in the succeeding chapters that Henry Dunant and other ICRC delegates such as, Sidney Brown and Marcel Junod, acted as witnesses and testified to the sufferings of victims from the use of conventional, chemical and nuclear weapons on the battlefields. Their testimonies helped initiate and sustain a humanitarian claim to addressing the problem of weapons. The power of these testimonies project a need to transcend the politicking over practices of legalization and medicalization in order to achieve ACD.

James Hatley in his book, *Suffering Witness: The Quandary of Responsibility after the Irreparable* describes a witness in the following words:

By witness is meant a mode of responding to the other's plight that exceeds an epistemological determination and becomes an ethical involvement. One must not only utter a truth about the victim but also remain true to him or her. In this latter mode of response, one is summoned to attentiveness, which is to say, to a heartfelt concern

¹²¹ James Hatley, *Suffering Witness: The Quandary of Responsibility after the Irreparable*, (Albany, New York: State University of New York: 2000); Edkins, *Trauma and the Memory of Politics*; Kali Tal, *Worlds of Hurt*

for an acknowledgement of the gravity of violence directed toward particular others. In this attentiveness, the wounding of the other is registered in the first place not as an objective fact but as a subjective blow, a persecution, a trauma. The witness refuses to forget the weight of this blow, or the depth of the wound it inflicts.¹²²

But how a witness experiences and recollects his experiences has to be understood in terms of the position of a witness.¹²³ A witness can be situated in a position from where he or she recounts his or her own experience, or be located in close proximity to other witnesses and their testimonies, or a witness can be engaged in the process of witnessing the process of witnessing itself. It is from any of these positions that a witness experiences a burden of “asymmetrical responsibility” to remember and respond to the helpless victims.¹²⁴ This need to respond to the victims generates a sense of restless energy, an ethical involvement, attentiveness and fidelity to the victims and their sufferings. It also produces a sense of trauma and intense regret within Dunant and his successors of “having arrived too late and having said both too

¹²² Hatley, *Suffering Witness*, 2-3

¹²³ Shoshana Felman & Dori Laub, *Testimony: Crises of Witnessing in Literature, Psychoanalysis and History*, (New York: Routledge, 1992)

¹²⁴ Hatley, *Suffering Witness*, 82

much and too little” in order to help the suffering.¹²⁵ Under these circumstances, “the question is not whether one should witness the victim but whether one should embrace one’s responsibility for that witness.”¹²⁶ It is this decision to embrace responsibility that is enacted in the form of a testimony.

It is important to acknowledge that a testimony “exists in the first place in order to bring one into an immediate and compelling contact with those who have been degraded, suffocated, victimized. The text is the voice of one who would witness for the sake of an other who remains voiceless even as he or she is witnessed.”¹²⁷ But there is a possibility of “textual indeterminacy” because the text carries within it “the voices of the other and all the others” and generates an “ethical burden” that “enters from beyond the text.”¹²⁸ In order to grapple with this problem of indeterminacy and ethical burden it is important to be attentive to the “tonality” of a testimony.¹²⁹ The significance of the tone of a testimony can be captured from this observation:

¹²⁵ Hatley, *Suffering Witness*, 5

¹²⁶ Hatley, *Suffering Witness*, 94

¹²⁷ Hatley, *Suffering Witness*, 19-20

¹²⁸ Hatley, *Suffering Witness*, 125

¹²⁹ Hatley, *Suffering Witness*, 126-127

In one's tone, one's affect is revealed...One's tone can reveal one's state of mind, the particular subtleties of one's own sensibility...Tone always implies a struggle to be sincere (or to avoid sincerity)...Whether one acknowledges it or not, one's expression to the other, one's saying, is already possessed by the other...Whether one wills it or not, one is called upon to reveal to the other the affect of one's saying, one's traumatism...Thus, tone is in the first instance not a modification of what is to be said but the very saying of the said—in one's tone one's language already is submitted to another, is already an expression rather than a thing or work.¹³⁰

It is the tone of the ICRC's appeals as a witness that is scrutinized in terms of its sincerity, humility in each succeeding chapter as these appeals are designed to arouse the authorities and the masses from their sense of apathetic complacency towards the use of particular weapons in war. For example, the tone of the ICRC's appeal against the use of chemical weapons during the First World War arouses the perpetrators of violence to take some action to constrain this form of heinous violence. It is by attentively listening to the tone of these appeals that one can experience feelings of vulnerability, shame, nausea,

¹³⁰ Hatley, *Suffering Witness*, 127

compassion and outrage.¹³¹ It is these feelings of vulnerability, shame, compassion and outrage that make the testimony of ethical witnesses “partial to their victims.”¹³² Furthermore, “testimony as a genre of writing not only articulates an ethical relation to those who have suffered but also becomes the last possible gesture of ethical resistance to that suffering.”¹³³ The testimonies can constitute an ethical act of resistance to feelings of shame, nausea and vertigo that overwhelm the witness as the latter struggles to assert the significance of human dignity. It is this act of ethical resistance that is addressed in the chapter on conventional weapons when the ICRC as a last resort leverages the testimonies of victims of landmines to regulate and prohibit the use of these weapons.

This encourages us further to explore the distinction between “those witnesses who actually have encountered” the suffering victims, such as Dunant, Junod and Brown and “the readers who receive the report of this encounter through the memory and testimony of those witnesses” such as government authorities and the general public.¹³⁴ It is in this distinction that “the very structure of witnessing commands that a *third party*, one who was absent or otherwise

¹³¹ Hatley, *Suffering Witness*, 7-8

¹³² Hatley, *Suffering Witness*, 39

¹³³ Hatley, *Suffering Witness*: 41

¹³⁴ Hatley, *Suffering Witness*, 103

exterior to the immediacy of a dyadic proximity but who is nevertheless involved in the significance revealed in that proximity” show respect.¹³⁵ It is the operation of this triad that is explained at considerable length in the next chapter with the help of Joseph Slaughter’s writings to demonstrate how the authority of the victim gets transferred to the humanitarian agency, such as the ICRC, that claims to represent the sufferings of the victims.¹³⁶ The succeeding chapters, especially the chapter on conventional weapons also demonstrate how a “genre of historical testimony arises in the wake rather than in the midst of face-to-face encounter” with the suffering of the victims.¹³⁷

In reading these testimonies that arise in the aftermath of a face-to-face encounter but are nonetheless, “commanded by that encounter” it is important to note the following possibilities.¹³⁸ First, the reader is urged to “substitute his or her own singularity” in place of the witness. Second, that the testimony itself is “mediated within history by means of language” and considerations of “how the context in which one writes influences what one has said.” Third, this testimony “can no longer address the reader with the same authority” as the victim himself because “the text is as well an interpretation, an imaginative ordering and

¹³⁵ Hatley, *Suffering Witness*, 103

¹³⁶ Joseph R. Slaughter, “Humanitarian Reading” in *Humanitarianism & Suffering- The Mobilization of Empathy*, ed. by Richard Ashby Wilson and Richard D. Brown, (Cambridge: Cambridge University Press, 2009), 93

¹³⁷ Hatley, *Suffering Witness*, 105

¹³⁸ Hatley, *Suffering Witness*, 105-107

arrangement of events, facts, impressions, emotions, images, symbols, and so on.” Fourth, there is the danger that the “other’s works, his or her stories, artifacts and labors and so on” can be transformed into “literary artifacts”, become an inheritance, that can be appropriated for a wide range of purposes “without the other being there to express her or his own will concerning those works.” Fifth, these testimonies through rhetoric seek to represent and reproduce “the other not only in concept but also in affects.”¹³⁹ These practices of production and reproduction of affect are tempered with considerations of substitution, mediation, authority and appropriation that are factored into the arguments presented in the succeeding chapters.

These arguments can be developed further by taking note of Tal’s observation that, “[b]earing witness is an aggressive act.”¹⁴⁰ It is an aggressive act because,

It is born out of refusal to bow to outside pressure to revise or repress experience, a decision to embrace conflict rather than conformity, to endure a lifetime of anger and pain rather than to submit to the seductive pull of revision and repression. Its goal is

¹³⁹ Hatley, *Suffering Witness*, 128-131

¹⁴⁰ Tal, *Worlds of Hurt*, 7

change. If survivors retain control over the interpretation of their trauma, they can sometimes force a shift in the social and political structure.¹⁴¹

A testimony can expose the “contingency of the social order” and “can challenge structures of power and authority.”¹⁴² This is resisted by “those who would try to prevent survivors from speaking out are the powerful, those who have perhaps more of a stake than most in concealing the contingency of forms of social and political organization.”¹⁴³ Furthermore, “the only words” that the witnesses have “are the words of the very political community that is the source of their suffering. This is the language of the powerful, the status quo, the words that delimit and define acceptable ways of being human within that community.”¹⁴⁴ As such, it is pertinent to study the practices of politicization of testimonies and this should not be restricted to practices of inclusion and exclusion but should also take note of practices that seek to routinise and codify these testimonies.¹⁴⁵ It is in scrutinizing the practices of routinisation and codification that one finds “the agendas and frameworks that are already accepted within the social order” and “once codified, the traumatic experience

¹⁴¹ Tal, *Worlds of Hurt*, 7

¹⁴² Edkins, *Trauma and the Memory of Politics*, 5

¹⁴³ Edkins, *Trauma and the Memory of Politics*, 5

¹⁴⁴ Edkins, *Trauma and the Memory of Politics*, 8

¹⁴⁵ Edkins, *Trauma and the Memory of Politics*, 5

becomes a weapon in another battle, the struggle for political power.”¹⁴⁶ In the succeeding chapters, significant attention has been devoted to how practices of routinisation and codification emerge and are reinforced in the ICRC’s efforts to address the problem of weapons. The deliberation over practices of routinisation and codification within the ICRC is explicitly addressed in the chapter on chemical weapons when Max Huber as the President of the ICRC initiates measures to control and contain the testimonies of ICRC delegates.

These practices of routinisation and codification also encourage deliberation on whether these are acts of complicity to cultivate and sustain a humanitarian space within the status-quo or acts of resistance by the ICRC to contest sovereign power in the field of ACD. To this end, the question of politicization of testimonies in the context of humanitarian actors has received particular attention in Robert De Chaine’s study on *Global Humanitarianism-NGOs and the Crafting of Community*.¹⁴⁷ In this book, De Chaine pursues some very interesting questions, “What kinds of identities circulate amongst humanitarian NGOs and how are those identities negotiated? What kinds of moral discourses do humanitarian NGOS articulate? How do humanitarian NGOs contribute to

¹⁴⁶ Jenny Edkins, *Trauma and the Memory of Politics*, 12, 190; Tal, *Worlds of Hurt*, 6

¹⁴⁷ D. Robert De Chaine, *Global Humanitarianism- NGOs and the Crafting of Community*, (Oxford: Lexington Books, 2005)

crafting of a community in a globalized world?”¹⁴⁸ In addressing these questions, De Chaine focuses on particular humanitarian actors such as Doctors Without Borders (MSF) and the International Campaign to Ban Landmines (ICBL) and their communicative strategies that are an integral part of a “global rhetorical culture” that define an international community.¹⁴⁹ These humanitarian actors are famous for their deployment of witnesses and their testimonies to generate awareness about the victims’ sufferings and to seek remedial action. At the same time these practices enable humanitarian actors to build their own “moral-social capital” to confront directly or obliquely, the perpetrators of such violence and suffering.¹⁵⁰ In attributing responsibility and seeking to mediate this suffering, humanitarian actors privilege “neutrality” vis-à-vis politics. This privileging of neutrality and crafting of a humanitarian space from which they can “challenge traditional conceptions of sovereignty” are conceived as political practices.¹⁵¹ Studying these practices of witnessing De Chaine argues that these practices are “carefully choreographed productions” of particular categories such as “the categorical status of a victim” whose suffering will “command” international attention.¹⁵²

¹⁴⁸ De Chaine, *Global Humanitarianism*, 9

¹⁴⁹ De Chaine, *Global Humanitarianism*, 3

¹⁵⁰ De Chaine, *Global Humanitarianism*, 57-8

¹⁵¹ De Chaine, *Global Humanitarianism*, 58

¹⁵² De Chaine, *Global Humanitarianism*, 58

The problem of categorization persists in the testimonies of witnesses as it refers to a particular category of victims but the significance of testimonies is “not to be found in their ability to provide a structure or a collection of categories” governed by reason as “the very act of reasoning is continually in danger of betraying the situation of a victim, of transforming the particularity of his or her suffering into a category, that can be given an explicit significance for all who reason. The victim enters into a *logos* in which he or she becomes one of many examples of the same type.”¹⁵³ But it is possible to address this problem by recognizing that this attempt at categorization, diverts attention from the need to show explicit respect and attention to the needs of the victims, “it covers a hard-heartedness, a refusal to be addressed by the other”, and it is not the substance of the argument but the “virulence” of tone in which it is argued that “demands the most discerning critique.”¹⁵⁴ The succeeding chapters particularly on nuclear weapons and conventional weapons demonstrate precisely how these tactics of categorization and virulence of tone are adopted by powerful nation-states that seek to resist humanitarian considerations in regulating and prohibiting particular weapons.

¹⁵³ Hatley, *Suffering Witness*, 37

¹⁵⁴ Hatley, *Suffering Witness*, 57

However, this exercise of caution does not completely emancipate concern with “how much do they allow the survivor to voice” as this will have a bearing on their “trauma being legalized and medicalised.”¹⁵⁵ The subsequent chapters devote considerable attention to this problem as they articulate how the effects of testimonies of victims are countered with considerations of classification, categorization, codification and appropriation that characterize practices of legalization, medicalization and testimonialization that efface the face of the suffering victim. These chapters demonstrate how agents partaking of these practices do not encourage much reflection on how “our moral relationships to other human beings should not in the first instance be based upon how they fit into various categories that provide the qualities by which human moral considerability can in turn be measured.”¹⁵⁶ It is this marginalization of shared ethical relationships that is articulated as a problem in addressing the problem of ACD. It is also an attempt to suggest that any critique of the ICRC’s efforts to promote ethical relationships in the field of ACD be tempered by the observation that, “in being called to this responsibility, the very urgency of moral obligations is rendered as more than rational and as exceeding any measure or call to self-consistency.”¹⁵⁷ In other words, the ICRC’s practices of legalization, medicalization and testimonialization to regulate and prohibit particular weapons demonstrate a cumulative strength towards rationalization

¹⁵⁵ Edkins, *Trauma and the Memory of Politics*, 18

¹⁵⁶ Hatley, *Suffering Witness*, 55

¹⁵⁷ Hatley, *Suffering Witness*, 57

and normalization but are always susceptible to claims of moral urgency and therefore contain possibilities of transgressions. It was this experience of moral urgency that compelled the ICRC to undertake an exceptional measure of launching a public campaign against anti-personnel landmines.

Conclusion

The above literature on social and political theory helps formulate some intellectual guideposts for writing a critical and effective history of the ICRC's efforts to regulate and prohibit weapons. It focuses attention on the embeddedness of the ICRC in the existing structures of power in the field of ACD. In questioning these normalized relationships of power it encourages deliberation on regularities observed in the ICRC's discourse on weapons from the late nineteenth century to the present times. The regularities observed are contextualized in specific historical contexts to take note of the enduring contestations among actors and their practices. The practices of legalization, medicalization and testimonialization as described above represent strategies deployed by the humanitarian actor to regulate and prohibit weapons. The sophisticated interplay between these practices and their effects in specific contexts is demonstrated in the succeeding chapters. It is the operation and effectiveness of these practices that signifies potential for change in addressing

the problem of chemical, nuclear and conventional weapons. It is this potential for change as an ethical response to the growing destructiveness of weapons that is gauged in the subsequent chapters. This change is configured in the ICRC itself and the broader practices of ACD.

At this juncture, it is only appropriate that this author, answer the question, “how and why one is taking up” with this particular history of the ICRC.¹⁵⁸ In response to this question, this author recalls her experiences as a student in India of international politics with specialization in disarmament studies. It was in this capacity and location in a country that had publicly declared its status as a nuclear weapon state and refused to sign the Ottawa Treaty banning the use of anti-personnel landmines that this author gained insights into the problems of ACD. A sincere and humble desire to address this problem found resonance and empathy in a reading of Dunant’s testimony on the Battle of Solferino. This along with access to the publicly available literature on the ICRC’s public campaign against the use of anti-personnel landmines encouraged this author to pursue this course of study. The effort in this study is to expose the possibilities and limits of the existing architecture of ACD and suggest the need for a more a sincere commitment to the suffering. It is this commitment which finds expression in the next chapter in the voice of Dunant.

¹⁵⁸ Edkins, *Trauma and the Memory of Politics*, 12, 190

CHAPTER FIVE - ICRC AND WEAPONS 1863-1914

Introduction

How did the International Committee of the Red Cross engage with the problem of weapons from the late nineteenth century till the outbreak of the First World War? In an effort to answer this question, this chapter begins by focusing on Henry Dunant's testimony of the Battle of Solferino that provides a vivid description of the weapons used in this fierce battle and the sufferings of the victims. It then explores the effects of this testimony on its audiences in Geneva and abroad. The effects are studied in terms of practices of medicalization that result in the constitution of the ICRC as a humanitarian organization providing medical relief to the victims on the battlefield and legalization through practices of codification that produced the Geneva Conventions of 1864 and the Hague Conferences of 1899 and 1907. The chapter concludes that the witness and his testimony, medical and legal practices of the ICRC enable the latter to make its initial forays in the field of disarmament vis-à-vis other actors in the international system. However, accepting the burden of responsibility for disarmament was not the priority of the ICRC during this period.

The ICRC emerged as an actor at a time in history when Europe having experienced the Napoleonic wars, the Crimean War and numerous other wars, was engaged with grave intensity and urgency in finding answers to questions pertaining to responsibility of actors in providing relief to the victims on the battlefield, the competitive procurement of technologically sophisticated weapons and the impending butchery of future wars. Traditionally the responsibility for providing relief to the victims of war was a responsibility vested in the governments but the inadequacy of governmental efforts was becoming a source of public outrage. The developments in the means of communication such as the press, railways and the telegraph made it impossible to conceal the horrors of wars from the general public. Practices of conscription by European powers had made war a subject of concern for each and every household. The growing destructive capabilities of weapons used in these wars had increased the size of the battlefield and the number of casualties in war. The founding of the International Committee of the Red Cross (ICRC) as a humanitarian organization specifically responding to these challenges fuelled the debate during this period.

Testimony of a Witness

The International Committee of the Red Cross is considered a product of a testimony of a witness, Henry Dunant, to the Battle of Solferino fought between Austria and France on 24th June, 1859.¹ Who was Henry Dunant and what his testimony? Briefly, Henry Dunant was a Swiss businessman with an inclination towards philanthropic works. It was his journey to meet Emperor Napoleon III of France to secure concessions for his business establishment in Algeria that was disrupted by the Battle of Solferino. Dunant observed this battle from a distance and moved into the battlefield once the war had been waged and its victims cried for help and assistance to relieve their suffering. It was this experience of war that is recollected and narrated by Henry Dunant in the form of a testimony titled *Un Souvenir de Solferino* later translated in English as *A Memory of Solferino*.² This testimony published three years after the Battle of Solferino provides a narrative, which is vivid in its recollection of all that Dunant witnessed, on the battlefield and thereafter. The power of these memories is such that in recalling his experiences a few years after the

¹ Henry Dunant, *A Memory of Solferino*, (Geneva: International Committee of the Red Cross, 1986)

² The exact publication of Dunant's, *A Memory of Solferino* is disputed. For this see, Anne-Marie Pfister, "A Hundred Years Since the Publication of A Memory of Solferino", *International Review of the Red Cross*, no.20, (November 1962),575-580

war, Dunant claims “that no one has forgotten it, especially as the consequences of that day are still being felt in many European countries.”³

In *A Memory of Solferino*, Dunant describes himself in modest terms as “a mere tourist with no part whatever in this great conflict” between Austrian and Prussian forces combining a total strength of 300,000 men armed with rifles and a 900 strong artillery, fighting relentlessly for fifteen hours.⁴ “To witness the moving scenes” of this battle is for Dunant a “rare privilege” which he is “resolved” to describe in his testimony.⁵ In his interpretation of Dunant’s testimony, Joseph Slaughter, suggests that by describing himself as a mere tourist, as a witness, Dunant is presenting himself as an “accidental paragon of humanitarian disinterestedness and indifference.”⁶ As a “surrogate witness” Dunant successfully “triangulates the lines of affective force between audience and actors.”⁷ The witness comes across as “both a participant in the apparent tragedy and a screen for projection of the audience’s pity and

³ Dunant, *Memory of Solferino*, 16

⁴ Dunant, *Memory of Solferino*, 16

⁵ Dunant, *Memory of Solferino*, 16

⁶ Joseph R. Slaughter, “Humanitarian Reading”, in *Humanitarianism and Suffering-The Mobilization of Empathy*, ed. Richard Ashby Wilson & Richard D. Brown, (New York: Cambridge University Press, 2009), 103

⁷ Slaughter, “Humanitarian Reading,” 102

compassion.”⁸ This humanitarian figure acts as a “conduit for our emotional investments in the scene of suffering” and acts as a “surrogate on which to anchor our feelings of goodwill towards the wounded.”⁹ The testimony of Dunant as a humanitarian witness not only addresses the inhumanity of war but also suggests “the affective disposition required to approach the wounded.”¹⁰

Dunant’s testimony is an invitation “to project ourselves not into the position of the sufferer but into the position of the humanitarian, the subject position of one who already recognizes the human dignity of the wounded and attempts to relieve their suffering.”¹¹ The subject position of a humanitarian witness occupied by Dunant can be substituted by individuals or by improvised groups that share a feeling of brotherhood in the face of suffering irrespective of nationality. But the act of substitution is incomplete “due to the lack of a critical mass of trained relief workers to counterbalance the piles of dying soldiers.”¹² The humanitarian actor and his audience are interpreted by Joseph Slaughter as peers sharing the same sensibility of obligation towards alleviating the suffering of the

⁸ Slaughter, “Humanitarian Reading,” 102

⁹ Slaughter, “Humanitarian Reading,” 102

¹⁰ Slaughter, “Humanitarian Reading,” 1

¹¹ Slaughter, “Humanitarian Reading,” 102

¹² Slaughter, “Humanitarian Reading,” 100

victims. Joseph Slaughter suggests that this encourages a recognition that “the sense of ethical obligation perhaps develops not in response to another’s tragedy but as a sense of responsibility to the moral integrity of one’s own class of humanity. This is, at least in part, the affective relationship that the figure of the aid worker seems to activate in humanitarian narratives.”¹³

Dunant’s testimony in which he positions himself as an “onlooker, standing on the hills around Castiglione” observing this complex battle space of violence and suffering provides a graphic description of the effectiveness of specific weapons used in war that inflict painful injuries and mutilate the victims.¹⁴ Dunant notes in detail the shape of artillery shells and bullets used in battle. To quote Dunant, “the French grape-shot was effective at prodigious ranges” and “Everywhere men fell by thousands, with gaping wounds in limbs or bellies, riddled with bullets, mortally wounded by shot and shell of every kind.”¹⁵ Dunant acutely feels the suffering of the victims, which he describes, in a sympathetic tone,

¹³ Slaughter, “Humanitarian Reading,” 103

¹⁴ Dunant, *Memory of Solferino*, 22

¹⁵ Henry Dunant, *Memory of Solferino*, 20-22

poor fellows who had not only been hit by bullets or knocked down by shell splinters, but whose arms and legs had been broken by artillery wheels passing over them. The impact of a cylindrical bullet shatters bones into a thousand pieces, and wounds of this kind are always very serious. Shell splinters and conical bullets also cause agonizingly painful fractures, and often frightful internal injuries.¹⁶

In a tone of anger and dismay, Dunant curses, these “infernal machines that disfigure the bodies and heads of the dead and dying indiscriminately.”¹⁷

But even in the midst of this anarchy and indiscriminate warfare, Dunant’s discerning testimony recalls particular injuries of victims that continue to traumatize him. He recalls the “revolting spectacle” of a trooper of the African Light Infantry that lay silent and immobile, “Three bullets had struck him, one in the right side, one in the left shoulder, and

¹⁶ Dunant, *Memory of Solferino*, 44

¹⁷ Slaughter, “Humanitarian Reading,” 98

the third in the right leg where it had remained.”¹⁸ Dunant hears the voice of

a Hungarian who never ceased to call out, begging for a doctor in heartbreaking Italian. A burst of grapeshot had ploughed his back which looked as if it had been furrowed with steel claws, laying bare a great area of red quivering flesh. The rest of his swollen body was all black and green, and he could find no comfortable position to sit or lie in.¹⁹

The inhumanity of war ravages the discipline of armed forces that when locked in battle is reduced to a state of complete disorder and disarray. Describing the suffering of the victim Dunant observes, “There was no water to be had for the poor sufferer. How many silent tears were shed that miserable night when all false pride, all human decency even, were forgotten.”²⁰ In the midst of this chaos, Dunant observes:

¹⁸ Dunant, *Memory of Solferino*, 67

¹⁹ Dunant, *Memory of Solferino*, 67

²⁰ Dunant, *Memory of Solferino*, 38

During a battle, a black flag floating from a high place is the usual means of showing the location of first aid posts or field ambulances, and it is tacitly agreed that no one shall fire in their direction. But sometimes shells reach these nevertheless, and their quartermaster and ambulance men are no more spared than are the wagons loaded with bread, wine and meat to make soup for the wounded.²¹

Dunant observes how this “spectacle” of suffering takes its toll upon the morale of those trying to address it.²² In the face of this suffering the local authorities find themselves “absolutely incapable of dealing with the suffering” and the volunteer helpers too cannot “bear to look upon suffering which they can do so little to relieve.”²³ The “doctors have done what they could” and “there aren’t enough of them.” Joseph Slaughter observes that in Dunant’s testimony,

theatre of military operations is transformed into a theatre of medical operations - still a theatre “of fighting” and

²¹ Dunant, *Memory of Solferino*, 39

²² Dunant, *Memory of Solferino*, 65

²³ Dunant, *Memory of Solferino*, 64

suffering, but of fighting for life and humane suffering: of life-giving amputations and blood-lettings, consolatory letter writing and “reading to the wounded men.”²⁴

Furthermore, “The movement down the narrative chain of death emphasizes the metonymical character of displacement from human to human remains (in the case of the wounded) and from human to mechanical guns (in the case of the agents of force).”²⁵ The innumerable victims fatigue the mind of Dunant, the witness, and he is compelled to represent them as disembodied “dead and dying” and dehumanized “piles of bleeding corpses.”²⁶ To attend to the victims, Dunant recognizes that, “Somehow or other a volunteer service had to be organized; but this was very difficult amid such disorder.”²⁷

Dunant’s testimony occasionally provides some biographical details and attributes virtues to the victims depending on the particular social class which they represent. The sufferings of the aristocrats are described in terms of virtues of honour and chivalry accompanied by their rank and

²⁴ Slaughter, “Humanitarian Reading,” 101

²⁵ Slaughter, “Humanitarian Reading,” 98

²⁶ Slaughter, “Humanitarian Reading,” 98

²⁷ Dunant, *Memory of Solferino*, 58

regiment. The sufferings of the ordinary soldier are attributed to industry and fortitude. John Hutchison notes that the description of sufferings of victims by Dunant “faithfully reflected the social outlook of a nineteenth century bourgeois.”²⁸ On the contrary, Joseph Slaughter interprets this description by Dunant as a “task of humanitarianism” that “involves both the physical and rhetorical rehabilitation of the wounded; that is, the humanitarian imagination must rehumanize the disfigured masses as objects of sympathy and as possible subjects of well-being before humanitarian relief can be administered.”²⁹ Notwithstanding these differences in interpretations both scholars acknowledge that Dunant in providing succour to the wounded encouraged the sentiment of “tutti fratelli”, two gentle words, embodying a feeling of universally shared brotherhood.³⁰ But despite this sense of idealism and effort to relieve the sufferings of the victims, for Dunant, “the feeling one has of one’s own utter inadequacy in such extraordinary and solemn circumstances is unspeakable.”³¹

²⁸ John F. Hutchison, *Champions of Charity- War and the Rise of the Red Cross*, (Colorado: Westview Press, 1996), 14-17

²⁹ Slaughter, “Humanitarian Reading,” 99

³⁰ Dunant, *Memory of Solferino*, 72

³¹ Dunant, *Memory of Solferino*, 72

One cannot ignore that in Dunant's mind the unspeakable is an outcome of a mind constantly agonizing over the problem of inevitability of wars fuelled by the exponential growth in the destructive capabilities of weapons. Dunant's mind is disturbed with the thought that "new and terrible methods of destruction are invented daily" and "the inventors of these instruments of destruction are applauded and encouraged in most of the great European states, which are engaged in an armament race" making recourse to wars an inevitable future prospect that cannot be avoided or ignored.³² These concerns find a voice fearful in its expression that,

the new and frightful weapons of destruction, which are now at the disposal of the nations, seem destined to abridge the duration of future wars, it appears likely, on the other hand, that future battles will only become more and more murderous. Moreover, in this age when surprise plays so important a part, is it not possible that wars may arise, from

³² Dunant, *Memory of Solferino*, 116

one quarter or another, in the most sudden and unexpected fashion?³³

In Dunant's observations on the unquenchable thirst of nation-states to procure more weapons and use them in wars with growing effectiveness, there is a sense of resignation and abandonment. But this feeling of resignation and despair does not permit Dunant to abandon the victims of war but only the aspiration of abolishing war.

Dunant expounds on the futility of striving to realize pacifist "... hopes and aspirations of the Society of the Friends of Peace ... the dreams of the Abbe de St. Pierre and the noble aspirations of such men as the Count de Sellon."³⁴ In his testimony there is a growing sense of urgency "to press forward in a humane and truly civilized spirit the attempt to prevent, or at least to alleviate, the horrors of war."³⁵ It is in his attempt to alleviate the horrors and take "precautions" against the unpredictability of war that Dunant suggests the need to form humanitarian organizations. Thus, Dunant makes a subtle and implicit argument on the differences between

³³ Dunant, *Memory of Solferino*, 128

³⁴ Dunant, *Memory of Solferino*, 116; Count Jules-Jacque de Sellon (1782-1839) was a Genevan philanthropist and founder of the first Peace Society in Europe in 1830.

³⁵ Dunant, *Memory of Solferino*, 116,127

pacifist and humanitarian organizations in addressing the problems of war and weapons. The Pacifists seek to abolish war and instruments of war. Humanitarians seek to alleviate the horrors of war. To this end Dunant advocates the formation of “relief societies for the purpose of having care given to the wounded in wartime by zealous, devoted and thoroughly qualified volunteers.”³⁶

Dunant’s testimony articulates a “moral sense of the importance of human life” that produces a “kind of energy” that is akin to cold calculation and a sense of total vulnerability.³⁷ A feeling of emotional vulnerability experienced in the cry of a victim, “Oh, Sir, I’m in such pain!” finds expression in Dunant’s testimony as the victim complains, “they desert us, leave us to die miserably, and yet we fought so hard.”³⁸ Similarly, another victim’s bitter observation, “If I had been looked after sooner I might have lived, and now by evening I shall be dead!”³⁹ These feelings of disappointment and vulnerability to pain and death experienced by the victims cannot fail but generate a sense of “remorse” and “regret” in the public and the authorities as they observe “young fellows disabled, with a

³⁶ Dunant, *Memory of Solferino*, 124-125

³⁷ Dunant, *Memory of Solferino*, 73

³⁸ Dunant, *Memory of Solferino*, 61

³⁹ Dunant, *Memory of Solferino*, 66

leg or an arm gone, returning sadly to their homes.”⁴⁰ Confronted with these haunting images of pain, disability and death, the cold logic of humanitarianism is deployed to engage in a humanitarian diplomacy calculated to mobilize a sense of pathos necessary to enlist the support of “men enjoying the most honourable reputation and the highest esteem” capable of convening during periods of peace a Congress of the “princes of military art.”⁴¹

Dunant suggests that such a Congress could find answers to two questions: First, “Would it 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?”⁴² The other question that Dunant asks with great energy and insistence is “Last of all—in an age when we hear so much of progress and civilization, is it not a matter of urgency, since unhappily we cannot always avoid wars, to press forward in a human and truly civilized spirit the attempt to prevent, or at least to alleviate, the horrors of war?”⁴³ It is this latter question with its emphasis on a preventive approach that is

⁴⁰ Dunant, *Memory of Solferino*, 123

⁴¹ Dunant, *Memory of Solferino*, 126

⁴² Dunant, *Memory of Solferino*, 115

⁴³ Dunant, *Memory of Solferino*, 127

reinforced by Dunant as he concludes his testimony dwelling on the effects of “the new and frightful weapons of destruction.”⁴⁴

These two questions posed by Dunant suggest that although the first step would be to confer recognition and agree upon principles which will facilitate the work of voluntary relief societies during war, the subsequent work undertaken by humanitarian organizations could be quite expansive in scope insofar as it was to prevent or alleviate the horrors of war. The problem of weapons would eventually have to configure a place in the scope of preventive work undertaken by humanitarian organizations to alleviate the horrors of war. To this end, the humanitarians must be willing to “confront the same dangers as the warrior.”⁴⁵

In confronting the horrors of the Battle of Solferino, Dunant, experiences a sense of “desperate fidelity” to testify to the violence and suffering of the victims because within himself he carries a feeling of guilt at his inability to address the suffering of the victims.⁴⁶ For three years, after the Battle of Solferino, Dunant the witness is restless and his written

⁴⁴ Dunant, *Memory of Solferino*, 128

⁴⁵ Dunant, *Memory of Solferino*, 118

⁴⁶ Dunant, *Memory of Solferino*, 115

testimony is a therapy to in some measure heal his wounded soul. Dunant's personal suffering as a witness can be gauged from a letter written at a time when he was directly experiencing the suffering of the wounded on the battlefield. In this letter, Dunant states:

I am writing from the battlefield. There one cannot choose his impressions. The battlefield with its heaps of dead and dying is nothing compared with a church in which five hundred wounded are lying one on top of the other...Every fifteen minutes for three days, I have seen a human being die in unimaginable agonies. A glass of water, a cigar, a friendly smile—and they become changed natures who suffer the hour of death bravely and calmly. Pardon, but I am weeping continuously as I write. I must close. They are calling me.⁴⁷

Dunant's testimony is a response to this call for assistance and redress demanded by the victims. The effect of the Battle of Solferino on Dunant is best summed up in Martin Gumpert's observation that for Dunant "The

⁴⁷ Martin Gumpert, *Dunant-The Story of the Red Cross*, (New York: Oxford University Press, 1938), 60

cry of the victims must be silenced. Dunant took it up, he cried out with them, cried louder, until society was ready to redeem him by an act...”⁴⁸

The immediate effect of Dunant’s testimony on Europe can best be gauged in the words of Gustave Moynier. The latter was a lawyer by training and worked as a secretary of the philanthropist association, The Geneva Society of Public Welfare. Moynier observed:

It was the publication in Geneva towards the end of 1862 of Mr. Henry Dunant’s book entitled *Un Souvenir de Solferino*. By his gripping account of what he had seen and felt during the terrible battle of 24 June 1859, the author of that book unsealed the eyes of the blind, moved the hearts of the indifferent and, in intellectual and moral terms, virtually brought about the reform he aspired to, to such an extent that, once that first conquest was achieved, all that remained was to give concrete form to the convincing historian’s vision.⁴⁹

⁴⁸ Gumpert, *The Story of the Red Cross*, 65

⁴⁹ Jean de Senarclens, *The Founding of the Red Cross- Gustave Moynier its Master Builder*, trans. Jane Brooks, (Genève: Slatkine, 2005); *La fondation de la Croix Rouge (The founding of the Red Cross)* memoir presented to the International Committee by its President, Gustave Moynier, 1903, 4.

Similarly, Dunant's testimony resonated with the other eminent members of this society. In the Battle of Solferino, Dr. Appia had served as a war surgeon and shared his notes from the field on military surgery with Dr. Maunoir. Both war surgeons were acutely aware of the inadequate and incompetent medical services on the battlefield. General Dufor, a professional soldier in Napoleon's imperial army had personally experienced the horrors of war. Recollecting the horrors of the Battle of Corfu between France and Britain, General Dufor observed, "My thighs and hands were raw flesh...I spent ten days in the hands of an assistant surgeon and an incompetent nurse...I've been deaf and blind, burned and poisoned."⁵⁰

These members of the Geneva Society for Public Welfare expressed interest in exploring the possibilities of Dunant's testimony. They along with Dunant founded the Permanent International Committee, which later came to be known as the International Committee for Relief to the Wounded in Time of War and finally from 16 March 1872, officially the International Committee of the Red Cross (ICRC). The first task that they

⁵⁰ Pierre Boissier, *From Solferino to Tsushima- History of the International Committee of the Red Cross*, (Geneva: Henry Dunant Institute, 1963), 50

assigned themselves was to act upon Dunant's initial suggestion of convening an international congress to confer recognition and agree upon principles for the work of relief societies in the midst of war. Considering the difficulties for a private association to convene such a Congress, the ICRC approached the Swiss Federal Government. The latter agreed to help the ICRC in convening an international congress in Geneva on 16th October 1863. In consultation with his colleagues, Dunant drafted ten articles to provide relief to the wounded on the battlefield that were to be discussed at this meeting by representatives of sovereign nation-states.

To advocate, generate support and publicity for this meeting, Dunant traveled extensively across Europe consorting with sovereigns and anyone that would help support the agenda of this meeting. On the other hand, his insular colleagues in Geneva made every effort to avoid giving the meeting any public character. They preferred a sense of confidentiality and entertained feelings of disdain and contempt for general public participation in such a meeting. This is obvious from Moynier's insistence to keep at bay a "superficial crowd who are unsuited to basic work and who will waste their time in humanitarian talk" and his observations that the citizens of Geneva "should be kept out on principle to prevent the

meeting from becoming a collection of curiosity seekers.”⁵¹ It is possible that Moynier’s observations stemmed from his wariness of the domestic political turmoil within Geneva.

But away from Geneva, engaging with people sharing his vision, Dunant recognized the inadequacy of only securing official patronage and protection for voluntary relief societies. In order to make his “demand for concerted international action” more effective, Dr. J. H. C. Basting, a military surgeon, persuaded Dunant to insert the principle of “neutrality” for “military medical personnel and their assistants, including members of the voluntary aid detachments.”⁵² Given the constraints of time and distance, Dunant exercised his own initiative, and inserted this principle as another article to be discussed at the Congress, to the annoyance of his colleagues in Geneva. This created a subtle but irreparable rift between Dunant and his colleagues, especially Moynier, making it difficult for the diffident Dunant to be more explicit on the full range of issues that he would have liked to address at the Congress. The differences between Dunant the humanitarian diplomat and Moynier the legal strategist

⁵¹ Jean de Senarclens, *The Founding of the Red Cross-Gustave Moynier its Master Builder*, trans. by Jane Brooks, (Genève: Slatkine, 2005), 185; Also see, Violet Kelway Libby, *Henry Dunant-Prophet of Peace*, (New York: Pageant Press, Inc), 138

⁵² Hutchison, *Champions of Charity- War and the Red Cross*, (Colorado: Westview Press, 1996), 63

become explicit in the observations and practices each adopts in convening the Congress in Geneva. These differences in temperament and strategy have repercussions on how the ICRC was able to address the problem of weapons in the late nineteenth and early twentieth century.

At the meeting in Geneva on 23 October 1863, the problem of development of weapons and suffering inflicted by weapons was addressed by Dr. Landa, a Spanish delegate. Dr. Landa observed that the discrepancy between the sufferings of the victims and the relief available on the battlefield could be attributed to the growing lethality of weapons. In the words of Dr. Landa:

The true ground of the inadequacy is the disproportion between the development of the means of protection and the means of destruction: the extraordinary progress in ballistics, for example, and the conical bullet, the effects of which are far more frightful than those of the spherical bullet. When I had to remove the conical bullets of our sharp-shooters from the Moorish wounded, I experienced a feeling of revulsion

that I should gladly make every high-placed military person feel.⁵³

Dr. Landa expressed the same concerns that Dunant had voiced in his testimony with regard to weapons but Dunant's voice had now been constrained at this Congress. Dunant's ability to participate in the deliberations had been effectively curtailed by his colleagues that had assigned to him the humble position of a mere observer. It was left to Dunant's conservative colleagues to give direction and momentum to the meeting. These colleagues and the representatives of sovereign nation states attending the meeting did not show any interest in addressing the gap between protection and destruction by addressing the problem of weapons. They seemed content to secure the approval of the sovereigns on the ten principles to provide relief to the wounded on the battlefield. These ten principles were codified in the Geneva Conventions of 1864. The gap between protection and destruction was to be filled by the constitution of voluntary relief societies to attend to the victims. This was possible because the ICRC asserted that the "relief committees would work to assist and not displace, the appropriate military and medical

⁵³ Gumpert, *The Story of the Red Cross*, 129

authorities.”⁵⁴ John Hutchison observes, “The red cross brassard was, in this sense, a license granted to the volunteers by the competent military authorities. As with all licenses, it could be revoked by the issuing body.”⁵⁵ It is therefore possible to observe that at this juncture in its history, in order to gain official recognition for their work, the members of the ICRC considered it essential to assiduously maintain, “a proper distance...between the Red Cross on the one hand and international movements in favour of peace and disarmament on the other.”⁵⁶

Dunant’s testimony itself carries within it a note of reverence and respect for the profession of arms and the heroic sense of duty and sacrifice which its fulfillment entails. While some states deduced the strategic usefulness of efficient and organized voluntary relief societies to serve the wounded on the battlefield, the armed forces of some sovereign-nations states expressed reservations about ICRC’s efforts at humanizing warfare. The operational logic among the armed forces insists that severe brutality in war is necessary to keep it short in duration. This argument is developed further to assert that the threat of severe brutality in war acts as a deterrent to launching wars of aggression. As such efforts to

⁵⁴ Hutchison, *Champions of Charity*, 53

⁵⁵ Hutchison, *Champions of Charity*, 53

⁵⁶ Hutchison, *Champions of Charity*, 150

humanize war were acceptable minimally, only to the extent that they provided relief to victims on the battlefield. It is possible that this grudging acceptance of the ICRC by the armed forces made the humanitarian organization conscious that any further step towards disarmament by developing laws of war to this end would arouse immediate suspicion among the nation-states. The ICRC as a fledgling humanitarian organization was acutely conscious that by explicitly championing disarmament activities, its members "would quickly become suspect among the military, whose confidence in them was indispensable, as they permitted themselves to cast the least disfavour upon the profession of arms."⁵⁷

During this period in history, the ICRC's approach to the problems of war and disarmament was distinguished from other actors in the international system. The ICRC as a voluntary association accepted responsibility for ameliorating the sufferings of the wounded in war. It was not the task of the ICRC to outlaw war or secure disarmament. On the contrary the ICRC believed in raising funds by seeking donations from the public to provide assistance in times of war. The idea of humanitarianism, as it was embodied in the ICRC, was contested by other war veterans such as

⁵⁷ Hutchison, *Champions of Charity*, 194

Florence Nightingale, Dr. Chenu and Dr. Diday.⁵⁸ These actors argued that the constitution of humanitarian organizations like the ICRC would render war easier. It would encourage states to shirk and transfer responsibility for their war wounded to humanitarian organizations. Furthermore, these organizations working in close cooperation with the national militaries will soon get incorporated into their military systems. They argued that instead of constituting humanitarian organizations as auxiliaries to nation-states, there was need for improvement and professionalism in the military medical services themselves. They believed that the tax-payers money should be used to this end and the citizenry not taxed further to make contributions to charities to aid the wounded. This would encourage states to accept full responsibility for their wounded and make it difficult for them to wage wars. Dr. Diday argued, "We must leave to war all its horrors, if this be the only way to open the eyes of those who order it, and those who submit to it... Let us not encourage the scourge by an organization, every offering to which would be a vote against the return of a general peace."⁵⁹

⁵⁸ Dr. Chenu, Dr. Diday and Florence Nightingale had all served in the Crimean War. See. Hutchison, *Champions of Charity*, 39-43

⁵⁹ Hutchison, *Champions of Charity*, 68

The ICRC refuted these arguments by claiming that, “when means to injure the enemy are being incessantly multiplied and brought to perfection, murderous refinements of war should have correlative refinements of mercy.”⁶⁰ Accepting “war for what it is” and disinterested in any attempt to outlaw war, Moynier and Appia in their treatise *La Guerre et La Charité* boldly stated, “To humanize war--if it is not a contradiction to bring such things together--that is our mandate.”⁶¹ Conscious of the irony of their cause, Moynier and Appia asserted that their interest as a humanitarian organization is in harmony with the interest of belligerent nation-states that seek to relieve the sufferings of the wounded on the battlefield. While it was the obligation of governments to relieve the sufferings of the wounded, by providing this relief as a voluntary association, Moynier claimed that “the Red Cross has an undying right to the gratitude of those who suffer” and consequently of their governments.⁶²

Interestingly despite their apparent disinterestedness in addressing the problems of abolishing war and achieving disarmament, Moynier and Appia shrewdly observed that by recruiting volunteers to work as

⁶⁰ Hutchison, *Champions of Charity*, 28

⁶¹ Hutchison, *Champions of Charity*, 65

⁶² Senarclens, *The Founding of the Red Cross*, 185

“Samaritans” in the battlefield, ICRC could make a significant contribution towards achieving disarmament.⁶³ The ICRC strategy towards achieving disarmament would be based on the testimonies provided by its delegates acting as witnesses in the battlefield. To quote Moynier,

by organizing succor for the wounded, in addressing fervent appeals in their favour to the various nations, in exciting pity by the relation of their miseries, and in laying bare, with a view to help our cause, the lamentable spectacle of a field of a battle, in unveiling the terrible realities of war, and in proclaiming, in the name of charity, that which policy has often an interest to keep concealed, *we shall do more for the disarmament of nations* than those who have recourse to economic arguments or to the declamations of a sterile sentimentalism.⁶⁴

Moynier and Appia’s mind reveals a capacity for strategic thinking for humanitarian purposes. If the ICRC as a humanitarian organization wants

⁶³ Hutchison, *Champions of Charity*, 68

⁶⁴ Hutchison, *Champions of Charity*, 68 (italics inserted)

to address the problem of weapons, it will have to deploy the testimonies of field delegates. These testimonies providing graphic details of injuries suffered by the victims of war would provide the ICRC with the moral argument to participate in practices regulating and prohibiting the use of weapons. Moynier and Appia had every reason to believe in the power of testimonies and their possible effects in achieving change such as disarmament. They had experienced how Dunant's testimony had laid the groundwork for the ICRC and the Geneva Conventions of 1864.

But having reaped the benefits of Dunant's testimony, the other members of the ICRC did not hesitate from discarding the witness himself. After having appropriated Dunant's testimony, the ICRC under the tutelage of President Moynier disowned him completely and dissociated itself from his personal misfortunes. In tendering his resignation to the ICRC, Dunant observed, "I return to the shadows, the enterprise is launched, I have merely been an instrument in the hand of God, now it is for other better qualified than I to move it forward and ensure its advance."⁶⁵ The ICRC under the leadership of Moynier made every possible effort to persecute

⁶⁵ Jean de Senarclens, *The Founding of the Red Cross*, 185. Senarclens and Hutchison provide interesting insights into the debate regarding Dunant's removal from the ICRC. The members of the ICRC refused to associate or offer any assistance to Dunant as they feared the public scandal surrounding Dunant's businesses affairs. Moynier as President of the ICRC coerced Dunant to resign as Secretary of the ICRC.

Dunant and ensure his disappearance from the international scene. Dunant was forced to pursue his humanitarian ambitions in a personal capacity completely abandoned by the ICRC until his death.

But in recognition for his efforts Dunant was awarded the Nobel Peace Prize in 1901. During the later years of his life, Dunant had embraced pacifism, an idea which, in the late nineteenth century, stood in stark contradiction to humanitarianism. John Hutchison observes that Dunant's embrace of pacifism could be interpreted as acceptance of defeat of humanitarian efforts to civilize war.⁶⁶ This became a source of humiliation for the ICRC itself and as the pacifist movement grew in strength, the ICRC felt compelled to suggest that it was "united by a common sentiment" with the pacifist movement.⁶⁷ But at the same time, ICRC claimed that while the pacifist "societies and congresses have as yet scarcely left the realm of theory and idealistic aspirations," it was the ICRC that was engaged in "definite and urgent tasks centered on the wounded and the sick."⁶⁸ According to the ICRC, this work was of more practical significance in achieving disarmament in the future. The differences between the pacifists and the humanitarians are summed by

⁶⁶ Hutchison, *Champions of Charity*, 351

⁶⁷ Hutchison, *Champions of Charity*, 193

⁶⁸ Hutchison, *Champions of Charity*, 193

Jean de Senarclens, in the following words, “The followers of these pacifist movements blamed the founders of the Red Cross, from the beginning, for recognizing the legitimacy of war, while seeking to limit its effects.”⁶⁹

Practices of Medicalization

It was in the practices of pacifist organizations of the nineteenth century and their discourses on war and peace that one comes across the explicit expressions of concern with regard to disarmament. In any attempt to address the subject of disarmament the ICRC’s emphasis was on being discreet. Only a teleological perspective on disarmament was encouraged. This strategy of prudence was also shared by some observers in the pacifist camp reluctant to launch a direct assault on state practices to achieve disarmament. They observed that,

Disarmament is the last step of pacific organization. Before achieving disarmament, the reduction of arms must occur; and

⁶⁹ Senarclens, *The Founding of the Red Cross*, 257

before that, the limitation of arms; and that limitation will have to be first preceded by a general accord among the powers.⁷⁰

Frederick Passy as leader of the International Peace League observed, "While disarmament was obviously the distant aim of our efforts and our hopes, the moment had not come to ask for it...to make what would appear to be an attack on the army or what could be interpreted as a weakening of discipline, was totally contrary to our method of seeing."⁷¹ Christian Lange summarizes the situation in the following words, "this burning and difficult issue was not discussed often...at conferences. (They) only rarely studied the problems of the possibility of a halt in the arms rivalry."⁷² It was feared that "In the current state of the question (of world peace) it could be dangerous to suggest general immediate disarmament to an international congress...War itself...might result from this well intentioned initiative toward the ideal pacific state."⁷³

⁷⁰ Sandi E. Cooper, *Patriotic Pacifism-Waging War on War in Europe 1815-1914*, (New York, Oxford: Oxford University Press, 1991), 127

⁷¹ Cooper, *Patriotic Pacifism*, 117

⁷² Cooper, *Patriotic Pacifism*, 117

⁷³ Cooper, *Patriotic Pacifism*, 117

While the pacifists engaged themselves in denouncing the economic costs of arms races in peace congresses, humanitarians mulled over the possibility of accumulating statistical data on the sufferings of victims. It was believed that this type of quantitative data could present a strong argument in the defense of disarmament. Dunant in his testimony had provided statistical data to reinforce the perspective that the Battle of Solferino was a "European catastrophe."⁷⁴ His testimony had numerically accounted for "the total of killed and wounded Austrians and Franco-Sardinians" to approximately 40,000 on the day of the battle itself.⁷⁵ This figure was doubled two months after the war taking into account those that did not survive because of the suffering they had endured as a result of the war. These figures had helped awaken the conscience of Europe. Statistical evidence was also provided by journalists reporting figures of approximately 35,000 to 50,000 men wounded, maimed and killed in the Battle of Solferino.⁷⁶ Similarly humanitarian actors such as Leonce de Cazenove engaged in constituting a Red Cross society in France argued that to further the cause of peace and disarmament, voluntary aid societies will have statistics, unanswerable in their exactness and their veracity; and when the partisans of war shall see those long lists of dead and

⁷⁴ "A Contemporary Account of Solferino", *International Review of the Red Cross*, no.181, (April 1976), 210

⁷⁵ Dunant, *Memory of Solferino*, 106

⁷⁶ *Toronto Weekly Message*, 16 July 1859. Also see "A Contemporary Account of Solferino", 210

wounded, of amputations, mutilations, and disfigurements, perhaps they will begin to reflect on, and to recognize, their cruel folly.⁷⁷

Dunant's testimony on the suffering of victims often identified them as subjects with a name, class, and rank and supplemented this information with statistical records. But from the ICRC's accounts all reference to the subjects as individual entities disappears and it succumbs to the overpowering logic of accumulating statistical information on the suffering of the victims in each battle. It takes pride in providing quantifiable numbers of relief packets provided to quantifiable number of victims. James Dawes observes the implications of this subtle shift in the representation of the suffering of victims from subjects to objects by noting how statistical information accumulated during war becomes an "epistemology of war."⁷⁸ Counting numbers is considered to be a source of objectivity on the battlefield but this very objectivity achieved through the "tactics of compression" can become a source of epistemological violence.⁷⁹

⁷⁷ Hutchison, *Champions of Charity*, 78

⁷⁸ James Dawes, *The Language of War- Literature and Culture in the US from the Civil War through World War II*, (Cambridge, Massachusetts and London, England : Harvard University Press, 2002), 24-68

⁷⁹ Dawes, *The Language of War*, 31

The statistical information acts as a tool for abstraction of identity and individuality of victims that would arouse sympathy and compel action. It provides a system of classification of different categories of victims-wounded, injured and killed that would otherwise be treated as an “aggregate loss.”⁸⁰ Furthermore these numbers and categories serve as an administrative technique of control and facilitate an emotional distancing mechanism. It reduces human subjectivity and human response to suffering to a “craftsman’s enthusiasm for identifying and mastering certain types of wounds” and generates a structure of replaceability.⁸¹ These numbers “serve a value neutral purpose that at the same time contributes to a value-oriented function (in this case it trains one to dismiss the value of the individual unit)”⁸² These numbers establish conditions that transform war into a system of productivity and even human improvement. The ICRC’s ability to provide this information in simple classified categories makes it a simple, easily accessible and practical narrative on the effects of war.

Contrary to the expectations of humanitarians and Pacifists, James Dawes suggests that the epistemological violence of statistical numbers is an act

⁸⁰ Dawes, *The Language of War*, 31-32

⁸¹ Dawes, *The Language of War*, 44

⁸² Dawes, *The Language of War*, 33

of closure that leaves nothing unaccounted for and “enables complacency in the face of unquantifiable suffering.”⁸³ The hazard with a statistical imagination is that it becomes a source of melancholia that acts as an “open wound” that “lacks an object present to consciousness.”⁸⁴ To quote James Dawes,

The war that always threatens to burst the seams of narrative clarity is recaptured in an almost aesthetic cleanliness and order. The ones who do not count, so to speak, are merely counted. In a vicious synecdoche the wound replaces the name as the primary bearer of identity and the wound itself is transformed from the vividly corporeal (a shattered hip, a severed artery) into the abstraction of a mathematical equation, a number in a chart that can be tallied both horizontally and vertically.⁸⁵

⁸³ Dawes, *The Language of War*, 34

⁸⁴ Dawes, *The Language of War*, 54; Also see Sigmund Freud, “Mourning and Melancholia” in *The Standard Edition of the Complete Psychological Works of Sigmund Freud*, ed. James Strachey, vol.14, (London: Hogarth, 1957), 245-259, 253

⁸⁵ Dawes, *The Language of War*, 30

In fact it was with this type of statistical information that Dunant had represented the ICRC at International Statistical Congress in Berlin where he met military surgeons deliberating on the comparative morbidity and mortality statistics of armies and civilian populations.⁸⁶ The benefits of quantitative data collection, which was so emphasized by the humanitarians and the pacifists, were attractive to the medical profession too. Jean de Blonay, an ICRC medical delegate, establishes a direct correlation between developments in the field of humanitarianism, medicine, surgery and pharmacology.⁸⁷ Jean de Blonay argues how working with humanitarian organizations provided an opportunity to civilian surgeons to engage in the treatment of the war wounded that “would not have been involved without the Red Cross.”⁸⁸ The abundant experience and information that these surgeons gained in ambulance and field hospitals helped them “to discover and consolidate the principles of modern surgery and treatment of wounds.”⁸⁹ It also helped normalize any discussion on treatment of wounds inflicted by weapons used in war.

⁸⁶ Hutchison, *Champions of Charity*, 30

⁸⁷ Jean de Blonay, “1870: A Revolution in Surgery,” *International Review of the Red Cross*, no.182, (May 1976), 266-268

⁸⁸ Blonay, “A Revolution in Surgery,” 266-268

⁸⁹ Blonay, “A Revolution in Surgery,” 266-268

The experience and information that these doctors gathered from operating on victims on the battlefield contributed to producing a “generation of pioneers who, in the space of thirty years, would establish the bases of modern surgical techniques.”⁹⁰ The availability of antiseptics and anesthetic drugs facilitated advanced surgery to heal the victims of war possible. The International Red Cross Conference venues in Berlin and Paris became sites of international exhibition for the modern inventions in sanitary and ambulance technologies. Dr. Thomas Longmore, Baron Mundy and Sir John Furley proposed that the effect of weapons used in war, wounds suffered by the victims and the Red Cross volunteer’s ability to address them should be discussed at the International Red Cross conferences.⁹¹ This subject was placed on the agenda of the International Red Cross conferences in Rome (1892) and Vienna (1897) but never received due consideration. The accolades heaped on the scientific progress made in treating the wounded on the battlefield made it appear unnecessary to address the problem of weapons themselves.

⁹⁰ Blonay, “A Revolution in Surgery,” 266-268

⁹¹ Hutchison, *Champions of Charity*, 171-173

Practices of Legalization

No doubt the statistical data provided by humanitarian organizations emphasized the enormity of the consequences of war and the gigantic efforts needed to address the suffering of victims. But it did little to present arguments against the indiscriminate nature of weapons used in war. James Dawes observes that, "The logic of counting is structural equivalency and personal irrelevance, a logic that does not simply reflect war's massive scale or violence's indiscriminateness but that participates in and reinforces this pervasive commensurability."⁹² To present arguments against the indiscriminateness of war the pacifists and the humanitarians acknowledged the need for the establishment of an international legal order before any progress could be made towards disarmament. Moynier observed, "the customs of war were in general, a total chaos in which everyone could find arguments to justify his conduct, whatever it might be; that was proof that 'might makes right' was the sovereign law governing the combatants' actions."⁹³ This statement demonstrates Moynier's dissatisfaction with the *jus ad bellum* or the law

⁹² Dawes, *The Language of War*, 69-70

⁹³ Gustave Moynier, *Ma Contribution aux Progress du Droit International (My Contribution to the Progress of International Law)*, typewritten ms., ICRC, Collection Moynier, 8; See Senarclens, *The Founding of the Red Cross*, 169

of war and his firm disposition that the task of “The New Law of War” is to ensure that war does not exceed the limits of strict necessity.⁹⁴ It is the purpose of laws of war to “specify these limits as precisely as possible, so as to ensure that wars between states did not obliterate the moral ties that joined the human beings involved in fighting them.”⁹⁵ From these observations it is possible to infer that according to Moynier, the focus of humanitarians will be to refrain from judgment on the causes of war and advance the development of *jus in bello* or the laws in war.

Pacifists like Bertha von Suttner and Klas Arnoldson agreed that the question of arms race and disarmament could be addressed only with a prior creation and understanding of an international legal order. Bertha Von Suttner observed, “friends of peace should not take up the armaments question: this can only follow from a preceding understanding and creation of a legal order.”⁹⁶ The ICRC could not agree more. James Dawes analyses of the language of war provides some helpful insights into the strategic thinking and practices that led pacifists and humanitarians to expound on the necessity of a legal framework to facilitate the work of

⁹⁴ Hutchison, *Champions of Charity*, 106

⁹⁵ Gustave Moynier, *Etude sur la convention de Genève pour l'amélioration du sort des militaires blessés dans l'armées en campagne (1864 et 1868); droit de gens*, (Paris: Cherbuliez, 1870); See Hutchison, *Champions of Charity*, 106

⁹⁶ Cooper, *Patriotic Pacifism*, 117

disarmament. James Dawes observes that “from its inception, the law of land war was designed to... revivify the power of language to discriminate” and this was initially made possible by the Geneva Conventions and the symbol of the red cross that established a line of demarcation between combatants and those with a protected status.⁹⁷ Developing the laws of war was essential to “formulate a language of resistance to the military’s representation of victims and their suffering that would make a mockery of any distinction or discrimination impossible.”⁹⁸ Furthermore by codifying the laws of war it was possible to constitute a universal language that established “a structure of repetition, a style of comprehensiveness and referential clarity” making it possible to effectively monitor the conduct of sovereign nation-states. But in constituting this language, James Dawes observes that the efforts of the ICRC have been to “eschew the murkiness of subjectivity” and focus on “constructing a language of universal categories and objective measurements.”⁹⁹ The effect of these efforts by the ICRC “creates an ethics based on achromatic duty rather than respect.”¹⁰⁰ Consequently to quote James Dawes:

⁹⁷ Dawes, *The Language of War*, 69-70

⁹⁸ Dawes, *The Language of War*, 69-70

⁹⁹ Dawes, *The Language of War*, 212

¹⁰⁰ Dawes, *The Language of War*, 213

the logic of war against which the conventions set themselves is this very tendency to devalue individual subjectivity, to make humans into collectible, countable and disposable things. And yet here, unexpectedly, a strange confluence is revealed between the two. For a striking and suggestive moment, the conventions seem to operate not so much athwart as within the assumptions of war. The humanitarian treaties and organized butchery work together: war's instrumentalization / dehumanization and law's universalization / departicularization both serve to objectify (to make an object, to make objective). Violence and its other, in a word commingled, achieve grotesque synthesis.¹⁰¹

However, Moynier believed that ICRC's participation in the development of international laws of war was vital to harmonize the "customs of law with morality" and expressed hope that "the day will come when there will be a general codification of the law of war."¹⁰² To this end, Moynier devoted his efforts at establishing an International Institute of Law from

¹⁰¹ Dawes, *The Language of War*, 214

¹⁰² Hutchison, *Champions of Charity*, 107

where “the most learned men in the field of international law” could “proclaim with a single voice, if possible, rules of moderation from which the legal conscience, of our time would permit no departure.”¹⁰³ Moynier the legal strategist within the ICRC realized the importance of having such institutions that together with the ICRC could work towards the dissemination of the laws of war agreed upon by sovereign nation states. In the codification of the laws of war, Moynier was also shrewd enough to realize that the attention to minute details exercised in drafting legal principles and rules could be compromised by unforeseen amendments and therefore it was desirable that such work not be exposed to the hazards of detailed discussions and revisions. The Geneva Conventions of 1864 were themselves a “model of brevity” and simplicity of language.¹⁰⁴

An authoritarian streak and familiarity with the process of drafting legal texts made Moynier the most watchful guardian of the Geneva Conventions. It will not be wrong to observe here that this preoccupation with the need for a legal framework from which to launch a struggle for disarmament prevented both humanitarians and pacifists to provide moral arguments for disarmament and thereby they implicitly yielded space to

¹⁰³ Paul Ruegger, “Gustave Moynier,” *International Review of the Red Cross*, no.178, (January 1975), 4

¹⁰⁴ Hutchison, *Champions of Charity*, 50

the logic of legal and technical arguments that came to dominate the discussions in disarmament conferences. Geoffrey Best suggests that the conditions for the establishment of a new international legal order were set in motion by the International Committee of the Red Cross with the signing of the Geneva Convention of 1864 (the first multilateral humanitarian treaty) and the St. Petersburg Declaration of 1868 (The first treaty for weapons-limitation)¹⁰⁵ These measures were regarded by Moynier as a “continuous line of defense that will bring to the conduct of war as much humanity as possible” leading to a “general codification of the law of war.”¹⁰⁶ The purpose of the St. Petersburg declaration of December 11, 1868 only stated the need for specifying “the technical limits where the requirement of war should give way to the needs of humanity.”¹⁰⁷ The declaration outlawed explosive bullets and projectiles weighing less than 400 grammes that are either explosive or loaded with inflammable or fulminating material.

¹⁰⁵ Geoffrey Best, *War & Law Since 1945*, (Oxford: Oxford University Press, 1994), 45-46

¹⁰⁶ Hutchison, *Champions of Charity-War*, 107

¹⁰⁷ Pierre Boissier, *History of the International Committee of the Red Cross from Solferino to Tsushima*, (Geneva: Henry Dunant Institute, 1985), 228

The St. Petersburg Declaration also established the principle of “unnecessary suffering” as a cardinal principle of laws of war by stating that:

Considering that the progress of civilization should have the effect of mitigating as far as possible the calamities of war; That the only legitimate purpose States should set themselves during a war is to weaken the military forces of the enemy; That, to this end, it is sufficient to disable the greatest possible number of men; That this purpose would be overstepped by using weapons that would unnecessarily aggravate the suffering of disabled men, or would make death inevitable; That the use of such arms would therefore be against the laws of humanity. ¹⁰⁸

These efforts at codification and popularization of the international laws of war encouraged a perception, “that war need not be as nasty as the anti-war party said it was, and that in any case non-combatants and their

¹⁰⁸ See the text of the St. Petersburg Declaration 1868 in Boissier’s, *Solferino to Tsushima*, 227

private property could largely be kept out of it.”¹⁰⁹ These meager measures sought to appease the pacifists and the humanitarians without relinquishing nation-states' ability to wage war. At this conference “additional articles” were appended to the Geneva Conventions to secure their application in situations of war at sea. But the initial history of codification of the laws of war was also a period of severe insecurity experienced by the ICRC as an actor. This insecurity severely constrained any interest that Moynier and his colleagues might have cherished in pursuing the agenda of disarmament more explicitly.

The relationship between the sovereign nation-states and the newly constituted humanitarian organization, the ICRC, was not based on mutual trust and confidence. At the International Red Cross Conference in Berlin in 1869, the ICRC denied any need for precise formal statutes concerning its mandate and organization. Moynier stated that “in view of the special nature of our functions”, we are” answerable to no one and exercise no authority.”¹¹⁰ Similarly, at the International Red Cross Conference held in Karlsruhe in 1887, it became clear that the tacit recognition of the ICRC as a moral authority was far more powerful than any formal recognition in

¹⁰⁹ Best, *War & Law Since 1945*, .45

¹¹⁰ Hutchison, *Champions of Charity*, 93-94

law which would only “run the risk of finding its freedom of action limited, and of seeing the results of its activity compromised.”¹¹¹ Gustav Ador representing the ICRC at this conference claimed that “the Committee has never asked for an extension of its competence; it has never taken the initiative to ask for a more complete definition of its rights.”¹¹²

John Hutchison in his close study of the politics of International Red Cross conferences during this period, shrewdly observes, how any proposal championing a formal recognition of the ICRC in international law or recommending a restructuring of its organization was carefully resisted by the ICRC itself. Hutchison concludes that, “It was not the other Red Cross Societies but rather the governments themselves who did not wish to create an international authority that might give them orders about how wars were to be waged.”¹¹³ The ICRC was deeply aware of this sentiment among the nation-states and did not wish to challenge it. It was content to maintain an unwritten and unspoken “exceptional status” for itself that provided it with the necessary ambiguity with which it could later expound the doctrine of the “right of initiative” to justify its

¹¹¹ Hutchison, *Champions of Charity*, 162

¹¹² Hutchison, *Champions of Charity*, 164

¹¹³ Hutchison, *Champions of Charity-War & the Red*, 162

engagement with the problem of weapons.¹¹⁴ At the International Red Cross Conferences held in Rome in 1892 and Vienna, 1897, efforts to discuss the problems of weapons used in war were skirted and subsumed to the logic of “There is no limit on armaments how then can we permit any limit on preparing measures for assistance?”¹¹⁵ There is no evidence of the ICRC steering the International Red Cross conferences to actively participate in the shaping of the agenda of disarmament. On the contrary the ICRC appeared to be indifferent or content to let the five year intervals, changing composition of national delegations and the procedural routines involved in these conferences to act as impediments in any serious effort to pursue an agenda of disarmament.

To reiterate, the ICRC actively championed the cause of establishing an international legal order to regulate the conduct of war but did not seek any formal recognition of itself as an institution within this order. Hutchison notes that, “The International Red Cross conferences of the 1880s made it plain that both the ICRC and the national societies were

¹¹⁴ The ICRC claims to possess a broad right of initiative in situations of armed conflict. It claims to derive these rights from the Geneva Conventions. See “Legal Bases: Extract from the ICRC 2009 Annual Report”, ICRC website, accessed March 7, 2011, <http://www.icrc.org/eng/resources/documents/annual-report/annual-report-legal-bases-2009.htm>

¹¹⁵ Hutchison, *Champions of Charity-War & the Red Cross*, 168-173

prepared to live with the cult of the nation.”¹¹⁶ It is in this atmosphere of discretion and recognition of the absolute power of the sovereign state over its weapons that one has to interpret the feeling of concern and trepidation among the members of the ICRC and their mandate under the Geneva conventions. Hutchison notes, “These fears of the ICRC were not groundless as its limited mandate under the Geneva Conventions of 1864 was constantly under threat of usurpation and co-optation by competing nation-states.”¹¹⁷ The emergence of the ICRC as a humanitarian organization was only possible because sovereign nation-states recognized that “any nation which does not participate in this humanitarian work will be outlawed by European opinion.”¹¹⁸

Following the St. Petersburg Conference on disarmament of 1868 Moynier and Appia had observed a “close connection that existed between this idea and the principles of the Geneva Convention.”¹¹⁹ They took credit for it by noting that the St. Petersburg Conference 1868 is building on the preparatory work done by the Geneva Convention 1864. While the Geneva Conventions is concerned with the protection of wounded soldiers on the

¹¹⁶ Hutchison, *Champions of Charity*, 150

¹¹⁷ Hutchison, *Champions of Charity*, 150

¹¹⁸ Gumpert, *The Story of the Red Cross*, 118

¹¹⁹ Boissier, *Solferino to Tsushima*, 225-226

battlefield, the Petersburg Declarations is a preventive measure insofar as it seeks to prohibit projectiles that wound soldiers.¹²⁰ In fact, Moynier was interested in considering the possibility of combining the two things as “Not only would this be the natural thing to do but Russia herself would probably find it useful to take advantage of the congress in Geneva which would serve a dual purpose.”¹²¹ This observation by Moynier suggests that now was an opportunity for the ICRC to address the second question raised by Dunant in his testimony with regard to “new and frightful weapons of destruction”¹²² that could be regulated and prohibited by developing laws of war as precautionary measures against the horrors of war.

Pierre Boissier in his *History of the International Committee of the Red Cross from Solferino to Tsushima* notes that “Moynier’s idea having been rejected, the next chapter in the law of war was written in St. Petersburg.”¹²³ Pierre Boissier does not provide us with any clear rationale as to why and how Moynier’s idea put forth by him to the Swiss

¹²⁰ Boissier as the official ICRC historian observes, “whereas the Geneva Convention came into play from the moment the soldier was wounded, the Declaration of St. Petersburg sought to prevent the occurrence of certain wounds. It might be said that the gunshot itself marked the separating line b/w them.” Pierre Boissier, *Solferino to Tsushima*, 227

¹²¹ Boissier, *Solferino to Tsushima*, 226

¹²² Dunant, *Memory of Solferino*, 128

¹²³ Boissier, *Solferino to Tsushima*, 226

confederation was rejected. It is necessary to explore this development as within it lie further accounts of the division of the laws of war into Geneva Conventions and the Hague Laws. A possible reason as to why Gustave Moynier's suggestion was not warmly received by the Swiss Confederation was the general hostility that pervaded western European countries against the imperial and later socialist ambitions of Russia. The Government of Switzerland itself was facing internal turmoil with "the number of anarchists and nihilists who had taken refuge there, and the murder of the Empress of Austria by one of them shortly before, at Geneva, in broad daylight, had thrown discredit over the ability of the Swiss Government to guarantee safety to the conference."¹²⁴

At the same time, the ICRC itself maintained a constant vigilance against any possibility of usurpation of the Geneva Conventions of 1864 by the sovereign nation-states. The Franco-Prussian War of 1870 had exposed the weaknesses in the implementation of the Geneva Conventions. Problems pertaining to mutual reciprocity in fulfilling the obligations under these laws, difficulty in practical application of the legal provisions and the grudging reluctance of the military to share its space with humanitarian actors had made the Geneva Conventions unpopular with sovereign

¹²⁴ Andrew D. White, *The First Hague Conference*, (Boston: The World Peace Foundation, 1912),1

nation-states. Furthermore in 1873, Moynier had been secretly informed of "a draft of an agreement of an exclusively official nature" circulating among governments, "the purpose of which was to put aside or, or at least to modify the Geneva Convention."¹²⁵ The perfect opportunity for this was at the Brussels Conference of 1874 which had been convened with the express purpose of determining "with greater precision than in the past, the laws and customs which are permissible in wartime, so as to limit the consequences and reduce the distress caused by war, so far as this is possible and desirable."¹²⁶ Its ambition was to "codify and clarify in 71 articles, a major part of the structure of common law applicable in wartime."¹²⁷ The ICRC feared that the additional articles that had been annexed to the Geneva Convention on October 20, 1868 would be used as a pretext during the Brussels Conference of 1874 to compromise or discard them altogether. The ICRC mobilized itself and the national Red Cross societies to actively to render this impossible and heaved a sigh of relief when the Brussels Declaration only reinforced the provisions of the

¹²⁵ Daniele Bujard, "The Geneva Convention of 1864 and the Brussels Conference of 1874", *International Review of the Red Cross*, no. 164, (November 1974),.578

¹²⁶ Bujard, "The Geneva Convention of 1864 and the Brussels Conference of 1874," 528

¹²⁷ Bujard, "The Geneva Convention of 1864 and the Brussels Conference of 1874," 528

Geneva Conventions of 1864 and the ICRC's wish "to see the text of the 1864 Convention remain unchanged was fully realized."¹²⁸

Similarly, at the convocation of the Hague Conferences in 1899 at the behest of Tsar Nicholas II of Russia, the ICRC was consumed with desire to safeguard the Geneva Conventions. It failed to realize that, "It may be possible" for statesmen "to get around the armaments question and suggest a few alterations in international law and the Statute of the Red Cross."¹²⁹ But the ICRC was reluctant to share the popular imagination that conceived of the Hague Conferences as Disarmament Conferences. It failed to realize that this conference was an opportunity to realize the full potential of Dunant's testimony.

But Dunant had not forgotten the horrors of war and the dangers of arms races. He reckoned that:

¹²⁸ Brussels Declaration of 1874 suggested application "to maritime warfare the provisions of the Geneva Convention of 1864 on the basis of the Additional Articles of 1868." Daniel Bujard, "The Geneva Conventions of 1864 and the Brussels Conference of 1874," 582

¹²⁹ Cooper, *Patriotic Pacifism*, 125

I have fought Russia all the time, because Russia seeks to regulate war, by making people accept the idea that it is the normal situation of mankind and always will be, whereas I...seek to reduce the inevitable horrors of war, that terrible scourge which future generations, perhaps, will regard as madness.¹³⁰

Dunant recognized that the efforts of humanitarian organizations like the ICRC were subsumed under the logic of, "By making war more humane, we make it more difficult."¹³¹

But a careful scrutiny of the wary disposition of European governments towards this conference had convinced him to pursue the idea of disarmament more explicitly. In a manifesto addressed to the Tsar of Russia, on the eve of the Hague Conference, Dunant issued an appeal for general disarmament:

¹³⁰ Y. de Portales and R. H. Durand, "Henry Dunant, Promoter of the 1874 Brussels Conference, Pioneer of Diplomatic Protection for Prisoners of War," *International Review of the Red Cross*, no.167, February 1975, 84

¹³¹ Portales and Durand, "Henry Dunant, Promoter of the 1874 Brussels Conference," 84

In the 20th century, the savage selfishness of nations cannot last, just as in the Middle Ages the quarrelsome and fierce egoism of the barbaric feudal barons could not continue unchecked. Life was hard then, but today, *if the rivalry in increasing arsenals goes on for long the struggle for life will become so awful that there will remain nothing but to prepare for doom...* May the heads of all nations rise to the occasion and seize the opportunity to deliver their peoples from the crushing burden oppressing them and to remove the threat of conflict.¹³²

In this manifesto, Dunant proposed reductions of armaments and the establishment of a disarmament bureau.¹³³ But alone and obscure Dunant, abandoned by the ICRC, with this message did not have the strength of the organization that he had created to help him in this endeavour. The ICRC led by Moynier feared the call for the revision of the Geneva Conventions made in 1899 by Russia and France. This call had aroused immediate concern within the ICRC that "the delegates at The Hague

¹³² Portales & Durand, "Henry Dunant, Promoter of the 1874 Brussels Conference, Pioneer of Diplomatic Protection for Prisoners of War," 84 (italics inserted)

¹³³ Andre Durand, "The development of the idea of peace in the thinking of Henry Dunant," *International Review of the Red Cross*, no. 250, (January-February 1986), 36-37

might, in their enthusiasm for creating new international agreements, override the terms of the existing Geneva Convention, particularly with regard to the use of the Red Cross emblem.”¹³⁴ Thus, the ICRC focus was on keeping the growing politicization of the Hague Conferences and their agenda of disarmament at bay from the Geneva Conventions. The agenda on disarmament as embodied under the Hague Laws was a matter of secondary importance to the ICRC interested in securing its guardianship of the Geneva Laws.

Pierre Boissier notes that at the Hague Conference of 1907, “Contrary to all previous conferences, no member of the International Committee was present.”¹³⁵ It was a deliberate decision of the ICRC to boycott this conference. It did not want to risk any possibility of political maneuvering by nation-states interested in revisions to the Geneva Conventions under the guise of pursuing disarmament. At the Hague Conference 1899, sovereign nation-states made paltry efforts to ban the introduction of new firearms, new explosives and submarine or diving torpedo boats. The conference prohibited only three means of warfare: the launching of projectiles and explosives from balloons, the use of

¹³⁴ Hutchison, *Champions of Charity*, 195

¹³⁵ Boissier, *Solferino to Tsushima*, 280-281

projectiles diffusing asphyxiating or poisonous gases and the adoption of bullets which expand or flatten in the human body. As their interest in aviation grew, they even failed to renew the prohibition against the launching of projectiles and explosives from balloons at the second Hague Conference.

The Hague Convention of 1907 placed its provisions on maritime warfare at par with those of the revised Geneva Conventions of 1906 but it constrained the agenda of disarmament by stating that “the right of the belligerents to adopt means of injuring the enemy is not unlimited” but that “it is permissible to use any means of warfare without which the objective of the war could not be achieved. On the other hand, any act of violence and destruction not required by this objective should be disallowed.”¹³⁶ Pacifists like Bertha von Suttner shrewdly observed that adaptation of the Geneva Conventions to naval warfare at the Hague Conference was a ploy to waste time “codifying violence” that allowed the main problems such as disarmament do be “dodged.”¹³⁷ The Hague Conferences of 1899 and 1907 were considered to be a failure in furthering the cause of disarmament by the pacifists but Moynier seemed

¹³⁶ Boissier, *Solferino to Tsushima*, 380-381

¹³⁷ Durand, “The development of the idea of peace in the thinking of Henry Dunant,” 37-38

content to make the observation, that the ICRC's "participation in the development of the law of nations, having increased beyond what we had dared to imagine a priori, has occupied a very important place in its annals up to the present time."¹³⁸

Conclusion

The failure of the Hague Conferences contributed to a growing atmosphere of militant nationalism, militarism, accelerating arms races and consequently the First World War. Sandi E. Cooper observes that, "By 1913, the peace movement had shed its timidity about arms issues" and "attitudes toward arms reduction and the difficulties of its attainment constituted a second major axis of peace thinking before World War I."¹³⁹ Proposals such as the right of an individual to refuse to bear arms were now being tabled.¹⁴⁰ There were suggestions that "the capacity of weapons producers and their economic and social allies to influence public policy had to be revealed to the public."¹⁴¹ Ideas experimenting with the possibilities of constituting neutral zones for non-belligerents were being

¹³⁸ Senarclens, *The Founding of the Red Cross*, 210-211

¹³⁹ Cooper, *Patriotic Pacifism*, 11, 14

¹⁴⁰ Cooper, *Patriotic Pacifism*, 12

¹⁴¹ Cooper, *Patriotic Pacifism*, 13

considered. It was suggested that this would "delimit potential battlefield sites and control the cost of arms for smaller states."¹⁴² It was now an open question whether even all humanitarian efforts on the battlefield could protect the victims from the growing destructive power of weapons and whether the desire of charity to keep pace with the arms race was a feasible ambition. It was obvious to the ICRC that:

The peace societies are flourishing, especially the International Peace League, whose outstanding leader is the eminent, M. Frederick Passy; they are recruiting adherents by the thousands and their influence, already apparent in the councils of sovereigns, can only extend itself and grow larger and larger. The future belongs to them.¹⁴³

But the ICRC as a humanitarian organization failed to take an active stance on the problem of disarmament and support the efforts of the pacifists.

¹⁴² Cooper, *Patriotic Pacifism*, 13

¹⁴³ Hutchison, *Champions of Charity*, 108

As the possibility of a great war in Europe became an impending reality, nation-states encouraged developments in chemical weapons and aerial bombardment but the ICRC failed to grasp the urgency of the problem. Dunant's testimony had described the problem of weapons and their effects on victims and the future of war. It suggested the need for preventive measures to mitigate the sufferings of the victims by establishing volunteer relief societies and hope that the scope of work they undertook on behalf of the victims would also contribute to furthering the vision of disarmament. Dunant's testimony did have an effect on its audience and mobilized them into establishing the ICRC and the Geneva Conventions. But the differences between Dunant and his colleagues and the constant organizational insecurity experienced by the ICRC made it difficult for its members to actively pursue disarmament. Their efforts to address the problem of disarmament through practices focused on medicalization and legalization to bridge the gap between protection and destruction were strategic but inadequate to meet the contemporary threats of weapons. Dunant, the witness eventually disappeared from the scene. The task of rousing the ICRC from its complacent stupor with regard to weapons was left to the victims of aero-chemical warfare in the First World War. It was their testimonies of more sophisticated weapons inflicting great violence and suffering that would

finally mobilize the ICRC to take a more active stance in addressing the problem of weapons.

CHAPTER SIX - A LIVING WITNESS TO THE USE OF CHEMICAL WEAPONS

Introduction

The previous chapter demonstrated how as a nascent humanitarian organization in the late nineteenth century and the first decade of the twentieth century, the International Committee of the Red Cross deferred active engagement with the problem of arms reduction or disarmament. It paid no heed to Dunant's appeals on arms reduction and disarmament. But on 6 February 1918 the ICRC issued an appeal against the use of poisonous and asphyxiating gases in the First World War. This appeal is significant as it proclaimed ICRC's very first intervention in addressing the problem of weapons. This chapter therefore is interested in exploring one question. How has the ICRC addressed the problem of chemical weapons and to what effect? In addressing this question, this chapter demonstrates the politicization of witnesses and their testimonies by the ICRC, its efforts at codification and routinisation of practices of

legalization and medicalization in order to further the cause of regulation and prohibition of chemical weapons.

The appeal issued by the ICRC against the use of poisonous and asphyxiating gases is acknowledged in almost all the books on ACD focused on chemical weapons and in genealogical accounts investigating processes that enable the constitution of moral taboos against the use of chemical weapons. Richard Price in his book *The Chemical Weapons Taboo* notes that “a well-publicized appeal by the Red Cross for the abolition of gas warfare was prompted by a concern for the “unoffending population behind combat areas” and that “as the result of activity at the international level by organizations such as the Red Cross” the problem of gas weapons became a subject of public and government concern in Europe and the United States in the inter-war period.¹ Despite these assertions, little attempt is made by Richard Price or other scholars to explore the practices of the ICRC in regulating and prohibiting the use of chemical weapons.² This chapter seeks to fill this gap in the existing literature on ACD.

¹ Richard Price, *The Chemical Weapons Taboo*, (Ithaca & London: Cornell University Press, 1997), 62, 63, 71

² Frederic J. Brown, *Chemical Warfare-A Study in Restraints*, (Princeton, New Jersey: Princeton University Press, 1968); Victor A. Utgoff, *The Challenge of Chemical Weapons-An American Perspective*, (London:

Chemical weapons in the form of asphyxiating shells and poisonous gases were first stigmatized at the Hague Conferences in 1899 and 1907 because of its association with “the destruction of innocents.”³ In other words the asphyxiating shells were conceived to be dangerous and capable of threatening the lives of civilian populations. With the outbreak of the First World War chlorine gas was first used in the Battle of Ypres in April 1915 on a massive scale. Subsequent use of phosgene gas in the Battle of Verdun, mustard gas at Ypres and the use of poison shells and projectiles intensified the violence and suffering of the victims on the battlefields. These victims were largely combatants engaged in trench warfare and not civilians. In fact, the number of civilian casualties due to chemical warfare was estimated to be approximately five thousand with a hundred dead.⁴ The governments had so far followed a policy of avoidance and a policy of official silence with regard to gas warfare against civilians.⁵ In other words civilian casualties in the form of collateral damage with the use of poison gas were considered to be unavoidable and silence was observed with regard to this practice.

The Macmillan Press, 1990); Kim Coleman, *A History of Chemical Warfare*, (New York: Palgrave Macmillan, 2005); (New York: Edward M. Spiers, *A History of Chemical & Biological Weapons*, (London: Reaktion Books, 2010)

³ Price, *The Chemical Weapons Taboo*, 34

⁴ Price, *The Chemical Weapons Taboo*, 62

⁵ Price, *The Chemical Weapons Taboo*, 62-63

But there was fear that as the war progressed the number of civilian casualties could increase, as there was a growing possibility of aero-chemical bombardment of military and civilian targets. There was a real fear of aero-chemical warfare among the governments and people coupled with the realization that there was "no defence against gas."⁶ It was in this context that the ICRC as a humanitarian actor issued its public appeal against the use of poison gas on February 6, 1918.⁷ The appeal issued by the ICRC as a humanitarian organization and not a pacifist organization against the use of poisonous gas and asphyxiating shells received enormous publicity in the press and caught the attention of governments and the public. The appeal issued by the ICRC received popular support and attention not only because of the use of chemical weapons in the war but also because of the language in which the appeal was crafted. The language in which the ICRC crafted its appeal against the use of chemical weapons is very interesting to read.

⁶ Price, *The Chemical Weapons Taboo*, 63

⁷ "Appeal Against the Use of Poison Gas, Letter and Memorandum from the International Committee of the Red Cross to the League of Nations", ICRC Archives, CR 159-5, Carton 150

Appeal of a Living Witness

In this appeal, the ICRC deliberately describes itself as a “living witness” championing the principle of humanity in war.⁸ As a “living witness”, the ICRC declares,

The stretcher-bearers who, on the battlefields, picked up combatants stricken by these gases, and even more, the nurses who tended them in hospital, are all unanimous in testifying to their terrible sufferings—sufferings more poignant to witness than even the most cruel wounds.⁹

On the basis of these testimonies, the ICRC claims that its “voice” is being raised on behalf of witnesses that can testify to the suffering of victims from asphyxiating and poisonous gases. In this context it is helpful to note James Hatley’s observation that, “the testimony exists in the first place in order to bring one into immediate contact with those who would witness for the sake of another who remains voiceless even as he or

⁸ ICRC’s Appeal Against the Use of Poison Gas

⁹ ICRC’s Appeal Against the Use of Poison Gas

she is witnessed.”¹⁰ The ICRC as a living witness claims to serve this purpose.

Furthermore, the voice raised by the ICRC is not timid. It is used forcefully to declare, “We protest with all our might against such a method of waging war, which we can only term criminal.”¹¹ This stigmatization of the use of poisonous gases as criminal by the ICRC is further reinforced in the appeal with words such as “cruel”, “murderous”, “barbaric” to flesh out the inhumane character of this method of warfare. As a living witness, the ICRC anguishes over the suffering that this form of warfare inflicts on the victims and asserts that the use of poisonous gases would bring shame and not honour to the victorious. To quote the ICRC,

Do you wish victory to mean simply the complete destruction of your adversaries? Do you wish triumph to change into shame because that triumph is no longer due to the valour and undaunted courage of your children? Do you desire the

¹⁰ James Hatley, *Suffering Witness: The Quandary of Responsibility after the Irreparable*, (Albany, New York: State University of New York, 2000), 19-20

¹¹ ICRC's Appeal Against the Use of Poison Gas

return, not of the hero, who without hesitation has risked his life for his country, but of the man who, without danger to himself, has succeeded with the help of poison in ridding himself of his enemies by inflicting horrible suffering on his victims?¹²

It is possible to suggest here that the ICRC's appeal draws "upon a deeper moral source - the codes of a *warrior's honour*."¹³ Michael Ignatieff suggests that the warrior's honour is recognized across different cultures and includes the ability to distinguish between "moral and immoral weaponry."¹⁴ This ability to exercise discretion and restraint is increasingly threatened in an emerging era of technologically sophisticated warfare and therefore the "path of moral reason" followed by the ICRC, "lies in subtlety, even casuistry: accepting the inevitability, sometimes even the desirability of war, and then trying, if it is possible, to conduct it according to certain rules of honour."¹⁵

¹² ICRC's Appeal Against the Use of Poison Gas

¹³ Michael Ignatieff, *The Warrior's Honor- Ethnic War and the Modern Conscience*, (Toronto: Viking, 1998), 116 (italics inserted)

¹⁴ Ignatieff, *The Warrior's Honor*, 117

¹⁵ Ignatieff, *The Warrior's Honor*, 161

As a living witness, the ICRC mulls over the possibilities of arms races that the use of these weapons will generate, especially the easy and cheap access to raw materials facilitating large scale production of poisonous gases and projectiles that could then be used against enemy combatants and “inoffensive population” to inflict greater suffering. The ICRC expresses this concern in the following words:

A combatant in the face of an enemy who uses these gases is obliged to imitate him in spite of himself, and if he does not wish to be in an inferior position, which might prove fatal to him, he will try to surpass him; he will concentrate all his efforts on obtaining for his poisons a more deleterious and a wider action. This will mean a rivalry in a search for the most murderous and most cruel methods.¹⁶

The ICRC as a living witness continues to express concern with “reprisals”, “counter-attacks” that could lead to escalation and proliferation of this method of warfare. The ICRC argues that anyone trying to make this method of warfare more cruel contrary to the

¹⁶ ICRC’s Appeal Against the Use of Poison Gas

sentiments of humanity would bear “a steadily increasing weight of responsibility” and therefore appeals that a ban be imposed on this barbaric method of warfare.¹⁷

But in addressing the question of responsibility, the ICRC is very careful. It grounds its appeal under the rubric of the laws of war. The ICRC’s appeal makes the case that the use of asphyxiating and poisonous gases is a violation of the Hague Laws that prohibit the use of poison or poisoned arms and of weapons that cause superfluous injury. The ICRC argues that these conventions were constituted to mitigate the cruelties of warfare and their violation would render war inhumane. It suggests that this problem could be addressed if an agreement on banning the use of poisonous gases be signed “under the Red Cross flag” in order to reinforce “the principles which inspired the Conventions of Geneva and The Hague.”¹⁸ These rhetorical efforts by the ICRC to confer a special status on the Red Cross symbol in addressing the problem of weapons and its insistence on the principles of the laws of war indicate an initial attempt to deploy the

¹⁷ ICRC’s Appeal Against the Use of Poison Gas

¹⁸ ICRC’s Appeal Against the Use of Poison Gas

“language of war” to make it “equivalent to force” even as it seeks to resist the violence incurred by chemical weapons.¹⁹

In crafting its appeal against the use of poisonous and asphyxiating gases, the living witness willingly offers its services to facilitate agreement among governments. In offering its services, the ICRC is careful to note the relationship that it has carefully nurtured as a humanitarian organization working in tandem with sovereign nation-states. In an obsequious tone, the ICRC reminds sovereign nation-states of the special relationship it enjoys with governments. In other words,

we of the Red Cross, whose flag is the emblem of that sentiment of humanity which, not so long ago, showed itself, even in the midst of battle, address ourselves in the *first instance to the Sovereigns*, the Governments and the Generals, and *afterwards to the peoples* who are now ranged in conflict with each other.²⁰

¹⁹ Dawes, *The Language of War*, 207

²⁰ ICRC's Appeal Against the Use of Poison Gas, (italics inserted)

Thus the text of the ICRC's appeal against the use of poisonous and asphyxiating gases is an attempt to build upon the legacy of Dunant as a witness to the Battle of Solferino. It is an attempt to practice Moynier's strategic advice that the ICRC should use testimonies from the field of witnesses to serve the cause of disarmament. At the same time it is a careful invocation of the need to develop the laws of war and the ability of the ICRC to exercise leadership in this endeavour with the support of governments.

The effect of the ICRC's appeal as a living witness on its audiences varied. It resonated powerfully with the public as they added their voice to the appeal issued by the ICRC. It encouraged women such as Emma Jacot Mieville to address a personal letter to Edouard Naville, the acting President of the ICRC on this subject. In this letter, Mieville shares with him the personal experiences of her brother Henri an ordinary soldier, a witness and a victim of use of poisonous gases in the First World War.²¹ In this letter Henri provides a vivid description of the intense suffering that he and his fellow soldiers experienced in the trenches from aerial bombardment and exploding poisonous gas shells such as pyrite. In this

²¹ Letter from Emma Jacot Mieville to Edouard Naville, President of the ICRC, ICRC Archives, Group AF, Section 8, 1914-1918

letter, Henri writes about the ineffectiveness of gas masks and how the lack of protection made them helpless from temporary blindness and blisters on their skin. Henri acutely describes the feelings of pain, dread and desperation felt by the ailing soldiers and the inadequate medical assistance available to the hoarse, shouting voices, crying in pain “Oh my eyes!”²² This letter dated 13 February, 1918 was sent to the ICRC, one week after the public appeal, congratulating it for voicing public concerns against the use of asphyxiating and poisonous gases. The ICRC’s appeal had resonated with the sentiments shared by the common people as they could identify with the sufferings that the ICRC had described in its appeal.

The governments too paid heed to the ICRC’s appeal on three grounds. Firstly, in addressing the legal considerations with regard to the use of poisonous gases, the ICRC’s appeal struck a chord with governments that were debating the question of responsibility for violating the Hague Laws. Secondly, by focusing attention on the threat posed by these weapons “to the whole population” the ICRC’s appeal voiced the concern of governments towards protecting their populations from total war.²³

²² Letter from Emma Jacot Mieville

²³ ICRC’s Appeal Against the Use of Poison Gas

Thirdly, by presenting itself as representing the interests of humanity the ICRC could not deny an interest among all parties in finding technical means of protection against gas warfare.

However, the different sovereign powers responded to the ICRC's appeal in a tactical manner by supporting the humanitarian sentiment expressed in the appeal with qualifying statements of safeguarding national interest and the need for mutual guarantees. The fact that they expressed their support, only at a time convenient to their strategic position in terms of winning or losing the war cannot be ignored. Andre Durand observes that the ICRC sent an official letter to the Government of France on 14 February 1918 and received a joint-response from the Allied forces on 8 May 1918.²⁴ He indicates that the response of the Allies was immediate and in support of the appeal. But on 12 September, 1918, Germany sent an official reply to the ICRC more than six months after the appeal, and more than three months after receiving an official letter from the ICRC on this subject.²⁵ Durand considers this tactical manoeuvring by Germany as the *raison d'être* that prevented the ICRC from presenting concrete proposals

²⁴ Andre Durand, *History of the International Committee of the Red Cross- From Sarajevo to Hiroshima*, (Geneva: Henry Dunant Institute, 1984), 90-94

²⁵ See Letter from Legation Imperial d'Allemagne to the ICRC dated September 12, 1918, ICRC Archives. Group CS, Section 8, 1914-1918

to the belligerents before the war came to an end²⁶. But Durand does not acknowledge that in this letter Germany states that this second letter was a complement to the letter which they had sent earlier on 27 May 1918. The replies of the warring parties were published in the *Revue* by the ICRC. But the earlier reply sent by Germany is not published in the *Revue*. Frederic J. Brown in his study on *Chemical Warfare-A Study in Restraints* observes that, "The appeal was rejected by both sides in notes designed more for propaganda effect than for serious negotiation. The atmosphere of distrust could not be overcome despite a mutual interest in terminating gas warfare."²⁷

The fact that the ICRC had issued an appeal three years after poisonous gases had been used led to allegations that it was a political decision by the humanitarian actor. During this period, one finds press clippings speculating that the ICRC's interest in the problem of use of poison gas in war had been due to the activism of German pacifists residing in Switzerland.²⁸ The deliberate reference to German pacifists' position on the use of poison gas and their ability to influence the ICRC is significant

²⁶ Durand, *Sarajevo to Hiroshima*, 95

²⁷ Brown, *Chemical Warfare*, 47

²⁸ "German Cry Against Poison Gas-Hit by their own Weapon", *The Times*, February 28, 1918, ICRC Archives, Group CS, Carton 8, 1914-1918

in the context of developments on the battlefield. The allies made the case that Germany had initiated the use of poison gas in war but considering that it could now be used by both sides and the fact that Germany did not have superior masks to protect its soldiers against the use of gas made it willing to use other forces that could lead to an agreement on the use of this weapon. The speculation surrounding the political motives of the ICRC that compelled it to take a public stance against the use of gas in war generated further contention among the sovereign nation-states battling against each other. The ICRC response to this controversy was, "Each side accused us of having worked for the other. We could not have wished for a more splendid testimonial of neutrality."²⁹

Humanitarian Diplomacy

But this criticism did not deter the ICRC from following up on its appeal against the use of poisonous gases in war. On the contrary it pursued active humanitarian diplomacy. It tried to enlist the support of President Woodrow Wilson closely affiliated with the pacifists for its efforts against the use of asphyxiating and poisonous gases. Three days after

²⁹ Durand, *Sarajevo to Hiroshima*, 93

issuing its appeal against the use of poisonous gases in war, the ICRC sent a personal letter to Woodrow Wilson. The tone of this letter again is one of appeal requesting that his "noble heart" take note of the ICRC's appeal and provide his "powerful help" in making this endeavour successful.³⁰ But as Richard Price observes, "President Wilson did not seem to have particular sensitivity toward the use of gas and delegated all gas warfare decisions to the War Department."³¹ On November 22, 1920, the ICRC also addressed a letter to the General Assembly of the League of Nations proposing that measures be undertaken for "absolute prohibition of the use of asphyxiating gas, a cruel and barbarous weapon which inflicts terrible suffering upon its victims."³²

The ICRC also sent individual letters and diplomatic missions to approach the belligerent parties to renounce the use of gas in war. The diplomatic undertaking of the ICRC persuaded the Allied powers to respond that "if the German government today declares that it agrees with the Red Cross proposal relating to the cessation of the use of gas and offers, fresh, detailed and workable guarantees that it will observe an agreement

³⁰ Letter from the ICRC to Woodrow Wilson, President of the United States, Washington, Archives, Group C-S, Carton 8, 1914-1918

³¹ Price, *The Chemical Weapons Taboo*, (Ithaca & London: Cornell University Press, 1997);58

³² J. Mirimanoff, "The Red Cross and Biological and Chemical Weapons." *International Review of the Red Cross*, (June 1970), 2-3.

reached, the Allied governments will not fail to examine this proposal in the most liberal spirit.”³³ To this the German response was that “the German government, by refusing from the outset to examine any serious proposal which appears capable of alleviating the sufferings caused by war, would be acting against the spirit of humanity”³⁴

The response of the belligerent parties shows their willingness to engage with the problem of chemical weapons in terms of the debate set by the ICRC in its appeal. The text of the replies sent by the governments to the ICRC contain multiple references to unnecessary suffering and suffering of civilians, respect for the laws of war and responsibility of governments. The response of the governments includes particular references to the “Red Cross proposal” as representative of the “spirit of humanity.”³⁵ In other words, the governments expressed faith in the ICRC’s appeal against the use of gas in war and regarded its appeal as a symbol of the spirit of humanity which no government could ignore without losing the battle of moral legitimacy in war. It is possible to suggest here, that by resorting to a public appeal as a living witness the

³³ Durand, *Sarajevo to Hiroshima*, 93; “Response de l’Allemagne a notre Appel contre l’emploi des gaz vénéux,” *Bulletin International des Societes de la Red Cross*, no. 196, (Octobre 1918), 461-464

³⁴ Durand, *Sarajevo to Hiroshima*, 94

³⁵ Durand, *Sarajevo to Hiroshima*, 95

ICRC had once again like Dunant's testimony, succeeded in arousing the conscience of the world against the horrors of the use of chemical weapons. It came to be acknowledged as the moral conscience of the world.

The ICRC appeal has also generated a debate among scholars about the path that the ICRC would adopt in the future with regard to regulating and prohibiting the use of weapons. Andre Durand suggests that, "In launching this appeal the ICRC was committing itself to a new venture and was aware of the responsibility it was assuming."³⁶ Max Petitpierre is more cautious in his suggestion that in shouldering this responsibility, the ICRC recognized that, "The Geneva Conventions but not those of the Hague are the work of the ICRC. However, in view of the inaction of States and international institutions the ICRC made inroads into the law of war after the First World War when it took upon itself the protection of civilian populations against the effects of modern warfare."³⁷ John F. Hutchison takes notes of a circular sent by the ICRC immediately after the war to the national Red Cross societies to the effect that, "the ICRC for its part had no intention of proposing a substantial reordering of the

³⁶ Durand, *Sarajevo to Hiroshima*, 90

³⁷ Max Petitpierre, "A Contemporary Look at the ICRC," *International Review of the Red Cross*, No.119, (February 1971), 77

priorities of the Red Cross movement. If new initiatives were needed, they lay principally in the area of international law.”³⁸ Scholars and practitioners of ACD assume that the proposals made by the Tenth International Red Cross contributed directly to the drafting of the Geneva Protocol of 17 June 1925 prohibiting the use of asphyxiating and poisonous gases.³⁹ But no further investigation has been made as to how were these proposals framed by the ICRC and to what purpose?

The minutes of the Tenth International Red Cross Conference (1921) conference proceedings show President Gustave Ador and Vice-President Edouard Naville of the ICRC making a case to representatives of governments, national Red Cross societies and their federation that after fifty years of service to humanity by following principles of impartiality, humanity and solidarity, the ICRC is in a position gained through “experience” and “conviction” to address the subject of weapons used in war and in finding ‘practical solutions’ to this problem.⁴⁰ The fact that the representatives of the ICRC felt compelled to passionately defend their decision for issuing an appeal against the use of poisonous and

³⁸ Hutchison, *Champions of Charity*, 285

³⁹ Durand, *Sarajevo to Hiroshima*, 96

⁴⁰ Tenth International Red Cross Conference, League of Nations Archive, Geneva, Section 12, Dossier 10786, Doc.11544,

asphyxiating gases demonstrates the sensitivity among governments and national Red Cross societies to ICRC's using its voice to address the problem of weapons. On the other hand, the ICRC felt compelled to present itself as a pragmatic actor capable of contributing to the policy making process in the field of ACD. Henceforth, in addressing the problem of weapons the ICRC would always experience a tension emerging from the consciousness that too much emphasis on pragmatism might undermine its ethical legitimacy and that resistance to pragmatic calculations stands to undermine its practical legitimacy.⁴¹

Despite the subtle criticism and resistance to its taking a position against the use of chemical weapons in war, the ICRC with the support of the Swedish and Norwegian Red Cross societies succeeded in maneuvering the passage of a resolution at this conference demanding absolute prohibition against the use of gas in war; limitation on use of aerial warfare for military purposes only and strict application of Article 25 of the Hague Convention prohibiting attack or bombardment of towns, villages, habitations or buildings which are not defended.⁴² Describing its

⁴¹ David Kennedy, *The Dark Sides of Virtue- Reassessing International Humanitarianism*, (Princeton & Oxford: Princeton University Press, 2004), 313

⁴² Trevor N. Dupuy and Gay M. Hammerman, eds., *A Documentary History of Arms Control & Disarmament*, (New York: R.R. Bower Company & T. N. Dupuy Associates, 1973), 66

initiative as a moral endeavor, the ICRC acknowledged that without doubt the laws of war were to be determined by governments but premised on its role according to the Geneva Conventions, the ICRC can exercise its right to initiative to bring urgent matters of grave concern to the attention of authorities.

It was in this capacity that the ICRC forwarded the resolution passed by the Tenth International Red Cross Conference to be deliberated by the League of Nations as a body responsible for maintaining peace. In these resolutions the ICRC sought clarification on the legal prohibition against asphyxiating gases contained in the 1907 Hague Convention.⁴³ The ICRC was of the view that the League of Nations was entrusted with the responsibility to regulate means of combat used in the First World War and accordingly make amendments to the Hague Laws. The ICRC did not consider itself in a position to develop the laws of war pertaining to the use of weapons as it was considered to be under the purview of the Hague Laws. However, the ICRC shrewdly showed a willingness to observe the proceedings of ACD conferences organized by the League of Nations addressing the problem of chemical weapons. The moral prestige that the ICRC enjoyed following its appeal against the use of poisonous and

⁴³ Brown, *Chemical Warfare*, 47

asphyxiating gases made it possible for it to be granted an observer status at these meetings. Lucien Cramer as an ICRC representative observed the proceedings of Conference on the Control of International Arms, Munitions and Materials of War organized by the League and prepared a report for the internal use of the ICRC to be discussed in the next section.⁴⁴

The ICRC also sent a letter dated 30 June 1925, to the signatories of the Geneva Protocol.⁴⁵ In this letter the ICRC argued that in its “moral war” against biological and chemical warfare, propaganda against chemical and biological warfare was not enough and this had to be accompanied with *scientific and technical preparations* to meet any eventuality of outbreak of this type of warfare.⁴⁶ It argued that the possibility of violation of laws made it the duty of the ICRC to facilitate research in times of peace with the help of civilians and military personnel on finding means to protect military and civilian populations against chemical warfare. This letter with its emphasis on scientific and technical preparations and the need to

⁴⁴ “Rapport Prepare par M. Lucien Cramer sur la Guerre Chimique”, Genève, le 6 Aout, 1925, ICRC Archives, Group CR, Carton 149, 1919-1950

⁴⁵ Aux Etats Signataires de la Convention de Genève- Guerre Chimique et bacteriologique, Genève 30 Juin 1926, ICRC Archives, CR-159-3, Box 150, 16.01.1928- 13.04.1928, italics inserted.

⁴⁶ Aux Etats Signataires de la Convention de Genève

develop the laws of war can be seen as a further attempt by the ICRC to bolster its pragmatic credentials.

Scientific & Technical Preparations

The 6 August, 1925 report prepared by Lucien Cramer, begins with heavy citation of numerous legal treaties and articles within those treaties that articulate positions and obligations of governments on chemical warfare.⁴⁷ The preamble of the Hague Laws of 1899, Article 23 of the Hague Conventions (1907), Treaty of Versailles, Treaty of St. Germain, Treaty of Neuilly, Treaty of Trianon and Article 5 of the recently concluded Washington Treaty 1922 are cited as legal measures available for restricting and prohibiting chemical warfare. The report then notes the observations of various government delegations on chemical warfare. The Polish delegation suggested that biological warfare be given the same consideration as chemical warfare. The American proposals suggested restrictions on the export of products that can be used for chemical warfare. M. Lange the Norwegian delegate observed the impossibility of regulating chemical warfare and therefore the need to abolish it. These

⁴⁷ "Rapport Prepare par M. Lucien Cramer sur la Guerre Chimique"

fractious and complex deliberations among governments led to the framing of the Geneva Protocol 1925 which considering “the general opinion of the civilized world” in simple and brief terms prohibited the use in war of asphyxiating, poisonous or other gases and of bacteriological methods of warfare.⁴⁸ While the Geneva Protocol indicated a simple consensus among governments it did not assuage concerns about the possibility of violating the law in situations of war, the problems of verification and the need for assistance to victims.

The differences among the governments had made it imperative for ICRC representative Lucien Cramer to acutely follow the concerns expressed by experts participating in the Temporary Mixed Commission established by the League of Nations on effects of war gases. Lucien Cramer’s report identifies experts by names such as Prof. Andre Mayer and Prof. W. B. Canon and their concern that civilian populations be made conscious of their vulnerability to chemical warfare. Although the report mentions the diversity and complexity of expert opinions on chemical warfare, it is heavily influenced by a report submitted by American Professor of

⁴⁸ See full text of the Protocol Prohibiting the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, Geneva, June 17, 1925 in *A Documentary History of Arms Control & Disarmament*, eds., Trevor N. Dupuy & Gay M. Hammerman, eds, (New York: R.R. Bower Company & T. N. Duput Associates, 1973), 125

Chemistry, at the University of British Columbia, Dr. Enrique J. Zanetti to the Temporary Mixed Commission on the effects of war gases.⁴⁹

Dr. Enrique J. Zanetti, in his report as an expert on effects of war gases, begins by suggesting that the term "gas" is interpreted differently by the military and the scientific establishment. A military interpretation of the word "gas" includes "any chemical agent employed in warfare whose action depends on contact with the human body producing thereby lesions due to chemical changes."⁵⁰ On the basis of this understanding Zanetti classifies different types of gases and their effects when used in the First World War as lachrymatory, paralyzing, asphyxiating, vesicant, and sternutatory. The sufferings endured by the victims such as blindness, paralysis of the cardiac and respiratory nerves, dysfunctional lungs, together with blisters, suffocation, pneumonia and tuberculosis are considered to be "essentially the same as any other type of warfare, that is, to put the enemy temporarily or permanently out of action."⁵¹ Zanetti suggests that the statistical evidence from the First World War shows chemical warfare to be "practical", "inexpensive", "humane" and "more

⁴⁹ J. Enrique Zanetti, "Report on the Effects of War Gas- submitted to the Temporary Mixed Commission of the League of Nations" League to Nations Archive, Geneva, O.T.A/Experts/9.

⁵⁰ Zanetti, "Report on the Effects of War Gas," 1

⁵¹ Zanetti, "Report on the Effects of War Gas," 1

effective.”⁵² While emphasizing the “humane” aspect twice at the beginning of the report, Zanetti observes, that from a military viewpoint chemical warfare “compares very favourably with the percentage of twenty-four fatalities for every one hundred casualties from shell or bullet.”⁵³

Zanetti emphasizes that victims from gas warfare are only temporarily put out of action. In the report, it is the victim that is held responsible for

faulty gas discipline, that is, the failure of the men from having their gas masks at hand and not knowing how to put it on without delay, or from the fact that the *victim found himself so close to an exploding shell* that the concentration of the gas was too great for the mask.⁵⁴

It is interesting to note that Zanetti is placing the onus of responsibility on the victims. In this context, it is important to note that soldiers had

⁵² Zanetti, “Report on the Effects of War Gas,” 2

⁵³ Zanetti, “Report on the Effects of War Gas,” 2

⁵⁴ Zanetti, “Report on the Effects of War Gas,” 10 (italics inserted)

only six seconds to follow the disciplinary training on wearing gas masks in warfare. The only “real danger” that Zanetti visualized was the possibility of a surprise attack where one party uses a gas that the other party has no knowledge of and the latter has no protective measures against this gas.⁵⁵ As a safeguard against this surprise attack, he suggests that mask protection research should be encouraged. He further suggests that it is the transportation and medical care that the victims will need that can be onerous for the military forces. Zanetti concludes that against chemical warfare, “protective measures can be devised which render them far less to be feared from the *humanitarian standpoint* than the accepted methods of warfare.”⁵⁶ Zanetti concluded that “*if protection keeps pace*” through “constant research” chemical warfare is unlikely to generate any such “horrors as generally believed.”⁵⁷

The “optimism” of Zanetti, his arguments on humanitarian efficiency, coupled with concerns of the other experts with regard to protecting civilian populations from chemical warfare, inspired Lucien Cramer in her report to suggest that the ICRC pursue the following course of action.⁵⁸

⁵⁵ Zanetti, “Report on the Effects of War Gas,” 10

⁵⁶ Zanetti, “Report on the Effects of War Gas,” 15 (italics inserted)

⁵⁷ Zanetti, “Report on the Effects of War Gas,” 16 (italics inserted)

⁵⁸ Rapport Prepare par M. Lucien Cramer sur la Guerre Chimique

First, encourage the governments to work with the national Red Cross societies to provide protection to the civilian populations against chemical warfare. This cooperation could be in the form of improvising and disseminating education to children and adults on protective measures to be undertaken. Second, take note of all scientific experiments that develop techniques and equipment to protect civilian populations from chemical warfare. Third, use all means of publicity in support of a global campaign to pressurize governments to take effective measures to remove or at least to limit the possibilities of chemical warfare. Third, parallel to these activities, the ICRC should engage the National Red Cross societies to study preventive measures such as the use of masks against poisonous gases. It should also convene a Technical Conference inviting experts from all over the world to undertake a special study on preventive measures against chemical warfare. Fourth, the International Red Cross Movement comprising of the ICRC and the National Red Cross societies should make it their first priority to wage a moral war against the use of chemical and biological weapons in war. This is possible by seeking each and every scientific and technical measure that will prevent modern warfare from being reduced to barbarity. The report concludes that the ICRC should not hesitate from undertaking this humanitarian task which is as important as the Geneva Conventions of 1864 and 1906. The ICRC should not fear mobilizing global public opinion against chemical and

biological war. It should engage all resources of the moral, scientific and political community to meet this challenge.

This report prepared by Lucien Cramer influenced the proceedings of the Twelfth International Red Cross Conference which met in Geneva in October 1925. At this conference two key resolutions were adopted with regard to chemical warfare.⁵⁹ First, to explore technical means of protection available to civilian populations against chemical warfare should the laws prohibiting it be violated. Second, to further explore the legal measures available to prohibit chemical warfare. The resolutions of the Thirteenth International Red Cross Conference further enabled the ICRC to convene conferences of experts at Brussels (1928) and Rome (1929) to address the problem of chemical warfare. Experts from fifteen different countries and from diverse professions such as chemistry, engineering, military medicine, aviation, fire-fighting, administrators and industry participated in these conferences "to examine the technical means of protection against this new weapons of war and destruction."⁶⁰ The work of these expert meetings was divided among three sub-

⁵⁹ The International Commission of Experts for the Protection of Civilian Populations Against Chemical Warfare, Bruxelles 16-19 January, 1928, ICRC Archives, CR-159-3 & 5, Box 150 16.01.1928- 13.04.1928

⁶⁰ Report of the International Committee of the Red Cross against Gas War, ICRC Archives, CR-159-7, Box 151, Date 16 May 1929

commissions to study the problem of collective protection, the problem of individual protection and the general organization of civilian populations against chemical warfare.⁶¹ It was finally under the Chairmanship of Prof. Andre Mayer that the International Commission of Experts made its final recommendations to the ICRC.⁶²

The report submitted by this body of experts envisaged specific tasks that the ICRC and the national Red Cross Societies could perform to protect civilian populations against chemical warfare. It also suggested that since the ICRC was undertaking these activities to protect civilian populations against chemical warfare, it was justified to seek financial contributions from governments. Following the recommendations of these experts, the ICRC sent a circular to the national Red Cross Societies encouraging them to constitute Mixed National Commissions for the Protection of Civilian Populations against Chemical Warfare.⁶³ The ICRC encouraged the Red Cross Societies to organize commissions composed of mixed nationalities in order to facilitate cooperation between the different Red Cross societies as they carried out preparatory exercises to meet the dangers of

⁶¹ The International Commission of Experts for the Protection of Civilian Populations Against Chemical Warfare, Bruxelles 16-19 January, 1928

⁶² Report of the International Committee of the Red Cross against Gas War, ICRC Archives, CR-159-7, Box 151, Date 16 May 1929,

⁶³ See ICRC Circular No.276 on the Constitution of Mixed National Commissions

chemical warfare. The recommendation to the national Red Cross societies to constitute mixed commissions was difficult to realize given the hostilities experienced by countries during the First World War. It was difficult to get the different Red Cross societies to cooperate with each other soon after the end of the war. Apart from that financial difficulties too added to the burden of supporting the activities of Mixed Commissions. Nevertheless, some national Red Cross societies did take very seriously the recommendations made by the International Commission of Experts on protection of civilian populations against chemical warfare. The preparations made by the national Red Cross societies varied.

The Japanese Red Cross society sent a report with photographs to the ICRC giving a graphic description of its preparations against chemical warfare.⁶⁴ The report is an account of a two-day simulation exercise conducted in Osaka by the Japanese Red Cross society in July 1928. The purpose of this exercise was to help in the protection of civilians should cities be targeted by aero-chemical warfare. This simulation exercise was

⁶⁴ See report on "Exercices de la protection contre les gaz de combat, qui ont eu lieu à Osaka, attached with letter dated November 24, 1928, from Le Capitaine de Viasseau M.Koga, Attache Naval à l' Ambassade du Japon to Monsieur le Professeur Dr. L. Demolis, Conseiller technique du Comité. ICRC Archives, Carton 150, Cotes 159-5 CR

possible with close cooperation between the armed forces and the Japanese Red Cross Society. During this simulation exercise gas shells were dropped by aerial aircrafts as the relief workers stood ready in preparation to come to the rescue of the victims. The report suggests that the exercise was a "brilliant success" and that it had won the admiration of the public as they watched the masked Red Cross medical workers braving the fumes from poisonous gases to reach the victims and provide them relief.⁶⁵ The photographs show nurses and stretcher bearers wearing masks and Red Cross bands, moving purposefully, undeterred in their tasks even as they are caught in the middle of field engulfed with heavy toxic gases. The photographs seek to create a heroic image of humanitarian actors undeterred by the exploding shells and poisonous gases marching forward and kneeling beside the victims on the battlefield to offer assistance. The report claims that the exercise had been preceded by conferences to generate awareness and extensive distribution of leaflets to the public on protection against poisonous gases.

⁶⁵ "Exercices de la protection contre les gaz de combat, qui ont su lieu a Osaka, attached with letter dated November 24, 1928, from Le Capitaine de Viasseau M.Koga, Attache Naval a l' Ambassade du Japon to Monsieur le Professeur Dr. L. Demolis, Conseiller technique du Comite. ICRC Archives, Carton 150, Cotes 159-5 CR

On the other hand, little preparation was made by the American Red Cross society to wage a propaganda war against the use of poisonous gases or to protect civilians against this form of warfare. The long standing tensions between the ICRC and the American Red Cross society in fact re-surfaced as the American Red Cross under the leadership of Henry Davison had been waging a campaign for the remodeling of the Red Cross movement along the lines of the League of Nations. The ICRC suffered from organizational insecurity vis-à-vis the League of Red Cross and Red Crescent Societies, a federation of national Red Cross and Red Crescent societies under the powerful influence of the Americans. The differences between the ICRC and the League were temporarily settled after six years of negotiations and the signing of the Draft Statute in May 1928 by ICRC President Max Huber and Colonel Draudt the chief negotiator representing the League. The signing of this statute is simply credited by scholars to the amiable relationship between these two men. The other possibility, often ignored is that the financial difficulties suffered by the ICRC during the war and its persistent efforts to find technical means of protection for civilian populations against the use of chemical weapons made it more amenable to reconcile its differences with the American Red Cross society. The wealthy Americans were an important source of revenue that the ICRC desperately needed. As soon as the Draft Statute of 1928 was

signed, the ICRC received gift cheques worth 2,000 U.S. dollars from the American Red Cross in support of its activities against chemical warfare.⁶⁶

To further its efforts towards protecting civilian populations against the use of chemical weapons in war, the ICRC itself established an International Documentation Centre in June 1928 with an annual budget of approximately 3700 Swiss francs till 1934.⁶⁷ The documentation centre focused on disseminating information and generating awareness on the dangers of chemical warfare among the governments and the public. This documentation centre served as a depository of all available publications on chemical warfare and was in keeping with the internationalist movement towards peace education that was beginning to gain momentum within the League of Nations after 1925.⁶⁸ This documentation centre was also used by the ICRC to encourage several international competitions encouraging researchers to discover a reagent capable of indicating the presence of mustard gas, design protective masks and shelters against gas attack and to undertake studies on special protective clothing, protection

⁶⁶ See correspondence between Max Huber, President of the ICRC and Hon. Judge J. B. Payne, President of the American Red Cross Society in 1928-29; ICRC Archives, Group CR 1919-1950 Carton 155 CR-159-j/1, or CR-159-26, Nos. 1-100, Date 21.6.1929 – 25.4.1930

⁶⁷ Durand, *Sarajevo to Hiroshima*, 265

⁶⁸ Elly Hormon, "The International Peace Education Movement" in Charles Chatfield & Peter Van Den Dungen, ed., *Peace Movements and Political Cultures*, (Knoxville: The University of Tennessee Press, 1988), 127-142

and purification of food and water. A cash prize of 10,000 Swiss francs was offered in these competitions. Andre Durand's observes that the ICRC by "taking up research into technical protection methods - normally a field reserved for governments and military authorities - but it was tending to become the international centre for information and publicity on the subject."⁶⁹

But these technical efforts imposed a prohibitive cost on the organization's meager resources and did not produce any promising results. Rainer Baudendistel observes,

These efforts led the ICRC to the sobering conclusion that it *was almost impossible to provide efficient protection against chemical warfare by technical means* and, more importantly that such matters were far beyond the capacity of the Red Cross. As a consequence, *the ICRC shifted its attention to*

⁶⁹ International Commission of Experts for the Legal Protection of civilian populations against the War Aero-Chimique (5 December 1931, Geneva), League of Nations Archives, & 7A/287, Box 33359

legal matters, in particular to the protection of the civilian population under international law ⁷⁰

A decade's worth of efforts had persuaded the ICRC of the limitations of pursuing technical means of protection for civilian populations against the use of chemical weapons and the need to focus on the development of the laws of war.

Dangers of Aero-Chemical Warfare

At the same time, the governments too had come to appreciate the significance of the International Red Cross Conferences as early as 1928. One finds letters of correspondence exchanged between diplomats representing different countries encouraging each other to attend these conferences. One example of the texts of such correspondence is the following:

⁷⁰ Baudendistel, *Between Bombs and Good Intentions*, 272 (italics inserted)

These conferences are composed of representatives both of Governments and of Red Cross Societies and are not, of course, diplomatic in character, but *they often include in their agenda subjects which may later become a matter for negotiation at a diplomatic conference composed solely of Government delegates duly authorized and empowered* ...we propose to send an official representative to this Conference, but he will as in the past, attend in the capacity of an observer only, and will take no part in the proceedings involving an expression of opinion on matters of policy. Our reason for placing this limitation on his activities is that we wish to reserve our attitude towards those *questions which, though they may be discussed in a preliminary way by these non-diplomatic conferences comprising representatives of the Red Cross Societies and convened by the International Red Cross Committee, are likely in due course to be brought before an International Conference properly constituted and consisting of delegates of Governments only*—such a conference, in fact, as is now being suggested again by the Swiss Government.⁷¹

⁷¹ Letter from 10, Downing Street, UK dated 5 May, 1928 to the Dept. of External Affairs, Canada Library

Based on this observation, it is possible to argue here that the International Red Cross Conferences came to be seen by governments as an alternative forum for exercising diplomacy in shaping the agenda of ACD. The complex politics of alliances within League of Nations made the International Red Cross Conferences with the ICRC as a neutral and impartial core actor attractive to some governments such as Germany that had been excluded from participating in the Washington Conference of 1922 and was looking for another forum where it could raise its concerns on aero-chemical warfare. At the same time other countries interested in constraining such efforts on the part of Germany wanted to make sure they have enough allies attending these meetings to take necessary action.

It is in this context that the Thirteenth International Red Cross Conference (1928) held in The Hague is interesting because it was at this conference the German Red Cross proposed that to avoid the real danger of aerial chemical warfare the only possible solution was,

to prohibit strictly the use of aircraft for the purpose of bombardment. The evil would be cut off at the root if there were a ban not only on the use of chemical weapons and practice with them in peacetime, but also on bomber aircraft and all the preparatory measures they require.⁷²

This proposal made by the German Red Cross was politically motivated. Germany had been defeated and faced the brunt of responsibility and public wrath for initiating the use of chemical weapons in war. Germany's airpower was much weaker than that of the Allied forces. In future combat this weakness could prove to be the Achilles' heel for Germany. The ICRC was alert to speculation in the international press that reprisals in the form of aerial bombardment by the Allies would force Germany to "whine, as she has done in the case of poisoned gas, to the Red Cross Convention, and suggest that such methods should be placed beyond the pale."⁷³ The ICRC was able to discern this political maneuvering by the Germans at this forum and therefore did not reinforce their explicit support on the issue of banning bomber aircraft.

⁷² Durand, *Sarajevo to Hiroshima*, 263

⁷³ "Reprisals Advocated-What Germany May Expect", ICRC Archives, Group CS, Carton 8, 1914-1918

Germany persisted and its delegate, M. de Moellendorff, attending the 1928 meeting in Brussels, stated clearly that the problem of chemical warfare should not be studied in isolation from other means of war.⁷⁴ It was not enough to isolate the problem of chemical warfare but it was necessary to get closer to the reality of things as attacks against major cities do not take place merely with the help of poisonous gases, but with the help of explosives and incendiary projectiles. It will be practically useless to envisage protective measures against gas without due consideration of other means of force that in combination with gas can produce deadly results. A proper understanding of modern chemical warfare was only possible by grasping the effectiveness of this form of warfare in combination with other weapons of war. This observation by M. de Moellendorff became a focal point of concern at the subsequent meeting of experts in 1929. The deliberations among the experts led them to conclude that protection of civilian populations was an insoluble problem and that entire populations in the future could be victims of total war. The possible use of explosives, incendiaries, asphyxiating gases and bacteriological weapons in tandem had made the task of protecting civilian populations extremely difficult. These dangers had only been

⁷⁴ La Protection de la Population Civile Contre les Dangers de la Guerre Aero-Chimique par des Instruments Diplomatiques, 14, League of Nations Archives, Geneva, Sectin 7A/287, Box 2364

compounded by the threat of air warfare and could only be limited by developing the laws of war.

Germany offered the ICRC a sum of 10,000 Marks in 1929 to organize a meeting of legal experts to formulate precise legal rules for protection of civilian populations against aerial bombardment.⁷⁵ The ICRC accepted this funding and proceeded to organize a meeting of experts for this purpose. It justified its action asserting that law is an instrument to regulate and restrict the violence of war. But before the ICRC could convene a meeting of legal experts to address the subject of protection of civilian population from aero-chemical warfare it made sure that a resolution to this effect was passed at the Fourteenth International Red Cross Conference 1930. This helped the ICRC to maintain its position of neutrality and to state clearly that the mandate was provided by the International Red Cross Conference although the persistence, propaganda and funding provided by Germany was the motive force behind ICRC's initiative in addressing the subject of protecting civilian populations against aero-chemical warfare.

⁷⁵ See ICRC "Aide Memoire" dated December 1, 1929, ICRC Archives, Group CR 1919-1950 Carton155CR-159-j/1, or CR-159-26, Nos. 1-100, Date 21.6.1929 – 25.4.1930

The Fourteenth International Red Cross Conference of 1930 passed resolution V encouraging the ICRC to explore with the help of experts methods to protect civilian populations against the dangers of aerial bombardments. This resolution stated clearly that it was the duty of the ICRC to study the means of ameliorating this situation. The task of scheduling the meeting, its composition and agenda was left to the discretion of the ICRC. The ICRC under President Max Huber, a lawyer by training, did not waste any time and three months after the passage of this resolution, convened a meeting of the International Commission of Experts for the Legal Protection of Civilian Populations Against Aero-Chemical Warfare in Geneva from 1-5 December, 1931.⁷⁶ Max Huber himself presided over the proceedings of this meeting and other ICRC representatives such as M. Georges Werner and M. Paul Des Gouttes also participated. Professional chemists, legal and military professionals with their expertise on this form of warfare also participated in this meeting. Some of these professionals had also participated in the meetings of experts convened in Brussels and Rome earlier.

⁷⁶ La Protection de la Population Civile Contre les Dangers de la Guerre Aero-Chimique par des Instruments Diplomatiques. League of Nations Archives, Geneva, Section 7A/287, Box 2364

The agenda of this meeting as spelled out by Max Huber confined itself to four specific questions.⁷⁷ First are the existing conventions of international law in force sufficient to protect civilian populations against the dangers of chemical and aero-chemical warfare? Second, do the existing treaties recognized and ratified by states contain sufficient provisions guaranteeing the protection of civilian populations against chemical and aero-chemical warfare? Third, how does the commission propose that new guarantees be established under international law? To address this third question should there be a general prohibition against aerial warfare; should aerial warfare be permissible only in clearly defined military zones of operations and prohibited in other areas. Fourth, what measures will be effective in guaranteeing that states observe these international laws? To this extent what preventive measures and actions in terms of control, sanctions should be considered.

Although the ICRC framed questions in terms of responsibility for protecting civilian populations, the recommendations of International Commission were constrained by legal precedents such as the findings of the Hague Rules of 1923. The Hague Commission of Jurists in 1923 had

⁷⁷ *La Protection de la Population Civile Contre les Dangers de la Guerre Aero-Chimique par des Instruments Diplomatiques*. League of Nations Archives, Geneva, Section 7A/287, Box 2364

focused on international law to the extent that it covered “new methods of attack or defense” that had become available with “new agencies of warfare,” or in other words, on developments in weapons technology that can shift the balance of war from offensive to defensive purposes and vice-versa.⁷⁸ As such, the efforts of the expert commission convened by the ICRC to develop a legal framework regulating and prohibiting aero-chemical bombardment to protect civilian populations did not produce encouraging results. The experts exchanged views about the lacunae existing in the laws of war which made it difficult to regulate aero-chemical warfare. The problem of regulating methods and means of warfare was compounded by the fact that their use could be justified for defensive as well as retaliatory purposes. The experts at the meeting expressed concern about the lack of universality in the laws of war and the sovereign right of states to express a right of reserve, retaliation or make qualifying statements in accepting an international treaty to safeguard their national interest.

Nevertheless the experts explored the possibility of regulating chemical and aero-chemical warfare on the premise that there was a distinction to

⁷⁸ *La Protection de la Population Civile Contre les Dangers de la Guerre Aero-Chimique par des Instruments Diplomatiques*. League of Nations Archives, Geneva, Section 7A/287, Box 2364

be maintained between the civilian population and combatants. This legal distinction between civilians and combatants had been established in the Hague Laws of 1899 and 1907 and reinforced by the Geneva Conventions of 1925. The Hague Conventions although inadequate in their provisions to meet the demands of regulating air warfare could serve as a starting point for regulating aerial bombardment especially if its intention was to terrorize civilian populations. The Geneva Convention of 1925 had been ratified by 33 countries but with 14 reserves until July 1931. But Mr. Barandon a special representative of the League of Nations to this meeting, in his report, was critical of a manifest tendency among the commission of experts to treat the newly convened Geneva Protocol 1925 on chemical warfare at par to meet the challenges of aerial bombardment.⁷⁹ He found himself compelled to remind the commission of experts that the Geneva Protocol of 1925 had been ratified by only 33 states and that the provisions in this protocol were distinctive in their concern with chemical warfare and should be regarded as specialized with this particular form of warfare only. Furthermore, it would be too much of an assumption to generalize that this protocol had made chemical warfare illegal, as most of the states that had acceded to this Protocol had done

⁷⁹ Mr. Barandon's Report on the Committee of Experts convened by the ICRC to discuss the Legal Protection of the Civilian Population against Aero-Chemical Warfare, December 1931, League of Nations Archives, 7A/287/ 33359

this with reservations stipulating conditions of reciprocity by parties to a conflict.

The minutes of the meeting also show experts battling with a legal vocabulary to conceptualize the meaning of “military objectives”, “civilians” and “combatants” as specific different categories instead of abstract legal nomenclatures.⁸⁰ The experts debated whether laborers working in a munitions factory would be classified as belonging to the category of the civilian population. These debates persuaded the experts that it was advisable not to create a definitive list of what constitutes the specific category of a civilian population and they refrained from clearly defining what constitutes a civilian population. Similarly, while they sought to restrict aerial bombardment to military objectives, the question of what constitutes military targets was left ambiguous. It was observed that, “Je crois qu’il est évidemment plus difficile de définir ou de circonscrire la définition de l’objectif militaire en termes généraux, que de le préciser par une énumération.”⁸¹ In other words, the experts found it more helpful to focus on universal categories and principles in

⁸⁰ International Commission of Experts for the Legal Protection of Civilian Populations against the War Aero-Chimique (5 December 1931, Geneva), League of Nations Archives, & 7A/287, Box 33359

⁸¹ A simple translation in English suggests that, “It is difficult to define and circumscribe the meaning of military objective in general terms and even more so in precise terms.” International Commission of Experts for the Legal Protection of civilian populations against the War Aero-Chimique (5 December 1931, Geneva), League of Nations Archives, & 7A/287, Box 33359

international laws of war. The simple, generalized principles of discrimination and protection of civilian populations in times of war could help strike a balance between humanitarian and military necessities. The minutes of this meeting show Max Huber exhorting his colleagues that international law of war should be understood as an act of interpretation that requires ingenuity in balancing humanitarian objectives with military necessity. To quote Max Huber, “C’est alors toujours le principe d’un certain équilibre entre les intérêts militaires et les intérêts humanitaires qui entre en ligne de compte” and “En somme, le droit de guerre repose en double équilibre: d’une part, équilibre entre les intérêts militaires et les autres intérêts humanitaires.”⁸² The experts agreed that establishment of certain general principles of laws of war helps to establish some prohibitions against particular types of warfare. To reinforce the humanitarian interest vis-à-vis military objectives, the experts deliberated and proposed recognition of a “special emblem” that would protect civilians seeking refuge in safety zones.⁸³ The experts argued that the “special emblem” such as the Red Cross insignia would

⁸² Translated in English this simply means that, “It is always the case that both military interests and humanitarian interests have to be taken into account. The laws of war rest on an equilibrium struck between the military interests and humanitarian interests.” International Commission of Experts for the Legal Protection of Civilian Populations against the War Aero-Chimique (5 December 1931, Geneva), League of Nations Archives, & 7A/287, Box 33359

⁸³ International Commission of Experts for the Legal Protection of Civilian Populations against the War Aero-Chimique (5 December 1931, Geneva), League of Nations Archives, & 7A/287, Box 33359

inform the enemy day and night and prevent it from targeting civilians. However there was concern that even these special emblems could be misused and it would entail movement of peoples, factories, railways that would not be easily achieved. The delimitation of areas enjoying immunity therefore does not seem feasible. The experts also pondered over the possibility that areas safeguarded by the special emblem might be more vulnerable to military attacks.

The experts also agreed that any treaty regulating aero-chemical warfare had to contain a clause carrying the threat of sanctions against the violator in order to be effective. The imposition of criminal sanctions could be considered in accord with the system of sanctions guaranteed under the League of Nations. It is usually the military force of a country that can determine whether a violation of a treaty has taken place. However, establishing the act of violation demands impartiality which when difficult to achieve leads to a political gamut of accusations and counter-accusations. Thus the Commission recommended the establishment of an independent impartial authority that would be empowered to investigate any violation of the rules of international law. The intervention of this body should have the effect not only to see the merits of the charges, to bring its findings to the public, but should also

be likely to prevent the use of measures that might aggravate the situation. This suggestion had long-term implications for the ICRC that became clear in the wake of the Italian-Ethiopian War of 1936 to be discussed in the succeeding paragraphs.

The experts suggested that in order to draft a new convention for the protection of civilian populations against aero-chemical bombardment, a new commission of experts should be convened to choose between two alternative ways of providing protection to civilians. One is to determine how to designate certain areas as protected areas and to practice evacuation of civilians to these areas. They argued that the act of classifying certain territories as “protected areas” is in keeping with the long standing practice of defining areas as “zones of combat” and the “front.”⁸⁴ In doing this there will be implicit recognition of the right of warring parties to bomb other areas. The bombing of other areas will be considered justifiable only in so far as it is a case of “military necessity” or a “military objective” in war.⁸⁵ They acknowledged that this approach to protection of civilian populations from aero-chemical bombardment is

⁸⁴ International Commission of Experts for the Legal Protection of Civilian Populations against the War Aero-Chimique (5 December 1931, Geneva), League of Nations Archives, & 7A/287, Box 33359

⁸⁵ International Commission of Experts for the Legal Protection of Civilian Populations against the War Aero-Chimique (5 December 1931, Geneva), League of Nations Archives, & 7A/287, Box 33359

not without risks. One cannot underestimate the difficulties associated with specifically enumerating military objectives and defining clearly the meaning of military necessity. This is complicated by the fact that often the military targets of attack are close to civilian populations and it is difficult to determine the full measure of devastation possible by a bomb dropped from the air. One has to consider at length the advantages and disadvantages of this approach whose success can only be relative and never absolute.

The experts also suggested drafting a convention prohibiting aerial bombardment outside the zone of military operations itself. The launching of any bombs or projectiles from the air outside the zone of combat would be considered indefensible and this could be constituted as a progressive step in the direction of abolishing air warfare. The abolition of air warfare could lead to gradual disarmament by all states. The experts recognized this proposal to be too radical as it amounts to suggesting abolition of aerial bombardment and were openly skeptical of any possibility that governments would be receptive considering their keen pursuit of developments in air warfare. They also believed that there was not enough time to prepare a draft convention to this effect to be put forward to governments for consideration at the Disarmament Conference of 1932

and that governments would prefer to return to the original proposals put forward at the last conference. It was asserted that consideration and evaluation of these proposals by a new commission will help the ICRC determine the best possible manner in which it can reinforce the spirit of the Hague Laws which had been signed and ratified by several states.

The national Red Cross societies consulted with experts on the report circulated by the ICRC summarizing the meeting and recommendations of the International Commission of Experts for the Legal Protection of Civilian Populations Against Aero-Chemical Warfare, 1931. Dr. Ake Hammarskjold consulted by the Swedish Red Cross Society agreed with the report of the experts that the subject of aero-chemical warfare had to be considered according to international general or customary laws.⁸⁶ According to international customary law it was possible to make the case that legally air warfare was indefensible if its purpose was to terrorize an enemy population rather than defending a population. But Hammarskjold recognized that it was not simple to make this argument because, Declaration XIV of the Hague Conference of 1907 concerning this type of warfare had not been ratified by most of the participating states to this

⁸⁶ Avis emis par M. Ake Hammarskjold sur le Rapport Adopte par la Commission International d'Experts pour la Protection Juridique des Populations Civiles Contre les Dangers de la Guerre Aero-Chimique, Genève, 1-5 Decembre, 1931. League of Nations Archives, Geneva, Section 7A/287, Box, 2364

conference. As a result of which air war and air raids were to be considered a legally acceptable form of waging war. This lack of universality in the laws of war was a source of weakness as experienced in the First World War. Thus these laws when applied to the problem of aerial bombardment had to be interpreted in precise terms.

Dr. Hammarskjold was critical of the lack of precision in the use of term such as legal protection, military objective, civilian population and zone of military operations and suggested that the ambiguity surrounding these terms could have been avoided and that a list of military objectives would have been helpful if it was stated clearly whether the list was specific or generic. Dr. Hammarskjold expressed reservations on the feasibility of legal measures suggested by the experts with regard to prohibiting bombardment of non-military targets, prohibiting the use of aircraft for bombing and banning the use of aircraft for military purposes. The lack of precision would result in conflicting interpretations on grounds of practical, technical and military considerations. For example, it will be difficult to monitor and control the transformation of a civilian aircraft for military purposes and thus a legal prohibition in this respect would have little practical value. The reservations expressed by Dr. Hammarskjold articulated the dangers of ambivalence in the language of

war and its efforts to provide protection only to those within its zone of application and exclusion of others generating a further demand for more law.

Disarmament Conference

All the expert reports compiled by the ICRC on the subject of chemical and aero-chemical warfare were sent to the League of Nations. These documents served as drafts to which government representatives referred at the Disarmament Conference organized by the League of Nations. Furthermore in a strategic effort to influence the outcome of this conference on the subject of chemical weapons the ICRC also convened an *International Commission of Experts on the Legal Protection of Civilian Populations against the Dangers of Chemical Warfare in 1931*. The studies of this commission led it to conclude that "the Geneva Protocol, in a quite general way, prohibits the use of poisonous and bacteriological weapons. Such a legal safeguard for the armed forces is a fortiori applicable to civilian populations."⁸⁷

⁸⁷ Mirimanoff, "The Red Cross and Biological and Chemical Weapons," 6.

The ICRC addressed the League of Nations Conference for the Reduction and Limitation of Weapons in 1932. At this conference the ICRC observed the following:

The ICRC is certainly convinced of the absolute need to replace war by the peaceful settlement of international difficulties, but so long as the possibility of recourse to armed force subsists, it is the Committee's duty to bear in mind the welfare of all war victims. Restricted today to the terms of reference assigned to it, and with the humanitarian point of view which prompts it to action, the ICRC considers that the only way to shelter civilians from some of the worst dangers arising from war is purely and simply to prohibit air raids and chemical and bacteriological warfare, for which it makes a pressing appeal to the Conference.⁸⁸

The 1932 Conference of Disarmament failed to make any progress on addressing issues such as production and imposition of sanctions that

⁸⁸ Mirimanoff, "The Red Cross and Biological and Chemical Weapons," 7-8

could strengthen the 1925 Geneva Protocol. The conference was unable to reach any agreement on the protection of civilian populations from aero-chemical warfare. It was ineffective in addressing concerns pertaining to the threat from bombers, the use of military aircraft for bombing and the conversion of civilian aircraft for bombing purposes. In an expression of complete pessimism, J. M Spaight observed, "It is evident from what happened at Geneva that the institution of an effective measure of supervision or control goes beyond the range of practical international politics at present."⁸⁹ This limitation could also be attributed to the complications that arose from clubbing chemical warfare with aerial bombardment.

The ICRC's efforts for the promotion of the ratification of the Geneva Protocol, technical research against the effects of chemical war and aerial bombardment and study of related legal issues on chemical and aerial warfare were often decried by pacifists as efforts to humanize war. Pacifists critiqued the ICRC as a "superfluous" organization devoted to the welfare of future war victims and accused it of "conniving with a spirit of militarism."⁹⁰ The hopes of the pacifists were vested in the

⁸⁹ J. M Spaight, *Air Power in the Next War*, (London: Geoffrey Bles, 1938), 70

⁹⁰ Max Huber, *The Good Samaritan*, (London: Victor Gollancz Ltd, 1945), .52

Kellogg-Briand Pact of 1928 that outlawed war and the ACD conferences held under the auspices of the League of Nations. But the failure of the Disarmament Conference of 1932 betrayed the expectations of both the ICRC and the pacifists. The latter reconciled themselves in the belief that the ICRC's approach is more pragmatic in the face of the Second World War. In the aftermath of this ICRC felt that its position was vindicated and Max Huber did not lose any opportunity to make this clear.⁹¹ To quote Max Huber,

Of this the Red Cross has had ample experience, not only in respect of its single services, but also in the attitude assumed towards it as an idea and institution. This was during the period immediately following the former World War, when many people who believed that the League of Nations and Kellogg Pact had permanently banished armed conflict from the world were of the opinion that to maintain an organization devoted to the welfare of future war victims was at best superfluous, and at worst a manner of connivance at a spirit of militarism which had been, so they averred, completely overcome. We know now what frightful

⁹¹ Huber, *The Good Samaritan*, 51-52

germs of war provocation may insinuate their way into the very fabric of a system of war prevention, or even be inherent in it, latent and long unsuspected.⁹²

Apart from the pacifists, governments too were not satisfied with the ICRC's efforts to prohibit aero-chemical warfare. Hitler in his Reichstag address on May 21, 1935 declared that the only practical and effective way of achieving a ban on certain categories of weapons and methods of combat is by following the ideas of the Red Cross as embodied in the Geneva Conventions.⁹³ He then accused the ICRC of inactivity in furthering the cause of banning aerial bombardment outside combat zones. In its personal correspondence with the members of the German Red Cross, the ICRC made it clear that this accusation was "indecent" considering all the efforts that the ICRC had made to ban aero-chemical warfare against civilian populations and reiterated the difficulty in banning the practices of bombardment without imposing restriction on aircrafts, long range guns and munitions.⁹⁴ It further went on to suggest

⁹² Max Huber, *The Good Samaritan*, 52

⁹³ See correspondence between Vice-President of German Red Cross and ICRC President Max Huber and Secretary Sidney Brown from May-July 1935; ICRC Archives, Groupe CR 1919-1950 Carton 207CR. 208-1, Limitation de l'arme aerienne, 1-12 Dates 06.06.1935—06.08.1937

⁹⁴ See correspondence between Vice-President of German Red Cross and ICRC President Max Huber and Secretary Sidney Brown from May-July 1935; ICRC Archives, Groupe CR 1919-1950 Carton 207CR. 208-1, Limitation de l'arme aerienne, 1-12 Dates 06.06.1935—06.08.1937

that ICRC's efforts with regard to weapons constituted only a "humanitarian petition" in a field where other stalwarts like the League of Nations and powerful nation-states had failed.⁹⁵ It is only pertinent to suggest here that for almost two decades the humanitarian actor had tried to address problems related to "the *technologies* that produce and manufacture new kinds of suffering" and *techniques* developed to shape, represent and communicate it" through scientific and technical documentation and development of the laws of war.⁹⁶

Italian-Ethiopian War

The Italian-Ethiopian war of 1935-36 served as a testing ground to study the effects of the practices of medicalization and legalization that the ICRC had been pursuing for almost two decades in its attempt to regulate and prohibit aero-chemical warfare. Dr. Marcel Junod and Sidney Brown served as ICRC's living witnesses to Italy's practice of aero-chemical warfare against the Ethiopians. Sidney Brown a lawyer by training had been in service of the ICRC for more than a decade. A new medical

⁹⁵ See correspondence between Vice-President of German Red Cross and ICRC President Max Huber and Secretary Sidney Brown from May-July 1935; ICRC Archives, Groupe CR 1919-1950 Carton 207CR. 208-1, Limitation de l'arme aerienne, 1-12 Dates 06.06.1935—06.08.1937

⁹⁶ Halpern, *Suffering, Politics, Power*, 2

recruit, Dr. Junod accompanied him on their mission to Ethiopia. Prior to their departure, President Max Huber had briefed the two delegates on their responsibility to bring “un-biased assistance to the Ethiopians, who knew civilization only in the form of competing national interests.”⁹⁷

Rainer Baudendistel on the basis of a meticulous study of the practices of the ICRC during this war including the testimonies of these two delegates provides an accurate description of the personalities of these two delegates. Marcel Junod is represented as the embodiment of the new, professional ICRC delegate, who is “young, motivated, self-confident, practically minded and technically competent” but Baudendistel notes that, “unlike Brown, he lacked political sensibility and judgement.”⁹⁸ In the words of Baudendistel,

While Junod excused Italian violations upon his return to Geneva in 1936, he outrightly condemned them ten years later, after the Second World War, in *Warrior Without Weapons*. The book gave the false impression that Junod had

⁹⁷ Baudendistel, *Between Bombs and Good Intentions*, 69

⁹⁸ Baudendistel, *Between Bombs and Good Intentions*, 69

realized all along what had happened in the Italo-Ethiopian war, as if he had never expressed a different opinion. Junod's account became a classic of humanitarian literature, not least because of his dramatic experiences in Ethiopia, but Brown's more truthful *Fur das Rote Kreuz in Aethiopien*, highly critical of the ICRC, disappeared quite unjustly from the bookshelves.⁹⁹

Sidney Brown as a delegate of the ICRC in Ethiopia expressed the view that the ICRC was not paying sufficient attention to the problem of mustard gas delivered by the Italian aircrafts on the hapless Ethiopian victims. In two specific instances, the Italians had deliberately targeted ambulances and hospitals of national Red Cross societies supporting ICRC's efforts in this war at Dessie and Melka Dida in Ethiopia. Doctors of Red Cross ambulances had been compelled to use camouflage as the Red Cross emblem no longer provided them the protection promised by the Geneva Conventions. Dr. Junod's on the spot-investigations had further confirmed that the Italians' aircrafts flying at a height of 2000 feet deliberately bombarded these ambulances and hospitals with incendiaries and gas shells despite the Red Cross insignia being visible at an altitude

⁹⁹ Baudendistel, *Between Bombs and Good Intentions*, 306-307

of 6000 feet.¹⁰⁰ Dr. Junod had further witnessed the suffering of barefooted Ethiopians crying for pity as their bodies suffered from severe burns that the Italians had dispersed through mustard, phosgene and arsenic gas shells. The ICRC delegates sent several reports and photographs providing evidence of the use of mustard gas and the sufferings of victims.

Sidney Brown's efforts to engage with the ICRC given his experience of aero-chemical warfare in Ethiopia and knowledge of the membership of the ICRC were constantly rebuffed by the ICRC and only generated friction. In replies to the reports that Brown sent to Geneva, he constantly received letters of rebuke demanding that he not get too personal, exercise restraint in using "epithets" and that in his reports there was a need for greater "objectivity", "precision", "prudence."¹⁰¹ Brown was asked to emulate the reporting style of Dr Junod that focused on reporting the technical facts. The ICRC members in Geneva did not refrain from voicing their criticism of Brown in their letters to Dr. Junod too. ICRC President Max Huber finally concluded that, "Mr. Brown's conduct was

¹⁰⁰ Marcel Junod, *Warrior Without Weapons*, trans. Edward Fitzgerald, (London: Jonathan Cape, 1951), 30-62

¹⁰¹ See correspondence between Sidney Brown and ICRC headquarters in ICRC Archives, Groupe CR 1919-1950, CR. 210-5, Conflit italo-ethiopien, 601-750 Dates 18.01.1936—12.012.1936

not in keeping with those of other delegates.”¹⁰² Unfortunately, as Rainer Baudendistel observes this mentoring from an organization proud of its pragmatism “lacked realism.”¹⁰³ Yves Sandoz in his eulogy of Max Huber’s virtues as President of the ICRC suggests that the latter gave the delegates “enough initiative to act in the very difficult situations in which they found themselves.”¹⁰⁴ This observation does not carry much weight in the light of the experiences of ICRC delegates in Abyssinia. The ICRC leadership was unwilling to listen and learn from the shrewd political judgement and experiences of its delegates in the field. It appeared to be keener on brow-beating them into adhering to conventional practices.

The Ethiopian Red Cross requested the ICRC to send gas masks to protect the victims of aero-chemical warfare. But after internal consultations, which lasted for seventeen days in the midst of war, ICRC concluded that it could not fulfill this request.¹⁰⁵ The legal minds within the ICRC argued that the organization’s mandate specifically under the Geneva Conventions did not permit it to supply gas masks. Gas masks could not easily be classified as medical material but can be construed as military

¹⁰² See Max Huber’s observations on Sidney Brown’s reports in ICRC Archives, Group CR 191-1950, CR 210-6, Conflit-Italo-Ethiopien, 751-900, Date 12.02.1936-13.03.1936

¹⁰³ Baudendistel, *Between Bombs and Good Intentions*, 308

¹⁰⁴ Yves Sandoz, “Max Huber and the Red Cross,” *The European Journal of International Law*, 18, no.1, (2007), 190

¹⁰⁵ Baudendistel, *Between Bombs and Good Intentions*, 289-291

material that can help the warring parties to build resistance and prolong the war. Furthermore the supply of gas masks could only be made to specific persons protected under the Geneva Conventions such as medical personnel, the wounded and sick. It could not be provided for protection of civilian populations in Ethiopia. Thus on legal grounds, the ICRC which prides itself for providing assistance to the victims of war circumvented the needs of the victims and failed to supply the gas masks. The ICRC kept urging its delegates to uphold the emblem of the Red Cross as a symbol of protection offered by the Geneva Conventions. Baudendistel comments,

It is interesting to note that the ICRC was, in regard to these bombardments, only concerned with possible violations of the Red Cross emblem. The underlying question, whether it was legitimate to bomb largely civilian targets and what the ICRC's reaction should be to that was not raised throughout the period under study. Geneva simply did not appreciate the wider significance of these bombardments.¹⁰⁶

¹⁰⁶ Baudendistel, *Between Bombs and Good Intentions*, 126

This observation by Baudendistel carries much weight as it illustrates the inability of the ICRC to experience responsibility by relating its practices prior to the outbreak of this war towards regulating and prohibiting aero-chemical warfare to concrete situations.

In the aftermath of the war the *Report on the Italo-Ethiopian Conflict and the Red Cross* prepared by the ICRC too did not address the problem of methods of war.¹⁰⁷ In writing this report, the ICRC's initial purpose was to engage with the methods of warfare and issues related to the Geneva Conventions. However as work progressed and the ICRC consulted the Italians, Max Huber decided to exclude the subject of methods of warfare and focus only on "matters of the Geneva Convention on Wounded and Sick, and in particular, to the misuse of emblem and the bombings of Red Cross field hospitals."¹⁰⁸ In writing this report, the Italians carefully manipulated the ICRC not to address the problem of methods of war. Baudendistel suggests that this became possible because, "In reality, the leadership of the ICRC had succumbed to the Italian strategy with its passivity and political naivety playing into Italian hands...The

¹⁰⁷ Baudendistel, *Between Bombs and Good Intentions*, 126

¹⁰⁸ Baudendistel, *Between Bombs and Good Intentions*, 197

humanitarian organization had been surreptitiously sucked into the Italian orbit.”¹⁰⁹

Furthermore, the ICRC deliberated on the possibility of sharing its report with both Italy and Ethiopia before making it public. This decision was not revised despite the fact that after the war Ethiopia had ceased to exist as a state and Italy was secretly given a free hand in shaping this testimony. Italy made full use of this opportunity to delete any references to deliberate aero-chemical bombardment of Red Cross hospitals. Any attempt to make this case was disputed by the Italians with arguments on the use of dum-dum bullets and practices of mutilation suffered by captured Italian pilots at the hand of the uncivilized Ethiopians. Thus the effect of these actions produced a report of which “the final version appeared sanitized, non-committal and showing understanding towards Italy.”¹¹⁰ The ICRC circulated only a few select copies of this report among the Red Cross societies. The censorship exercised by the ICRC in its report on addressing the subject of methods of war did not prevent it from displaying a willingness to address the same subject by expanding the ambit of the inquiry that it was conducting at the request of the Italian

¹⁰⁹ Baudendistel, *Between Bombs and Good Intentions*, 192

¹¹⁰ Baudendistel, *Between Bombs and Good Intentions*, 289-291

Red Cross following the Geneva Conventions.¹¹¹ Article 30 of the Geneva Convention of 1929 stipulates that,

On the request of a belligerent, an enquiry shall be instituted, in a manner to be decided between the interested parties, concerning any alleged violation of the Convention; when such violation has been established the belligerents shall put an end to and repress it as promptly as possible.¹¹²

The Italians, confident of their ability to manipulate the ICRC, preferred that an inquiry be conducted by the ICRC rather than the League of Nations. The Italians insisted that the costs of such an inquiry should be borne equally by the warring parties. ICRC accepted this request knowing full well that the shared cost of such an inquiry was impossible for a poor country like Ethiopia to undertake and did not hesitate to blame the Ethiopians for lack of progress with the inquiry.

¹¹¹ Baudendistel, *Between Bombs and Good Intentions*, 193-195

¹¹² Baudendistel, *Between Bombs and Good Intentions*, 81, fn.18; International Convention for the Amelioration of the Condition of the Wounded and the Sick in Armies in the Field, Geneva, July 27, 1929, Treaty Series no.36, (London,1931) 39

The Ethiopians lost faith with the ICRC and their Emperor Haile Selassie approached the League of Nations for conducting an inquiry instead of the ICRC. In his address to the Assembly, the Emperor stated with grief:

None other than me and my gallant companions in arms could bring the League of Nations undeniable proof. The appeals of my delegates to the League of Nations had remained unanswered; my delegates had not been eye-witnesses. That is why I decided to come myself to testify against the crime perpetrated against my people and to give Europe warning of the doom that awaits it if it bows before the accomplished fact...”¹¹³

Selassie in a passionate speech described to the League how the Italians mercilessly sprayed mustard gas from aircraft targeting “women, children, cattle, rivers, lakes and fields” making “all those whom it touched fly shrieking with pain. All who drank the poisoned water or ate the infected food succumbed too, in dreadful suffering. In tens of thousands the

¹¹³ Keith Arthur Berriedale, *Speeches & Documents on International Affairs, 1918-1937*, (London: H. Milford & Oxford University Press, 1938), .86

victims of the Italian mustard gas fell...”¹¹⁴ The League of Nations established the Committee of Thirteen to investigate whether chemical warfare did take place in Ethiopia in direct contravention to the Geneva Convention of 1925.

The Committee of Thirteen approached the ICRC to share the reports of its delegates in Ethiopia to help investigate whether chemical warfare did take place in Ethiopia in violation of the Geneva Convention of 1925. The ICRC immediately refused. Salvador de Madriaga as the President of the Committee of Thirteen, an experienced diplomat and a veteran of several Disarmament Conferences decided to make the correspondence exchanged between the two international organizations public. This resulted in a public debate whether ICRC’s decision not to share information constituted a direct affront to the League of Nations. ICRC then asserted that the principle of neutrality required that it be discreet in sharing this information. ICRC claimed that adherence to the principle of neutrality made it imperative that,

¹¹⁴ Berriedale, *Speeches & Documents on International Affairs*, 85-86

the International Committee does not feel that it can communicate information received from its own delegates, or information confided to it as being an international organ of the Red Cross, for any enquiry other than that for which the Geneva Convention itself makes a provision in the matter of establishing the facts regarding alleged violations.¹¹⁵

The ICRC further buttressed its grounds of refusal by suggesting that it would compromise the possibilities of another enquiry that it was going to undertake under article 30 of the Geneva Conventions. Madriaga shrewdly pointed out that, "the League's own inquiry covers a subject with which the ICRC's was not concerned, namely the conduct of hostilities which included gas warfare."¹¹⁶

The ICRC's final response to the Committee of Thirteen was another attempt to defend its position by stating that,

¹¹⁵ Durand, *Sarajevo to Hiroshima*, 308

¹¹⁶ ICRC Archives, CR 210/1102, Salvador de Madriaga to the President of the ICRC, April 18, 1936,

The aims of the International Committee of the Red Cross are exclusively humanitarian and non-political; its primary function is to endeavor to alleviate the sufferings of the victims of war. In order to attain those aims, it must adhere scrupulously to a line of conduct that will enable it to maintain relations of mutual confidence with the contending parties...The International Committee likewise considers that it cannot depart from the principles stated above even in conflicts in which the right to wage war is denied.¹¹⁷

It is ironical that ICRC, which had laboured for more than a decade to get countries to accept the 1925 Geneva Protocol and strengthen measures for verification, now backpedaled on issues concerning verification of its violation by state parties.

The reports of its field delegates had enabled the ICRC to accumulate useful data for verification purposes but the organization refused to share it with the League or the national Red Cross societies. It left the matter of

¹¹⁷ Max Huber to Salvador de Madriaga, April 24, 1936, ICRC Archives, CR 210/1123

cooperation of the national Red Cross societies with the League of Nations to their own discretion. The British, Swedish and Norwegian Red Cross societies extended their cooperation to the League. Despite the requests of its own delegates and the national Red Cross societies, the ICRC did not even share the reports of its delegates with these societies prior to accepting the burden of an inquiry at the insistence of the Italians.¹¹⁸ This once again showed the divided nature of a movement that the ICRC seeks to lead. The Committee of Thirteen did not complete its inquiry in the absence of necessary documentation. In retrospect, Rainer Baudendistel concludes that ICRC's "silence protected an illegality under international law."¹¹⁹

These actions of the ICRC undermined the moral image that it had constructed in making a public appeal on February 6, 1918 against the use of chemical weapons in war. It also unleashed a torrent of criticism labeling the ICRC as pro-fascists and anti-communists on several grounds.¹²⁰ By complying with the wishes of the Italians, the ICRC gave the appearance of enabling a pro-Italian foreign policy of the Swiss government that had "no intention of alienating its powerful southern

¹¹⁸ Baudendistel, *Between Bombs and Good Intentions*, 183

¹¹⁹ Baudendistel, *Between Bombs and Good Intentions*, 289

¹²⁰ Geoffrey Best, *War and Law since 1945*, (Oxford: Oxford University Press, 1994), 83-84

neighbor” for the inconsequential Ethiopians.¹²¹ Baudendistel notes that during this war several members of the ICRC in Geneva, “had links to organizations with pronounced pro-Italian positions” and it is possible that their political convictions operated at a more “subtle” level despite their expressions of outrage at the sufferings of the victims in Ethiopia.¹²² It is significant to note that Baudendistel mentions differences in political convictions and not racial prejudices in his text.

A public scandal concerning President Max Huber’s close association with two business enterprises Maschinenfabrik Oerlikon and Aluminium Industries AG also emerged during this period. These two companies Huber inherited from his father. It has been suggested that Aluminium Industries AG owned factories supplying aluminium to other industries engaged in wartime production. It is not clear whether aluminium was supplied specifically to any weapons producing units or that Max Huber enjoyed any income from these sales. It is an established fact that the company benefited from close relations with Fascist Italy in expanding its production facilities during the Italian-Ethiopian War from 1935-1936.

¹²¹ Baudendistel, *Between Bombs and Good Intentions*, 24-26

¹²² Baudendistel, *Between Bombs and Good Intentions*, 22-24

In recent years, ICRC scholars such as Baudendistel and Sandoz have come to the defence of Max Huber stating that the latter had resigned from the Chairmanship of Aluminium Industries AG in 1941. Baudendistel claims that "Huber renounced any revenue from his function at AIAG as of 1 September 1939" while Yves Sandoz suggests, "Huber knew the aluminium produced in the factories of the company he headed was important during wartime, and as soon as war broke out he gave up all claim to any income relating to his membership of the Board of Aluminium Industries AG, donating it to social works, in particular the Red Cross."¹²³ While Buadensdistel holds the Communist press accountable for generating this controversy about Huber in mid-1936, Sandoz places the blame specifically on Jack Rolland a humorist that had later apologized to Huber for confusing Aluminum Industries AG with Oerlikon Buhrle a weapons manufacturing firm. While Baudendistel and Sandoz both give slight variations in interpreting this controversy, it will not be remiss to observe here that it is easier to recognize a possibility of confusion emerging from Huber's ownership of Maschinenfabrik Oerlikon and Jack Rolland's reference to Oerlikon Buhrle a weapons manufacturing firm sharing the same German name "Oerlikon" than confusing Max Huber's Aluminium Industries AG with Oerlikon Buhrle. Buadendistel

¹²³ Baudendistel, *Between Bombs and Good Intentions*, 20; Sandoz, "Max Huber and the Red Cross", 194, fn.87

acknowledges Huber's ownership of two companies and gives an account of the controversy stemming from the ownership of Aluminium Industries AG; Sandoz mentions Huber's ownership of only one company, Aluminum Industries AG and the controversy surrounding it. There is no mention by Sandoz of Maschinenfabrik Oerlikon.

The mounting criticism of the ICRC and President Huber in the context of its handling of the Italian- Ethiopian warfare made the latter offer a defensive rebuttal in the form of an article on the principle of neutrality. Huber published an article "Croix-Rouge et neutralité" in which he argued that the principles of neutrality and impartiality necessitated that the ICRC maintain a relationship of confidence with parties involved in a war.¹²⁴ The ICRC had to exercise prudence when it received complaints about violations of the Geneva Conventions and always remember that it was not a "court of justice."¹²⁵ In this academic interpretation of the principle of neutrality Huber upheld normative considerations with regard to neutrality and impartiality and argued that they should be practiced in good faith and objectivity. But in practicing these principles in specific situations the ICRC appeared to be in a privileged position where it was

¹²⁴ This article is discussed at length in Baudendistel, *Between Bombs and Good Intentions*, 194-195

¹²⁵ Baudendistel, *Between Bombs and Good Intentions*, 194

placed in a position above the parties involved instead of being an active participant in a political situation. Baudendistel captures this positioning of the actor with great effect when he suggests,

Huber had described a Red Cross which operated in a world where neutrality, impartiality, objectivity and good faith were generally respected values. In such a world, the ICRC being above the parties, in somewhat Olympic serenity, had its place, but it was not a world in which Mussolini's war against Ethiopia was fought. The real question was how to react to a party which paid only lip service to these values and did not apply them in reality.¹²⁶

Baudendistel concludes that, "Huber's discourse sounded strangely out of touch with reality."¹²⁷ Max Huber's interpretation of neutrality made it possible to conceive that serving this principle itself was the goal of the ICRC and undermined other interpretations that recognized that "Neutrality and impartiality were not goals in themselves, but merely

¹²⁶ Baudendistel, *Between Bombs and Good Intentions*, 194-195

¹²⁷ Rainer Baudendistel, *Between Bombs and Good Intentions*, 195

means to achieve better respect for persons under the protection of the Red Cross”¹²⁸

President Huber emphasized that, “the ICRC does not have to take a stand for or against any method of warfare, but it has to concern itself with alleviating the suffering caused by war.”¹²⁹ But this experience itself produced multiple reactions within the membership of the organization itself. Paul Ruegger believed that ICRC’s silence found favour with the Italian and Swiss governments and enhanced its reputation as a humanitarian actor.¹³⁰ Paul Logoz observed that ICRC’s silence protected “a means of combat which is atrocious.”¹³¹ Brown, the ICRC delegate in Ethiopia that had cautioned the ICRC against these possible allegations was forced to resign for breach of confidentiality while Junod won acclaim and decorations within the Red Cross movement including from the Italian Red Cross society. The undermining of Brown’s testimony and his disappearance from the ICRC suggests, “a refusal to admit to the

¹²⁸ Baudendistel, *Between Bombs and Good Intentions*, 194-195

¹²⁹ ICRC Archives, PV Seances Plenieres, (23 April 1936),2; Baudendistel, *Between Bombs and Good Intentions*, 292

¹³⁰ Baudendistel, *Between Bombs and Good Intentions*, .289

¹³¹ Baudendistel, *Between Bombs and Good Intentions*, 289

existence of a particular kind of trauma” that enveloped this particular delegate and the ICRC.¹³²

Baudendistel notes in a tone of resignation, “The once controversial subject of Italy’s chemical warfare in Ethiopia had disappeared from the movement’s agenda, just eight months after poison gas been used, as it had much earlier from the League of Nation’s agenda.”¹³³ This experience brought center-stage the dilemmas that plague the ICRC with regard to its ethical commitments and legal mandate in addressing the problem of weapons and their use in specific situations. Baudendistel observes that with this experience, “the organization redefined, without even realizing it, its role in times of conflict.”¹³⁴ It became an actor that gave priority to relief over protest and even in this undertaking it was governed exclusively by the Geneva Conventions. In a tone of quiet rebuke, Rainer Baudendistel notes that, “The ICRC should at least have informed the next Conference held in London in 1938, about the decision to redefine its role but the matter was not even raised.”¹³⁵

¹³² Kali Tal, *Worlds of Hurt-Reading the Literatures of Trauma*, (Cambridge: Cambridge University Press, 1996), 6

¹³³ Baudendistel, *Between Bombs and Good Intentions*, 298

¹³⁴ Baudendistel, *Between Bombs and Good Intentions*, 293

¹³⁵ Baudendistel, *Between Bombs and Good Intentions*, 308

At the International Red Cross Conference in London, 1938, the Dutch government tried to raise the question of separate jurisdiction between the Hague Laws and the Geneva Conventions. The ICRC had a clear mandate under the Geneva Conventions and “Huber knew very well that the line between the two bodies of law was blurred.”¹³⁶ But the ICRC now did not want any discussion of its mandate under the Geneva Conventions as being separate from the Hague laws. A proposal put forward by the British Red Cross Society seeking to amalgamate the Geneva Conventions and the Hague Laws into one Convention was ridiculed by the ICRC as being too “utopian” in its efforts to regulate war.¹³⁷ The ICRC expressed concern that the problems of a merger should not impede revisions of the existing conventions in their present form.¹³⁸ The proposal was scuttled by the argument that it was outside the scope of the conference and it had to be preceded by extensive consultations. President Huber did not consider this an opportune moment to engage in this legal hair-splitting. His behind the scenes diplomacy and calculated correspondence with the Dutch government enabled him to skirt this issue by rallying support for

¹³⁶ Sandoz, “Max Huber and the Red Cross,” 185

¹³⁷ XVI^e Conference Internationale de la Croix Rouge, Londres, 20-25 Juin 1938, Exposé de M. Camille Gorge, Président et rapporteur de la II^e Commission (Commission juridique)—(Séance plénière du 24 juin 1938), Swiss Federal Archives, Bern, E2001D, 1000/1551, B.65.101.01, BD 122

¹³⁸ XVI^e Conference Internationale de la Croix Rouge, Londres, 20-25 juin 1938,—II^e Commission—Resumé des discussions de la Commission juridique, Swiss Federal Archives, Bern, E2001D, 1000/1551, B.65.101.01, BD 122,

addressing the wider concerns of humanity when a global war was waiting to be unleashed.

Good Samaritan Practices Silence

The silence of the ICRC on such a critical subject was contingent to a specific situation in its history but it quickly crystallized into two internal policy statements. These two internal documents represented attempts by the leadership of the organization to codify arbitrary and ad-hoc practices of the ICRC and its delegates witnessing violations of the laws of war into a consistent policy. The first document issued on 12 September 1939 was a *Memorandum on the Activity of the International Committee of the Red Cross Concerning International Law*.¹³⁹ The second document issued the next day contained *Instructions for the Delegates of the International Committee of the Red Cross- Violations of International Law*.¹⁴⁰ The purpose of the new instructions was to inform the delegates of the “limits

¹³⁹ See Memorandum on the Activity of the International Committee of the Red Cross Concerning International Law, dated September 12, 1939 in Attitude of the International Red Cross Committee to Violations of International Law, Library & Archives Canada, Ottawa, Source: RG25, G-1, Vol.1963, File No. 842-BG-39

¹⁴⁰ See Instructions for the Delegates of the International Committee of the Red Cross-Violations of International Law dated September 13, 1939 in Attitude of the International Red Cross Committee to Violations of International Law, Library & Archives Canada, Ottawa, Source: RG25, G-1, Vol.1963, File No. 842-BG-39

of their authority.”¹⁴¹ They instructed the delegates not to be a willing witness to any infraction of international humanitarian law. If the delegate became an unwilling witness it was advised that he immediately contact the headquarters and submit a confidential report. It was clearly stated that the delegate must exercise extreme discretion and was not at liberty to discuss contents of the report without permission of the ICRC. It was argued that should a delegate be “invited to verify violations of international law he must bear in mind that his mission is not to witness violations of the Conventions of Geneva or the Hague, or to investigate such.”¹⁴² But the ICRC as a “competent authority” would act as the “sole judge” in determining whether a confidential report submitted by a delegate was to be shared with any other party or not.

The Memorandum described six conditions under which ICRC would undertake an enquiry in case of violations.¹⁴³ These conditions are now part of ICRC’s rhetorical arsenal on constituting an inquiry for purposes

¹⁴¹ Instructions for the Delegates of the International Committee of the Red Cross-Violations of International Law dated September 13, 1939 in Attitude of the International Red Cross Committee to Violations of International Law, Library & Archives Canada, Ottawa, Source: RG25, G-1, Vol.1963, File No. 842-BG-39

¹⁴² Instructions for the Delegates of the International Committee of the Red Cross-Violations of International Law dated September 13, 1939 in Attitude of the International Red Cross Committee to Violations of International Law, Library & Archives Canada, Ottawa, Source: RG25, G-1, Vol.1963, File No. 842-BG-39

¹⁴³ Memorandum on the Activity of the International Committee of the Red Cross Concerning International Law

of verification of violation of laws of war. The first condition stipulates that the ICRC will only co-operate in an inquiry if a mandate is conferred on it by an international treaty or by an ad hoc agreement by all parties concerned. The second condition insists that the ICRC will never constitute itself as a commission of inquiry. This is supplemented by the third condition that the ICRC will confine itself to choosing qualified persons outside its own organization to serve on such a commission. The fourth condition suggests that the ICRC support will not be available if the inquiry does not facilitate parties from presenting their views and does not guarantee complete impartiality. Fifth the ICRC seeks assurance that no communication will be made to the public concerning a request for an inquiry or a proposal for an inquiry without its consent. The sixth condition specifically states that the ICRC will participate in the institution of such a commission of an inquiry only if it concerned itself with breaches of the Geneva Convention. These conditions are a reiteration of the stance that the ICRC took with regard to sharing testimonies of its delegates with the League of Nations. But it is the qualifying statement attached to the sixth condition that is worth quoting here in full. It states the following:

The International Committee of the Red Cross devotes itself to the protection of humanitarian interests in all circumstances chiefly in time of war and interior troubles. Its special mission which surpasses all others is to watch over the interests protected by the Conventions of Geneva, to improve the lot of the sick and wounded and guard over the treatment of prisoners or of all other conventions proposed by the Red Cross. If, therefore, the CICR is called upon to investigate under conditions mentioned above, these should, above all, concern infractions to the said conventions. *Investigations about violations regarding the law of war in general, particularly rules relative to the means used in war, could only enter into the activities of the CICR in very exceptional cases.*"¹⁴⁴

Thus it is this qualifying statement that provides a key insight into ICRC's commitment to violations of international humanitarian law especially the Hague Laws. These documents were sent by the ICRC to the national Red Cross societies. The latter did not hesitate from sharing them

¹⁴⁴ Memorandum on the Activity of the International Committee of the Red Cross Concerning International Law, (italics inserted)

with government authorities and reassuring them of the ICRC's future course of action when it came to the use of weapons in war.

At the same time these internal documents regulating the conduct of ICRC delegates did not seem to be enough for Max Huber. He was aware that practices of codification run the risk of becoming abstract words susceptible to multiple interpretations and therefore felt it necessary to develop moral arguments encompassing the work of the ICRC and its delegates. In 1945 Max Huber published a book, *The Good Samaritan*.¹⁴⁵ In this book, Huber developed Moynier's idea that, "one cannot be at once a good Samaritan and one who rights wrongs" into a full fledged doctrine¹⁴⁶, and developed its rationale by citing Dunant and the "ethical quality of the Red Cross worker" from a Christian standpoint.¹⁴⁷ In undertaking this study, Max Huber notes that the founders of the ICRC had little desire to give a "Christian imprint" to the work of the organization and this has in fact over the years facilitated universal recognition of the organization as a neutral actor.¹⁴⁸ But in order to make a case for his study, he asserts, it will be a grave injustice to "overlook

¹⁴⁵ Max Huber, *The Good Samaritan*, (London: Victor Gollancz Ltd. 1945)

¹⁴⁶ Senarclens, *The Founding of the Red Cross*, 168

¹⁴⁷ Huber, *The Good Samaritan*, 32-33

¹⁴⁸ Huber, *The Good Samaritan*, 32-33

the Christian faith by which the founders, Dunant especially, were animated." Huber observes that, "On the battlefield of Solferino, Dunant is all helper—Samaritan is the exact meaning of the term."¹⁴⁹ Max Huber emphasizes that Dunant's express desire was that he be recognized as nothing else but "a disciple of Jesus Christ."¹⁵⁰ It is possible to suggest here that this is an obvious attempt by Huber to invoke the legacy of Dunant's testimony for a political purpose in his absence.

Huber asserts that, in addressing the suffering of victims, an ICRC delegate like a good Samaritan acts out of compassion and spontaneity. But in this practice of providing relief to the victim what Max Huber finds especially noteworthy is best expressed in his own words:

The Samaritan *makes no complaint* against the thieves, or against the authorities for tolerating the evils of highway robbery; he has *no word of reproach* for those who had passed by before him and could have helped. Face to face with distress, *action, not talk*, is where one's duty

¹⁴⁹ Huber, *The Good Samaritan*, 53

¹⁵⁰ Huber, *The Good Samaritan*, 32

lies...There is nothing but the *simple action, without words* and without ado, as simple as the majestic answer with which Jesus meets the lawyer's question, "And who is my neighbor?"¹⁵¹

The above observation is only Huber's ingenious attempt to seal the testimonies of suffering witnessed by its delegates in a vow of silence. For Huber, the compact between the ICRC and its delegates is akin to "Christ submitted in obedience, even unto the Cross" a "complete submission is the sacrifice demanded."¹⁵² Huber eulogizes "inconspicuous" and "unknown" labours of the Good Samaritan and emphasizes that only this kind of work can help build an enduring institution like the ICRC. In girding the labours of numerous Samaritans collectively under the rubric of the ICRC as a humanitarian organization, Huber insists on the need for "submission to a uniformity of method."¹⁵³ One uniform method is adherence to the principle of neutrality which according to Max Huber can be interpreted in the biblical message of Christ to his apostles, "Behold, I send you forth as sheep in the midst of wolves; be ye therefore wise as serpents, and harmless as

¹⁵¹ Huber, *The Good Samaritan*, 41

¹⁵² Huber, *The Good Samaritan*, 43

¹⁵³ Huber, *The Good Samaritan*, 54

doves.”(Matt.x.16)¹⁵⁴ Max Huber asserts that while neutrality is the public principle of the ICRC, the unspoken and unwritten principle is “prudence” that too demands silence and reticence of its delegates.¹⁵⁵

Max Huber can also be credited with tempering the voice of a living witness as it expressed sentiments of humanity and outrage at violation of laws of war. Huber describes Dunant’s testimony as a “voice of a prophet” only to stipulate that the voice of an ICRC delegate must now only be raised under specific conditions based on impartiality and an unprejudiced survey of facts.¹⁵⁶ Max Huber further suggests that an ICRC delegate that is able to serve in silence, restrain himself from voicing his judgement is “severely realist” and should not be reproached.¹⁵⁷ Breaking of this silence will result in a loss of confidence that might undermine the work of the organization. ICRC stands for deeds and not words and its silence must be broken only if “by speaking someone or something may be served.”¹⁵⁸

¹⁵⁴ Huber, *The Good Samaritan*, 64

¹⁵⁵ Huber, *The Good Samaritan*, 64

¹⁵⁶ Huber, *The Good Samaritan*, 53, 66

¹⁵⁷ Huber, *The Good Samaritan*, 66

¹⁵⁸ Huber, *The Good Samaritan*, 76

Max Huber asserts an ethics of “simplification” and “realism” that make it imperative for the ICRC to focus exclusively on its functions under the Geneva Conventions and only then consider any possibility of enlarging its “radius of action, by seeking out such tasks as would naturally arise out of a community of need rather than of nature.”¹⁵⁹ Describing the delegates of the ICRC as “severely realist” Max Huber proceeds to delineate the burden of responsibility that the actor experiences when he must choose between accepting and rejecting a course of “some beneficial and much-needed action.”¹⁶⁰

In making this decision, Max Huber explicitly specifies that the first priority is to be assigned to tasks undertaken to fulfill the ICRC’s mandate under the Geneva Conventions. Then one must consider whether the measures it seeks to support is “foredoomed to failure because its requirements would exceed the personal and material means at hand, or else because the external obstacles, technical, political or other, are insuperable.”¹⁶¹ Another reason that might deter the ICRC from supporting such an action that appears to be feasible enough is ICRC’s pre-occupation with “current tasks and prior commitments” that “are so

¹⁵⁹ Huber, *The Good Samaritan*, 76

¹⁶⁰ Huber, *The Good Samaritan*, 45

¹⁶¹ Huber, *The Good Samaritan*, 69

overwhelming that they can only be done justice to at the price of ruthless concentration, at least for a certain time.”¹⁶²

This burden of realism and simplification generates a suffering within the actor that is expressed as “helplessness”, “torment” and “saddest regret” by Max Huber. But this feeling of vulnerability experienced by the delegate is also claimed to be a source of strength. Max Huber uses the word “sacrifice” that the actor makes when it strives to maintain its independence instead of bartering it for security. Max Huber suggests that the ICRC lives a hands-to-mouth existence and it has to earn its “moral credit” anew each day with its own actions.¹⁶³ Max Huber emphasizes that recognition of the ICRC as a humanitarian actor and its activities are not chartered in any specific international document and “the only international treaty in which it is mentioned does no more than assume its existence when attributing to it the right to take the initiative in philanthropic actions.”¹⁶⁴ It will not be a mistake to discern a feeling of reproach in the tone of Max Huber’s writings for the innumerable tasks that the ICRC had undertaken on its own initiative during wars for which

¹⁶² Huber, *The Good Samaritan*, 69

¹⁶³ Huber, *The Good Samaritan*, 70

¹⁶⁴ Huber, *The Good Samaritan*, 70

it had not been fully appreciated but instead had been a recipient of sharp criticism for endeavours that it had failed to undertake.

The intensely religious tone of Max Huber in addressing the subject of ICRC delegates reveals the complex character of a man ensnared in a deeply religious outlook tempered with the cold logic of law. It was this calculative legal mind that facilitated practices of codification and routinisation within the ICRC with a view towards the future. These practices can be held responsible for proscribing the practices of an ICRC delegate. Max Huber can be credited with the mythologisation of the ICRC delegate. The practice of mythologisation seeks to reduce traumatic events to “a set of contained and controlled narratives.”¹⁶⁵ It was under Huber’s tutelage that the legacy of a living witness was transformed into a character akin to the mythological figure of the Good Samaritan. Kal Tal expounds that, “mythologization works by reducing a traumatic event to a set of standardized narratives (twice and thrice-told tales that come to represent “the story” of the trauma) turning it from a frightening and uncontrollable event into a contained and predictable narrative.”¹⁶⁶

¹⁶⁶ Tal, *Worlds of Hurt*, 6

Weapons of Mass Destruction

In 1948, the United States, the new superpower, insisted that chemical, biological and nuclear weapons be constituted as a separate category labeled as weapons of mass destruction and all questions pertaining to their regulation and prohibition be addressed in the ACD conferences organized by the United Nations only.¹⁶⁷ As such any effort on the part of the ICRC to address regulation and prohibition of these weapons was discouraged. However, allegations of use of chemical weapons persisted in the battlefields of Korea, Yemen, Vietnam and Iran-Iraq wars. The use of chemical and biological agents in these wars raised problems of the types of agents used and the problem of verification. The use of herbicides, incapacitants and riot control agents was justified by governments claiming that it was not within the provisions of the Geneva Protocol of 1925.

¹⁶⁷ Weapons of mass destruction were defined in the US revised draft resolution of *September 1947 as including: atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons, and any weapons developed in the future which have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above (UN document S/C.3?SC.3/7/Rev.1). The definition was accepted by the Commission on Conventional Armaments on 12 August 1948 (UN document S/C 3?SR.13), *Incendiary Weapons- A SIPRI Monograph*, (Stockholm & London: Almqvist & Wiksell & The MIT Press, 1975), p.41; Martha Finnemore, "Stigmatizing the Bomb origins of the Nuclear Taboo", *International Security*, 29, no.4, (2005),17-20

Although the International Red Cross conferences continued to pass resolutions urging governments to “conclude as rapidly as possible an agreement banning the production and stockpiling of chemical and bacteriological weapons”, the ICRC itself adopted a more diplomatic posture towards regulating and prohibiting the use of chemical weapons in the battlefield.¹⁶⁸ The ICRC was acutely aware that the problem of verification is a bone of contention between the two super-powers. The super-powers contested the feasibility of on-site inspection and national technical means of verification. Victor A. Utgoff observes,

Given the reluctance of sovereign nations to submit to widespread on-site inspections of their activities, successful *arms control would seem to require procedures for making ‘soft’ accusations in private*, and a willingness of the ‘accused’ nation to take quick action to dispel suspicions of wrong doing.¹⁶⁹

¹⁶⁸ Resolution XIV of the XXIst International Conference of the Red Cross in Istanbul 1969

¹⁶⁹ Victor A. Utgoff, *The Challenge of Chemical Weapons-An American Perspective*, (London: The Macmillan Press, 1990), 80 (italics inserted)

The ICRC adopted this approach on the issue of verification with regard to the use of chemical and biological weapons, as it was in-keeping with its wariness and desire to exercise extreme caution,

The ICRC received reports from its medical teams that poison gas had been used in the civil war in Yemen. It was once again confronted with problems that it had encountered in the Italian-Ethiopian War. In the words of Dr. Robin Coupland and Dominique Loye, the ICRC was mired in a quagmire of questions:

Whether the ICRC should issue protective masks to the civilian population (thereby appearing to verify allegations); the risk of exposure of ICRC staff to chemical agents; the possibility of ICRC staff coming under attack to prevent their witnessing the effect of use of chemical weapons; and whether an ICRC team assisting victims should carry out scientific investigations to verify the allegations. The question of public disclosure of the

reports by the ICRC became a prominent feature of diplomatic exchanges and in the media.¹⁷⁰

The ICRC responded with two public statements condemning the use of such a weapon and sent a memorandum to the signatories of the Geneva Convention reminding them of their obligations under this treaty.

Similarly the UN Secretary General approached the ICRC for information on use of poisonous gases in the frontier regions of Thailand and Vietnam the ICRC responded with a letter on June 19, 1981.¹⁷¹ The Secretary General was following up on a UN General Assembly Resolution No.35/144C requesting the latter to carry out, with the assistance of qualified medical and technical experts, an impartial investigation regarding the alleged use of chemical weapons and to assess the extent of the damage caused by the use of such weapons. This resolution specifically mentioned ICRC's press statement of May 6, 1980 that from the evidence collected by its delegates stationed at the border of Thailand

¹⁷⁰ Dr. Robin Coupland & Dominique Loye, "Who will assist victims of nuclear, radiological, biological, or chemical weapons -- and how?" *International Review of the Red Cross*, 89, no.866, (June 2007), 332.

¹⁷¹ See details of correspondence in "Letter from the ICRC to the UN concerning an inquiry into the alleged use of chemical weapons," *International Review of the Red Cross*, no.225, (Nov-Dec, 1981), 377-381

and Vietnam it could not be concluded that poison gases were used or not in the region. In this letter the ICRC further states that it is not indifferent to the allegations concerning the use of chemical weapons and their investigation under the auspices of the United Nations. In the language of the ICRC:

The efforts made by the ICRC with a view to prohibiting or restricting the use of certain indiscriminate or particularly cruel weapons should be considered as a *logical complement* to the Geneva Law, since these efforts are also primarily aimed to alleviate the plight of the victims of conflicts.¹⁷²

After repeatedly making the claim that it is not indifferent, ICRC then proceeded to recount the particular conditions under which it will consider taking a public position on violations of international humanitarian law. These conditions are the following: these violations are important and repeated; the steps taken confidentially have not succeeded

¹⁷² "Letter from the ICRC to the UN Concerning an Inquiry into the Alleged Use of Chemical Weapons," 377 (italics inserted)

in stopping the violations; such publicity is in the interests of the persons or populations affected or endangered; the delegates have been direct witnesses to these violations, or the existence and extent of the violations have been established by means of reliable and verifiable sources.

The ICRC then makes its rhetorical statement that the first and foremost priority of the delegate under the Geneva Convention is protection and assistance of the victims and not recording of violations in the conduct of hostilities. This argument is prefatory to the assertion that, "Because of this, the ICRC does not have any specific reports on the weapons and combat methods used in the armed conflicts in which it intervenes."¹⁷³ Another qualifying statement appended to these conditions is that,

The ICRC does not in principle express its opinion on the use of certain weapons or means of combat. However, it does not rule out the possibility of taking steps and, if necessary, making itself heard if it considers that the fact of resorting to a weapon or a

¹⁷³ "Letter from the ICRC to the UN Concerning an Inquiry into the Alleged Use of Chemical Weapons," 379

method of warfare, or of threatening to resort to it, would aggravate the situation to an exceptionally serious degree. To do this, it must however have reliable and verifiable facts in its possession.¹⁷⁴

The tone of this letter betrays a grudging acknowledgement by the ICRC of the logical interaction between the Hague Laws and Geneva Laws. But in this acknowledgement there is an implicit attempt to prioritize the Geneva Conventions as the “principal” and the Hague Law as the “complement.” There is a further effort at disciplining the delegates by insisting that accounting for violations of international humanitarian laws through the use of certain weapons or methods of warfare in the midst of hostilities is not a priority task in protecting and assisting the victims. Finally, the complete denial with reference to the ICRC possessing any “specific” reports on the weapons and combat methods deployed in armed conflict is sufficient proof of the organization’s extreme reluctance in addressing the problem of weapons.

¹⁷⁴ “Letter from the ICRC to the UN Concerning an Inquiry into the Alleged Use of Chemical Weapons,” 380

While it is possible that in this particular case ICRC did not possess any “specific” reports on the use and abuse of chemical weapons, one cannot but notice the ambiguity which envelopes ICRC statements on particular conflicts where the use of chemical weapons has been a bone of contention. For example, during the Iran-Iraq war, “the International Committee of the Red Cross said it presumed Iraq had used prohibited substances.”¹⁷⁵ Thus the use of the word “presumed” once again enabled the ICRC to refrain from taking a definite stance against any state party. This statement too was issued on 7 March 1984, after a team of specialists from the UN had traveled to Iran and sent several reports confirming that mustard gas and nerve agent tabun had been used by Iraqi forces against Iran and both the superpowers had condemned the use of chemical weapons by Iraq.

While the ICRC itself is circumspect in playing an active role itself on the subject of verification it has persistently lobbied for inclusion of provision for verification to ensure compliance in the Biological Weapons Convention (BWC) and the classification of chemical agents into lethal and non-lethal without any threshold for determining this distinction. It has tried to raise these issues in its consultations with government experts

¹⁷⁵ Utgoff, *The Challenge of Chemical Weapons*, 82

but in 1968 with both superpowers agreeing that the subject of chemical and biological weapons be addressed only at the United Nations it became difficult for the ICRC to raise these subjects at the Diplomatic Conference on the Reaffirmation of International Humanitarian Law in 1974. After consultations with governments experts the ICRC concluded that,

Problems relating to atomic, bacteriological and chemical weapons have been the subject of international agreement or discussion among governments. *The ICRC therefore does not propose to raise them when submitting its Draft Protocols.* It will be recalled that at several International Conferences of the Red Cross, the Red Cross as a whole has clearly expressed its disapproval of weapons of mass destruction and urged governments to agree on the banning of the use of such weapons.¹⁷⁶

But the above statement did not prevent the ICRC from attempting to influence developments within the meetings at the UN and other non-

¹⁷⁶ "Draft Additional Protocols to the Geneva Conventions-Brief Summary," *International Review of the Red Cross*, no.151, (October, 1973), 508 (italics inserted).

governmental forums. The ICRC expressed support for the UN Secretary General U. Thant's report on chemical and bacteriological weapons.¹⁷⁷ It maintained an observer status but participated in meetings organized by the World Health Organization, The Women's International League for Peace and Freedom (WILPF) and International Peace Bureau. These meetings enable the ICRC to engage with other actors interested in supporting its claims that the Geneva Convention of 1925 is applicable to all chemical and bacteriological agents. The ICRC study on Customary International Humanitarian Law reinforces this position.

But the fact that governments contested these claims made by the ICRC, that the threat of the use of these weapons against civilians and combatants persists, has led the ICRC to launch another appeal entitled "Biotechnology, Weapons and Humanity" on 25th September 2002.¹⁷⁸ A study of this appeal can serve as another starting point for tracing ICRC's efforts against chemical and biological warfare. This study can be facilitated by access to archival data that will throw insights into how the

¹⁷⁷ The Question of General and Full Disarmament: Secretary General Report on Chemical & Bacteriological (Biological) Weapons & their Effects, UN doc.A/7575, 1.7.1969; Also see, Conference on Biological and Chemical Warfare, *International Review of the Red Cross*, no.108, (1970), 164-165; Conference on the Outlawing of Biological, Chemical & Nuclear Weapons, *International Review of the Red Cross*, no.128, (November, 1971)

¹⁷⁸ Appeal on Biotechnology, Weapons & Humanity, 25-09-2002, Official Statement, <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/5eamtt?opendocument>

how ICRC deliberated the problem of verification and engaged in diplomacy during the Cold War period facilitating two comprehensive ACD agreements: the Biological Weapons Convention (1972) and the Chemical Weapons Convention (1993).

Conclusion

This chapter has demonstrated how the sufferings of the victims of chemical warfare during the First World War found voice in the appeal of the ICRC as a Living Witness. It has shown how the ICRC by waging a "moral war" against the use of these weapons positioned itself as a neutral intermediary between warring nation-states. The ICRC also accepted responsibility for the documentation of scientific and technical data considered to be necessary to address the sufferings of the victims. In accumulating this scientific and technical data the humanitarian actor incurred costs that made it possible for it to argue that states party to the Geneva Conventions should make financial contributions to the humanitarian organization. The nation-states provided financial assistance to the ICRC to enable it to organize expert meetings and table these expert reports at international conferences to regulate and prohibit aero-chemical warfare. However these expert reports on the laws of war

engaged in practices of classification of victims with ambiguity of meaning that only created further ground for contention in terms of their application in concrete situations. The shortcomings of the application of these laws of war became manifest in the Italian-Ethiopian war and the ICRC resorted to literal interpretation of these rules at the cost of addressing the needs of the suffering victims. It further tried to appropriate the legacy of Dunant's testimony to fashion itself as a Good Samaritan that exercises great discretion in voicing its concerns on the regulation and prohibition of chemical weapons. This became even more feasible with the categorization of chemical weapons under the rubric of weapons of mass destruction. The deliberate insistence of powerful nation-states that problems of weapons of mass destruction could only be addressed by governments within the United Nations, arguments made by the governments to this effect and the ICRC's response is studied at great length in the next chapter on nuclear weapons.

CHAPTER SEVEN - GOOD SAMARITAN'S APPROACH TO NUCLEAR WEAPONS

Introduction

Dunant's warning on the growing destructiveness of weapons used to wage war once again came true with the use of nuclear weapons in Hiroshima and Nagasaki. This brought the Second World War to an end, but seventeen years after the ICRC's appeal against the use of chemical weapons, the humanitarian actor now felt compelled to engage with the problem of nuclear weapons. This chapter explores how the ICRC has addressed the problem of nuclear weapons and to what effect? In addressing this question, this chapter begins by focusing on the testimonies of ICRC delegates, Dr. Junod and Fritz Bilfinger, as they witnessed the effects of the nuclear weapons on the victims of Hiroshima and Nagasaki. This chapter then demonstrates that the ICRC's efforts to address the problem use of nuclear weapons have remained mired in practices of legalization. These practices of legalization can be studied in three stages. The first stage involved efforts to include nuclear weapons in the ambit of the Geneva Protocol of 1925, the second stage focused on efforts to get nation-states to agree on the Draft Rules of 1957 and finally

the 1996 Advisory Opinion of the ICJ on the use of nuclear weapons and the ICRC's position vis-à-vis the decision of the court to maintain that the use nuclear weapons should be completely prohibited. The ICRC's efforts to take note of the practices of medicalization that enabled Dr. Junod and other medical experts to describe the sufferings endured by the victims in a vocabulary of "hiroshimitis" and "atomic bomb disease" suggest the need for a health based approach to weapons.¹ But the arguments generated on a health based approach to weapons through practices of medicalization failed to receive due consideration as the humanitarian actor was compelled by particular nation-states to address demands of technical competence and legal mandate in addressing the problem of nuclear weapons.

Testimonies of Witnesses

In a telegram, Fritz Bilfinger an ICRC delegate first summarized his observations made on 29th and 30th August 1945, on the tragedy that a

¹Marcel Junod, "The Hiroshima Disaster", *International Review of the Red Cross*, no.231, (November-December), 337-344; Dr. Masao Tsuzuki, "Atomic Bomb Injury from Medical Point of View," ICRC Archives, BAG OJ1Pj-0034-5; Also see Robert Jay Lifton, *Death in Life - Survivors of Hiroshima*, (Chapel Hill & London: The University of North Carolina, 1991), 103

single nuclear weapon had inflicted on the people of Hiroshima. The contents of this telegram note,

Visited Hiroshima thirtieth. Situation horrifying. 80% of town razed. All hospitals destroyed or severely damaged. Have visited two provisional hospitals: conditions indescribable. Full stop. Bomb effects surprisingly severe. Many victims, apparently recovering, suddenly experience fatal relapse owing to degeneration of white corpuscles and other internal injuries. Deaths occurring now in great numbers. More than 100,000 injured still in provisional hospitals in neighbourhood. Grave shortage of material, bandages, medicaments, stop. Appeal allied high command asking supplies be parachuted immediately into centre of town. Urgently need large supplies bandages, cotton, wool, ointment for burns, sulphamides, blood plasma and transfusion kits. Stop. Immediate action necessary. Also send

medical investigation commission. Report follows. Please acknowledge.²

The information provided by Bilfinger in a quick and precise form, is supplemented by Dr. Marcel Junod's testimonies on his visit to Hiroshima and Nagasaki.³ It is important to recollect here that Dr. Junod's conduct and reports from the field had won the approval of the presiding authorities in Geneva during the Italian-Abyssinian war in 1936. It was his testimony on the use of chemical weapons that had found favour with the ICRC while the testimonies of other delegates had met with rebuke and dismissal. Several years of service thereafter, had helped Dr. Junod acquire the experience and discretion necessary in investigating the effects of nuclear weapons on the field. This information is significant as it helps to put into perspective the value of his testimony in the organization that he represented.

² Fritz Bilfinger, telegram of 30th August 1945, copy, ICRC Archives, File No. G.8/76; The text of the telegram is also available in Marcel Junod, "The Hiroshima Disaster", *International Review of the Red Cross*, no.230, (September-October 1982), 271

³ Dr. Junod's testimony on the effects of nuclear weapons is available from three different sources. Marcel Junod, *Warrior Without Weapons*, trans. Edward Fitzgerald, (Oxford: Alden Press, 1951); Marcel Junod, "The Hiroshima Disaster", *International Review of the Red Cross*, no.230, (September-October 1982), 265-280; Marcel Junod, "The Hiroshima Disaster", *International Review of the Red Cross*, no.231, (November-December), 329-344

Dr. Junod is traumatized by the memory of the victims of aero-chemical bombardment in Ethiopia and this becomes obvious when making an aerial survey of Hiroshima. He recollects,

As for me, my feelings were very strange; I was less impressed with what I saw than with something I remembered: a picture of burned and blasted Abyssinian huts and fleeing natives. Though flying above the remains of Hiroshima it was of Dessie I thought.⁴

As the aircraft flew over several Japanese cities destroyed by aerial bombardment, Dr. Junod's recollects in precise details the time and date of his flight over Hiroshima at twelve o'clock on 8 September 1945. Dr. Junod notes,

We - my colleagues and I peered anxiously through the windows and witnessed a sight totally unlike anything we had ever seen before. The centre of the city was a sort of white

⁴ Junod, *Warrior Without Weapons*, 291

patch, flattened and smooth like the palm of a hand. Nothing remained. The slightest trace of houses seemed to have disappeared. The white patch was about 2 kilometers in diameter. Around its edge was a red belt, marking the area where houses had burned, extending quite a long way further, difficult to judge from the airplane, covering almost all the rest of the city. It was an awesome sight.⁵

The aircraft flew “over the city several times” before landing. Dr. Junod, describes these effects from an experienced eye of one that has seen the familiar sight of cities destroyed by explosive and incendiary bombs. An on-the ground inspection, by “walking slowly, through the dead city” enabled Dr. Junod to register in detail the effects of blast, fire and radioactivity on the infrastructure and the inhabitants. In order to break the “monotony of the scene” of devastation, to gain relief from “the same picture everywhere” and to give further legitimacy to his description Dr. Junod states with authority that, “We were standing more or less above the very spot where the bomb had exploded.”⁶

⁵ Junod, “The Hiroshima Disaster,” 272

⁶ Junod, “The Hiroshima Disaster,” 277, 279

Listening to other witnesses present their testimonies Dr. Junod learned that a few seconds after the atomic bomb was dropped,

Thousands of human beings in the streets and gardens in the town centre, struck away by a wave of intense heat, died like flies. Others lay writhing like worms, atrociously burned...Horses, dogs and cattle suffered the same fate as the people. Every living thing was petrified in an attitude of acute pain. Not even the plants were spared. Trees were charred, leaves ripped off and grass turned yellow, shriveled and burned ... Those inside were killed or injured. Those who managed miraculously to get out did not escape the fire which broke out, a vast belt of flames, trapping the victims within the town and preventing help from arriving. The few who, in spite of everything, managed to get through the wall of fire, apparently to safety, generally died ten, twenty, or forty days later from a delayed reaction to the mysterious and relentless gamma rays. Most of the strong structures (concrete,

stonework) resisted the heat but were completely gutted by the ensuing blast.⁷

Dr. Junod further provides a description of the suffering endured by the “sick and injured” that “had been collected up and crammed together pell-mell” in buildings more or less completely destroyed by the nuclear bomb.⁸ Dr. Junod suggests that the particular description below be considered representative of the general state of affairs and observes,

This emergency hospital is in a half-demolished school. There are many holes in the roof. On that day, it was pouring with rain and water was dripping into the patients' rooms. Those who had the strength to move huddled in sheltered corners, while the others lay on some kind of pallets; these were the dying. There are eighty-four sick and injured in this hospital with ten nurses and twenty schoolgirls, who seem to be very little girls, aged from 12 to 15 years, to look after them. There is no water, no sanitary installations, no kitchen. A doctor

⁷ Junod, “The Hiroshima Disaster,” 330

⁸ Junod, “The Hiroshima Disaster,” 278

comes in from outside to visit the sick every day. The medical care is rudimentary; dressings are made of coarse cloth. A few jars of medicine are lying around on a shelf. The injured often have uncovered wounds and thousands of flies settle on them and buzz around. Everything is incredibly filthy. Several patients are suffering from the delayed effects of radioactivity with multiple hemorrhages. They need small blood transfusions at regular intervals; but there are no donors, no doctors to determine the compatibility of the blood groups; consequently, there is no treatment.⁹

For Dr. Junod, "each one of those human beings represented an infinity of suffering. Those disfigured masks would always retain the horror of what they had witnessed"¹⁰ Several of these victims suffered from third degree burn injuries and there were approximately thirty thousand injured in about fifty such hospitals. This was the tragic situation that Dr. Junod faced the day he visited Hiroshima, a month after the first use of a single nuclear weapon.

⁹ Junod, "The Hiroshima Disaster," 278

¹⁰ Junod, *Warrior Without Weapons*, 299

But the sufferings of the victims soon became “cases” of medical interest and scientific experimentation.¹¹ Dr. Junod visited several such improvised hospitals accompanied by Dr. Masao Tsuzuki, a professor of surgery and an expert on the effects of radioactivity at the Imperial University of Tokyo. Dr. Tsuzuki’s medical survey of the victims at the very site of their destruction is repulsive to Dr. Junod and he describes this experience in the following words,

To listen to him one would have thought that we were in a giant laboratory, operating with thousands and thousands of human beings instead of guinea pigs, and it was in this *spirit of passionate scientific interest* that he showed us dissected members, histological cuts and tables of statistics drawn up according to his clinical and pathological anatomical investigations¹²

Dr. Tsuzuki later advised the ICRC in further detail on the medical effects of nuclear weapons. On the other hand, Dr. Junod notes the

¹¹ Junod, “The Hiroshima Disaster,” 279

¹² Junod, *Warrior Without Weapons*, 300, (italics inserted)

“adamant” attitude of the experts from the American Technical Commission comprising of physicists and doctors that even as they were surveying the unyielding scene of death and destruction in Hiroshima, had already concluded that “one month after the explosion of the atom bomb, the place was perfectly safe and there was no longer any danger of radioactivity for human beings.”¹³ The paucity of medical care, the lack of treatment for the victims, the charred remains and the carbonized bodies of victims blatantly evident did not persuade these experts to reach another conclusion. In these observations made by Dr. Junod on the medical and technical experts from both sides one can gauge a feeling of disturbance at the paralysis of sympathy, the hard-heartedness and the craftsman’s enthusiasm for his subject. Dr. Junod’s testimony also indicates the burgeoning differences between the Japanese and the Americans in addressing the problem of nuclear weapons to which we will refer at length in the succeeding paragraphs.

The information provided by the Japanese and American experts compounded with his own personal observations as a medical expert on the clinical and biological symptoms observed amongst the victims lead

¹³ Junod, “The Hiroshima Disaster,” 278

Dr. Junod to describe the suffering of victims as “hiroshimitis.”¹⁴ The syndrome of “hiroshimitis” captures the effects of radiation on the victims. Dr. Junod claims to have seen many anatomical specimens showing the effects of radiation after autopsies had been performed on the victims.¹⁵ He cautions that, “the continuing radioactivity is a real danger for relief teams coming in from outside or leaving the shelters, because they may also be put out of action” and concludes that “As things stand now, we are unequipped to provide any defence whatsoever, if V2s are used to carry the atom bomb.”¹⁶

As a witness to the use and effects of aerial bombardment, mustard gas and nuclear weapons in wars, Dr. Junod, chafes and states peremptorily, “Let us place no reliance on the slender hope which lawyers have aroused by devising a form of words to place a check on violence”¹⁷ Dr. Junod often refers to legal conventions available to the ICRC as weapons but in repeatedly encountering the sufferings of the victims in a tone of “sadness and bitterness” questions,

¹⁴ Junod, “The Hiroshima Disaster,” 337

¹⁵ Junod, “The Hiroshima Disaster,” 339

¹⁶ Junod, “The Hiroshima Disaster,” 342

¹⁷ Junod, *Warrior Without Weapons*, 312

And what weapons, what means were at the disposal of the strictly humanitarian cause we had been called upon to serve against this sudden explosion of violence which was rapidly spreading over the whole world? Nothing but the two Conventions which we had already seen in action in Abyssinia and Spain; the one concerned the protection of the wounded and the other the protection of prisoners of war.¹⁸

Dissatisfied with his own answer, the restless Dr. Junod as a witness further exhorts that,

No matter what their intrinsic value and significance, texts rely for their application on the action of men. Again and again on the missions which took me to many theatres of war *I have had the lively impression that I too was a combatant engaged in battle.* A battle must be waged against all those who violate, or neglect, or know nothing of, the provisions of these Conventions. A battle must be waged for their proper application and for their extension. *And if the texts should*

¹⁸ Junod, *Warrior Without Weapons*, 138

*prove imperfect then a battle must be waged to secure recognition for their spirit.*¹⁹

Dr. Junod, recollects his former colleague Sidney Brown's statement, "There are the official texts, of course, but, above all, there's the spirit of the thing."²⁰ It is this message that surfaces in Dr. Junod's consciousness as he considers "the limits which were thus so rigorously imposed on our activities."²¹ He finds encouragement in victorious American General MacArthur's observations to him made in the following words:

The Red Cross is too modest. It had hidden its light under a bushel. It should not confine its activities to succouring the physically wounded and organizing material assistance. Its aims are too limited. *It should go further.* It holds a unique position in the world. It enjoys universal confidence. Its flag is respected by all peoples and by all nations. And now its

¹⁹ Junod, *Warrior Without Weapons*, 310, (italics inserted)

²⁰ Junod, *Warrior Without Weapons*, 16-17

²¹ Junod, *Warrior Without Weapons*, 220

value should be utilized to the full. *It should be concentrated on the very heart of the problem...*²²

Dr. Junod concludes that, "For someone who was a witness, albeit one month later, of the dramatic consequences of this new weapon there is no doubt in his mind that the world today is faced with the choice of its continued existence or annihilation."²³ To avoid a recurrence of the "experience of the annihilation of thousands of human beings in appalling suffering", Dr. Junod suggests that, "we should cry out in alarm: Do the same for atomic energy as you did for poison gas. Ban its use in time of war, if the worst happens and war itself cannot be avoided."²⁴

Dr. Junod's testimony shows that his experiences of pain and sufferings of victims could no longer be contained by President Max Huber's dictum of being a Good Samaritan. Dr. Junod's describes himself as "Le Troisieme Combatant" translated in English as "Warrior Without Weapons" but which could literally be translated as "The Third

²² Junod, *Warrior Without Weapons*, 307, (italics inserted)

²³ Junod, "The Hiroshima Disaster," 344

²⁴ Junod, "The Hiroshima Disaster," 344

Combatant.”²⁵ This description is endorsed by President Huber in the following words, “In speaking of ‘the third combatant’, and in consequence, of a third front, Dr. Junod makes use of the terminology of war and it is above all in time of war that such terms take on their full significance.”²⁶ President Huber embellishes this description further by referring to ICRC delegates as “front line troops” of the humanitarian organization.²⁷

This description of ICRC delegates as “the third combatant” and “front line troops” represents another subtle attempt at constructing the image of a witness with a testimony. The need for a new image stems from the effort made by the organization to mobilize itself on a military scale in order to meet the challenges of a Second World War. It is an attempt to place oneself at par with other actors in the international system that had experienced the hardship and sufferings of the Second World War. In order to meet the challenges of this war, the “third combatant” is considered to possess both physical and civic courage, diplomatic qualities of tact, discretion, firmness, a sense of proportion and like a military commander, “a delegate must possess the necessary ability to

²⁵ Junod, *Warrior Without Weapons*, 308, 310

²⁶ Junod, *Warrior Without Weapons*, 10

²⁷ Junod, *Warrior Without Weapons*, 10

take quick decisions, often of the gravest nature, because he will often not be in a position to turn to Geneva for special instructions.”²⁸ This endorsement and embellishment of ICRC delegates as “front line troops”, “the third combatant”, the “warrior without weapons” presents an interesting parallel to the description of an ICRC delegate as a “Good Samaritan” that Max Huber provides in his own book as discussed in the previous chapter.²⁹ The biblical description of an ICRC delegate is the product of Max Huber’s pious imagination where the latter is to take a vow of silence with regard to everything that he observes on the battlefield but now a seasoned delegate, Dr. Junod insists on describing himself as a third combatant, a warrior without weapons. Both Dr. Junod and Bilfinger continued to work with the ICRC for several decades influencing its decision-making processes. But what effect does Bilfinger and Dr. Junod’s testimonies have on the practices of the ICRC as it addresses the problem of nuclear weapons? It is difficult to trace the direct impact of these testimonies on the humanitarian actor and its response can only be studied in terms of the actions that it undertook immediately in the aftermath of the use of nuclear weapons.

²⁸ Junod, *Warrior Without Weapons*, 11

²⁹ Max Huber, *The Good Samaritan*, London: Victor Gollancz, Ltd, 1945)

First Appeal and Geneva Conventions

The helplessness experienced by the ICRC delegates on observing the effects of nuclear weapons, finds expression in the succeeding measures undertaken by the ICRC. On September 5, 1945 the ICRC alerts the Red Cross movement to *The End of Hostilities and The Future Tasks of the Red Cross*.³⁰ This document reveals the inner turmoil within the organization as it grapples with the shock of nuclear weapons and acknowledges the significance of nuclear deterrence in the following words:

It would be useless to attempt a forecast for this new weapon, or even to express an opinion on the prospect that the Powers would relinquish it altogether. *The question arises whether they would, perhaps, keep it in lasting and unfailing reserve as a supreme safeguard against war and as a means of preserving a just order.* This hope is not,

³⁰ *The End of Hostilities and the Future Tasks of the Red Cross*, Circular Letter No.370 to the Central Committees of the Red Cross Societies, 5 September 1945, Report of the international Committee of the Red Cross on its Activities During the Second World War, (ICRC: Geneva, 1948), vol.1.,688-690

perhaps, entirely vain as, during this six years struggle, there has been no recourse to the chemical or bacteriological means of warfare as outlawed by the Powers in 1925. It is as well to remember this fact at a time when there have been so many infringements of law and so many reprisals have been taken.”³¹

It is interesting to note that in less than a month after the use of nuclear weapons, the ICRC appears to be considering the logic of nuclear deterrence and providing support for it based on its past efforts to prohibit chemical and biological warfare. The emphasis in the text on nuclear weapons as a “supreme safeguard”, a “means of preserving a just order” and the impossibility of states showing any willingness to relinquish it suggests that the ICRC was recognizing and weighing the political utility of this weapon. It is possible that the ICRC had become familiar with the nascent logic of deterrence in strategic thinking that had developed with practices of aero-chemical bombardment, which the ICRC had tried to regulate and prohibit prior to the outbreak of the

³¹ English translation available in Francois Bugnion, “The International Committee of the Red Cross and Nuclear Weapons: From Hiroshima to the Dawn of the 21st Century,” *International Review of the Red Cross*, 87, no.859,(September 2005), 514-515(September 2005), 514-515, (italics inserted); Also see Durand, *Sarajevo to Hiroshima*, 634-637 ; For the French text see, “Le fin des hostilities et les taches futures de la Croix Rouge, Genève, le 5 Septembre, 1945,” *Revue International de la Croix Rouge*, no.321, (September 1945),657-662

Second World War, and to which the thoroughly beleaguered ICRC succumbed momentarily.

In this context, Francis Bugnion's suggestion that in the first appeal "the ICRC was already questioning the lawfulness of atomic weapons and calling on States to reach an agreement banning their use" is stretching the truth.³² On the other hand, Andre Durand offers a more realistic assessment in the following words,

On 5 September 1945, one month after the first bomb was dropped on Hiroshima, it issued an appeal drawing the attention of the Powers to the dangers facing the civilian population as a result of the progress of aviation, the increased effects of air raids, the use of discoveries in nuclear physics and, *apparently without cherishing any illusions that the atom bomb might be banned, proposed that at least its use should be controlled.*³³

³² Bugnion, "The International Committee of the Red Cross," 514

³³ Durand, *Sarajevo to Hiroshima*, 631 (italics inserted)

Although this appeal observed that, "It is indeed questionable whether the latest developments of the techniques of war leave any possibility for international law to cover a firm and sound order of society" practices of legalization continued as the actors within the Red Cross movement persistently dwelled on the possibilities of expanding the Geneva Protocol of 1925 to include a prohibition against the use of nuclear weapons. This idea gained ground within the Red Cross movement in the form of several resolutions.³⁴ A 1946, Resolution XI of Board of Governors of the League of Red Cross & Red Crescent Societies stated that,

In pursuance of its humanitarian ideals, requests the next International Conference of the Red Cross, when considering the extension of its Regulations of 1925 relating to gases and aerial warfare, that it consider favourably *the addition* to this regulation of the atomic bomb and other similar weapons that widely destroy the masses of mankind and the cultural inheritance of nations as well as combatants of the armed forces.³⁵

³⁴ Bugnion, "The International Committee of the Red Cross," 514

³⁵ See the text of the resolutions in Bugnion, "The International Committee of the Red Cross," 514, (*italics inserted*)

This idea was further reinforced by Resolution No. II of the Board of Governors at the XX Session held in Stockholm in 1948.³⁶ They observed that, "during the Second World War the belligerents respected the prohibition of recourse to asphyxiating, poison and similar gases and to bacteriological warfare, as laid down in the Geneva Protocol of June 17, 1925." They therefore requested, "the Powers solemnly to undertake to prohibit absolutely all recourse to such weapons and to the use of atomic energy or any similar force for purposes of warfare."³⁷ The significance of the passage of this resolution is captured by Nagendra Singh in his observation that, "The International Red Cross Conference held in Stockholm was the first to pass a resolution condemning atomic weapons."³⁸

The reference by the ICRC to the success of the Geneva Protocol of 1925 prohibiting the use of asphyxiating gases and bacteriological weapons and the possibility that the same logic could be applied to nuclear weapons continued for several years and is troublesome. The efforts to bring

³⁶ Bugnion, "The International Committee of the Red Cross," 514,

³⁷ See the text of the Resolution in Nagendra Singh, *Nuclear Weapons and International Law*, (New York: Frederick A. Praeger, 1959), 252

³⁸ Singh, *Nuclear Weapons and International Law*, 252

nuclear weapons within the ambit of the Geneva Protocol of 1925 are problematic because it shows an unwillingness to acknowledge that “gas was not used during the Second World War, not because of international agreement proscribing it, but because of the fear of reprisals.”³⁹ It also shows a reluctance to recognize the willingness of governments to consider nuclear weapons as a means of reprisal against the growing dangers of powerful conventional weapons. The logic of nuclear deterrence could be played out differently from the logic of deterrence in the case of chemical weapons. Chemical weapons technology is a cheaper form of technology that does not produce radioactivity capable of total annihilation and is easily available for use to several nation-states in the battlefield. This facilitated prohibition of the use of chemical weapons under a legal agreement in the form of a protocol accepted by nation-states. But at the time of the use of nuclear weapons in Hiroshima and Nagasaki, the United States possessed a monopoly on the nuclear weapons technology. This monopoly on the nuclear weapons technology generated resistance and competition among the other nation-states especially, the USSR and the United States.

³⁹ Singh, *Nuclear Weapons and International Law*, 253

Apart from the above argument on including nuclear weapons within the ambit of the Geneva Protocol, the ICRC's suggestion that safeguards be provided against this weapon to protect the civilian populations began to acquire a rhetorical force. ICRC President Huber in an article published in the prestigious journal, *Foreign Affairs* suggested that,

*The civilian population also requires protection against the methods of modern warfare, especially air bombing and long-range weapons. It will not be easy to enforce the claims of humanity in this respect against the objections derived from military and political considerations, yet a new kind of warfare and a hitherto unknown menace to mankind call for new and precisely formulated international safeguards. The Red Cross will never tire of asserting this; indeed, it has not ceased to make the demand since the First World War.*⁴⁰

But the force of the ICRC's arguments for protection of civilian populations against the dangers of the use of nuclear weapons was

⁴⁰ Max Huber, "The Principles of the Red Cross", *Foreign Affairs*, 26, no.4, (1947-48), 723, (italics inserted)

constrained by a growing political climate of hostility among the superpowers. By 1947, the ICRC became fully cognizant of the growing competition between the superpowers. In the expert meetings prior to the Diplomatic Conference for revising the Geneva Conventions, satellites countries belonging to the Soviet bloc launched a “peace offensive” lobbying other countries for a resolution prohibiting the use of weapons of mass destruction. The failure to pass these resolutions along with persistent accusations that the ICRC is “soft on fascism” led the USSR and its allies to boycott the International Red Cross conference in Stockholm.⁴¹ Francis Bugnion notes,

Regardless of the International Committee’s efforts to dissociate itself from the Atlantic bloc—especially on the basic question of banning nuclear weapons—the USSR and its allies always looked upon it as belonging to the bourgeois, capitalistic bloc, in other words the enemy.⁴²

⁴¹ Geoffrey Best, *War and Law since 1945*, (Oxford: Oxford University Press, 1994), 84

⁴² Francis Bugnion, “From the end of the Second World war to the dawn of the third millennium: the activities of the international Committee of the Red Cross during the Cold War and its aftermath: 1945-1995,” *International Review of the Red Cross*, no.305, (1995), 207-224

On the other hand the attitude of the Allied Powers towards the ICRC in the aftermath of the Second World War was one of deference and suspicion. They acknowledged that the ICRC had during the war become a force to be reckoned with. The humanitarian organization's efforts were awarded with a Nobel Peace Prize in 1944 for services rendered during the Second World War. But this deference was also marked by suspicion. This found expression in the sentiment that,

This Committee, which is responsible to nobody but itself and which in its most exalted moments tends to claim an authority independent of all other authority in the world, might, if it ever ceased to be controlled and inspired by men and women actuated by the high principles and the neutral spirit which have so far guided the Committee, become a dangerous body.⁴³

The efforts of the Allied Powers towards the ICRC were therefore attempts to restrain its political clout vis-à-vis its humanitarian

⁴³ Geoffrey Best, "Making the Geneva Conventions of 1949: The View from Whitehall," in *Studies & Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*, ed. Christopher Swinarski, (Geneva, The Hague: ICRC & Martinus Nijhoff Publishers, 1984), 8

endeavours. To quote Geoffrey Best, "The attitude there seems to have been that if a certain degree of political significance developed *pari passu* with humanitarian achievements of unquestioned value and was a condition of their repetition, so be it; the categories of diplomacy could bear whatever minor adjustments needed to be made."⁴⁴ It was this attitude that the ICRC had to be conscious of in negotiating revisions to the Geneva Conventions. By 1947, the ICRC keen on revising the Geneva Conventions in the immediate aftermath of the war, "could hardly have wished further to complicate an already complicated task by adding to its Geneva agenda an item which could, given the rules of legislative game, be plausibly represented as belonging more to The Hague."⁴⁵

At the Diplomatic Conference for revising the Geneva conventions, the Soviet delegation introduced a draft resolution declaring the use of atomic, bacteriological or chemical weapons to be inconsistent with the basic principles of international law; urging states to adhere to the Geneva Protocol of 1925 and accept a ban on the use of atomic weapons. This was considered to be inadmissible by the Diplomatic Conference of 1949. At the same time, ICRC's attempt to secure a "general protection"

⁴⁴ Best, "Making the Geneva Conventions of 1949," 6

⁴⁵ Best, *War & Law since 1945*, 22

of the civilian population against the dangers of total war failed to materialize in law.⁴⁶ Thus, both the efforts to secure inclusion of nuclear weapons within the Geneva Protocol of 1925 and restraints on the use of these weapons by arguing for security of the general civilian population did not yield much result. What accounts for the failure of these two proposals?

Scholars have offered different reasons for these developments. Geoffrey Best suggests that the Soviet peace offensive with its insistence that the list of prohibited and punishable offences against civilian populations include "all other means of exterminating the civilian population" was feared by the allied powers led by the United States.⁴⁷ The latter launched a counter-offensive stipulating that,

unless the definition of civilians was tightly pinned to those who were in an enemy's hand either as aliens in his territory, or because he was occupying their territory, it could extend to cover the civilian population of an enemy country. And what

⁴⁶ Jean Pictet, *Commentary- IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, (Geneva: ICRC, 1958), 5

⁴⁷ Best, *War and Law since 1945*, 111

besides genocide could the phrases be pointing to but the sorts of area and indiscriminate bombing which had become American, British and Commonwealth specialties? ⁴⁸

Geoffrey Best further notes that Washington and its allies feared that if the Soviet resolution passed muster at this conference venue it “might prove an embarrassing precedent ... It might give the Russians an opening for pushing their policy with regard to atomic energy matters in international bodies other than the AEC of the UN.”⁴⁹ It was in the interest of the US and its allies to keep the subject of nuclear weapons restricted to a single forum such as the United Nations where they exercised considerable influence during these early years, instead of encouraging the emergence of multiple forums, where the problem of nuclear weapons could be addressed.

Jean Pictet, in his commentary on the Fourth Geneva Conventions, concerned with the Relative Protection of the Civilian Persons in Time of War (1949), observes that the explicit purpose of convening the

⁴⁸ Best, *War & Law since 1945*, 110-111, (italics inserted)

⁴⁹ Best, *War & Law since 1945*, 112-113

Diplomatic Conference was not revision of the Hague Laws. The Convention was inspired by considerations that it was no longer enough to secure protection for civilians and emphasized the need to “prevent such people from becoming victims.”⁵⁰ Furthermore, although the title of this convention in a preliminary draft form was labeled as Convention *for* the Protection of Civilian Persons in Time of War” it was later revised to its current form with its emphasis on “relative protection” because it generated confusion that it included the population as a whole instead of a “limited class of civilians.”⁵¹ However the change was made only in the title and by an error of omission no “corresponding correction” was made in the preamble.⁵² Pictet further asserts that, “the main object of the Convention is to protect a strictly defined category of civilians from arbitrary action on the part of the enemy, and not from the dangers due to the military operations themselves.”⁵³ As a result, “the Diplomatic Conference declared that a draft Resolution forbidding the use of weapons of mass destruction was not receivable.”⁵⁴

⁵⁰ Pictet, *Commentary on Protection of Civilian Persons*, 5

⁵¹ Pictet, *Commentary on Protection of Civilian Persons*, 5

⁵² Pictet, *Commentary on Protection of Civilian Persons*, 5

⁵³ Pictet, *Commentary on Protection of Civilian Persons*, 5

⁵⁴ Pictet, *Commentary on Protection of Civilian Persons*, 5

The ICRC had for long in its history tried to prioritize the Geneva Conventions at the expense of the Hague Laws. It had just before the outbreak of the Second World War tried to sweep under the carpet any questions regarding its authority under the Hague Laws. It therefore should have come as no surprise to the ICRC that the same logic was now being deployed by states unwilling to see any further accretion of its authority under international law. The ICRC had succeeded in persuading states to agree to a maze of rules under the four volumes of the Geneva Conventions. But this panoply of rules, discrete, classificatory schemes available for the protection of wounded, sick or shipwrecked members of armed forces, prisoners of war and civilian persons in the power of the enemy did not provide any immunity to entire civilian populations against aerial bombardment or the use of nuclear weapons. A poignant feeling of disappointment experienced by the ICRC is expressed by Francis Bugnion, "Four years after Hiroshima, the rules governing aerial bombardment were still the same as those adopted by the Second International Peace Conference in the Hague in 1907, which prohibited the discharge of projectiles from balloons."⁵⁵ The ICRC realized that, "the mere assumption that atomic weapons may be used, for whatever reason, is enough to make illusory any attempt to protect non-combatants by legal

⁵⁵ Bugnion, "The International Committee of the Red Cross," 516

texts. Law, written or unwritten, is powerless when confronted with the total destruction the use of this arm implies.”⁵⁶ But this does not prevent it from suggesting that nation-states should consider “as a logical complement to the said Conventions—and to the Geneva Protocol of 1925—all steps to reach an agreement on the prohibition of atomic weapons, and in a general way, of all non-directed missiles”⁵⁷

Second Appeal and Draft Rules of 1957

ICRC scholars such as Bugnion and Boissier regard the ICRC document on *The End of Hostilities and The Future Tasks of the Red Cross* issued on September 5, 1945 as the first appeal issued by the humanitarian actor against the use of nuclear weapons.⁵⁸ The appeal issued on April 5, 1950 by the ICRC concerning atomic weapons and non-directed missiles to the signatories of the Geneva Conventions of 1949 is considered as a second

⁵⁶ “Arme atomique et armes aveugles” (Atomic weapons and non-directed missiles), *Revue Internationale de la Croix Rouge*, English Supplement, 3, no. 4, (April 1950), 70-73; Full text available in Francis Bugnion, “The International Committee of the Red Cross,” 517

⁵⁷ Bugnion, “The International Committee of the Red Cross,” 517

⁵⁸ *The End of Hostilities and the Future Tasks of the Red Cross*, Circular Letter No.370 to the Central Committees of the Red Cross Societies, 5 September 1945, Report of the international Committee of the Red Cross on its Activities During the Second World War, (ICRC: Geneva, 1948), vol.1, 688-690

appeal.⁵⁹ The claim by these scholars that the ICRC issued two appeals, to address the problem of nuclear weapons, is used by these scholars to only emphasize the moral significance of the ICRC as a humanitarian actor engaging with the problem of nuclear disarmament. This study finds it relevant to explore the *raison d'être* for the ICRC's decision to issue two appeals in the intervening space of five years to address the problem of nuclear weapons. This study argues that the efforts of the first appeal were to extend the ambit of the Geneva Protocol of 1925 to include prohibition on the use of nuclear weapons. The ICRC was also interested in securing regulation and prohibition of nuclear weapons by claiming a general protection for the civilian population under the Geneva Protocols of 1949. Both these efforts did not produce promising results as the threat of nuclear weapons to civilian populations persisted despite the growing panoply of the laws of war.

It is possible to suggest here that the ICRC having successfully secured the revisions of the Geneva Conventions in 1949, to its satisfaction on most issues, except the problem of nuclear weapons, found it suitable to

⁵⁹ "Atomic Weapons and non-directed missiles- International Committee of the Red Cross to the High Contracting Parties to the Geneva Conventions for the Protection of the Victims of War, Geneva, April 5, 1950," *International Review of the Red Cross*, Supplement, vol.III, no.4, 70-73; Republished in 1994 in the *International Review of the Red Cross*, accessed on March 7, 2011, <http://www.icrc.org/web/eng/siteeng0.nsf/html/5KYLUR>

issue a second appeal on April 5, 1950 concerning atomic weapons and non-directed missiles to the signatories of the Geneva Conventions of 1949. It is important to note the content and tone of this appeal as it gives no indication of the preceding deliberations and negotiations that the ICRC had made with regard to nuclear weapons as discussed above. The second appeal appears to only deliberate on the effects of nuclear weapons on the victims. In registering these effects the ICRC argues that these weapons will “not spare hospitals, prisoner of war camps and civilians.”⁶⁰ The victims will suffer from “burns after weeks of agony” and painful infirmities that will have to be endured for a lifetime.⁶¹ It states that, “Within the radius affected by the atomic bomb, protection is no longer possible” as “its effects, immediate and lasting, prevent access to the wounded and their treatment.”⁶² It further suggests that, “the suffering caused by the atomic bomb is out of proportion to strategic necessity” and “with atomic bombs and non-directed missiles, discrimination becomes impossible.”⁶³ The ICRC concludes that the inevitable consequence of nuclear weapons is “extermination, pure and simple” and declares that,

⁶⁰ “Atomic Weapons and non-directed missiles,” 70-73

⁶¹ “Atomic Weapons and non-directed missiles,” 70-73

⁶² “Atomic Weapons and non-directed missiles,” 70-73

⁶³ “Atomic Weapons and non-directed missiles,” 70-73

The International Committee of the Red Cross, which watches particularly over the Conventions that protect the victims of war, must declare that the foundations on which its mission is based will disappear, if deliberate attack on persons whose right to protection is unchallenged once countenanced.⁶⁴

It is this language of suffering and survival and the need to address it that comes across as an "appeal" by a humanitarian actor to the powerful nation-states. It is important to note here the considerable importance that the ICRC's appeal attaches to the sufferings endured by the victims of nuclear weapons and the explicit concern for its own survival. It will not be wrong to suggest that this appeal was a strategic exercise on the part of the ICRC to position itself as a champion of humanitarianism interested in addressing the sufferings of the victims vis-à-vis powerful governments and inter-governmental organizations working in an atmosphere of uncertainty and suspicion generated in the aftermath of a war that had come to an end with the use of nuclear weapons.

⁶⁴ "Atomic Weapons and non-directed missiles," 70-73

The appeal issued by the ICRC with its focus on the sufferings of the victims received immediate publicity in the leading newspapers across the globe. Extracts from the appeal were published along with immediate reactions of governments and people in several newspapers. This appeal was represented by the media as “Red Cross Opens Drive to Outlaw Atomic Weapons”, “Red Cross Urges Atom Bomb Ban” and “World Red Cross Appeals for Ban on Atom Warfare.”⁶⁵ ICRC’s initiative was interpreted as “the organization is prepared to act as a medium for bringing the powers together to reach an atomic truce—which the United Nations has so far failed to achieve.”⁶⁶ It was suggested that a favourable response to the ICRC’s appeal to governments would result in the Government of Switzerland convening a Diplomatic Conference to address the problem of nuclear weapons. But at the same time, possibility of such a conference stoked reservations and doubts such as “UN Fears Erosion of Prestige.”⁶⁷ It was reported that, “Some United Nations sources expressed fear that such a Geneva conference, not under the direct auspices of the international organization, would lead to another

⁶⁵ “Red Cross Opens drive to Outlaw Atomic Weapons,” *Christian Science Monitor*, May 3, 1950, “Red Cross Urges Atom Bomb Ban” *The New York Times*, May 3, 1950; Michael L. Hoffman, “World Red Cross Appeals for Ban on Atom Warfare” *The New York Times*, May 3, 1950, ICRC Archives, CR-225-227, Protection des Population Civiles Contre les Bombardements, 596-664, Date: 5.4.1950—6.6.1950

⁶⁶ Hoffman, “World Red Cross Appeals for Ban on Atom Warfare”

⁶⁷ “UN Fears Erosion of Prestige,” *The New York Times*, May 4, 1950, ICRC Archives, CR-225-227, Protection des Population Civiles Contre les Bombardements, 596-664, Date: 5.4.1950—6.6.1950

“bypassing” of the United Nations and strike another blow at its prestige.”⁶⁸

These fears were stoked by the failure of the United Nations to resolve a deadlock between the Soviets and the Americans on nuclear weapons. On the one hand, the Americans were interested in establishing an international commission to monitor and inspect uranium mines and facilities owned by national authorities on a continuous basis. On the other, the Soviets clamoured for periodic inspections and wanted national control over operation of atomic facilities. At the same time a feeling of dread pervaded the minds of people in Europe. The people of Europe dreaded “the present US policy of being prepared for atomic war.”⁶⁹ There was a sense of uncertainty in Europe with regard to the purpose of the US on nuclear weapons. These misgivings found expression in the following words,

It is the United States that dropped the first atomic bombs and
it is the United States that is publicly affirming its intention to

⁶⁸ “UN Fears Erosion of Prestige”

⁶⁹ Hoffman, “World Red Cross Appeals for Ban on Atom Warfare”

keep on accumulating them—and that's all that most Europeans know for sure. They are very unsure about what the United States intends to do with its bombs and where it might drop them.⁷⁰

The immediate reaction of the US government even before it received the appeal in writing from the ICRC was described by newspapers as “US Opposes Red Cross Plan for Atom Bomb” and “US Brands Soviet Sole Bar on Atom”⁷¹ This representation by the media served to polarize the position of the ICRC vis-à-vis the US government on the subject of nuclear weapons. US officials did not hesitate from denouncing ICRC's initiative publicly on grounds that “The Red Cross appeal made *no specific proposals* for enforcement of the atomic weapons ban” and that “any agreement which is based only on the good faith of the signatory nation is no better than the good faith of the individual nations involved.”⁷² The unfavourable response of the US was made more explicit to the ICRC in a letter sent by the US Department of State on June 19, 1950. The contents of the letter made it clear that:

⁷⁰ Hoffman, “World Red Cross Appeals for Ban on Atom Warfare,”

⁷¹ “US Brands Soviet Sole Bar on Atom”, May 4, 1950, *The New York Times*; Homer Bigart, “US Opposes Red Cross Plan for Atom Bomb,” *New York Herald Tribune*, May 4, 1950, ICRC Archives, CR-225-227, Protection des Population Civiles Contre les Bombardements, 596-664, Date: 5.4.1950—6.6.1950

⁷² Bigart, “US Opposes Red Cross Plan for Atom Bomb,” (italics inserted)

The appropriate forum for the atomic energy negotiations, as approved by the General Assembly of the United Nations, is the forum of the six permanent members of the United Nations Atomic Energy Commission. As the International Committee knows, the Soviet Union has absented itself from this forum.

The constructive interest of the International Committee in these matters is much appreciated and it may be assured that the United Nations, which is occupied with this problem, will continue to receive the strong support of the United States for any effective system of international control and prohibition which conforms to the interests of humanity.⁷³

Thus, the contents of this letter and the public statements made by the US officials and its allies to the press made it abundantly clear to the ICRC that its efforts to address the problem of nuclear weapons were to be stemmed at its root.

⁷³ Letter from Department of State ,Washington, US, addressed to ICRC President Paul Ruggieur on June 19, 1950. ICRC Archives, CR-225-8 Protection des populations civiles contre les bombardements, 664bis-750, Date: 6.6.1950-25.08.1950

The ICRC had issued its appeal approximately three months prior to the outbreak of war in Korea. This war fanned public anxieties about the possible use of nuclear weapons but there was a clear understanding within the ICRC that there was little need to break from past precedents where the ICRC had protested against alleged violations of the laws of war but never ruled on its content or on its own initiative ascertained particular facts to determine violations of laws of war. The ICRC's focus had been only on literal interpretation and application of the laws of war as seen during the Italian-Ethiopian conflict in the previous chapter. Furthermore, the ICRC's decisions to issue appeals against the use of particular weapons are determined only in terms of the specific conditions of war. Adherence to these practices continued to be of vital significance to ensure its own existence. The ICRC was quite willing to express its confidence in President Truman's promise that nuclear weapons would not be used unless there was a threat to the US and other allied democracies. The ICRC was aware that this argument was a matter of political expediency for statesmen and did not question it. An internal document of the ICRC shows that it was quite willing to continue with its practices of "cynical realism" that did not require it to protest against the use of a

weapon unless its moral prestige was at stake making it difficult for it to assist the victims of war.⁷⁴

However the nuclear tests conducted on the Bikini Islands by the Americans exposed Japanese fishermen to radiation resulting in the loss of life and created public outrage. The ICRC proceeded to convene a meeting of experts to deliberate on "the rules in force that have become insufficient and at times inadequate to govern aerial bombardment or the use of blind weapons, which are responsible for widespread and indiscriminate killing of defenceless persons."⁷⁵ This meeting included fifteen experts specializing in the fields of international law, military science, medicine, military history and civil defence. These experts deliberated in Geneva from April 6-13, 1954 and provided their recommendation in a report on *The Legal Protection of Civilian Populations and Victims of War from the Dangers of Aerial Warfare and Blind Weapons*.⁷⁶ The USSR, Poland and the German Democratic Republic again did not accept the ICRC's invitation to the expert meeting.

⁷⁴ ICRC President's meeting on 27 July, 1950- Point 3 on the agenda. CR-225-8 Protection des populations civiles contre les bombardements, 664bis-750, Date: 6.6.1950-25.08.1950

⁷⁵ Report of the Commission of Experts for The Legal Protection of Civilian Populations and Victims of War from the Dangers of Aerial Warfare and Blind Weapons, Geneva: 1954, ICRC Archives, BAG OJ1Pj-003,

⁷⁶ Report of the Commission of Experts for The Legal Protection of Civilian Populations and Victims of War from the Dangers of Aerial Warfare and Blind Weapons.

Furthermore, contrary to the wishes of the ICRC this meeting of experts was publicized by the Japanese Red Cross as a meeting to abolish nuclear weapons and all forms of aerial disarmament.

Dr. Tsuzuki of Tokyo University, the very same specialist that had accompanied ICRC delegate Dr Junod, in Hiroshima, participated in this expert meeting and presented a report on *Atomic Bomb Injury from Medical Point of View*.⁷⁷ It is important to note that medical experts both inside and outside Japan had developed an entirely new vocabulary to diagnose and describe the sufferings endured by the victims of nuclear weapons in Hiroshima and Nagasaki. Dr. Junod of the ICRC had coined the concept of “hiroshimitis” to contextualize the sufferings of victims in a particular location. But the concepts of “Hiroshima disease”, “atomic bomb disease”, “atomic bomb injury”, “atomic bomb neurosis”, “atomic disease”, “atomic bomb radiation sickness”, “atomic bomb radiation injury” had gained wider circulation.⁷⁸ Robert Lifton argues that the growing incidence of leukemia among the victims of Hiroshima and Nagasaki led to the emergence of a “scientifically inaccurate but

⁷⁷ Tsuzuki, “Atomic Bomb Injury from Medical Point of View,”

⁷⁸ Tsuzuki, “Atomic Bomb Injury from Medical Point of View,” 4-5; Also see Robert Jay Lifton, *Death in Life - Survivors of Hiroshima*, (Chapel Hill & London: The University of North Carolina, 1991), 103

emotionally charged term 'A-bomb disease' which has taken for its medical model this always fatal malignancy of the blood-forming organs."⁷⁹

Dr. Tsuzuki is credited with crafting the specific expression of "atomic bomb disease" to refer specifically to the effects of radiation on the victims.⁸⁰ Others claim that "from the standpoint of science, it is a very obscure and vague concept...A-bomb disease is not really a diagnosis but simply a convenient category for a condition that is not understood."⁸¹ The catastrophe that the nuclear weapons had wrought on the victims and the absence of any existing medical vocabulary to configure the magnitude of sufferings of the victims gave birth to this expert vocabulary and led Dr. Tsuzuki to argue that it was three months before the "terrible confusion of the so-called 'Atomic Bomb Disease' had gone and become somewhat quieter."⁸² But the expression atomic bomb disease continued to gain currency to refer to a specific wound or injury and sometimes to suggest a disease or diseased state of being. The language of atomic bomb disease gained further currency due to the practices of the

⁷⁹ Lifton, *Survivors of Hiroshima*, 103

⁸⁰ Tsuzuki, "Atomic Bomb Injury from Medical Point of View," 6

⁸¹ Lifton, *Survivors of Hiroshima*, 156

⁸² Tsuzuki, "Atomic Bomb Injury from Medical Point of View," 6

Hiroshima Red Cross Hospital and its specialized unit the Atomic Bomb Hospital catering only to the victims of atomic weapons. Robert Lifton in his study takes note that,

After the A-bomb Hospital was built—since no one was admitted to the hospital unless he had A-bomb disease—well, when they made announcements, they began to mention those who had died of A-bomb disease. And also, those who died of it in other hospitals or other places were announced to have died of A-bomb disease...⁸³

The findings of the medical study that Dr. Tsuzuki shared with the ICRC on the atomic bomb contained detailed accounts of the injuries from thermal, mechanical and radioactive energy that combine and produce complicated effects on the human body. The injuries suffered by the victims were carefully catalogued into primary and secondary burns; primary and secondary wounds from blast injury, crush injury and fragment injury; primary and secondary radiation sickness. It provided evidence that the victims of radioactive energy suffered from injuries that

⁸³ Lifton, *Survivors of Hiroshima*, 132

affected their blood cells and internal organs damaging lungs, gastro-intestines and kidneys. It contained evidence on the damage to reproductive organs of victims resulting in "malformation of descendants." ⁸⁴

Dr. Tsuzuki concluded that "present medical science" has no effective treatment for victims of severe radiation injuries (exposed over 600r).⁸⁵ A descriptive account of the victims' injuries was supported with statistical information on the victims. The number of these victims was approximately 100,000 in Hiroshima and 50,000 in Nagasaki. The language of statistics was used to assert a probability that "almost 75% of all dead victims had passed away on the first day of bomb explosion and the next day. Ninety percent of them died by the end of the second week."⁸⁶ In this language of statistics one can again note the effort being made by witnesses such as Dr. Tsuzuki to emphasize the magnitude of suffering experienced by the victims. This emphasis on statistical knowledge is reminiscent of the efforts made by Dunant to rouse his audiences from their state of complacency.

⁸⁴ Tsuzuki, "Atomic Bomb Injury from Medical Point of View," 10

⁸⁵ Tsuzuki, "Atomic Bomb Injury from Medical Point of View," 5

⁸⁶ Tsuzuki, "Atomic Bomb Injury from Medical Point of View," 5

At this juncture, it is critical to note that the Hiroshima Red Cross Hospital and its specialized unit the Atomic Bomb Hospital were constructed more than a decade after the nuclear weapons were dropped on Hiroshima and Nagasaki and became functional only in 1956. Similarly, a national medical law to provide medical benefits to the victims was not enacted until 1957. In the meantime, the victims were at the mercy of the local Japanese practitioners and the American controlled Atomic Bomb Casualty Commission (ABCC). The latter was a research institution interested in studying the effects of radiation on victims without any policy to provide them with medical relief.⁸⁷ The results gathered from these studies too were consecrated to the laws of secrecy and not shared with medical experts from other countries. The US practices of strict censorship with regard to any information on effects of radiation coming out from Japan made the medical evidence shared by Dr. Tsuzuki as an expert with firsthand experience of working with the victims in the immediate aftermath of the nuclear explosions of enormous significance to the ICRC. It is pertinent to note here that Dr. Tsuzuki's name eventually figured on the purge list prepared by the Americans

⁸⁷ For a full account of the ABCC practices see, M. Susan Lindee, *Suffering made Real- American Science and the Survivors at Hiroshima*, (Chicago & London: The Chicago University Press, 1994)

because of his differences with them on sharing information about the effects of radiation on victims.⁸⁸

In the meantime, the Board of Governors of the League of Red Cross Societies met in Oslo in May 1954 and made the following request to the ICRC. It suggested that the ICRC,

make a thorough examination and propose at the next International Conference of the Red Cross *the necessary additions to the Conventions in force in order to protect civilian populations* from the dangers of atomic, chemical and bacteriological warfare.⁸⁹

In this request one gathers an inclination within the Red Cross movement for more law and in this process of acquiring additional conventions a strategic deferment of reckoning with the harsh consequences of nuclear weapons on the victims. However, the sufferings endured by the victims

⁸⁸ Lifton, *Survivors of Hiroshima*, 327

⁸⁹ Joseph L. Kunz, "The 1956 Draft Rules of the International Committee of the Red Cross at the New Delhi Conference," *The American Journal of International Law*, 53, no.1, (January 1959), 134, (italics inserted)

of Hiroshima and Nagasaki were not to be ignored by the medical experts that had attended to these victims and voiced their concerns at expert meetings convened by the ICRC as mentioned in the preceding paragraphs.

It was on the basis of the consultations with experts such as Dr. Tsuzuki providing powerful medical evidence and the passage of the Oslo Resolution that the ICRC prepared the text of the Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War.⁹⁰ The efforts of the ICRC to get input on these Draft Rules from the national Red Cross societies and its decision to present these Draft Rules to the XIXth International Red Cross Conference to be held in New Delhi in 1957 led to fierce contention within the Red Cross movement. This becomes obvious from the exchange of correspondence between the ICRC, the Japanese Red Cross Society and the American Red Cross Society.⁹¹ The American Red Cross Society was of the view that with the passage of the 1954 Oslo Resolution, the Red Cross voice had been heard on nuclear weapons and "that the Red Cross could have taken, and can take, *no more*

⁹⁰ "Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War," *International Review of the Red Cross*, 9, no.10, (October 1956),163-173

⁹¹ Notes, entretiens process verbaux concernant l'attitude de la CR devant les experiences atomiques. Memorandum pour la delegation du CICR a la 19e Conference International de la CR, ICRC Archives, BAG 051-021, Date 3.3.1955-17.10.1957

effective action than to urge governments to continue their efforts to reach the desired results.”⁹² In other words, the US wanted the ICRC to completely refrain from making any further efforts in addressing the problem of nuclear weapons.

But the Japanese Red Cross society disagreed and expressed the need for further ICRC engagement with the problem of nuclear weapons in order,

*to find out any means, outside the disarmament, for the prohibition of the use of nuclear weapons, inasmuch as the disarmament can only be achievable by political détente about which no serious efforts seem to have been made up to the present.”*⁹³

⁹² Letter from President of the American Red Cross Society, Alfred M. Gruenther, addressed to Mr. Shimazdu, President of the Japanese Red Cross Society, on September 13, 1957, Notes, entretiens process verbaux concernant l'attitude de la CR devant les experiences atomiques. Memorandum pour la delegation du CICR a la 19e Conference International de la CR, ICRC Archives, BAG 051-021, Date 3.3.1955-17.10.1957, (italics added)

⁹³ See Memorandum of the Japanese Red Cross Society attached with the letter sent by Masutaro Inoue of the Japanese Red Cross Society to the ICRC on October 2, 1957, Notes, entretiens process verbaux concernant l'attitude de la CR devant les experiences atomiques. Memorandum pour la delegation du CICR a la 19e Conference International de la CR, ICRC Archives, BAG 051-021, Date 3.3.1955-17.10.1957, (italics inserted)

These two statements represent polarized positions of Japanese Red Cross society representing the victim country and the American Red Cross representing the interests of a country that used nuclear weapons. The ICRC had to engage diplomatically with both these national Red Cross Societies that were auxiliaries of their governments. The ICRC did not want to disrupt the unity of the Red Cross movement but at the same time wanted to address the problem of nuclear weapons in a responsible manner.

The Japanese Red Cross Society advocated a health based approach to nuclear weapons that focused on the effects of the use of nuclear weapons on human health. It advocated this approach in the aftermath of the hydrogen bomb test at Bikini Islands near Japan. Following this test, it had prepared a plan on "Nuclear Weapons and Their Experiments."⁹⁴ On the basis of this plan it drafted a resolution to be proposed at the International Red Cross Conference which if adopted could be transmitted with the help of the ICRC to governments. This plan sought a ban not only on the use of nuclear weapons but on experimental tests of nuclear

⁹⁴ Proposition of the Japanese Red Cross Society on Nuclear Weapons and their Experiments, October 17, 1957, Notes, entretiens process verbaux concernant l'attitude de la CR devant les experiences atomiques. Memorandum pour la delegation du CICR a la 19e Conference International de la CR, ICRC Archives, BAG 051-021, Date 3.3.1955-17.10.1957

weapons. These tests conducted on land, sea and air contaminate the environment posing health hazards to human beings. A health based argument was presented on the grounds that not only should the use of nuclear weapons in time of war be of concern, but that the test of these weapons in time of peace also constitute a threat to human health. Furthermore, these tests could continue indefinitely creating an “irredeemable situation” adversely affecting the human body.⁹⁵ An analogy was made suggesting,

Suppose a new medicine has been invented, and it is certain that this medicine is very effective to a certain kind of disease but there is no definite opinion about its derivative effect. In such a case, it is doctor’s professional responsibility to withhold the medicine from his patients. The Japanese Society thinks that the same can be said with regard to the experiments of atomic and hydrogen bombs.⁹⁶

⁹⁵ Proposition of the Japanese Red Cross Society on Nuclear Weapons and their Experiments,3

⁹⁶ Proposition of the Japanese Red Cross Society on Nuclear Weapons and their Experiments, 3

In making this argument, the Japanese Red Cross Society acknowledged that experts differ on the degree and time of the effects of nuclear weapons but "so long as it is not proved that they cause no danger to the health of human body and the future generation" it was possible to suggest that nuclear tests be suspended or limited.⁹⁷ It further urged the ICRC to establish a commission of experts to "study the question whether the health of mankind and the future generation can be affected by the experiments of the nuclear weapons."⁹⁸ It argued that "many scientists in different countries seem to be desiring to exchange their views in this field, but they hesitate to participate in the meetings because they are afraid of the ideological movement" but that "if the Red Cross should refuse even to study the problem, it may be misinterpreted by the general public as if the Red Cross were ignoring its internationally recognized principle to fight against suffering and death with foresight and the Red Cross were taking political or military matters into consideration."⁹⁹ The ICRC as a bastion of neutrality could therefore provide a forum for scientists to express their opinions on this subject easily. It argued that to shirk this responsibility on the grounds that a Science Commission had already been constituted by the United Nations to study the effects of radioactivity was unacceptable because the meetings of this Commission

⁹⁷ Proposition of the Japanese Red Cross Society on Nuclear Weapons and their Experiments, 2

⁹⁸ Proposition of the Japanese Red Cross Society on Nuclear Weapons and their Experiments, 7

⁹⁹ Memorandum of the Japanese Red Cross Society, 2

were shrouded in secrecy and would take a very long time to reach any conclusion as they were mired in political interests.

At the same time a legal argument was made in the report that "the problem of "health" in "peacetime" is entirely in the competence of the Red Cross" as provided in Article 25 of the United Nations Charter.¹⁰⁰ It further urged that the Geneva Protocol of 1925 could be revised and enlarged to prohibit the use of nuclear weapons. It was argued that agreement on the Geneva Protocol of 1925 could be reached notwithstanding arguments that "there are no means to supervise the application; experiments are necessary for the study of the methods for protection against violation attack; peacetime industries can be easily converted."¹⁰¹ The very same arguments were being produced in the context of nuclear weapons by those resisting efforts to regulate and prohibit them but if such arguments could be overcome to prohibit the use of asphyxiating gases and bacteriological weapons there was little reason to assume that the argument for prohibition could not be extended to nuclear weapons. Moreover the Japanese Red Cross argued that the practices for securing this through the intervention of the ICRC have their

¹⁰⁰ Proposition of the Japanese Red Cross Society on Nuclear Weapons and their Experiments, 2-3

¹⁰¹ Proposition of the Japanese Red Cross Society on Nuclear Weapons and their Experiments, 4

precedents and there is little evidence that “the ICRC was suspected by any government in precedent cases.”¹⁰²

While the Japanese Red Cross urged the ICRC to take a bold position against the use of nuclear weapons the American Red Cross Society actively resisted the idea that the ICRC should undertake a study to facilitate formulation of solutions to the problem of nuclear weapons. In response to the Japanese Red Cross Draft Resolution it asserted that it would be “*unrealistic and presumptuous* to assume that an International Red Cross Conference can formulate solutions to problems involving *highly complicated political and military* considerations with which the governments are necessarily concerned”¹⁰³ and that these efforts could be construed as “evidencing a conclusion that the governments are either incompetent, insincere or unmindful of the humanitarian principles with which the Red Cross is concerned.”¹⁰⁴

¹⁰² Letter from Tadatsugu Shimazdu, President of the Japanese Red Cross Society, addressed to Alfred M. Gruenther, President of the American Red Cross Society, on October 1, 1957, ICRC Archives, BAG 051 Pj001.01, 17.9.1954-01.12.1959 Protection Juridique des populations civiles contre les dangers de la guerre moderne-Generalites

¹⁰³ Letter from Alfred M. Gruenther, President of the American Red Cross Society, addressed to Tadatsugu Shimazdu, President of the Japanese Red Cross Society, on September 13, 1957, ICRC Archives, BAG 051 Pj001.01, 17.9.1954-01.12.1959 Protection Juridique des populations civiles contre les dangers de la guerre moderne-Generalites

¹⁰⁴ Letter from Alfred M. Gruenther, to Tadatsugu Shimazdu, on September 13, 1957

The American Red Cross society made technical competence a bone of contention by alleging that, "We doubt that the International Red Cross is competent, jurisdictionally or otherwise, to suggest the exact methods and terms that the governments should employ in reaching those results."¹⁰⁵ It further tried to demoralize and discipline the ICRC by suggesting the following conduct of a humanitarian organization to be more appropriate:

Humility is, perhaps, an essential attribute of those seeking humanitarian goals and the Red Cross' effectiveness in the field will, in our view be enhanced, not diminished, if we assert no ability to suggest precise formulae but are united in an appeal that those possessed of the competence and the power proceed with all diligence to the perfection of effective international covenants and machinery that will ensure those humanitarian benefits of which the Red Cross believes mankind deserving.¹⁰⁶

¹⁰⁵ Letter from Alfred M. Gruenther, to Tadatsugu Shimazdu, on September 13, 1957

¹⁰⁶ Letter from Alfred M. Gruenther, to Tadatsugu Shimazdu, Society, on October 1, 1957

Similar arguments were made by the American Red Cross Society on the ICRC's Draft Rules for the Protection of the Civilian Population from the Dangers of Indiscriminate Warfare. It declined to make any comment on the "General Principles" or "Rules of Application" but made no bones about questioning the jurisdiction of the ICRC to address the problem of nuclear weapons by arguing that, "The general rules of war, including the Hague Conventions that are mentioned repeatedly in your commentary, have not, at least heretofore, been considered subjects for institutional Red Cross interest."¹⁰⁷ It further problematized the categories of victims to which the ICRC attended by observing that, "citizen civilians of a party to a conflict who are not incapacitated by reason of age, sickness, etc., have not heretofore been regarded as belonging to categories on whose behalf the Red Cross has institutionally concerned itself."¹⁰⁸ It concluded that both the national Red Cross societies and the ICRC were incompetent to address what were "essentially military questions" and which were to be addressed only by governments within the United Nations.¹⁰⁹ It threatened that if the "technically incompetent" Red Cross

¹⁰⁷ Letter from Ellsworth Bunker, American Red Cross Society to Pierre Boissier of the ICRC on November 7, 1955, ICRC Archives, BAG 051 Pj001.01, 17.9.1954-01.12.1959 Protection Juridique des populations civiles contre les dangers de la guerre moderne-Generalites

¹⁰⁸ Letter from Ellsworth Bunker, American diplomat, to Leopold Boissier, Vice-President of the ICRC on November 7, 1955,

¹⁰⁹ Letter from Leopold Boissier, Vice-President of the ICRC to Ellsworth Bunker, American diplomat, on December 16, 1955, ICRC Archives, BAG 051 Pj001.01, 17.9.1954-01.12.1959 Protection Juridique des populations civiles contre les dangers de la guerre moderne-Generalites

“projects itself too far in these matters of essentially military-political import” it will be “hazarding its effectiveness.”¹¹⁰ Thus the American Red Cross society acting as an auxiliary of its government tried to insist on framing the problem of nuclear weapons as only a “military-political problem” and put forward a spate of arguments trying to discredit the efforts of the ICRC on grounds of technical competence raising questions of legal mandate and seeking to discipline the ICRC by reminding it of only limited jurisdiction over victims carefully regulated to be inside and outside particular bodies of law.

The ICRC did not vacillate in extending its support to the Japanese Red Cross Society and its Draft Resolution. It at the same time tried to engage with the American Red Cross society by addressing its concerns about jurisdiction and competence of the ICRC.¹¹¹ The ICRC conceded that its lack of technical competence in addressing the problem of nuclear weapons had made it hesitant in addressing this problem but this was not sufficient reason to remain indifferent to the problem. The ICRC acknowledged that a distinction is made between the Geneva Conventions

¹¹⁰ Letter from Ellsworth Bunker to Pierre Boissier of the ICRC on November 7, 1955

¹¹¹ Letter from Leopold Boissier to Ellsworth Bunker on December 16, 1955

and the Hague Laws but argued that the ICRC is concerned with the Hague Laws,

since the majority are based on the same humanitarian principle as the Geneva Law, namely: the respecting of persons taking no active part in hostilities, and those placed hors de combat. In strengthening the legal safeguarding of such persons, the Red Cross could not take undue account of such distinctions...Otherwise, it would not have concerned itself with the law relating to prisoners of war or occupied territory, both having first been embodied in the Hague Law.¹¹²

This relationship was further embellished with statements on how since the end of the First World War, the ICRC had “displayed a constant interest in the protection of the civilian population in general, without any distinction or any desire to exclude certain categories” and that with the end of the Second World War, it was an open question whether

¹¹² Letter from Leopold Boissier to Ellsworth Bunker on December 16, 1955

“developments in indiscriminate methods of warfare still left any possibility of the protection of specific categories of non-combatants”¹¹³

To assuage concerns about technical competence, the ICRC further argued that it had “constant recourse to authoritative opinion” and its effort was only to initiate studies to be pursued in “more competent circles, that is to say at the governmental level.”¹¹⁴ The ICRC insisted that it along with national Red Cross Societies had conducted general surveys and studies and engaged in practical work of assisting the victims. In these efforts there has always been an emphasis on recognition of general rules to protect populations and focusing on the preventive aspect of the restatement of these general rules. In short, “one method of fighting against suffering is to prevent it from occurring.”¹¹⁵

The ICRC further claimed that in exercising this initiative the ICRC is interested in a “restatement of humanitarian limitations, irrespective of the weapons employed” and therefore its task is different from that of the

¹¹³ Letter from Leopold Boissier to Ellsworth Bunker on December 16, 1955

¹¹⁴ Letter from Leopold Boissier to Ellsworth Bunker on December 16, 1955

¹¹⁵ Letter from Leopold Boissier to Ellsworth Bunker on December 16, 1955

United Nations.¹¹⁶ The United Nations focus on disarmament and the prohibition of the use of a specific weapon has not generated much result and neither has it expressed any interest in any revision of the laws of war. The ICRC therefore made the case that, “the competence of our organization would still be complete for one simple, fundamental reason: the Red Cross is, essentially, entitled to take any initiative leading to the development of humanitarian law, and this is just as true of the National Societies as of the International Committee.”¹¹⁷ It was in presenting this robust defense of its right to initiative that the ICRC took control in framing its attempts to address the problem of nuclear weapons as belonging to the rubric of IHL and not as ACD practices undertaken by governments within the United Nations. In this shrewd demarcation the ICRC did not forfeit its right to address the problem of nuclear weapons but asserted the need to craft an alternative vocabulary that could regulate and prohibit the use of these weapons.

It is possible that the exchange of this correspondence with the national Red Cross Societies influenced the ICRC to shore up its professional credentials and strengthen its in-house technical competence on weapons.

¹¹⁶ Letter from Leopold Boissier to Ellsworth Bunker on December 16, 1955

¹¹⁷ Letter from Leopold Boissier, to Ellsworth Bunker on December 16, 1955

The terms of the engagement with the nuclear issue were increasingly being defined by the national Red Cross Societies working as auxiliaries of their governments. A health based approach was being advocated by the Japanese that were providing a plethora of medical data on the sufferings of the victims whereas the Americans wanted more technical and legal expertise from the ICRC to qualify itself as being able to address the problem of nuclear weapons. The Americans were the key architects of the United Nations and it was not in their interest to let the subject of nuclear weapons be addressed at a forum outside the UN. For the first time in its history, the ICRC's ability to address the problem of weapons was challenged on grounds of competence and jurisdiction. It was forced to defend itself on both these conditions of engagement. The ICRC's moral and legal credentials did not seem to be enough for other actors engaged with the problem of nuclear weapons and to address the challenge of technical competence it now hired Philippe Eberlin, a physicist.

The differences among the different actors comprising the Red Cross movement had a further effect on the ICRC. It had to pay heed to the recommendations of the Advisory Working Party of Experts delegated by national Red Cross Societies that suggested that in addressing the

problem of weapons with uncontrollable effects, “a more valuable contribution could be made by keeping to its own purely humanitarian and general aims.”¹¹⁸ It further argued that “a draft international convention” should be represented as an “appeal to the conscience of all men and especially government” and thought it was,

necessary to define more clearly the relationship between those new Rules, which aim at protecting civilian populations primarily from the dangers caused by weapons, and the Fourth Geneva Convention, or The Hague Conventions, so that the protection which those Conventions, especially the former, already afford to civilians in times of conflict should on no account be underrated.¹¹⁹

Joseph Kunz observes that the Draft Rules submitted by the ICRC in 1956 to the International Red Cross conference was less demanding and smaller in scope than the text that it had prepared in 1955 and circulated amongst the governments and Red Cross Societies and that the ICRC’s position

¹¹⁸ R.J. Wilhelm, “Legal Protection of the Civilian Population- Advisory Working Party of Experts Delegated by National Red Cross Societies,” *International Review of the Red Cross*, 9, no.6, (June 1956), 93-97

¹¹⁹ Wilhelm “Legal Protection of the Civilian Population,” 97

with regard to the Geneva and Hague laws changed within the span of a year. To quote Joseph Kunz,

In 1955 the ICRC itself had stated that it had to go beyond the “Geneva” into the “Hague” laws of war, that the field covered by the Draft Rules is rather different from that covered by the Geneva Conventions. But the 1956 Draft Rules try to restrict themselves to the “Geneva” laws of war: Hence the title of the corresponding Commission at the New Delhi Conference. The dividing line between “Geneva” and “Hague” laws of war was one of the arguments in the discussion.¹²⁰

The minutes of the ICRC meetings further show that there was awareness within the organization that its decision to put forward the Draft Rules was a “political act” seeking only a “moral guarantee” against the use of nuclear weapons.¹²¹ In introducing the Draft Rules to the International

¹²⁰ Kunz, “The 1956 Draft Rules,” 135, fn.10

¹²¹ ICRC President’s meeting on 1/8/1957. ICRC Archives BAG 051 Pj-020.04, Dates 15/07/1957—01/10/1957 Exchanges de vues avec le gouvernement americain concernant l’examen du Projet de Regles a la Nouvelle Delhi; ICRC President’s Meeting on 4/9/1957. ICRC Archives BAG 051-Pj- 020.04, Dates

Humanitarian Law Commission at the New Delhi conference, the ICRC claimed that it could not deny its association with several resolutions demanding prohibition on the use of nuclear weapons for the protection of civilian populations.¹²² It then asserted that,

Now, the Red Cross is not a political institution; it has *no competence in the art of war and still less in nuclear science. It does not have to concern itself either with the manufacture of armaments or with the elaboration of strategy.* Its only anxiety is, and should remain, the protection of non-combatants and the giving of relief...The ICRC therefore considered that *a solution should not be sought in drawing up a catalogue of authorized or prohibited means of warfare, but rather in making out a list of principles ensuring the safety of those who must, by general consent, be protected from attack.*

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15/07/1957—01/10/1957. Echange de vues avec le gouvernement americain concernant l'examen du
Projet de Regles a la Nouvelle Delhi

¹²² Jean Pictet, "The XIXth International Red Cross Conference- A Few Thoughts on the Conference,"
International Review of the Red Cross, 9, no.2, (February 1958), 31-41

¹²³ Pictet, "The XIXth International Red Cross Conference," 35, (italics inserted)

The ICRC further stated that “in a conflict the preservation of a country’s safety may face it with harsh realities” but “humanity also has its necessities.”¹²⁴ Thus, while the ICRC showed an apparent willingness to yield ground on questions of its own claim to technical expertise it did not completely emancipate itself from the demands of instrumental calculation. It merely paved the way for these deliberations to be grounded in general principles of humanity that are not easily susceptible to technical calculations given the ambiguity surrounding the meaning of terms such as military necessity and unnecessary suffering. The implications of these practices were to be realized by the ICRC at a much later date when the International Court of Justice gave its advisory opinion on the use of nuclear weapons.

Despite the enormous conciliatory stance adopted by the humanitarian actor the Draft Rules presented by the ICRC became a subject of deep controversy on both procedural and substantive matters. The ICRC emphasized the difference between Draft Rules and draft conventions. The Draft Rules required only a general approval and no lengthy discussion on particular articles. A general approval would suggest the

¹²⁴ Pictet, “The XIXth International Red Cross Conference,” 35

following.¹²⁵ First, a set of rules revising and extending those previously accepted is desirable. Second, that the underlying principles of the draft are in conformity with Red Cross ideals and the requirements of humanity. Third, the ICRC should continue its efforts and prepare the ground for an international agreement. Fourth, the record of the discussions and the text of the proposals shall be appended to the Draft Rules. These could then serve as texts for governments to draft a convention. The ICRC's efforts to secure a general approval on the Draft Rules were rejected by the delegates of the communist countries that insisted an article-by-article debate to which the representatives of the free world were opposed.

This conflict of interest between the warring ideological blocs sharpened further when article 14 of the Draft Rules came under discussion. Article 14 proposed the following:

Without prejudice to the present or future prohibition of certain specific weapons, *the use is prohibited of weapons whose harmful effects--resulting in particular from the*

¹²⁵ Kunz, "The 1956 Draft Rules," 135

dissemination of incendiary, chemical, bacteriological, radioactive or other agents—could spread to an unforeseen degree or escape, either in space or in time, from the control of those who employ them, thus endangering the civilian population.”¹²⁶

This Article 14 of the Draft Rules can be regarded as an initial manifestation of an effects based approach to weapons. The effects based approach makes a direct linkage between the use of a weapon and its victims. In making this linkage it uses medical data to substantiate the legal principle of unnecessary suffering that can then outweigh claims of military necessity in regulating and prohibiting particular weapons. Despite ICRC’s efforts not to make any explicit reference to the use of nuclear weapons per se in the text of this article and to focus only on the effects of weapons, the language of the text, was interpreted by governments as making specific reference to nuclear weapons.

¹²⁶ “Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War, ICRC,” 12, (*italics inserted*); Bugnion, “From the End of the Second World War,” 207-224; Bugnion, “The International Committee of the Red Cross,” 518 (*italics inserted*)

The communist representatives wanted to expand the scope of this article to a total ban on nuclear weapons and more specifically on nuclear tests. But the delegates of the free world provided several arguments against Article 14. First, they claimed that this was a disarmament question and a political matter, which could only be addressed within the confines of the United Nations and not the International Red Cross. Second, each country had the sovereign right to self-defence and any proposal seeking to constrain the use of nuclear weapons should take this factor into serious consideration. Third, there was need for a system of inspection and verification to establish adequate safeguards against their use. Fourth, an outright ban on nuclear weapons would only succeed in strengthening some countries possessing superiority in conventional weapons unlike others.

The impossibility of reconciling the differences between these ideological blocs produced a compromise resolution. The compromise resolution required the ICRC 'to transmit the Draft Rules, the record of the discussions, the texts of the proposals, and the submitted amendments, to the governments for their consideration.'¹²⁷ In mock salutation to its efforts, the Conference urged the ICRC to continue with its efforts and

¹²⁷ Kunz, "The 1956 Draft Rules," 137

retained the first two paragraphs of the Draft Rules. The task of studying the effects of the use of nuclear weapons was entrusted to a Scientific Commission established by the UN, which carried out its work in complete secrecy. Thus any possibility of the ICRC's engagement with the studying the effects of nuclear weapons was wrested away by the governments. The "polite burial" of the Draft Rules by the governments disheartened the humanitarian actor and is held responsible for paralyzing its future efforts to develop humanitarian law for several decades.¹²⁸

After waiting for two years for governments to offer their suggestions on the Draft Rules, the ICRC informed the Board of Governors of the League of Red Cross Societies in Athens, that in the absence of "a general consensus on a minimum number of provisions" among governments it was "not possible to compile a list of questions for submission to the experts" or proceed towards convening a diplomatic conference which is the final stage in the formulation of international law.¹²⁹ In a tone of regret the ICRC resolved,

¹²⁸ Kunz, "The 1956 Draft Rules," 138; Bugnion, "From the End of the Second World," 207-224,

¹²⁹ "Information Meeting By the International Committee of the Red Cross", *International Review of the Red Cross*, 12, no. 12, (December 1959), 232-233

You know how carefully the ICRC drew up the Draft Rules, to the best of its ability and conscience, and in consultation with qualified experts. We repeat, however, that whatever the ICRC's regrets at the meager response of the governments, its own fate is not bound up with that of the Draft Rules.¹³⁰

Resolutions, Additional Protocols & An Open Question

The defeat of the Draft Rules of 1957 compelled the ICRC to take stock of its situation and to determine its own path forward, the ICRC convened a Round Table of independent experts from 11-14 April 1962. In this meeting, the ICRC was careful to invite military experts as its 1954 meeting of experts was criticized for not having sufficient input from "military aviators from the major nuclear powers, if only so that all concerned might have seen the actual problem which was faced-both in terms of the weapon themselves and the attitude of military men toward restrictions on their use."¹³¹ This Round Table included renowned experts on military and strategic thinking such Dr. Thomas Schelling and Colonel

¹³⁰ "Information Meeting," 233

¹³¹ Letter from R.R. Baxter to Rene Jean Wilhelm of ICRC. ICRC Archives, BAG 051 Pj-019, Date 31/07/1958—01/10/1958

Miksche, Dr. Draper an authority on international laws of war and journalists specializing on military security issues. This Round Table is significant for fostering a shift in the ICRC's discourse on nuclear weapons.¹³²

This meeting of experts made several helpful suggestions to the ICRC. Firstly, it helped the ICRC to recognize that in the face of nuclear war, it could no longer continue with the language of "humanization of war" and there was need to emphasize a language of "limits to the evils of war."¹³³ In emphasizing the limits of war, the focus is not only on assistance but prevention of suffering. Secondly, this language had to be universal and not make any distinction between nuclear haves and nuclear have-nots in demanding that the principles of the laws of war be observed. Thirdly, the laws of war now had to be described as international humanitarian law to emphasize their moral significance and content. Fourthly, the ICRC was not to make any distinction between ideas of peace and disarmament but regard that the two could be approached hand in hand. Fifthly, the ICRC should try to propagate these ideas through resolutions and declarations

¹³² Summary of the Round Table of 11-14 April 1962 , Consultation on the Legal Protection of Civilians in Case of Armed Conflict. ICRC Archives, BAG 051-051.05, Dates- 11/04/1962—14/04/1962, Document SP319; Consultation on the Legal Protection of Civilians in Case of Armed Conflict, ICRC Archives, BAG 051-051.01, Dates- 15/03/1962—19/03/1962, Document D733; ICRC Archives, BAG 051-051.02, 11/04/1962—12/04/1962, Reponses donnees jusqu'au 12 avril 1962 aux questions posees par le CICR.

¹³³ Summary of the Round Table of 11-14 April 1962

focusing on principles and rules of methods of war instead of specifying the means of war or seeking a treaty text. Sixthly, the ICRC should refer to the Geneva and Hague Laws in the most general terms alluding to principles of discrimination and unnecessary suffering but not delve into the specifics of these laws with regard to particular weapons. It was these recommendations that helped charter the ICRC's course in the succeeding decades in addressing the problem of nuclear weapons. Its efforts to address the problem of nuclear weapons by focusing on the suffering of victims and articulating an effects based approach to nuclear weapons had been stymied by big powers engaged in the realpolitik of Cold War.

Despite the setback, the ICRC slowly put the suggestions of the experts into practice over the succeeding decades. The Cuban Missile Crisis presented itself as an opportunity for the ICRC to intervene on the problem of nuclear weapons. The crisis emerged when US intelligence discovered that the Soviets had placed missiles in Cuba capable of delivering nuclear weapons. As the tension between the superpowers escalated and the possibility of a nuclear war emerged in a subtle diplomatic maneuver, the ICRC informed the UN Secretary General, U. Thant that it was willing to offer any help within its power to help him address this crisis. The ICRC was then requested to assist in facilitating

inspection of ships arriving in Cuba to verify that they were not carrying any nuclear weapons. The agreed condition that the ICRC suggested was that all the three countries involved in the crisis agree to accept its services and that the Red Cross flag not be on display on ships carrying the inspectors. In other words representatives of the ICRC were to serve as weapons inspectors on board ships arriving at Cuban ports. Whether the ICRC was to be engaged in supervising withdrawal of Soviet missiles from Cuban soil is still a subject of speculation among scholars. Thomas Fischer maintains that, "In all of U. Thant's talks with Castro, the superpowers and the ICRC there was only the question of using the latter for inspecting incoming ships to Cuba. The responsibility for verification of the dismantlement always remained with the United Nations."¹³⁴

The ICRC's services offered during the Cuban missile crisis were never put into effect as the crisis was ultimately resolved by the superpowers bilaterally. But the very fact that the ICRC had shown initiative and accepted responsibility to verify ships carrying nuclear weapons generated much concern about the humanitarian actor's approach to weapons. ICRC's intervention was conceived as an attempt to give a

¹³⁴ Thomas Fischer, "The ICRC and the 1962 Cuban Missile Crisis", *International Review of the Red Cross*, 83, no.842, (June, 2001), 287-309

humanitarian disguise to what was essentially a humiliating weapons inspection programme for the superpowers. There was concern that the ICRC might jeopardize its principle of neutrality essential for undertaking humanitarian duties if it were to offer its services in a political operation. To address these concerns, the ICRC sent a circular letter to the National Red Cross & Red Crescent Societies on November 15, 1962 arguing that its action in the Cuban missile crisis was based on the principle of humanity which is fundamental to the work of the organization.¹³⁵ The principle of humanity does not only recognize a duty to act in times of conflict to relieve suffering but also encourages promotion of cooperation and peace to avoid conflict. It also issued a policy statement to the effect that the ICRC would offer its services only if the following conditions existed,

that peace was threatened by the danger of nuclear war; that the United Nations declared itself unable to intervene; that the ICRC was called upon to lend its support to an efficient mission within the scope of the Red Cross principles; and that

¹³⁵ "International Committee of the Red Cross & the Cuban Missile Crisis" *International Review of the Red Cross*, (December 1962), 653-657

all parties concerned gave their approval to the intervention under the ICRC's conditions.¹³⁶

This represented yet another attempt by the humanitarian actor to codify its practices with regard to weapons. The Cuban Missile Crisis served to establish the ICRC as the only humanitarian organization enjoying the confidence of the superpowers. For the fourth time in its history, the ICRC received the Nobel Peace Prize and this helped to boost its confidence and bring into practice the suggestions made by the independent experts as mentioned above.

A palpable change in the humanitarian actors' discourse on nuclear weapons became discernible with the centenary celebrations of the International Red Cross Conference in Vienna in 1965. The ICRC was fully aware that resolutions passed at this forum served as recommendations to governments. In drafting these resolutions, ICRC delegates were keen to remind the participants at the conference that although these recommendations were not of a binding character, it was

¹³⁶ Fischer, "1962 Cuban Missile Crisis," 309, footnote 76 ; Melchior Borsinger, "Paul Ruegger- Envoye extraordinaire de l' humanite" in Victor Umbricht, ed., A Paul Ruegger pour son 80 e anniversaire, 14 aout, 1977, 162

important to “say everything we have to say in as precise a manner as possible” and “although disarmament in itself is not strictly speaking the concern of Red Cross action, it seemed, clear to us, ...that the Red Cross had to express its hopes and to let its views be heard on this very important subject.”¹³⁷ For this purpose, the ICRC was willing to appropriate the language of peace and apparently put an end to its long standing differences with pacifists. The constitution of “Red Cross as a Factor in World Peace” served the ICRC’s purpose of passing resolution X at this conference.¹³⁸

The language of this resolution at first commended “the efforts made by various governments to eliminate the danger of armed conflicts through disarmament and, in particular, through the conclusion of the 1963 Treaty banning nuclear weapons tests in the atmosphere, in outer space treaty, and under water and also the 1963 Resolution of the United Nations General Assembly banning the stationing of weapons of mass destruction in outer space.”¹³⁹ But then it further appealed to “all the governments to pursue their efforts to reach agreement on the ban of all nuclear weapon

¹³⁷ Report of the XXth International Conference of the Red Cross, October 2-9, 1965, Vienna, 86; Report of the XXIst International Conference of the Red Cross, September 6-13, 1969, Istanbul, 58

¹³⁸ Report of the XXth International Conference of the Red Cross, October 2-9, 1965, Vienna, 57

¹³⁹ Report of the XXth International Conference of the Red Cross, October 2-9, 1965, Vienna, 57

tests and on general and complete disarmament under effective international control as well as to consider taking such partial measures as the establishment of nuclear free zones and agreements for the non-proliferation of nuclear weapons.”¹⁴⁰ But not all resolutions met with favour outside the International Red Cross Conferences. A unanimously passed resolution emphasizing “the general principles of the Law of War apply to nuclear and similar weapons” failed to find support in the politicized atmosphere of UN General Assembly in 1968 which passed all other resolutions endorsing principles of international humanitarian law.¹⁴¹

Similarly another resolution XX was adopted at the XXIst International Red Cross conference in Istanbul in 1969.¹⁴² Paragraph 5 of this resolution issued an urgent appeal to “all governments and to the United Nations to take all measures to put an end to armed conflicts and to establish a lasting peace; urges renewed efforts to halt the nuclear arms race, including the establishment of an adequately verified treaty banning nuclear weapons test in all environments, a sea beds arms control treaty,

¹⁴⁰ Report of the XXth International Conference of the Red Cross, October 2-9, 1965, Vienna, 57

¹⁴¹ Resolution XXVIII, XXth International Conference of the Red Cross, Vienna, 2-9 October 1965, Report, Austrian Red Cross, Vienna, 1965, 85; Resolutions Adopted by the General Assembly During its Twenty-Third Session, 24 September-21 December 1968, Official Records of the General Assembly, Twenty-Third session, Supplement No.18, Document A/7218,50-51

¹⁴² Report of the XXIst International Conference of the Red Cross, September 6-13, 1969, Istanbul, 101

sound and effective arrangements covering chemical and biological weapons, and general and complete disarmament under effective international control.”¹⁴³ This appeal was reinforced in the next paragraph proposing “that funds that would have been assigned to the purchase of armaments be used for the service of mankind, the protection of lives, and health of people, first and foremost the younger generation, and for the improvement of education and teaching.”¹⁴⁴

The passage of these resolutions met with some resistance from nation-states cautioning that they were a departure from the Red Cross mission to aid the victims, and strict adherence to the principle of neutrality from all controversial issues. That it would result in “danger of departing” from past practices. But this resistance was overcome and the ICRC was successful in getting these resolution passed through this conference.¹⁴⁵ The success of the ICRC’s efforts at this conference can be gauged further from resolution XIV devoted exclusively to weapons of mass destruction that requested the United Nation to consider adopting “a special agreement on the prohibition of weapons of mass destruction” that

¹⁴³ Report of the XXIst International Conference of the Red Cross, September 6-13, 1969, Istanbul, 58

¹⁴⁴ Report of the XXIst International Conference of the Red Cross, September 6-13, 1969, Istanbul, 58

¹⁴⁵ Report of the XXIst International Conference of the Red Cross, September 6-13, 1969, Istanbul, 62

would serve as “an important contribution to the development of international humanitarian law” and “requests the ICRC to continue to devote great attention to this question, consistent with its work for the reaffirmation and development of humanitarian law.”¹⁴⁶

By 1969 powerful nation-states resistant to the ICRC's efforts to address the problem of nuclear weapons were quickly becoming aware of the effectiveness of these “motherhood and apple pie” resolutions that the ICRC was able to move successfully within the International Red Cross conferences.¹⁴⁷ These resolutions facilitated organization of the 1977 Diplomatic Conference on the Reaffirmation of International Humanitarian Law. The governments of powerful countries made their participation in this conference conditional to a strict guarantee that the problem of nuclear weapons be excluded from the agenda of this conference. This diplomatic conference reached some agreement on the methods and means of warfare. Article 35 of Protocol I articulated some basic rules that, “In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited; it is prohibited to employ weapons, projectiles and material and methods of

¹⁴⁶ Report of the XXIst International Conference of the Red Cross, September 6-13, 1969, Istanbul, 99

¹⁴⁷ Hays Parks, “Air War and the Law of War,” *American Air Force Law Review*, 32, no.1 (1990), 69, footnote 239

warfare of a nature to cause superfluous injury or unnecessary suffering” and “It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.”¹⁴⁸

But how to interpret the application of the Additional Protocol I to the use of nuclear weapons remains an open question. Dr. Yves Sandoz of the ICRC observes that,

The relationship between the 1997 Additional Protocols and international humanitarian law was thus somewhat *ambiguous*: while it was impossible to exclude the weapon with the greatest potential for destruction from the field of application of international humanitarian law, the law could not be expected to resolve a problem of strategic balance which clearly went beyond its purview.¹⁴⁹

¹⁴⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. ICRC website, accessed on March 9, 2011 <http://www.icrc.org/ihl.nsf/FULL/470?OpenDocument>

¹⁴⁹ Yves Sandoz, “Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons”, *International Review of the Red Cross*, no. 316, (1997), 6 (italics inserted)

However, the problem of nuclear weapons continued to weigh heavily upon the mind of the humanitarian actor and this can be gleaned from its Commentary of the Additional Protocols. The Commentary suggests,

(the) *uncertainty* which exists regarding the scope of international humanitarian law with respect to the use of nuclear weapons is *potentially harmful* for such law and consequently all the victims that it aims to protect. This danger is all the greater as a first use of nuclear weapons, *considered to be lawful by its user, could be a considered a violation by its victim*, and clearly entails the risk of uncontrolled escalation.¹⁵⁰

The above observations by Dr. Sandoz and the ICRC's Commentary on the Additional Protocols with their emphasis on "uncertainty" and "ambiguity" indicate the dangers of a "porous discourse" that makes

¹⁵⁰ The ICRC's letter to the ICJ is appended as Annexe to the Statement of the Honourable Varga Pizarro of Costa Rica presented to the International Court of Justice on 14 November 1995. CR95/33 International Court of Justice, The Hague, (italics inserted)

alternative interpretations on the meanings of particular principles possible among the nation-states, the ICRC and the ICJ.¹⁵¹ It creates a cacophony of voices of representatives of governments and humanitarian organizations, each with its own interpretation, making it difficult to ascertain the particular voice of an actor and determine “how precisely to apply the new vocabulary to particular situation.”¹⁵² This problem becomes acute in terms of application of these principles of international humanitarian law to nuclear weapons.

The dangerous effects of a “porous discourse” become visible when the World Health Organization requested the International Court of Justice (ICJ) to give its opinion on the following question, “In view of the health and environmental effects, would the use of nuclear weapons by a state in war or other armed conflict be a breach of its obligations under international law, including the WHO Constitution?”¹⁵³ The ICJ refused to consider this question crafted in the language of medical and environmental effects of nuclear weapons on grounds of jurisdiction under the UN Charter. However, when the question was re-crafted by the

¹⁵¹ Dawes, *The Language of War*, 210; Kennedy, *The Dark Side of Virtue*, 266-267

¹⁵² Kennedy, *The Dark Side of Virtue*, 271

¹⁵³ World Health Assembly Resolution WHA46.40, May 14, 1993. The full text of the resolution and the ICJ’s reasons for not addressing this question can be gained from the World Court Digest, accessed on March 9, 2011

http://www.mpil.de/ww/en/pub/research/details/publications/institute/wcd.cfm?fuseaction_wcd=aktdat

UN General Assembly in more abstruse juridical terms as “[i]s the threat or use of nuclear weapons in any circumstance permitted under international law?” the ICJ agreed to consider it.¹⁵⁴ The significance of the problem undertaken by the ICJ was not lost on the ICRC. Louise Doswald Beck, then deputy head of the ICRC legal division on weapons, shrewdly observed, “The Advisory Opinion of the International Court of Justice represents the first time that the Court’s judges have been called upon to analyze in some detail rules of international humanitarian law.”¹⁵⁵

The Advisory Opinion of the ICJ

It is important to recollect here that although the Advisory Opinion of the International Court of Justice on nuclear weapons took place in the aftermath of the Cold War, at an expert meeting convened by the ICRC in 1954 the idea of approaching the ICJ to give an opinion on the use of nuclear weapons had already been deliberated. The Report of The

¹⁵⁴ UN General Assembly, Resolution 49/75 K on request for an advisory opinion from the International Court of Justice on the legality of the threat or use of nuclear weapons, December 15, 1994, ICJ website accessed on March 9, 2011,

<http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=e1&case=95&code=unan&p3=0>

¹⁵⁵ Louise Doswald Beck, “International Humanitarian Law and the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons,” *International Review of the Red Cross*, no.316, (1997), 35-55

Commission of Experts for The Legal Protection of Civilian Populations and Victims of War from the Dangers of Aerial Warfare and Blind Weapons, shows that the experts shared a common fear that “the *use of atomic weapons for tactical and strategic purposes is virtually inevitable in future hostilities*, if the use of these weapons is not excluded by an international agreement of a political character.”¹⁵⁶ To this end, “The principles of laws of war should apply not only to conventional weapons but also to atomic and hydrogen bombs and also “to those which are in the process of development.”¹⁵⁷ Whether “the Protocol of Geneva of 1925 prohibits, or should prohibit, the use of atomic weapons or radioactive substances for warfare” was a question that received varied responses from the experts.¹⁵⁸ Some experts asserted that ‘this Protocol does prohibit these types of warfare’ and suggested that, “an *advisory opinion of the International Court of Justice* should be sought on the interpretation of the Protocol in this regard.”¹⁵⁹ A careful reading of the minutes of this meeting shows that it was ICRC President Paul Rueggger that made this last suggestion.¹⁶⁰

¹⁵⁶ Report of the Commission of Experts for The Legal Protection of Civilian Populations and Victims of War from the Dangers of Aerial Warfare and Blind Weapons, Geneva: 1954, ICRC Archives ICRC Archives, BAG 051Pj003, 3 (italics inserted)

¹⁵⁷ Report on Dangers of Aerial Warfare and Blind Weapons, 3

¹⁵⁸ Report on Dangers of Aerial Warfare and Blind Weapons, 9 (italics inserted)

¹⁵⁹ Report on Dangers of Aerial Warfare and Blind Weapons, 9 (italics inserted)

¹⁶⁰ Report on Dangers of Aerial Warfare and Blind Weapons, 9

But the ICRC did not choose to act upon this suggestion immediately. It is difficult to trace the particular *raison d'être* for this lack of action but one can surmise that the difficult political climate of the Cold War did not make this a feasible course of action for a humanitarian actor trying to safeguard its neutral position. However, it is possible to suggest that this idea survived within the Red Cross movement for several decades and came to be shared with other civil society actors as the ICRC cooperated with them on several issues pertaining to peace, human rights and disarmament. It was these civil society organizations that were later to urge the ICRC to take a position that could influence the International Court of Justice's (ICJ) interpretation of international humanitarian law in determining the threat or legality of the use of nuclear weapons.¹⁶¹ The International Association of Lawyers Against Nuclear Arms (IALANA) urged the ICRC "to approach the ICJ while it was deliberating on the nuclear weapons case to make it clear that the principles of IHL as interpreted in the Additional Protocols applied to nuclear weapons."¹⁶²

¹⁶¹ Information communicated to the author via email by Alyn Ware Representative of IALANA on March 9, 2011

¹⁶² Information communicated to the author via email by Alyn Ware Representative of IALANA on March 9, 2011

The difficulties of a “porous discourse” on the application of law to nuclear weapons is captured by Alyn Ware, representative of IALANA in the following words,

it was important to make this clear by the ICRC given that in the process of working on the Additional Protocols to the Geneva Conventions it had agreed to the demands of nuclear-weapon states that the issue of application of the protocols to nuclear weapons would not be considered during the 1977 negotiations. The 1977 Protocols thus *did not refer specifically to nuclear weapons, but nor were nuclear weapons expressly excluded* from the application of the customary principles of international law affirmed in the Protocols (particularly Protocol I). This led to a *divergence of opinion* amongst those States making written statements to the ICJ *with some arguing that the Protocol I did not apply and others arguing that the Protocol did apply* because it was a codification of existing international humanitarian law already accepted and binding on States. IALANA believed that it was important that the ICRC, as the host of the 1977 Protocol negotiations, make clear to the ICJ

its opinion on the application and meaning of these principles to the ICJ.¹⁶³

The situation was grave as certain nation-states “contended that ‘new’ rules of Protocol I do not apply to nuclear weapons, notably those regarding reprisals against civilians and protection of environment against severe damage.”¹⁶⁴

The ICRC representatives are hesitant to address this problem in interviews and claim that the humanitarian actor was interested in offering its advice in a confidential capacity as “amicus curiae” that is friendly advisor, to the ICJ but the information got leaked and due to pressure from powerful governments it had to observe silence.¹⁶⁵ The ICRC was unable to make its representation before the court and, “the IALANA sought the cooperation of particular nation-states such as Costa Rica, Malaysia and Mexico to present the ICRC's letter to the Court in

¹⁶³ Information communicated to the author via email by Alyn Ware Representative of IALANA on March 9, 2011, (*italics inserted*)

¹⁶⁴ Information communicated to the author via email by John Burroughs, Executive Director of Lawyers Committee on Nuclear Policy on March 9, 2011

¹⁶⁵ Interview with Dr. Sommarugga, former President of the ICRC and Yves Sandoz, former ICRC Director of the Department of International Humanitarian Law

order that it could be considered in the hearings. Costa Rica obliged.”¹⁶⁶
This ensured that the voice of ICRC was not marginalized in the proceedings of the ICJ deliberating on law pertaining to the use of nuclear weapons.

On September 19, 1995, the ICRC addressed a letter to the H.E. Mohammed Bedjaoui President of the International Court of Justice deliberating on the legality of the threat or use of nuclear weapons. In this letter the ICRC states,

we feel it is important for the Court to be informed of the position of the International Committee of the Red Cross ICRC in this regard. Indeed, the *issue is largely one of international humanitarian law* and, as you are aware, the international community has entrusted *the ICRC with wide powers in this area.*¹⁶⁷

¹⁶⁶ Information communicated to the author via email by Alyn Ware Representative of IALANA on March 9, 2011

¹⁶⁷ The ICRC's letter to the ICJ is appended as Annexe to the Statement of the Honourable Varga Pizarro of Costa Rica presented to the International Court of Justice on 14 November 1995. CR95/33 International Court of Justice, The Hague. (italics inserted)

The above text is an interesting demonstration of ICRC's efforts to frame the question of legality of the threat or use of nuclear weapons as "largely one of international humanitarian law" and to assert the "wide powers" that the ICRC enjoys in interpreting this body of law. It is also an act of responsibility through which the humanitarian actor tries to define its position on the subject of nuclear weapons.

In an attempt to wield this power and exercise this responsibility, the ICRC further argues that the question of the legality of the threat or use of nuclear weapons cannot be addressed without reference to Protocol I of the Geneva Conventions. In interpreting this protocol, the ICRC asserts that, "the interpretation given to the principle of proportionality does not help resolve the problem" without determining what is meant by "the concrete and direct military advantage anticipated."¹⁶⁸ The ICRC admits that,

Of course, the disproportion between losses and damages caused and the military advantages anticipated raises a delicate problem, in some situations there will be no room

¹⁶⁸ The ICRC's letter to the ICJ

for doubt, while in other situations there may be reason for hesitation. In such situations the *interests of the civilian population should prevail*.¹⁶⁹

But the ICRC describes the claims made by particular nation-states that “any type of attack provided that this did not result in losses or damages which were excessive in relation to the *military advantage anticipated*” as “manifestly incorrect”.¹⁷⁰ The humanitarian actor insists on its interpretation that,

the attack must be directed against a military objective with means that are not disproportionate in relation to the objective, but are suited to destroying only that objective, and *the effects of the attack* must be limited in a way required by the Protocol; *moreover*, even after those conditions are fulfilled, the incidental losses and damages must not be excessive.¹⁷¹

¹⁶⁹ The ICRC's letter to the ICJ, (italics inserted)

¹⁷⁰ The ICRC's letter to the ICJ

¹⁷¹ The ICRC's letter to the ICJ (italics inserted)

In an attempt to further resist arguments on technical improvements that might facilitate the use of particular types of nuclear weapons, the ICRC claimed that, “we are not aware of any *technical development* that might have modified the characteristics of specific nuclear weapons.”¹⁷² It further argued that, “If the illegality of any use of nuclear weapon is not admitted, it would therefore be necessary to determine *whether specific types of nuclear weapons*, having regard to their current technical characteristics, might be used in well-defined situations, without contravening the principles and rules of international customary law as set out in Protocol I.”¹⁷³

The ICRC was uncertain whether its attempts to exercise its influence on the deliberations of the ICJ will produce a satisfactory verdict from the court. It decided to concomitantly engage itself with preparing a study of Customary International Humanitarian Law.¹⁷⁴ This study was expressly undertaken a year after the ICJ accepted the task of providing an advisory opinion on the use of nuclear weapons and published almost a decade

¹⁷² The ICRC’s letter to the ICJ (*italics inserted*)

¹⁷³ The ICRC’s letter to the ICJ (*italics inserted*)

¹⁷⁴ Jean –Marie Henckaerts and Louise Doswald Beck, *Customary International Humanitarian Law*, volume I Rules, (Cambridge: Cambridge University Press, 2005)

later. This fact is explicitly stated in the study.¹⁷⁵ The ICRC study on Customary International Humanitarian Law provides a brief extract of the ICJ's advisory opinion on the use of nuclear weapons, and in a voice of restraint observes that,

this opinion took into account a wide range of legal analysis and scientific evidence presented by States. As a result, the Court being the principal judicial organ of the United Nations, the ICRC had to take due note of the Court's opinion and deemed it not appropriate to engage in a similar exercise at virtually the same time.¹⁷⁶

The ICRC's study on Customary International Humanitarian Law has become a bone of contention among scholars that contend that the ICRC played a political game in not engaging at length with the question of nuclear weapons in this study. David Turns comments,

¹⁷⁵ Henckaerts and Beck, *Customary International Humanitarian Law*, 255

¹⁷⁶ Henckaerts and Beck, *Customary International Humanitarian Law*, 255

It is inappropriate for the ICRC to defer to such a controversial decision, especially when it amounted to a non-finding and-to the limited extent that anything was decided -- it was based on what would for the purposes of the Study be an irrelevant consideration, namely the concept of self-defence under the *jus ad bellum*...Once the political decision to engage a weapon has been made, a totally different set of considerations enters into play in the context of whether the weapon is consistent with operational rules as to military necessity, humanity and proportionality. At the very least, one would have expected the ICRC to analyze the effects of nuclear weapons in the context of *jus in bello*.¹⁷⁷

But the ICRC study in explicating the General Principles on the Use of Weapons makes several references to the ICJ opinion on the use of nuclear weapons. In illustrating Rule 70 that prohibits the use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering, the ICRC reiterates the ICJ's affirmation that

¹⁷⁷ David Turns, "Weapons in the ICRC Study on Customary International Humanitarian Law", *Journal of Conflict & Security*, 11, no.2, (2006), 234

this was a “cardinal principle” of international humanitarian law.¹⁷⁸ In an attempt to explain this principle of unnecessary suffering further as the “effect of a weapon on a combatant” the ICRC begins by suggesting that this can be determined in various ways.¹⁷⁹ Firstly, by stipulating that no military purpose violates this rule. Secondly, by focusing on proportionality between military necessity and unnecessary suffering. Thirdly, by exploring availability of alternative means to assess unnecessary suffering. It reinforces these different possibilities by quoting the ICJ’s definition of unnecessary suffering as “a harm greater than that unavoidable to achieve legitimate military objectives.”¹⁸⁰

The ICRC study emphasizes that the cardinal principle of discrimination in the use of weapons is acknowledged in the ICJ advisory opinion Rule 71 of Customary International Humanitarian Law. The lack of explicit lineage and interpretation of this principle by the ICJ is a subject of concern to the ICRC. In the Additional Protocol I, the principle of discrimination had been defined to the effect that it prohibits the use of weapons which are “of a nature to strike military objectives and civilians

¹⁷⁸ Henckaerts and Beck, *Customary International Humanitarian Law*, 239

¹⁷⁹ Henckaerts and Beck, *Customary International Humanitarian Law*, 240

¹⁸⁰ Henckaerts and Beck, *Customary International Humanitarian Law*, 241, footnote 25

or civilian objects without distinction.”¹⁸¹ The ICRC is aware that this interpretation is a bone of contention between the ICRC and several governments. The judges of the ICJ too debated the possibilities and limitations of accepting this interpretation in its entirety and the ICRC tried to influence these deliberations by addressing a letter to the court as discussed above.

To determine whether the use of a weapon is indiscriminate, Additional Protocol I, provides Article 54 (1) prohibiting weapons which cannot be directed at a specific military objective and Article 51(4c) prohibiting weapons the effects of which cannot be limited as required by the Protocol.¹⁸² But the ICJ observes that not all state parties had ratified the Additional Protocols and concluded that “Additional Protocol I in no way replaced the general customary rules applicable to all means and methods of combat including nuclear weapons”¹⁸³ At the same time the judges were unable to determine what other legal criteria could be used to ascertain the principle of discrimination. This created a legal conundrum among the judges obfuscating the question of whether nuclear weapons were

¹⁸¹ Henckaerts and Beck, *Customary International Humanitarian Law*, 245

¹⁸² Henckaerts and Beck, *Customary International Humanitarian Law*, 247

¹⁸³ ICJ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, ICJ Reports 1996, 259; Bugnion, “The International Committee of the Red Cross,” 521, footnote 25

indiscriminate and therefore their use legal or illegal under international law.

This led to a divided opinion among the judges on determining whether a weapon was indiscriminate because it could not be directed at a specific military objective or whether it was indiscriminate because its effects could not be limited in scope. Taking advantage of this divided opinion among the judges, the ICRC study conveniently paraphrased the opinion of a single judge, Judge Higgins, of the ICJ to reinforce the idea that “ a weapon is indiscriminate in nature if it is incapable of being targeted at a military objective” as stated in Article 54(1) of the Additional Protocol I and deliberately omitted the judge’s application of this definition to nuclear weapons that suggested,

Notwithstanding the unique and profoundly destructive characteristics of all nuclear weapons, that very term covers a variety of weapons which are not monolithic in their effects.

To the extent that a specific nuclear weapon would be incapable of this distinction, its use would be unlawful.¹⁸⁴

The ICRC engaged in this practice of inclusion and exclusion in selectively representing Judge Higgins's opinion because it did not want the principles of discrimination and military objective that had so painstakingly been achieved to now be qualified by arguments on "not monolithic in effects" to facilitate the possible use of low yield or tactical nuclear weapons. The ICRC's position is a total ban on the use of nuclear weapons without exceptions.

The indecisiveness of the ICJ on declaring nuclear weapons as indiscriminate once again generated a feeling within the ICRC for greater precision in defining the effects of a weapon in order to label it as indiscriminate and therefore illegal. It was this lack of precision in determining the effects of a weapon that came to be considered as a weakness in the ICRC's legalistic approach to weapons. This prompted the ICRC to reinforce its message that the ICJ had accepted the

¹⁸⁴ Henckaerts and Beck, *Customary International Humanitarian Law*, 247; Beck, "International Humanitarian Law and the Advisory Opinion," 35-55

“principles and rules” of international humanitarian law especially the principles of distinction and prohibition of unnecessary suffering and their application to the use of nuclear weapons. This emphasis on rules being sufficient to render a weapon illegal was significant for the ICRC as some governments argued that the legality of a weapon could only be determined with the help of a specific treaty or customary rule prohibiting its use. In response, the ICRC claimed that “the majority of States used the rule prohibiting indiscriminate weapons itself to argue their case on the lawfulness or otherwise of nuclear weapons” and that “In their individual opinions, the judges of the Court assessed the legality of the effects of nuclear weapons on the basis of the rule itself and independent of treaty law.”¹⁸⁵

It is worth noting here that the ICJ did study the specific application of the Geneva Protocol of 1925 to determine the question of legality surrounding nuclear weapons. The ICJ observed that the terms “‘poison’ and ‘poisoned weapons’ have been understood, in the practice of States, as their primary, or even exclusive, effect is to poison or asphyxiate.”¹⁸⁶

The ICRC study interprets this decision in the following manner. It notes

¹⁸⁵ Henckaerts and Beck, *Customary International Humanitarian Law*, 248-249

¹⁸⁶ Eric David, *The International Court of Justice Opinion on the Legality of the Use of Nuclear Weapons*, *International Review of the Red Cross*, no.316, 1997, pp.21-34,

that the suggestion of UK and US governments that the prohibition “did not apply to weapons which could incidentally poison, but only to weapons that were designed to kill or injure by the effect of such poison” does not “indicate that poison must be the primary or exclusive injury mechanism but that it must be an “intended” injury mechanism and is in keeping with the origin of the rule, namely, to prohibit the smearing of arrows with poison which would prevent recovery from the injury caused by the arrow.”¹⁸⁷ ICRC’s interpretation notwithstanding, the ICJ’s advisory opinion concluded that the Geneva Protocol of 1925 does not apply to nuclear weapons.

The ICRC persists with the question, “how the use of nuclear weapons could be compatible with the principles and rules of international humanitarian law?” and how the decision of the ICJ has “contributed to the interpretation of those rules”?¹⁸⁸ In response to both these questions, the ICRC expresses dissatisfaction with the answer of the ICJ that could not “conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence,

¹⁸⁷ Henckaerts and Beck, *Customary International Humanitarian Law*, 248-249

¹⁸⁸ Bugnion, “The International Committee of the Red Cross,” 522, footnote 36, (Internal) Document A 1218rev2, adopted by the ICRC Assembly on 27 June 2002; “Use of Nuclear, Biological or Chemical Weapons: Current International Law and Policy Statements,” Information note to Presidents/Secretary Generals of National Societies, 4 March 2003, ICRC Archives, file 141.2-011; Beck, “International Humanitarian Law and the Advisory Opinion,” 35-55

in which the very survival of a State would be at stake.”¹⁸⁹ In an tone of resignation acknowledging the limits of legal arguments on regulating nuclear weapons, the ICRC persists that it is the responsibility of nation-states, “to ensure that these weapons are not used, irrespective of whether they consider them to be lawful or not.”¹⁹⁰ To this end it urges them to negotiate to achieve a total prohibition and limit the risk of proliferation of nuclear weapons. This it urged was imperative considering the effects of nuclear weapons.

The ICRC further observes that the judges of the ICJ acknowledged the effects of nuclear weapons but were unable to provide a definition of the effects of nuclear weapons and restricted themselves to amorphous observations of widespread destruction in time and space.¹⁹¹ It insists that the very fact that these harmful effects based on scientific evidence led the judges to observe that,

¹⁸⁹ Summary of the Advisory Opinion of July 8, 1996, ICJ website accessed on March 9, 2011, <http://www.icjij.org/docket/index.php?p1=3&p2=4&k=e1&case=95&code=unan&p3=5>

¹⁹⁰ “Use of nuclear, biological or chemical weapons: current international law and policy statements- ICRC’s information note to Red Cross and Red Crescent Societies National Societies about its position.” 04-03-2003, ICRC website accessed on March 9, 2011

<http://www.icrc.org/eng/resources/documents/misc/5sksk7q.htm>

¹⁹¹ Henckaerts and Beck, *Customary International Humanitarian Law*, 248

The destructive power of nuclear weapons cannot be contained in either space or time...the radiation released by a nuclear explosion would affect health, agriculture, natural resources and demography over a very wide area. Further, the use of nuclear weapons would be a serious danger to future generations...¹⁹²

Considering the above, the ICRC as a humanitarian actor claims that it finds it difficult to “to envisage how a use of nuclear weapons could be compatible with the rules of international humanitarian law.”¹⁹³ In explicit terms, the ICRC also denounced practices of classification that had deliberately made a distinction between conventional and weapons of mass destruction. To this effect it issued a statement.

Actually, there is no such dual categorization of arms in international humanitarian law, which regulates all weapons in accordance with certain generally applicable

¹⁹² ICRC statement to the United Nations General Assembly on the Advisory Opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons, United Nations General Assembly, 51st session, 1996, *International Review of the Red Cross*, no. 316, (1997), 118-119, <http://www.icrc.org/Web/Eng/siteeng0.nsf/html/57JNFU 28-02-1997>

¹⁹³ ICRC statement to the United Nations General Assembly, 51th session, 1996

rules in order to prevent excessive suffering and destruction.¹⁹⁴

The ICRC continues to entrench its arguments against the use of nuclear weapons from an effects based position. It argues that the effects of nuclear weapons are extremely destructive, uncontrollable in space and time, threatening the survival of humanity by producing “unspeakable suffering” making it “extremely difficult to bring aid to victims.”¹⁹⁵ It reiterated this message in a statement delivered to the UN General Assembly in 2009 where it observed that “Given the unique characteristics of nuclear weapons the ICRC, as a humanitarian organization, goes beyond a purely legal analysis” and “appeals to all States to ensure that these weapons are never used again, regardless of their views on the legality of such use.”¹⁹⁶ This argument acquires a rhetorical force within the ICRC in the voice of Yves Sandoz arguing that

¹⁹⁴ General and Complete Disarmament, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects, United Nations General Assembly, 51st session, 18 October 1996. Statement by the International Committee of the Red Cross. 18-10-1996.

<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/57jna8?opendocument>.

¹⁹⁵ United Nations, General Assembly, 64th session, First Committee, Items 96 & 100 of the agenda, Statement by the International Committee of the Red Cross (ICRC), New York, October 9, 2009;

<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/united-nations-statement-091009>

¹⁹⁶ ICRC’s Statement to the UN General Assembly October 9, 2009;

<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/united-nations-statement-091009>

“all ‘sterile’ legal arguments” be left behind and to focus on “the political responsibility of States.”¹⁹⁷

In making this statement the ICRC implicitly accepts that legal efforts to address the problem of nuclear weapons have reached their limits and only a moral appeal focusing on the effects of the use of nuclear weapons on the victims remains the first and last resort to prohibiting the use of these weapons. Despite this latent tone of resignation, one cannot ignore the fact that the ICRC is an active participant in practices of “lawfare” and that its practices make it difficult to respond to the question, “are the conventions tools to minimize violence or weapons to justify it?”¹⁹⁸ The ICRC would like to suggest that they are the former but it is very difficult to make out the difference.

Conclusion

To conclude, this chapter has demonstrated ICRC’s efforts for the last six decades to address the problem of regulating and prohibiting the use of

¹⁹⁷ Sandoz, “Advisory Opinion of the International Court of Justice,” 6

¹⁹⁸ Dawes, *The Language of War*, 215

nuclear weapons. It has shown how ICRC delegates, Dr. Junod and Fritz Bilfinger with their testimonies on the sufferings of the victims at Hiroshima and Nagasaki argued that ICRC delegates were warriors without weapons confronting the horrors of nuclear warfare. They cried against the feeble legal constraints to address the problem of nuclear weapons. The sufferings of the victims generated expert medical vocabularies on atomic bomb disease that led to the creation of specialized medical institutions and practices of secrecy. These practices of medicalization worked vis-à-vis practices of legalization as they generated a debate within the Red Cross movement on the possible strategies that the ICRC should undertake in addressing the problem of nuclear weapons. The ICRC's interest in the effects based approach to addressing the problem of nuclear weapons came under severe attack by powerful nation-states that tried to constrain its power and influence by arguing that the humanitarian actor did not possess the necessary competence and mandate. These rhetorical arguments made it difficult for the ICRC to secure the inclusion of the nuclear weapons within the ambit of the Geneva Protocol of 1925 or the Fourth Geneva Convention of 1949; the arguments made it impossible to secure the passage of the Draft Rules of 1957 and finally forced ICRC to adopt a position independent of the ambivalent decision of the ICJ on nuclear weapons. The consciousness that the onerous burden of responsibility concerning the use of nuclear

weapons and their effects has been shirked by governments with the help of an ambiguous advisory opinion of the ICJ, has persuaded the ICRC to accept that a legal solution to the problematic and moral appeals can be effective only if they focus on the effects of the use of these weapons on the victims. The next chapter shows how this consciousness comes into play as an effects based approach to weapons is galvanized by the ICRC to regulate and prohibit the use of conventional weapons.

CHAPTER EIGHT - ICRC'S EFFECTS-BASED APPROACH TO CONVENTIONAL WEAPONS

Introduction

In addressing the problem of conventional weapons, some scholars assume that the International Committee of the Red Cross (ICRC) was a “reluctant” actor hesitant “to move into an area in which it lacked expertise and which lay somewhat beyond its traditional concern with war victims.”¹ While others boldly state that, “In 1973, the ICRC became involved in conventional weapons issue after criticism over US weapons used in Vietnam war.”² These observations by scholars cite particular historical events or the traditional outlook of the ICRC as a humanitarian actor as reasons for ICRC’s engagement with the problem of conventional weapons but fail to offer a historical trajectory tying in the complexities of ICRC’s historical engagement with the problem of weapons. The previous chapters have demonstrated how the ICRC’s efforts to address the problem of weapons of mass destruction were constrained by other

¹ R. R. Baxter, “Humanitarian Law or Humanitarian Politics? The 1974 Diplomatic Conference on Humanitarian Law,” *Harvard International Law Journal*, 16, no.1, (1975), 23

² Major Donna Marie Verchio, “Just Say No! The SirUS Project: Well-Intentioned, But Unnecessary and Superfluous,” *The Air Force Law Review*, 51, no.183, (2001),194

actors in the international system, especially the powerful nation-states. The ICRC had stoutly defended its competence in addressing the problem of weapons and nation-states too had tacitly come to acknowledge the voice of the ICRC as a potent force on the subject of weapons. Undoubtedly, the failure of the Draft Rules and the establishment of the Disarmament Commission in the United Nations had made it clear to the ICRC that governments would not tolerate any further direct engagement on its part with the problem of weapons of mass destruction. This could be a factor in the initial hesitation that the ICRC might have expressed in addressing the problem of conventional weapons or could be interpreted as a tactic of strategic watchfulness that the ICRC considered useful to gauge the political climate before making any further overtures in this field.

The use of conventional weapons in both the Great Wars had been unprecedented. The use of demolition bombs and fragmentation bombs had been initiated in the First World War. The use of napalm and incendiaries dropped as clusters from aircraft had become a common practice among the belligerents during the Second World War especially from 1942-45. Yet the public outcry against the use of these weapons got swept under the carpet by the victorious Allied Powers that did not want

to address the problem of conventional weapons or aerial bombardment and focused all their energies on the development and use of nuclear weapons both during the war and in its immediate aftermath. It was not until wars broke out in Korea and Vietnam that any concern was publicly expressed by nation-states or the ICRC on the use of conventional weapons. These wars and the public outcry against the use of conventional weapons in these wars made it difficult for the ICRC to ignore the problem of conventional weapons. It is in this context that ICRC President, Dr. Eric Martin observed, "all the dead and wounded in the conflicts that have occurred over the last thirty years were the victims of conventional weapons and not of weapons of mass destruction."³

The use of conventional weapons and the suffering of a large number of civilian victims in these wars made it imperative that the ICRC begin to consider how it could address the problem of conventional weapons and to what effect? This chapter addresses this question in three stages: First, by showing how the discourse on human rights provided the ICRC an opportunity to forge new alliances, build its own repertoire of humanitarian languages, and enabled it to intervene to address the

³ "Conference of Government Experts on Weapons which may cause Unnecessary Suffering or have Indiscriminate Effects," *International Review of the Red Cross*, no.163, (October 1974,) 540

problem of conventional weapons. Second, the chapter considers the expert arguments on an effects based approach to weapons that were discussed at The Conference for the Reaffirmation & Development of International Humanitarian Law (1974-1977) and the Conference on the Prohibition of Weapons that Cause Superfluous Injury and Unnecessary Suffering (1980). The third section investigates how the ICRC creatively deployed an effects based approach by bringing into play the testimonies of victims to abolish the use of landmines.

Human Dignity and Human Rights

The question, "What role has the Red Cross played, and, indeed, what role can it play, in connection with disarmament?" was addressed at the 1977 International Red Cross Conference in Bucharest.⁴ It was now being argued that the basic *raison d'être* of the Red Cross was to care and protect the victims of war but "progress" and "respect for the spirit" of the Red Cross was possible only if there was an acknowledgement that "the incredible technical evolution has created a far wider gap between

⁴ "The ICRC and Disarmament," *International Review of the Red Cross*, no.203, (March-April 1978), 90-100

the weapons available today and those being wielded in the days of the First Geneva Convention.”⁵ The limitations of the revised Geneva Convention for the Protection of Civilian Populations (1949) that provided for protection of the population under the control of the enemy was also acknowledged by the ICRC. In the words of Jean Pictet, “it must be admitted that the Convention, despite its title, could protect civilians only against the abuse of authority by the enemy power and not against the use of weapons.”⁶ As such, “the work done by the Red Cross in an attempt to have certain indiscriminate or particularly cruel weapons banned or limited is a *logical complement* to the work it has done to relieve suffering. A limitation of such weapons is actually aimed at rendering the fate of their victims less bitter.”⁷

But the efforts to regulate and prohibit the use of weapons of mass destruction had taught the ICRC some valuable lessons. Firstly, it had realized that launching any direct action to achieve disarmament was dangerous as aspersions would be cast on its neutrality. Each nation-state had its own precious strategy advocating disarmament and these ranged

⁵ “The ICRC and Disarmament,” 100

⁶ Jean Pictet, “The Swing of the Pendulum: A Hundred Years in the Development of Humanitarian Law 1874-1973,” *International Review of the Red Cross*, no.168, (March 1975), 120

⁷ Pictet, “The Swing of the Pendulum”, 120, (*italics inserted*)

from incremental to absolute measures. The ICRC's preference for any one strategy would be considered a political position. Secondly, the ICRC was beginning to question whether legal measures of a universal international character were by themselves adequate to address the problem of weapons. Thirdly, it was important that the ICRC associate itself in a general manner with other international organizations such as the United Nations and its specialized agencies, non-governmental organizations such as the Amnesty International, and think-tanks such as Stockholm International Peace Research Institute to further the agenda of ACD. A close association with these actors would enable the ICRC to share their expertise without losing its own singular identity. In 1974, confident of its own place in the international system, ICRC President Eric Martin observed:

Today the ICRC can be said to hold a privileged place in the world, in relation to governments and to the UN which trust it for its impartiality and experience. No international

organization is in a position today to think of taking its place.⁸

In evaluating its practices in addressing the problem of weapons and reconfiguring its strategy, the ICRC did not hesitate in seeking the help of independent experts. In 1965, ICRC had convened a Roundtable of independent experts and they suggested that the ICRC should focus on developing "collateral measures towards disarmament, which can create a climate of confidence" as recommended by the United Nations Committee of Eighteen to study disarmament.⁹ To this end, the ICRC could develop a declaration reaffirming the principles of the laws of war emphasizing the principles of discrimination and proportionality in the conduct of war. These principles already exist in customary and treaty law. The express purpose of the declaration could be humanitarian in scope in order to avoid attracting any hostility from the superpowers. These experts also suggested that the ICRC should continue to focus on the problem of protection of civilian population in armed conflict. The experts affirmed that the problem of the protection of the civilian populations in war was

⁸ "ICRC Activities," *International Review of the Red Cross*, no.174, (September 1975), 461(italics inserted)

⁹ "Civilian Population in War Time," *International Review of the Red Cross*, no. 58, (January 1966), 79-89.

of capital importance to the nation-states. This problem had been compounded given the power of destructive weapons and the absence of any definitive treaty rule on "reprisals." The linkage between weapons and protection of civilian populations was a close one and could be explored further in the pursuit of disarmament. They suggested that such a declaration of principles prepared by the ICRC and ratified by nation-states could serve as a "basis of one or a number of international treaties" in the future.¹⁰ These experts also suggested that the ICRC should be willing to launch an appeal if it fears great calamity will ensue with the use of particular weapons in an armed conflict. The ICRC must make every effort to disseminate these principles to "penetrate the conscience of peoples."¹¹ These recommendations by independent experts to the ICRC served as a blueprint for the future as the humanitarian actor addressed the problem of conventional weapons.

While the ICRC was seeking the help of experts to reconfigure its strategy in addressing the problem of weapons, other actors in the international system too were expressing similar concerns. This led to a growing public consciousness about exploring the relationship between the human rights

¹⁰"Civilian Population in War Time," 87

¹¹"Civilian Population in War Time," 87

laws and laws of war. This is captured by, D. Schindler, in the following observation:

For a long time no attention was paid to the relations between those two branches of international law. It was only towards the end of the 1960s, with the outbreak of a succession of armed conflicts at this period - wars of national liberation in Africa, the Middle East conflict, the wars in Nigeria and Vietnam - in which aspects of human rights arose at the same time, that people became conscious of the relationship.¹²

These wars provided the stimulus to reconsider the status of laws of war and explore possibilities of prohibitions and restrictions on the use of particular conventional weapons. The Tri-Continental Conference of Asian, African and Latin American Revolutionary Solidarity held in Havana from January 3-15, 1966 and the International Conference on Human Rights in Teheran in May 1968 adopted resolutions supporting the need for a conference to study the existing state of the laws of war. The

¹² D. Schindler, "The International Committee of the Red Cross and Human Rights," *International Review of the Red Cross*, no.208, (January-February 1979), 8

International Conference on Human Rights concluded that, "napalm bombing is among the methods and means of warfare that erode human rights."¹³

The significance of the International Conference on Human Rights, 1968, which is often credited for providing the initial impetus for the reaffirmation and development of the laws of war should be analyzed from the ICRC's perspective too. The previous chapters have shown how the ICRC strategically picked up the language of peace during the inter-war period and after the failure of the Draft Rules of 1957. The ICRC's engagement with the language of peace had always been political and especially now there was need to be more circumspect with peace movements being closely associated with nuclear disarmament and anti-Vietnam war protests. But the language of human rights, had emerged after the Second World War, and had gained momentum with the establishment of international organizations. The language of human rights provided the ICRC with another opportunity, to broaden its repertoire of humanitarian languages. This is succinctly captured in Jacques Moreillon's observation,

¹³ Reference found in UN General Assembly Resolution 3255 B (XXIX), "Four Resolutions of Direct Interest to the ICRC," *International Review of the Red Cross*, no.166, (January 1975), 44

First, since the first World War the role of the Red Cross in promoting peace has also become a matter of increasing importance, but also of increasing delicacy, within the movement.

Secondly, human rights are the subject of many political discussions throughout the world today; yet although the Red Cross movement has always been motivated by concern that certain fundamental human rights should be respected, human rights as such have only been a marginal consideration-at least till now.¹⁴

The interest in the language of human rights in armed conflict that the International Conference on Human Rights, 1968, provoked, internationally, provided the shrewd ICRC an opportunity to find common ground among non-state actors especially international NGOs pursuing an agenda of human rights. In 1969, the International Red Cross Conference in its Istanbul declaration proclaimed that "man has the right to enjoy

¹⁴ Jacques Moreillon, "The Fundamental Principles of the Red Cross, Peace and Human Rights," *International Review of the Red Cross*, no.213, (July-August 1980), 171

lasting peace”, to “live a full and satisfactory life” and this “aim can be achieved only if human rights as set forth and defined in the Universal Declaration of Human Rights and the Humanitarian Conventions are respected and observed.¹⁵ It further observed that,

if the ideals of peace and freedom are to be achieved, special attention must be paid to...the principles of human rights and humanism embodied inter alia in the International Red Cross and finding expression in the Geneva Conventions.¹⁶

The ICRC also sent observers to meetings convened by NGOs addressing the problem of weapons and human rights. The ICRC itself formally convened meetings of non-governmental organizations to expressly consult them on the development of the laws of war. These meetings enabled the ICRC and the NGOs to share their experiences with regard to problems in application of the laws of war in the field.¹⁷ These initial meetings served to forge the crucial links of cooperation between the

¹⁵ Report of the XXIst International Conference of the Red Cross, Istanbul, (September 6-13, 1969),101

¹⁶ Report of the XXIst International Conference of the Red Cross, Istanbul, 101

¹⁷“Meeting of NGOs,” *International Review of the Red Cross*, no.129, (December 1971), 651

ICRC, the UN and the NGOs that would enable these actors to work in tandem in addressing the problem of conventional weapons.

The Conference on Human Rights in Teheran had urged the UN Secretary General to study the “the need for additional humanitarian international conventions and rules” and the “steps which could be taken to secure the better application of existing humanitarian international conventions and rules.”¹⁸ These initiatives by other actors in the international system have been interpreted by scholars as providing the ICRC with a working “assumption that any call for a conference would have strong support in the Third World.”¹⁹ It has also been suggested that these resolutions urging the UN Secretary General to undertake studies on the development of the laws of war were conceived by the ICRC as an “organization which has played a crucial role in developing international humanitarian law and in seeing that the law is applied” as “a *threat* to its own position with respect to this body of law.”²⁰

¹⁸ R.R. Baxter, “Conventional Weapons under Legal Prohibitions,” *International Security*, 1, no.3, (1977), 46

¹⁹ W. Hays Parks, “Air War and the Law of War,” *American Forces Law Review*, 32, no.1, (1990), 68

²⁰ Baxter, “Conventional Weapons under Legal Prohibitions,” 46 (italics inserted)

The truth in the observation of these scholars while relevant is a little misplaced. The ICRC in its efforts against weapons of mass destruction had already learned to appreciate the importance of associating with other international organizations such as the League of Nations and its successor the United Nations and its specialized agencies. It had incurred the displeasure of the League of Nations when it had appeared to be uncooperative in addressing the problem of chemical weapons in the war between Ethiopia and Italy. It had realized the investment that superpowers had made in the United Nations and their desire to use it as a forum for addressing the problem of weapons of mass destruction and not the ICRC. Thus, it would have been short-sighted of the ICRC to present itself as an organization competing with the United Nations in addressing the problem of conventional weapons. The wisdom of the ICRC manifests itself when it deliberately constituted a working relationship with the UN and thereby renewed its own legitimacy and acceptance among the nation-states. The ICRC established close cooperation with the United Nations Secretariat and the Human Rights Division as it sought to make further inroads in the development of the laws of war. Observing these developments, Max Petipierre, an ICRC delegate, shrewdly observed that

the, "ICRC is sometimes the agent of the UN due to its ability to "mobilize" quickly."²¹

Thus it came as little surprise to observers of the ICRC when in 1969, it was able to maneuver, the XXIst International Conference of the Red Cross held in Istanbul, Turkey, to pass a resolution XIII for the Reaffirmation and Development of the Laws and Customs Applicable in Armed conflicts. This resolution emphasized:

The necessity and the urgency of reaffirming and developing humanitarian rules of international law applicable in armed conflicts of all kinds, in order to strengthen the effective protection of the fundamental rights of human beings, in keeping with the Geneva Conventions of 1949.²²

This resolution further urged the ICRC to establish cooperation with the UN and other official and private organizations to "harmonize" and "co-

²¹ Max Petipierre, "A Contemporary Look at the ICRC," *International Review of the Red Cross*, no.119, (February 1971), 65

²² Report of the XXIst International Conference of the Red Cross, 98

ordinate” efforts undertaken for this purpose.²³ W. Hays Parks satirically observes, “In short, the ICRC drafted a resolution calling upon itself to convene a conference to review the documents which it had prepared.”²⁴

In order to protect the civilian populations against the effects of hostilities, the ICRC realized that it was “essential to reintroduce into international humanitarian law, without ambiguity, principles concerning the conduct of hostilities which had been laid down at the beginning of this century, at The Hague Conferences in 1899 and 1907, and to develop those principles.”²⁵ To this end, the ICRC submitted a report on the reaffirmation and development of the laws of war and customs applicable in armed conflicts to the Twenty-First International Red Cross Conference in 1969. In this report, the ICRC urged nation-states to abstain from using weapons likely to cause unnecessary suffering; weapons which because of their lack of precision or their effects, affect civilians and combatants in an indiscriminate manner and weapons with uncontrollable harmful effects in time and space by those using them.²⁶ On the basis of this report, the ICRC was able to muster a resolution from the International

²³ Report of the XXIst International Conference of the Red Cross, 99

²⁴ Parks, “Air War and the Law of War,” 68

²⁵ Yves Sandoz, “A New Step Forward in International Law: Prohibitions or Restrictions on the Use of Certain Conventional Weapons,” *International Review of the Red Cross*, no.220, (January-February 1981), 16

²⁶ Sandoz, “A New Step Forward in International Law,” 5

Red Cross conference to continue with its efforts to regulate and prohibit weapons.

International Humanitarian Law

The resolution passed at Istanbul in 1969, empowered the ICRC to convene a Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts in 1971 and 1972 respectively. The documents presented by the ICRC at these meetings proposed that the problem of protection of civilian populations especially against certain types of bombing and against the effects of certain weapons be considered. This proposal generated a dialogue at the plenary meeting among the experts with proposals in support of the view that "humanitarian concern should be directed towards the suppression of weapons" and claims that "reinforcement of protection for possible victims, and particularly the civilian population was essential in view of the way in which weapons had developed; there should be as extensive a defence as possible, and even

complete immunity for the civilian population.”²⁷ However this was not a unanimous view acceptable to all experts as others asserted that the problem of weapons is a disarmament problem and should be addressed at another forum such as the UN. To address this dilemma, that categorized the problem of weapons as a humanitarian or disarmament problem, Yves Sandoz, suggests that the ICRC proposed a compromise formula:

While not inviting the experts to discuss “prohibitions of specific weapons”, so as not to overlap the work of bodies concerned with disarmament, the ICRC thought it possible for them to examine, in addition to general principles, the principles relating to weapons which in any case, *owing to their effects or their lack of precision, might affect the civilian population indiscriminately.*²⁸

Furthermore, the work of the Conference of Government Experts was shared between three different commissions. The Commission for the Protection of Civilian Populations against Dangers of Hostilities,

²⁷ “Conference of Government Experts, Geneva, 24 May-12 June (1),” *International Review of the Red Cross*, no.127, (October 1971), 533, 538.

²⁸ Sandoz, “A New Step Forward in International Law,” 5, (*italics inserted*)

constituted the third commission, and within this commission it was acknowledged that the protection of civilian populations could not be easily segregated from the problem of weapons. In developing a protocol for the protection of the civilian populations, the ICRC suggested that there were three possibilities in affiliating an additional protocol to existing legal instruments.²⁹ First, was with the fourth Geneva Convention of 1949 that provided for the protection of civilian populations within the power of an enemy. Second, the additional protocol could be attached to the Regulations annexed to the Hague Conventions of 1907 (Convention Regulations No. IV). Third, an independent protocol could be legislated. But the participating experts from different countries expressed varying degrees of support for the first and the third possibilities and none registered their consent for annexing the protocol to the Hague Laws. It is therefore not surprising that the ICRC felt compelled to devise a legal instrument that while conceived as additional protocols to the Geneva Laws would re-inscribe the principles enshrined in the Hague Laws as rules.

²⁹ "Conference of Government Experts, Geneva 24 May-12 June, 1971 (II)," *International Review of the Red Cross*, no.128, (November 1971), 590

To wrest the possibility of considering the problem of conventional weapons at an alternative forum, powerful governments once again reiterated their old argument that, the UN was the appropriate forum for addressing the problem of weapons but some other governments suggested that, "those arms that were not specifically examined by these bodies should be considered by the Commission."³⁰ The ICRC did not hesitate to remind the participants that it was only after nineteen governments had submitted a written proposal suggesting that the ICRC should consult experts on the problem of conventional weapons that these expert meetings had been convened.³¹ Both Jean Pictet and A. Naville representing the ICRC at these conferences, emphasized the inadequate provisions existing under the current laws of war to protect civilian populations from the effects of particular weapons and the need for the voice of the Red Cross to be heard in addressing this problem.³² But these initial considerations in the plenary meetings and in the Commission for the Protection of Civilian Populations against Dangers of Hostilities, with their abstract references to development of weapons technology and protection of civilian populations did not result in much progress. The

³⁰ "Conference of Government Experts, Geneva 24 May-12 June, 1971 (II)," 592

³¹ "A Publication of the ICRC," *International Review of the Red Cross*, no.152, (November 1973), 572

³² "Reaffirmation and Development of International Humanitarian Law in Armed Conflicts- Conference of Red Cross Experts, (Geneva 24 May- 12 June 1971)," *International Review of the Red Cross*, no.121, (April 1971), 199-205

studies undertaken at these conferences were heavily criticized by Sweden and a core group of nation-states for having “neglected the question of the use of certain forms of weapons against both the civilian population and military personnel.”³³

For the ICRC the emerging support from Sweden and other middle powers to address the problem of conventional weapons was important and reinvigorated its interest in addressing the problem of weapons. The meeting with government experts had enabled the ICRC to configure that its future efforts in addressing the problem of weapons had to be deliberately focused on conventional weapons per se. To this end, the ICRC made its own position on weapons more defined. In 1973 in the aftermath of these meetings with government experts the ICRC declared:

Problems relating to atomic, bacteriological and chemical weapons have been the subject of international agreement or discussion among governments. The ICRC therefore does not propose to raise them when submitting its draft protocols.

³³ The core group comprised of Sweden, Mexico, Yugoslavia, Austria, Egypt, the Netherlands, Switzerland, and several other medium powers. See Baxter, “Conventional Weapons under Legal Prohibitions,” 46

With regard to weapons known as “conventional” weapons, which inflict unnecessary suffering and indiscriminately strike civilians and combatants alike, the ICRC has, at the request of the second session of the Conference of Government Experts made a study with a view to describing those weapons and their effects...The ICRC is prepared, should the need be felt, to pursue its research in this direction.³⁴

This decision was further fortified by resolution XIV of the XXIInd International Red Cross Conference in Teheran that provided the ICRC with a mandate to:

study in depth the question of prohibition or restriction of the use of conventional weapons which may cause unnecessary suffering or have indiscriminate effects, and to transmit a report on the work of the conference to all governments

³⁴ “Draft Additional Protocols to the Geneva Conventions- Brief Summary,” *International Review of the Red Cross*, no.151, (October 1973), 508

participating in the Diplomatic Conference on Humanitarian Law held in Geneva, with a view to assisting them in their further deliberations.³⁵

The passage of this resolution was possible only through a mediated settlement between the representatives of the US and Sweden.³⁶ The ICRC having thus decided that the path ahead lay in the regulation and prohibition of conventional weapons appeared content to make preparations for the diplomatic Conference for the Reaffirmation and Development of International Humanitarian Law. W. Hays Parks suggests that the "ICRC had developed the term "international humanitarian law applicable in armed conflicts" to supplant the traditional *law of war*."³⁷ The ICRC had also shrewdly inserted the word "humanitarian" as a key concept in the title of this conference.³⁸ The powerful resonance of "humanitarianism" as a concept to be deployed in the consideration and development of the law of war by the ICRC was interpreted as a political

³⁵ "Conference of Government Experts on Weapons which may cause Unnecessary Suffering or have Indiscriminate Effects," *International Review of the Red Cross*, no.159, (June 1974), 289

³⁶ F. Kalshoven, "Conventional Weaponry: The Law from St. Petersburg to Lucerne and Beyond," in *Armed Conflict and the New Law: Aspects of the 1977 Geneva Protocols and the 1981 Weapons Convention*, ed. by Michael A. Meyer, (London: British Institute of International & Comparative Law), 257

³⁷ Parks, "Air War and the Law of War," 72, footnote 245

³⁸ Parks, "Air War and the Law of War," 72, footnote 245

exercise by other actors in the international system. This can be gauged by a comment made by W. Hays Parks:

The ICRC borrowed a page from the Marxist-Leninist lexicon in adding the term “humanitarian”, as it suggests that anyone who opposes adoption of the rules under consideration is anti-humanitarian.³⁹

This observation makes one appreciate the significance of the word “humanitarian” in the development of the laws of war. It demonstrates the strong ideological differences between the superpowers and a global political climate within which the ICRC had to operate without getting stigmatized. The ICRC was quietly acting upon the strategic recommendations made by independent experts in 1965. By inserting the word “humanitarian” ICRC sought to give greater visibility to humanitarian considerations vis-à-vis military considerations in the reaffirmation and development of the laws of war and stave off any ideological differences that could jeopardize this effort.

³⁹ Parks, “Air War and the Law of War,” 72, footnote 245

Principles and Rules

The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law in Armed Conflict took place in four annual sessions from 1974-1977 in Geneva. In the opening session of this conference itself, an "intimate connexion" in the work of the reaffirmation and development of the laws of war undertaken by the ICRC and supported by the United Nations, was observed by V. Winspeare Guicciardi, Director General of the United Nations office in Geneva.⁴⁰ He stated that, "This growing convergence of our respective efforts is true in the field of disarmament and in the limitation or prohibition of the use of weapons."⁴¹ This "intimate connexion" manifested itself in the form of an ad-hoc committee on conventional weapons. It is significant to note that this committee never acquired the full status comparable to other deliberating commissions during the duration of this conference and continued its work only in this limited capacity.

⁴⁰ "Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict," *International Review of the Red Cross*, no.156, (March 1974), 127

⁴¹ "Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflict," 127

To facilitate the work of the ad hoc committee on conventional weapons, the ICRC convened two experts meetings at Lucerne and Lugano in 1973 and 1974 respectively. ICRC's efforts at organizing these expert meetings to address the problem of weapons were now being spoken of as "its usual procedure" in the scholarly and diplomatic communities.⁴² The experts participating in these meetings were often referred to in the ICRC literature as "Red Cross experts" and the ICRC itself did not hesitate from declaring that it participates in these meetings in "an expert capacity."⁴³ This practice of labeling itself as an expert presents a striking development in a humanitarian actor that had been at pains to prove its competence as discussed in the previous chapter.

In order to convene an expert meeting at Lucerne itself, the ICRC sought financial contributions equivalent to 500,00 and 750,000 Swiss francs respectively from governments participating in the diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law.⁴⁴ Furthermore, the ICRC appeared to enjoy the tacit support of great powers that "believe the drafting and consultative efforts by the ICRC are

⁴² Baxter, "Humanitarian Law or Humanitarian Politics?" 24

⁴³ "Diplomatic Conference-Summary of the Fourth Sessions Work," *International Review of the Red Cross*, no.196, (July 1977), 118

⁴⁴ Report on Conference of Government Experts on the Use of Certain Conventional Weapons-Second Session- Lugano, 28.1-26.2.1976, (Geneva: International Committee of the Red Cross, 1976), 3

productive in formulating “new international law” as it is “isolated from the pressures that plague the UN Secretariat.”⁴⁵ These observations show that an element of routinisation and normalization had crept into the practices of the ICRC that was increasingly acceptable to other actors in the international system as it addressed the problem of weapons and laws of war.

In convening these meetings, the ICRC acknowledged that the “the question of invitations” to these expert meetings “is of a highly political character”⁴⁶ It tried to address this problem diplomatically by suggesting that its initiative in organizing these meetings stemmed both from the Diplomatic Conference and the International Red Cross Conference. This was followed up by a consultative process with governments resulting in a majority decision to avoid any disruption of proceedings at the meetings. But at the same time, the ICRC did not hesitate from exercising its own initiative in inviting representatives of NGOs to observe the proceedings of these meetings. The official title of these expert meetings was simply “Conference of Government Experts on the Use of Conventional

⁴⁵ David P. Forsythe, “The 1974 Diplomatic Conference on Humanitarian Law: Some Observations,” *American Journal of International Law*, 69, no.77, (1975), 69. Also see footnote 19-George Aldrich, *Human Rights in Armed Conflict: Development of the Law*, Department of State Bulletin, No.68, 1973, pp.876-877

⁴⁶ “Conference of Government Experts on Weapons which may cause Unnecessary Suffering or have Indiscriminate Effects,” *International Review of the Red Cross*, no.159, (June 1974), 291

Weapons” but in the ICRC literature, following the language of resolution XIV adopted at the XXIIInd International Conference at Teheran, these expert conferences were often referred to as “Conference of Government Experts on Weapons which may cause Unnecessary Suffering or have Indiscriminate Effects.” At the same time, to off-set the efforts of some nation-states to represent the problem of “conventional weapons” as a military problem, it became common practice among the ICRC and other actors in the international system to refer to the weapons under study as no longer simply conventional but “inhumane weapons.”⁴⁷ This was a strategic attempt by the ICRC and other actors to initiate the constitution of a parallel language that could be used to stigmatize particular conventional weapons in a language of humanitarianism that could be deployed by both state and non-state actors.

Furthermore, the rules of procedure, especially rule no.8 for these expert meetings emphasized that the experts,

⁴⁷ Eric Prokosch, “Trends in Fragmentation Weapons,” *International Review of the Red Cross*, no.177, December 1975, 608

study in depth, *from the humanitarian standpoint*, the question of the prohibition or limitation of the use of conventional weapons that may cause needless suffering or have indiscriminate effects; the conference shall therefore abstain from any discussion of a controversial or political nature.⁴⁸

The humanitarian focus in these discussions was to be carried further with a discussion and analyses of proposed “legal criteria” for the prohibition or restriction of the use of certain conventional weapons.⁴⁹ A compromise between the existing principles of “military necessity” and “unnecessary suffering” was an acknowledged route to determining the legal criteria for the laws of war but the methods and means of applying these principles in practice was ambiguous. In determining the legal criteria, ICRC President Eric Martin, was explicit in voicing a particular demand:

Today, it is no longer enough to proclaim that the right of belligerents to adopt means of injuring the enemy is limited

⁴⁸ “Conference of Government Experts on Weapons which may cause Unnecessary Suffering or have Indiscriminate Effects,” 291-292 (italics inserted)

⁴⁹ Conference of Government Experts on Weapons which may cause Unnecessary Suffering or have Indiscriminate Effects,” 292

and that they have to abstain from using weapons which are unnecessarily cruel or which, by their very nature, are equally dangerous for civilians and combatants. Over and above these general principles, the international community demands that strict *rules* should be laid down setting forth unequivocally what weapons are covered by those principles.⁵⁰

Thus in developing international laws of armed conflict the ICRC's emphasis was on articulating humanitarian principles as precise legal rules that could be applied for the purpose of regulating and prohibiting the use of particular weapons in particular situations. In this context, it is pertinent to heed David Kennedy's observation that in undertaking this exercise as a "broad political process" there is a dangerous possibility that "narrowly drawn rules permit a great deal and legitimate what is permitted."⁵¹ In the context of weapons, this can result in rules prohibiting only the use of those weapons that are no longer of any use, weapons that could be too prohibitively expensive, or weapons that could be potent tools in the hands of enemies. These rules can become part of a

⁵⁰ "Conference of Government Experts on Weapons which may cause Unnecessary Suffering or have Indiscriminate Effects," 541, (*italics inserted*)

⁵¹ Kennedy, *Of Law and War*, 86, 97

broad ethical discourse with a persuasive “vocabulary for arguing about the legitimacy and illegitimacy of military conduct common to those inside and outside the military profession.”⁵²

But in order for these rules to be considered as constituting a persuasive ethical framework it is important that these rules be validated. The task of validation is possible only if these rules are negotiated.⁵³ This involves a negotiated balancing exercise between military effects vis-à-vis medical effects to cover the panoply of particular conventional weapons short-listed by the experts. These included, incendiary weapons (with particular regard to napalm), small caliber projectiles, blast and fragmentation weapons, delayed action and perfidious weapons, potential weapons developments. In preparing this list of conventional weapons, the contribution of the ICRC cannot be easily ignored. The ICRC’s 1955 proposal in the form of Draft Rules for the Protection of Civilian Population had included a specific list of conventional weapons with uncontrollable effects. In this category it had included the problem of recording placement of landmines and sharing this information after a

⁵² Kennedy, *Of Law and War*, 86

⁵³ Kennedy, *Of Law and War*, 97

conflict with the contending parties.⁵⁴ Fritz Kalshoven recalls a 1967, ICRC memorandum sent to all governments questioning the indiscriminate nature and unnecessary suffering caused by the use of napalm and high velocity rockets against civilian populations.⁵⁵ Similarly in 1969 the problem of fragmentation bombs, flechettes, and in 1971 new types of rifle ammunition and mines were added to list of growing anti-personnel weapons by the ICRC. These past measures by the ICRC and the draft documents submitted by it to the experts at Lucerne and Lugano made it easy to compile a list of conventional weapons to be addressed. But since the Additional Protocols were “not to contain a single formal prohibition concerning a specific weapon” the ICRC was acutely conscious that “even more importance must be attached to the development of general principles as rules,” particularly the principles of unnecessary suffering and military necessity.⁵⁶

⁵⁴ Stuart Maslen, “The Role of the International Committee of the Red Cross,” in *To Walk Without Fear-The Global Movement to Ban Landmines*, ed. by Maxwell A. Cameron, et al., (Oxford: Oxford University Press, 1998), 82

⁵⁵ Kalshoven, “Conventional Weaponry,” 255

⁵⁶ Yves Sandoz et al., ed *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, (Geneva: ICRC & Martinus Nijhoff Publishers, 1987), 394

Effects Based Approach to Weapons

At the expert meetings, for ascertaining, legal criteria for the regulation and prohibition of weapons, a paper offering strong arguments for an effects based approach to weapons was mentioned in Annex 4 of the documents distributed at the Lucerne conference. This paper was an independent contribution by Colonel David Hughes-Morgan on "Legal criteria for the Prohibition or Restriction of Use of Categories of Conventional Weapons" and is also referred to as simply the "British paper."⁵⁷ This paper makes a distinction between a traditional and an effects-based approach to weapons. A traditional ban on the "use of a specific weapon or projectile necessarily" involved "a description of the weapon or projectile concerned."⁵⁸ This would result in a more specific prohibition encouraging,

the possibility of lawful circumvention of the rule. A detailed prohibition on a specific weapon which is militarily effective

⁵⁷ Conference of Government Experts on the Use of Certain Conventional Weapons, Lucerne, 24.9-18.10.1974, (Geneva: International Committee of the Red Cross, 1975), 7-10 ; Kalshoven, "Conventional Weaponry," 258-259. See footnote 14, explaining "along with other documents distributed at the Conference, Sir. David's paper was merely mentioned in the list of such documents, included as Annex 4 to the Report."

⁵⁸ Kalshoven, "Conventional Weaponry," 258-259

may well challenge technologists to devise a weapon having the same effect but whose characteristics are not caught by the prohibition.⁵⁹

In contrast to this traditional approach, Colonel David Hughes Morgan suggested drafting prohibitions “with reference to the effects resulting from the use” of weapons. He argued that an effects-based prohibition, “is not only valid as a prohibition in itself, but is likely to contain the criteria by which future prohibitions on specific weapons ought to be judged.”⁶⁰ Furthermore he considered it desirable to develop a “standard of comparison by which it can be determined whether injury is caused unnecessarily.”⁶¹ It has been observed by Frits Kalshoven, a rapporteur at these expert meetings, that the opening debate among the experts “profited” greatly from this classification of the traditional and effects based approaches to regulate and ban weapons.⁶²

⁵⁹ Kalshoven, “Conventional Weaponry,” 258-259 See footnote 14, explaining “along with other documents distributed at the Conference, Sir. David’s paper was merely mentioned in the list of such documents, included as Annex 4 to the Report.”

⁶⁰ Kalshoven, “Conventional Weaponry,” 258-259.

⁶¹ Kalshoven, “Conventional Weaponry,” 258-259.

⁶² Kalshoven, “Conventional Weaponry,” 258

But in both these approaches it was important to ascertain legal criteria that could establish a balance between the military value and effects of a weapon vis-à-vis the medical effects of a weapon on a victim. In other words, assessment of the military value and effects of a weapon would include analyses of the functional interrelationship of a particular weapon with other weapons and weapon systems, alternatives to the weapons under study and the effects of such alternatives. To interpret military necessity in terms of particular applications of weapons and their effects, related concepts such as “antipersonnel” and “antimaterial” weapons, as well “point weapons” and “area weapons” had also to be configured.⁶³ On the other hand assessment of the medical effects of a weapon would include a study of the suffering or injury inflicted on a victim. The experts found it difficult to conceptualize and define suffering in quantitative terms. Concepts closely associated with suffering such as pain and injury too were considered as possible substitutes. The problem with the concept of pain was that it had to be interpreted in both physical and psychological terms. Psychological pain, largely of a subjective character could not be as easily quantified as physical pain, and an argument that “the relief of pain certainly does not relieve the suffering”

⁶³ Report on the Work of Experts- Weapons that may cause Unnecessary Suffering or have Indiscriminate Effects, (Geneva: International Committee of the Red Cross, 1973), 23

could not be denied.⁶⁴ The concept of injury was found to be more relevant as it could be assessed in terms of mortality rate, degree of pain or severity of wounds and the incidence of permanent damage or disfigurement. The experts suggested that the concept of "injury" should act as a substitute in assessment of legal criteria for unnecessary suffering.⁶⁵ But these reflections by the experts failed to generate any clear understanding to questions such as "what suffering should be considered necessary?" and "how much injury is required to disable an enemy soldier?"⁶⁶

To answer the above questions, the principle of proportionality was considered to be a key to calculate the military effectiveness of a weapon vis-à-vis unnecessary suffering. David Kennedy suggests that, "the idea of proportionality -or necessity- encourages a kind of strategy, and ethic, by metaphor: the metaphor of weighing and balancing."⁶⁷ The argument that, "a weapon which in practice is found *inevitably* to cause injury or suffering *disproportionate* to its military effectiveness would be held to

⁶⁴ R. Scott, "Unnecessary Suffering? A Medical View," in *Armed Conflict and the New Law: Aspects of the 1977 Geneva Protocols and the 1981 Weapons Convention*, ed. by Michael A. Meyer, (London: British Institute of International & Comparative Law, 1989), 277

⁶⁵ Scott, "Unnecessary Suffering? A Medical View," 277

⁶⁶ Kalshoven, "Conventional Weaponry," 261

⁶⁷ Kennedy, *Of Law and War*, 143

contravene the prohibition" was not acceptable to everyone.⁶⁸ Objections were expressed to the use of words such as "inevitably" and "disproportionate" that seemed to put a "premium on weapons" by implying that, "if a weapon is very effective from a military point of view, then the degree of suffering that would be acceptable would be proportionally high."⁶⁹ It was argued that an argument based on proportionality to assess military effectiveness and unnecessary suffering would go further than customary international law that constrains the military effectiveness of a weapon to rendering a combatant hors de combat.

The assessment of military and medical effects of particular conventional weapons generated substantial data on military and medical effects of these weapons but no agreements was reached on how to determine what was "unnecessary suffering" or how to interpret "military necessity." Several interpretations of military necessity were available that generally defined it as "the right to apply that amount and kind of force which is necessary to compel the submission of the enemy with the least possible

⁶⁸ Kalshoven, "Conventional Weaponry," 259-260, (italics inserted)

⁶⁹ Kalshoven, "Conventional Weaponry," 260

expenditure of time, life and money.”⁷⁰ Others showed a willingness to accommodate a “certain degree of freedom of judgment” to be exercised on the battlefield by a practitioner but insisted that, “it can never justify a degree of violence which exceeds the level which is strictly necessary to ensure the success of a particular operation in a particular case.”⁷¹ Yet others along with the ICRC insisted that military necessity must be bound by the dictates of public conscience.

On the principle of unnecessary suffering a “Statement Concerning Unnecessary Suffering Presented by the Informal Working Group of Medical Experts” concluded:

From a strictly medical standpoint it seems impossible at the present stage of medical knowledge to objectively define suffering or to give absolute values permitting comparisons between human individuals...

It was the opinion of all medical experts that instead of ‘suffering’, *the wound or injury caused by a weapon* offered a

⁷⁰ Sandoz, Commentary on the Additional Protocols, 396

⁷¹ Sandoz, Commentary on the Additional Protocols, 396

better but still very complex way of defining the effect of that particular weapon...it seemed to the medical experts preferable to use *injury instead of suffering*.⁷²

These attempts by experts to negotiate the meanings of concepts such as military necessity and unnecessary suffering demonstrate an interesting exercise described as “lawfare” by David Kennedy.⁷³ Lawfare is a concept used to describe practices of experts engaged in “managing law and war together.”⁷⁴ In this process where law serves as a vocabulary for power, to determine “what is a proportional, necessary or legitimate application of military force” a comforting legal illusion grows that merges legal and political vocabularies making “military effectiveness or market efficiency...both a legal standard and a policy objective.”⁷⁵ Furthermore, the question of responsibility itself becomes not a matter of experience but induces an “escape from the experience of decision to the idea that those evaluating targets are exercising judgment.”⁷⁶ The word “necessity”

⁷² Sandoz, *Commentary on the Additional Protocols* 408 (italics inserted)

⁷³ Kennedy, *Of Law & War*, 32. Lawfare-managing law and war together-requires a strategic assessment about the solidity of the boundary between war and peace all the time, insisting on the absolute privilege to kill or the inviolability of those outside combat when it seems more advantageous than an assessment of proportionality and vice versa.

⁷⁴ Kennedy, *Of Law & War*, 32

⁷⁵ Kennedy, “Speaking Law to Power: International Law and Foreign Policy,” *Wisconsin International Law Journal*, 23, no.173, (2005), 178

⁷⁶ Kennedy, “Speaking Law to Power,” 180

becomes the fulcrum of “the limit of legality.”⁷⁷ It is used as a *suffix* to military action by advocates of the military standpoint and contrarily it is used by advocates of a medical and humanitarian standpoint as a *prefix* to suffering. The violence embedded in the practices of description and classification of victims as combatants and civilians and the description and classification of sufferings endured by the victims as unnecessary, indiscriminate or excessively cruel did not seem to engage the attention of the experts interested in articulating precise descriptions and definitions of particular conventional weapons.⁷⁸

Furthermore, to produce effects-based data for particular weapons, the organizers took the help of Swiss military facilities to organize on-site field tests and even displayed soap models riddled with bullets. Jean Pictet of the ICRC’s proposed that “...if two or more weapons would be available which would offer equal capacity to overcome...an adversary, the weapons which could be expected to inflict the least injury ought to be employed” were considered simplistic and abstract.⁷⁹ But the difficulties of applying these abstract formulas in concrete situations led

⁷⁷ Sandoz, *Commentary on the Additional Protocols*, 396

⁷⁸ Yves Sandoz, “A New Step Forward in International Law: Prohibitions or Restrictions on the Use of Certain Conventional Weapons,” *International Review of the Red Cross*, no.220, (January-February 1981), 13, 17

⁷⁹ Kalshoven, “Conventional Weaponry,” 261

other actors to castigate the proposals and practices of the ICRC in no uncertain terms. W. Hays Parks a representative in the US delegation claimed,

While members of the ICRC have considerable experience carrying out their humanitarian missions in areas of armed conflict, often times at great personal risk, their experience nonetheless remains that of an observer rather than a participant. They have no experience in decision making in the heat of battle or the fog of war. This affects both their ability and credibility to deal with those portions of the law of war relating to the conduct of hostilities, and frequently is manifested in proposals offered by the ICRC.⁸⁰

Observing the process of determining the effects of particular weapons, Eric Prokosch, suggests that there was tendency among the contending experts from different countries to debunk the definitions and figures offered by each group, insist on technical details demanding military precision. Furthermore the fact that different tests produced different

⁸⁰ Parks, "Air War and the Law of War," footnote 67

results confounded and detracted attention from the terrible effects of these weapons on the victims.⁸¹ But for the ICRC the path forward was abundantly obvious. In a growing voice of confidence, ICRC representative, Jean Pictet claimed:

The ICRC is of the opinion that considerations of caliber, the muzzle velocity and even other manufacturing characteristics may not suffice, but that it will be necessary, above all, *to concentrate on the particularly dangerous effects that these munitions have on the human body. In fact, the main thing to be avoided is the effects.*⁸²

Notwithstanding the ICRC's more articulate vision on an effects based approach to weapons, the expert meetings were able to generate only some agreement on proposals to ban the use of weapons whose main effect was to injure by fragments undetectable by the X-rays; to undertake further studies on the effects of small-calibre projectiles and future weapons; to record the location of minefields and impose restrictions on the use of

⁸¹ Eric Prokosch, *The Technology of Killing- A Military and Political History of Anti-Personnel Weapons*, (London & New Jersey: Zed Books, 1995), 149-160

⁸² "Conference of Government Experts on Weapons," *International Review of the Red Cross*, no.181, (April 197), 189, (italics inserted)

scatterable or remotely delivered mines; to prohibit incendiary attacks against civilian areas, and against military objectives within such areas unless suitable precautions were taken.

The problem of incendiary weapons had to some extent been addressed in the form of special reports by the UN Secretary General and SIPRI.⁸³ The UN General Assembly also passed several resolutions supporting the findings of the UN Secretary General on napalm and other incendiary weapons. The ICRC reports on "Weapons that may cause Unnecessary Suffering or have Indiscriminate Effects" concluded that they are:

likely to facilitate substantive disarmament negotiations with a view to the elimination of production, stockpiling and proliferation of the weapons in question, which should be the ultimate objective.⁸⁴

⁸³ *Incendiary Weapons-A SIPRI Monograph*, (Stockholm, Sweden & London, England: Almqvist & Wiksell, The MIT Press, 1975); *Napalm and Other Incendiary Weapons and all Aspects of their Possible Use*, Report of the Secretary-General, 1973, A/8803/Rev.1. New York; *Napalm and Other Incendiary Weapons and all Aspects of their Possible Use*, Report of the Secretary-General, 1973, A/9207. New York

⁸⁴ UN General Assembly Resolution 3076 (XXVIII), *Napalm and other Incendiary Weapons and All Aspects of their Possible Use*, "Two UN Resolutions of Direct Interest to the ICRC", *International Review of the Red Cross*, No.155, February 1974, p.90; UN General Assembly Resolution 3255 A (XXIX), Resolution 3255 B (XXIX) *Napalm and other Incendiary Weapons and*

However, this general observation did not confirm to the observations of the ICRC at the expert meetings. These meetings persuaded the ICRC to believe that efforts to regulate the use of napalm, could restrict its use against civilian populations and on military objectives located within a concentration of civilians but total prohibition against their use was impossible to achieve despite their ability to inflict "extremely cruel burns" on both civilians and combatants.⁸⁵ The ICRC wanted the reports prepared by the experts under its auspices to be interpreted as "a part of a series of studies undertaken by the UN and other institutions on the subject of weapons."⁸⁶ It wanted its efforts to be interpreted as complementing and supplementing efforts of other actors in the international system.

The complexity of the subject matter and the contending national interests did not deter Jean Pictet of the ICRC to observe at the concluding session of the expert meetings that he was "convinced that a diplomatic

all Aspects of their Possible Use , "Four UN Resolutions of Direct Interest to the ICRC", *International Review of the Red Cross*, no. 166, (January 1975), 41-48,..

⁸⁵ Sandoz, "A New Step Forward in International Law," 13-14

⁸⁶ "Four UN Resolutions of Direct Interest to the ICRC," 41

instrument on weapons will one day be a reality.”⁸⁷ The ICRC had committed a decade’s worth of effort in organizing preparatory meetings, expert meetings and diplomatic conference proceedings to achieve this confidence. *The International Review of the Red Cross*, a journal published by the ICRC had spared no effort to inform and educate its readers of the developments at these meetings and conferences, resolutions passed by the UN that were complimentary to the efforts made by the ICRC. It discreetly refrained from identifying particular nation-states as they took different positions in the conference. However, it selectively chose to publish book reviews and articles of authors, like Erick Prokosch, Pertti Joenniemi, detailing the effects of weapons under discussion at the conference and publicly advocating a ban on particular conventional weapons.⁸⁸

At the final plenary session of the diplomatic conference, ICRC President, Alexander, Hay, had no compunction in reminding the conference delegates of the enormous amount of time and effort that his organization had devoted to making the work of this conference feasible. On behalf of

⁸⁷ “Conference of Government Experts,” *International Review of the Red Cross*, no.181, (April 1976), 88

⁸⁸ Eric Prokosch, “Trends in Fragmentation Weapons,” *International Review of the Red Cross*, no. 177, (December 1975), 607-610; “Conventional Weapons,” *International Review of the Red Cross*, no.191, (February 1977), 92-93

the ICRC, he took credit for encouraging actors living in a divided world to "speak the same language" of humanitarianism and suggested that at least a resolution offering a follow-up action would be desirable.⁸⁹ The suggestion of a resolution was a tactical move on the part of the ICRC as it was aware that the rhetorical argument offered by powerful nation-states that this conference was not the forum to pursue disarmament would once again be played out. However, the fact that this conference had addressed the problem of weapons at length, and provided the necessary groundwork for a Conference on Conventional Weapons (1980) to be convened by the United Nations, could not be denied or ignored.

Throughout the process of reaffirmation and development of international humanitarian law the ICRC and the UN worked in close cooperation with each other. The ICRC undertook the organization of expert meetings and participated actively in the drafting of the legal texts. It showed respect towards the UN as it took note of the reports drafted by the Secretary General in preparing the documentary material for these conferences. The United Nations Secretary General too affirmed that the UN's interest in the development of the laws of war was limited to strengthening these

⁸⁹ "Diplomatic Conference-Summary of the Fourth Sessions Work," *International Review of the Red Cross*, no.196, (July 1977), 339

laws and that it did not seek to establish any monopoly or dual systems of law but welcomed the efforts of more accomplished actors in this process such as the ICRC.⁹⁰ The ICRC too demonstrated some modesty when it claimed to be hesitant in accepting the mantle of a “specialist” in providing assistance to war victims.⁹¹ It did not hesitate from accepting the mantle of being a self-proclaimed guardian of international humanitarian law. The ICRC no longer hesitated in offering a subtle critique, that in providing relief to the victims, it had come to accept several responsibilities that were increasingly being considered by other actors as its “regular, quasi-mandatory functions” but which provided governments with a pretext to absolve themselves from taking further action.⁹² Thus both the UN Secretary General’s secretariat and the ICRC had become savvy to multiple pressures that politicking of nation-states exercised and both considered it mutually beneficial to work with each other.

The inclusion of a section on Methods and Means of Warfare in Protocol I of the Additional Protocols to the Geneva Conventions has enabled the

⁹⁰ “Conference of Government Experts, Geneva 24 May-12 June, 1971 (II),” 601

⁹¹ “XXIst International Conference of the Red Cross- Opening Session Speeches,” *International Review of the Red Cross*, no.106, (January 1970), 7

⁹² “XXIst International Conference of the Red Cross- Opening Session Speeches,” 7

ICRC to perpetuate the myth that it is only interested in the development of international humanitarian law and not ACD. This makes it possible for the ICRC to insist that:

The words “methods and means” include weapons in the widest sense, as well as the way in which they are used. The use that is made of a weapon can be unlawful in itself, or it can be unlawful only under certain conditions. For example, poison is unlawful in itself, as would be any weapon which would, by its very nature, be so imprecise that it would inevitably cause indiscriminate damage. It would automatically fall under the prohibition of Article 57 (Precautions in attack), paragraph 2 (a) (ii). However, a weapon that can be used with precision can also be abusively used against the civilian population. In this case, it is not the weapons which is prohibited, but the method or the way in which it is used.⁹³

⁹³ Sandoz, *Commentary on the Additional Protocols*, 410

However, it is difficult for observers of the ICRC's engagement with the problem of weapons to accept that the actor is not engaged with the problem of ACD. To quote, W. Hays Parks, "Notwithstanding attempts by some to characterize Protocol I as a humanitarian agreement, those articles that affect the conduct of hostilities are as much an arms control agreement as they are law of war provisions."⁹⁴ In fact participants at the diplomatic conference itself have repeatedly offered the following argument,

Inferior military powers in the isolated role of a neutral or non-aligned nation regarded the "humanitarian" law movement as another vehicle for the conventional disarmament of the superpowers...Rather than confront the superpowers in overt disarmament negotiations, these advocates pursued their objective through less-publicized negotiations updating the law of war.⁹⁵

⁹⁴ Parks, "Air War and the Law of War," 103

⁹⁵ Parks, "Air War and the Law of War," 81

While the last observation specifically refers to nation-states, one cannot ignore the fact the same sentiment has long been shared by the ICRC.

Divisive Myths on IHL and ACD

By addressing the problem of conventional weapons under the rubric of affirming the principles of IHL, the ICRC also sought to perpetuate a myth distinguishing between IHL as a field of activity distinctly different and segregated from practices of ACD. This practice is questionable both in terms of theory and practice. W. Hays Parks observation that, "Disarmament and the law of war are simultaneously similar and dissimilar, and the dissimilarities would later operate to the disadvantage of advancement of the law of war in the 1977 Protocols" is acutely relevant in this context.⁹⁶ A decade after the adoption of the Additional Protocols the ICRC observed that among the permanent members of the Security Council, only China ratified both the protocols and France only Protocol I. Only sixty-seven nation-states became party to Protocol I and sixty- one to Protocol II. W. Hays Parks makes little effort to spell out similarities and differences between laws of war and ACD. The reports

⁹⁶ Parks, "Air War and the Law of War," 64

from expert meetings dwell at length on this problem, demonstrating the difficulties and lack of agreement among the participants on how to demarcate specific boundaries on spaces occupied by IHL and ACD.

To ensure that the problem of weapons, could be addressed by a diplomatic conference expressly convened to address the problem of developing laws of war from a humanitarian perspective, it was necessary to suggest a point of departure for a humanitarian approach to weapons. It was suggested by some experts that “the question of the use of particular weapons” should serve as this point of demarcation and other considerations such as elimination of development, production and stockpiling of weapons that constitute a gamut of disarmament issues could be relegated to a disarmament forum.⁹⁷ The exclusive emphasis on the use of a weapon was necessary from a humanitarian perspective because the humanitarian principle prohibiting indiscriminateness in the use of a weapon unlike the principle of unnecessary suffering was not explicitly stated in any international legal instrument. Thus “the method of use of a weapon, rather than its properties, would in general be the

⁹⁷ Report on the Work of Experts, Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects, (Geneva: International Committee of the Red Cross, 1973),11

decisive element in determining whether the requirement of discrimination had been violated.”⁹⁸

These practical considerations made it imperative to focus on use of weapons but did not persuade those who believed that “to achieve mere restrictions on use rather than complete bans would amount to a distortion of the humanitarian objectives of the Conference.”⁹⁹ It was hoped that “*prohibitions solely on the use* of a given weapon could, provided they were complete bans, exert a moral pressure on arms producers to stop manufacturing the weapon in question.”¹⁰⁰ The pragmatic ICRC was content to argue that by developing and affirming IHL it was able to keep the problem of conventional weapons on the conference’s agenda. In the long run, this emphasis on the use of a weapon, provided the ICRC with a rationale to claim that its engagement with the problem of weapons could not be interpreted as practices of ACD, but as engagement with the reaffirmation and development of IHL. Thus, by not engaging in ACD, the ICRC’s practices were not to be interpreted as a threat to national security considerations of nation-states. By developing international humanitarian

⁹⁸ Conference of Government Experts on the Use of Certain Conventional Weapons, Lucerne, 24.9-18.10.1974, (Geneva: International Committee of the Red Cross, 1975), 10

⁹⁹ Conference of Government Experts on the Use of Certain Conventional Weapons, Second Session-Lugano, 28.1-26.2.1976, (Geneva: International Committee of the Red Cross, 1976), 7

¹⁰⁰ Conference of Government Experts – Lugano, 5 (italics inserted)

law it was merely educating states on legitimate and illegitimate use of weapons.

Internal Reflections

The quick succession of the conference to develop and reaffirm international humanitarian law with the United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (henceforth referred to simply as the CCW) engendered a debate within the ICRC on the relationship between international humanitarian law, ACD. Alexander Hay as President of the ICRC addressed this problem at the Twenty-Fourth International Red Cross Conference in Manila in 1981. Alexander Hay observed that, "the Red Cross movement cannot hold itself aloof from the humanitarian problems raised by the armaments race, by the massive delivery of arms

throughout the world; nor can it ignore the difficulties that assail those who work for disarmament.”¹⁰¹

In undertaking measures that were more than pious appeals, Hay identifies two particular difficulties in this context.¹⁰² First, is the need for specialization to address some of the technical problems in disarmament. The lack of in-house expertise within the ICRC compels the actor to engage external specialized experts for investigation purposes that might not produce tangible results. This is too expensive for an organization like the ICRC engaged in a wide array of activities. Second, is the problem of procedure that hinders achievement of disarmament as no two states are agreed on how to achieve it. The significance of this observation is that it implicitly demonstrates the shrewdness of ICRC practices in constituting a procedure to address the problem of conventional weapons. It is the problem of procedure that in the words of the ICRC President that make “it impossible for us to take specific positions on procedures to be adopted for disarmament without trespassing on the political field and so deviating from the fundamental

¹⁰¹ “Address by Mr. Alexander Hay, President of the ICRC, at the opening meeting of the Twenty-Fourth International Red Cross Conference,” *International Review of the Red Cross*, no. 226, (January-February, 1982), 15

¹⁰² Parks, “Air War and the Law of War,” 1-225

principles of the Red Cross” any violation of which can shatter the unity of the movement.¹⁰³

It is thus convenient for the ICRC to represent the practices of regulation and prohibition of weapons as belonging to “two branches of international law, disarmament law and international humanitarian law applicable in armed conflicts. This dual relationship is not unimportant, since each of these laws approaches problems differently.”¹⁰⁴ The differences in approach are explained by Yves Sandoz, a former Assistant Director of the Department of Principles and Law within the ICRC, in the following manner.¹⁰⁵ The disarmament approach factors in considerations of problems of security understood in terms of balance of forces maintained by the competing nation-states. It further takes note of not simply the use of a weapon but also matters concerning manufacture, sale or purchase and storage of weapons. In contrast, the humanitarian approach in its attempt to “humanize war” cannot disregard security considerations but as it is “by its nature subsidiary, operating only when the law prohibiting the use of force has failed to fulfill its role, international humanitarian law

¹⁰³ Address by Mr. Alexander Hay, President of the ICRC, 15

¹⁰⁴ Sandoz, “A New Step Forward in International Law,” 7

¹⁰⁵ Sandoz, “A New Step Forward in International Law,” 7

cannot claim to be a substitute for the other.”¹⁰⁶ As such the humanitarian approach is “modest” in its objectives as it seeks to secure provisions that are inclusive of humanitarian interest shared by all nation-states while not excluding particular nation-states because of their military interests. Given this approach, to the problem of weapons, Yves Sandoz observes that it is unlikely for the ICRC to expect that:

States will accept, as part of international humanitarian law, the prohibition of weapons of strategic importance which bedevil all discussions on disarmament. On the other hand, there are some weapons the possession of which does not materially affect the balance of forces in the world, and which are not essential from the military viewpoint, but whose effects are particularly cruel or cause extensive damage without military justification.¹⁰⁷

Yves Sandoz argues that understanding the limits of the agenda that the ICRC can pursue with regard to addressing the problem of weapons with

¹⁰⁶ Sandoz, “A New Step Forward in International Law,” 7

¹⁰⁷ Sandoz, “A New Step Forward in International Law,” 7

international humanitarian law should not be interpreted as useful only for “prohibiting useless weapons.”¹⁰⁸ On the contrary, “if the only effect of international humanitarian law on armed conflicts were to prevent any use of force not strictly justified by military necessity, it would still save a great many lives and much suffering.”¹⁰⁹ In an effort to show that the ICRC has not entirely conceded defeat to the logic of military necessity, Yves Sandoz refers to the “sacrifice” that governments have made in balancing military necessity to the humanitarian principle of protection of civilian populations as embodied in the provisions and preamble of the Additional Protocols and the CCW respectively.¹¹⁰ This ironic reference to the “sacrifice” made by governments in ameliorating the conditions of victims of weapons used in war is further used to counsel that, “it is not in the interests of international humanitarian law to venture too far in this direction. To force the pace might well lead to catastrophe.”¹¹¹ In other words, it could lead to emptying international humanitarian law of any meaningful application and could also lead to loss of credibility for the ICRC as a pragmatic humanitarian organization.

¹⁰⁸ Sandoz, “A New Step Forward in International Law,” 8

¹⁰⁹ Sandoz, “A New Step Forward in International Law,” 8

¹¹⁰ Sandoz, “A New Step Forward in International Law,” 8

¹¹¹ Sandoz, “A New Step Forward in International Law,” 7

Commenting on the effects of a language of humanitarianism that the ICRC had deliberately inserted in a conference on the laws of war that acted as a precursor to the CCW, David Forsythe has argued that “By christening the 1974 Conference as one on international humanitarian law, one could not ipso facto change the motivations of governments or how they approached the issues.”¹¹² Similarly, David Kennedy observes,

When the International Committee of the Red Cross completed its lengthy restatement of the rules and standards of customary international law in war, it was written entirely in the key of validity: here is a definitive statement of rules that we have determined, after careful scientific inquiry, to be valid. But it is not surprising that many of the interpretations have been seen by others to be tendentious writings, advancing the Red Cross agenda. States that have persistently opposed interpretations included in the Red Cross restatement—including the United States—have protested their validity in classical terms: we did not consent.¹¹³

¹¹² David P. Forsythe, “The 1974 Diplomatic Conference on Humanitarian Law: Some Observations,” *American Journal of International Law*, 69, no.77, (1975), 87

¹¹³ Kennedy, *Of Law and War*, 20

The problem of excessive legalism in the ICRC's approach in addressing the agenda of the diplomatic conference, including the methods and means of warfare, could not be discounted easily by the ICRC. The emphasis on excessive legalism by the ICRC was perceived by non-western countries as being more aligned with the "just war" tradition of the West and "a marked tendency in some Western delegations to be more concerned with preserving traditional definitions and the traditional structure of law."¹¹⁴ On the other hand, the western powers severely attacked the ICRC, precisely because of its desire to make the laws of war "too complex for the commander to fight."¹¹⁵

The ICRC's paltry efforts to address this problem by simplistically suggesting that it was concerned only with *jus in bello* (law in war) and not *jus ad bellum* (law of war) failed to satisfy any party. With regard to conventional weapons, this translated into the argument that the ICRC, "like *jus in bello* in general" is concerned with the "use of weapons, not their possession, for prohibition of the latter falls under the heading of

¹¹⁴ Forsythe, "The 1974 Diplomatic Conference," 81-82

¹¹⁵ Parks, "Air War and the Law of War," 75, see footnote 255, Comment attributed to Mr. Pictet by Waldemar A. Solf.

disarmament.”¹¹⁶ But this argument offered by the ICRC is not persuasive enough for those that believe that “the humanism of effects based targeting... can trump the clarity of prohibition” and that the distinction between laws of war and laws in war cannot be maintained insofar as laws of armed conflict are perceived as a global “vernacular for evaluation of legitimacy of warfare.”¹¹⁷

Commenting on the development *Of Law and War* in the twentieth century, David Kennedy observes how the ICRC’s efforts to reaffirm and develop international humanitarian law have contributed to producing a capacious legal vocabulary that gives the impression that by using it “one will have ‘taken everything into account’” or “balanced” all the relevant competing considerations.”¹¹⁸ This vocabulary has become a “professional” language that is accessible to diverse professions to guide action. The appeal of this vocabulary is vested in its availability as “both moral and pragmatic choice.”¹¹⁹ On the one hand it allows an actor to express moral outrage and at the same time it serves as an instrument of nuanced calculation. One cannot escape the irony embedded in this body

¹¹⁶ Sandoz, *Commentary on the Additional Protocols*, 424

¹¹⁷ Kennedy, *Of Law and War*, 34, 39-40

¹¹⁸ Kennedy, *Of Law and War*, 39-40

¹¹⁹ Kennedy, *Of Law and War*, 34, 39-40

of law in practice if we consider the question: "But if we are calculating are we really repulsed?"¹²⁰ David Kennedy argues that although the expert meetings and the diplomatic process generated "a complex world of legal pluralism, of multiple perspectives on the validity of persuasiveness, and strategic usefulness of legal norms and institutional competence" it eroded a sense of experience of responsibility. The experience of responsibility is confined to the "ambit of one's sense of professional responsibility."¹²¹ This is dangerous because, "while armoring the most heinous human suffering in legal privilege" it redefines "terrible injury as collateral damage, self-defense, proportionality, or necessity."¹²²

At this critical juncture, it is helpful to take note of a growing sentiment within the ICRC as expressed by Jacques Freymond, an ICRC delegate.¹²³ It would be wrong to equate opinions expressed by him in an individual capacity, as an author of a book reflecting on the role of the ICRC during wars, revolutions, as the official view of the ICRC. But the fact that they were published by the official journal of the ICRC during the process of codification of the laws of war in the form of Additional Protocols

¹²⁰ Kennedy, *Of Law and War*, 39-40

¹²¹ Kennedy, *Of Law and War*, 39-40

¹²² Kennedy, *Of Law and War*, 39-40

¹²³ Jacques Freymond, "Guerres, Revolutions, Croix Rouge, Relfexions sur le Role du Comite International de la Croix Rouge," *International Review of the Red Cross*, no.185, (August 1976), 428-435

deserves consideration. Jacques Freymond suggests that within the ICRC there is a growing consciousness that "we must certainly avoid excess legalism" and that the ICRC, "cannot continue to negotiate patiently and stubbornly for the right of a man to be treated as a man...it is no longer a question of saving human lives, but of saving human race."¹²⁴ In a spirit of rebellion he suggests that, "All the ICRC can do is go forward, putting itself into a state of moral belligerence, leading a vast crusade over the heads of the nation-states, and if necessary against them; in short, to turn itself into a movement for reawakening humanity."¹²⁵ While recognizing that for the ICRC as a frontline organization it is difficult to strike a balance between the dilemma of "secret diplomacy and public support" Jacques Freymond asserts that, "it is still more hazardous for action to be shrouded in silence or secretiveness, denying it the support of public opinion, which may be apathetic, ignorant or distrustful of anything arcane and therefore obscure."¹²⁶ These views expressed by Jacques Freymond echo the sentiments of his predecessors, Brown and Junod, and gives voice to a growing sentiment within an organization that had patiently negotiated the Additional Protocols of 1977 and which was still

¹²⁴ Jacques Freymond, "Guerres, Revolutions, Croix Rouge, Reflexions, sure le role du Comite International de la Croix Rouge," *International Review of the Red Cross*, no. 186, (August, 1976), 428-435

¹²⁵ Freymond, "Guerres, Revolutions, Croix Rouge," 428-435

¹²⁶ Freymond, "Guerres, Revolutions, Croix Rouge," 428-435

very reluctant to shed its legalistic approach in addressing the problems of weapons.

Convention on Conventional Weapons

The agreements reached at the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law paved the way for an immediate demand that an ACD conference be convened under the auspices of the United Nations. The linkage between the Additional Protocols and the CCW was clearly established when several nation-states showed unwillingness to ratify the Additional Protocols unless they were supplemented by an instrument concerning weapons. To quote Yves Sandoz, the CCW is an "indispensable supplement to the 1977 Protocols."¹²⁷ The language of humanitarianism and humanitarian principles, which the ICRC deliberately inserted to guide the work of the conference on international humanitarian law, were now explicitly inscribed in the title of the succeeding ACD conference. The ACD conference was labeled: the "United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons which May Be

¹²⁷ Sandoz, "A New Step Forward in International Law," 16

Deemed to Be Excessively Injurious or to Have Indiscriminate Effects” and took place from 1979-1980. The ICRC was the only humanitarian actor that was granted observer status at this conference in recognition of its work that had made this conference possible. All other humanitarian organizations that had been present during the expert meetings at Lucerne and Lugano were deliberately excluded from this ACD conference.

Acknowledging that “the link between the instruments adopted on 10 October 1980 and Protocol I of 8 June 1977 additional to the Geneva Conventions has not been settled categorically,” Yves Sandoz offers the following argument:

It seems logical, however, to consider these restrictions and prohibitions as rules intended to put into concrete terms some of the principles, laid down in the 1977 Protocol I, particularly Articles 35 and 51. Moreover, several points of the Convention’s preamble give a clear indication in this direction. Yet it cannot be claimed that the prohibitions follow so naturally from the principles reaffirmed by the 1977 Protocol that an obligation concerning them existed before they were explicitly formulated. The protracted

negotiations which were necessary to achieve these instruments plainly demonstrate that their content was by no means an obvious matter. So the Convention and its Protocols should be considered as a development of law and any condemnation of action taken previous to their enactment, by retroactive application of their underlying philosophy, would be, juridically, as sterile as it would be inadmissible.¹²⁸

In observing that, “the Convention merely provides the legal framework within which the prohibitions contained in the Protocols are applicable” Yves Sandoz succinctly captures the crystallization of a strategic vision of his predecessors such as Gustave Moynier that the road to disarmament was possible only after constituting a legal framework from which such an action could be initiated.¹²⁹ The CCW comprises of a main text and three protocols with the possibility of creating more protocols in the future. The significance of protocols attached to a treaty text was clearly understood by the legal mind of the ICRC. The ICRC recognized that unlike a treaty which requires detailed technical analyses of particular weapons systems, a protocol could be agreed on without lengthy

¹²⁸ Sandoz, “A New Step Forward in International Law,” 15

¹²⁹ Sandoz, “A New Step Forward in International Law,” 9

negotiations and by stigmatizing and banning a weapon with a simple protocol it could deter future developments of such weapons.¹³⁰ The ICRC in a note of satisfaction observed that the 1980 Convention on Conventional Weapons “marks the completion of a significant phase in the evolution of international humanitarian law, a phase whose prime purpose has been to provide better legal protection for the civilian population against the effects of hostilities.”¹³¹

However this claim, made by the ICRC is disputed by other scholars especially in the context of Protocol II of the CCW. This protocol described as “a typical offspring of the arranged marriage between military necessity and humanitarian imperatives” relates to “a very definite problem” pertaining to the use on land of mines, booby-traps and similar devices.¹³² The grounds on which scholars have critiqued this protocol are the following.¹³³ First, is that the protocol makes a rhetorical statement prohibiting indiscriminate use of landmines as it does not stipulate more specific measures in this context apart from the general

¹³⁰ Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to have Indiscriminate Effects, United Nations, General Assembly, 49th session (1994), Statement by the ICRC. 24-10-1994
<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/57jm9f?opendocument>

¹³¹ Sandoz, “A New Step Forward in International Law,” 12-13

¹³² Sandoz, “A New Step Forward in International Law,” 12-13

¹³³ Prokosch, *The Technology of Killing*, 162

prohibition on discrimination between civilians and combatants articulated in the general text of the Additional Protocol I of the Geneva Conventions. Second, the restrictions imposed on “remotely delivered mines” by artillery or aircraft are also qualified by requirements that these restrictions are applicable only in the case of “pre-planned minefields”; their location can be accurately recorded; they contain a neutralizing mechanism and that advance warning should be given “unless circumstances do not permit.”¹³⁴ Third, these provisions were applicable only in the case of international armed conflicts. Fourth, the protocol did not provide for any mechanism to secure compliance with its provisions. Thus the qualifying statements and rhetorical appeals to humanitarian principles contained in this protocol did not do much to protect civilian populations. The view of scholars contending the ICRC’s self-congratulatory approach towards the CCW is succinctly expressed by Erick Prokosch, in the following words, “On the whole, Protocol II gives the impression of having been written to satisfy the needs of military forces, which may later have to occupy a mined area, rather than to protect civilians.”¹³⁵

¹³⁴ Prokosch, *The Technology of Killing*, 162

¹³⁵ Prokosch, *The Technology of Killing*, 162

The ICRC acknowledged the truth in this observation several years later at it prepared to write a commentary on the Additional Protocols to the Geneva Conventions in which it reiterated the very same shortcomings mentioned above. A decade later, in 1987, ICRC's commentary on the Additional Protocols observed the following:

Landmines and booby-traps have in some cases been scattered in astronomical quantities in certain theatres of war. Once the war is over, these devices can only be eliminated with considerable risk by patient efforts which must continue for many years. Meanwhile they form a serious and constant threat to the population. This is just one example, but in reality all delayed-action devices or those which have not exploded, for whatever reason, have a similar effect on the environment, with ominous consequences. In addition, chemical components of certain material war remnants can have permanent harmful effects on humans, animals, vegetation, water, land and the ecosystem as a whole.¹³⁶

¹³⁶ Sandoz, *Commentary on the Additional Protocols*, 411

As mentioned in the preceding paragraphs, during the process of negotiating the Additional Protocols and the CCW, the ICRC found it useful to consult and cooperate with human rights and environmental groups during the process of reaffirming and developing the laws of international humanitarian law. It supported the resolutions passed by the International Red Cross movement inclusive of a language of human rights. This has led scholars to argue that, "Without the impetus of human rights the adoption of the two Protocols of 1977 additional to the Geneva Conventions would not have been possible."¹³⁷ But, as a frontline organization, and during the course of the negotiations of the Additional Protocols, the ICRC came to recognize the need to refrain from using a language of rights that is not always acceptable to several nation-states. Among nation-states there exists a preference for two separate bodies of law. The language of human rights law is often general and mired in ideological contestations between nation-states, whereas the laws of war are expected to be more precise, particular and reciprocal in their application.¹³⁸ The ICRC selectively excluded the word "rights" but continued to focus on "human person" to advocate for maintenance of "human dignity" on behalf of victims in armed conflict. The focus on "human dignity" served as a common meeting ground for the languages of

¹³⁷ D. Schindler, "The ICRC and Human Rights," *International Review of the Red Cross*, no.208, (January-February, 1979), 13

¹³⁸ Schindler, "The ICRC and Human Rights," 13-14

human rights and international humanitarian law while enabling each of its advocates to retain their own sense of different identities. The significance of this subtle distinction is clearly demonstrated when the ICRC was awarded a Human Rights Prize by the UN in 1978. ICRC President Alexander Hay in his speech at the award ceremony used a language of “human dignity” but the expression “human rights” never became a part of the ICRC repertoire on humanitarian languages.¹³⁹

The cautious distance that the ICRC maintains with regard to the human rights body of law is interesting considering the strenuous efforts it has made to align the Geneva Laws with the Hague Laws into a common language conveniently categorized as international humanitarian law. This difference in language has empowered the ICRC to actively differentiate itself from being just another human rights organization in the international system. Jacques Moreillon captures this sense of distinctiveness that the ICRC seeks to preserve by suggesting that:

¹³⁹ “Human Rights Prize awarded to the ICRC,” *International Review of the Red Cross*, no.207, (November-December, 1978), 341

the Red Cross is better equipped -- especially juridically -- to promote respect of *humanitarian law* in time of war than to safeguard *human rights* in time of peace; this shows *how important it is to distinguish institutions* created by the international community for the maintenance and safeguard of peace and human rights from other organizations with a specific object, such as our own.¹⁴⁰

This practice by the ICRC constitutes an attempt to assert a sense of difference and independence. The ICRC retained this practice, even as it ran a campaign parallel and complementary to the one being run by other humanitarian organizations against landmines with the end of the Cold War.

Landmines Must Be Stopped

The ICRC's campaign against landmines was once again launched with the same practices that had become routine in its preparatory work for

¹⁴⁰ Moreillon, "The Fundamental Principles of the Red Cross, Peace and Human Rights," 182 (italics inserted)

developing international laws of war on weapons. This was articulated by the humanitarian actor in the following words,

The ICRC, as a general rule, consults the Red Cross Societies as to the desirability of revising a convention or preparing a new one; it then submits the drafts to the International Red Cross Conferences where Red Cross and government delegates are able to examine them and give their opinions. These are borne in mind in further studies by the Committee, backed up, if necessary, by the conclusions of commissions of experts. Once it has been completed as a text, it sends it to the Swiss Federal Council, which assumes responsibility for the subsequent moves: consulting governments, collecting and publishing their suggestions or amendments and, finally convening a diplomatic conference. The Conference works out the final text of the convention, which is usually signed by the plenipotentiary representatives of the States at the closing ceremony, but does not come into force until after ratification by the

governments or legislative assemblies of the signatory states.¹⁴¹

These practices enumerated above by the ICRC had facilitated agreement on the Additional Protocols and the CCW. But in reviewing the CCW, one has to appreciate the value of the complementary role that the ICRC had strategically envisaged for itself vis-à-vis the UN and other civil society actors in the context of the landmines campaign. Two months after Handicap International, a humanitarian organization, took the lead in prompting the government of France to seek a review of the CCW in February 1993, the ICRC convened an international symposium at Montreux to gauge the opinion of experts on the magnitude of the landmine crisis and possible responses to it.¹⁴² Once again, the proposals ranged from maintaining the status-quo, exploring possibilities for incremental changes and total ban. At this time, the position of the ICRC on total ban of anti-personnel landmines was yet to crystallize and be aligned in harmony with other humanitarian organizations. Unlike other humanitarian organizations that engaged in acts of naming and shaming particular governments, the discreet ICRC sought to work with “its

¹⁴¹ ICRC Activities in the Field of Weapons, Official Statement of the ICRC. 21-07-05
<http://www.icrc.org/eng/siteeng0.nsf/html/weapons-ihl-210705>

¹⁴² ICRC Symposium on Anti-Personnel Mines, Montreux 21-23 1993

network of professional military officers working with armed forces on IHL issues” as it had exclusive “access to military circles that other non-governmental organizations did not.”¹⁴³

As the review process of the CCW gathered some momentum within the UN and the final text of the revised protocol was to come up for discussion, the ICRC issued a report prepared by an independent military expert on *Anti-Personnel Landmines: Friend or Foe?*¹⁴⁴ This report, prepared by Brigadier Patrick Blagden in an independent capacity at the request of the ICRC, once again fuelled debates on military utility of anti-personnel landmines. This report served to disrupt the existing stalemate that reinforced the status-quo that had been reached at a meeting of government military experts in 1994. At this meeting, it was concluded that anti-personnel landmines were cost-effective, no substitutes for these weapons existed as alternatives and that there was need for more study to evaluate the effectiveness of a weapon not in terms of doctrine but in actual combat and to make a distinction between the utility of anti-personnel mines *per se* and that of anti-vehicle mines or landmines in

¹⁴³ Maslen, “The Role of the International Committee of the Red Cross,” 96

¹⁴⁴ *Anti-Personnel Landmines: Friend or Foe?* (Geneva: ICRC, 1996)

general.¹⁴⁵ The report engaged with the persistent problem of anti-personnel landmines during the Second World War and in twenty-six conflicts thereafter. It questioned the military utility of anti-personnel landmines and concluded that the humanitarian cost inflicted by these weapons outweighed any possible military utility that could be incurred by their use. It substantiated this claim by providing evidence from experience in actual combat situations that made it doubtful to claim that they could be used in compliance with existing international law and military doctrine. This report was widely circulated by the ICRC among experts and the general public. It succeeded in generating a counter-discourse on military utility to the prevailing discourse on anti-personnel landmines both inside and outside the UN.

At the same time, the ICRC organized a symposium to study "The Effects of Weapons and the Medical Profession" at Montreux in 1996.¹⁴⁶ The express purpose of this meeting was:

¹⁴⁵ Maslen, "The Role of the International Committee of the Red Cross," 87-88

¹⁴⁶ ICRC Report on The Medical Profession and the Effects of Weapons, Symposium, Montreux, Switzerland, 1996

To identify and communicate the individual and public health effects of weapons so that the international community can work together to eliminate any superfluous injury, unnecessary suffering and indiscriminate effects associated with weapon design and use, human conflict and the global proliferation of weapons.¹⁴⁷

To experts at this meeting grappling with the long standing question of what constitutes “superfluous injury or unnecessary suffering?” Dr. Robin Coupland of the ICRC suggested that:

Doctors trying to understand this phrase step into the no-man’s land between the effects of weapons on health and the international law of war. One way-perhaps the only way-to navigate this non-man’s land is to translate a field surgeon’s concept of abhorrent weapons into a tool that can be used for

¹⁴⁷ Robin M. Coupland, “ The SirUS Project: Progress Report on “Superfluous Injury or Unnecessary Suffering” in Relation to the Legality of Weapons,” *Medicine & Global Survival*, 10-08-2004 [http:// www.ippnw.org/MSG/V6N2Coupland.html](http://www.ippnw.org/MSG/V6N2Coupland.html)

making a legal determination of whether a specific weapon will inflict “superfluous injury or unnecessary suffering.”¹⁴⁸

This observation by Dr. Coupland indicates that it was no longer sufficient to describe weapons as “abhorrent” and invoke a moral stigma against their use but that there was a further need for instrumental calculation of the sufferings endured by the victims. This invocation by the ICRC to the medical community to calculate “unnecessary suffering” was a departure from the past practices of the ICRC. In its efforts to prohibit the use of weapons of mass destruction, the ICRC had considered it sufficient to invoke a sense of horror that was construed as an enduring norm and a moral taboo. However this sense of horror and abhorrence was no longer deemed to be enough by the ICRC to prohibit the use of anti-personnel mines.

As a field surgeon, Dr. Coupland of the ICRC directly witnessed the horror of the sufferings endured by the victims of landmines in Afghanistan and Cambodia. The ICRC could not have found a better spokesman to address this meeting of experts. Dr. Coupland argued that it

¹⁴⁸ Robin M. Coupland, “The SirUS Project,” <http://www.ipnw.org/MSG/V6N2Coupland.html>

was the responsibility of the medical community to establish a linkage between the effects of particular weapons on human health. This he suggested is possible for the medical community if it is able to provide objective, quantifiable data on the injury suffered by a victim as a consequence of the use of a particular weapon. It was only with this data that the arguments on military utility proffered in terms of effectiveness of weapons technology and design could be challenged. On the question of who could be entrusted to collect this data it was suggested by the participating experts that:

The ICRC, or perhaps the World Health organization with its greater resources, should collect data and publish the findings, and the International Court of Justice could be asked to give advisory opinions on the legality or otherwise of new weapons.¹⁴⁹

The Medical Division of the ICRC established in 1977, the same year as the codification of the Additional Protocols, now collected data on effects

¹⁴⁹ Douglas Holdstock, "International Committee of the Red Cross: The Medical Profession and the Effects of Weapons," *Medicine, Conflict & Survival*, 12, (1996), 254

of anti-personnel landmines on victims. It collected statistical data from its hospitals and limb fitting workshops operating in several war-devastated countries and from epidemiological reports. According to this data it was estimated that approximately 24,000 people are killed and wounded on average every year globally.¹⁵⁰ The ICRC displayed a rare willingness to publicize this data to influence the proceedings of the CCW review conference. This becomes obvious from the following observation by Dr. Coupland,

In Vienna in October, 1995, delegates of governments at the United Nations Convention on Conventional Weapons failed to prohibit the production, transfer, and use of antipersonnel mines. When they reconsider this issue in April, 1996, they cannot claim ignorance of the effect of antipersonnel mines on individuals and societies because data now exists.¹⁵¹

This confident statement illustrates that by collecting health based data on the effects of anti-personnel landmines on victims, the ICRC had shifted

¹⁵⁰ Chris Giannou, "Antipersonnel landmines: facts, fictions, and priorities," *British Medical Journal*, 315, (29 November 1997), 1454

¹⁵¹ Robin M. Coupland, "The effect of weapons on health," *The Lancet*, 347, (February 17, 1996), 450

the burden of responsibility in weighing unnecessary suffering vis-à-vis military necessity. It had provided an understanding of unnecessary suffering that was too powerful for arguments on military necessity to withstand public scrutiny. This caused a sense of unease among particular governments in the international system. This sense of unease is articulated by Major Donna Verchio as she argues that,

In sum, it is not the ICRC's, or any NGO's duty or responsibility to determine what weapons are lawful under international humanitarian law. Nor is it the ICRC's responsibility to define what constitutes "unnecessary suffering or superfluous injury." Currently, both responsibilities rest squarely on sovereign nations. They should remain there unless and until these same nations indicate a willingness to give the ICRC a mandate.¹⁵²

The data collected by the ICRC and presented to the international community represented a significant advance in the practices of weighing military necessity vis-à-vis unnecessary suffering. The battle of numbers

¹⁵² Verchio, "Just Say No! The SirUS Project," 194

became vigorous as different estimates of numbers of mines scattered in the fields was weighed against the number of prosthetic limbs provided to the victims. Ironically, while on the one hand, the medical division of the ICRC engaged itself in providing objective, quantitative data on unnecessary suffering, the ICRC was itself dismissive of the accumulating statistical data on the number of mines deployed in the field. In making its case for prohibition of anti-personnel landmines, the ICRC did not hesitate from making the following argument:

Whether a square kilometer of rural Angola contains 10 mines, 10,000, or 10,000,000 is not important: it is one square kilometer of farmland that cannot be used to grow crops to feed families. That is what is important.¹⁵³

The above observation is significant for an organization that for more than a century prided itself in providing accurate statistical figures on the number of victims and the amount of relief provided. One can thus suggest that a century later the ICRC is now coming to grips with the

¹⁵³ Giannou, "Antipersonnel landmines," 1453

problem that simply a long list of the wounded and dead is not enough to wage a battle for disarmament.

The ICRC felt compelled to reconsider its information policy to wage a successful campaign against landmines. Modoux suggests that it was no longer possible for the ICRC to present the information that it had collated in an "esoteric language" suited to "official circles accustomed to reading between the lines."¹⁵⁴ The ICRC had to come to terms with the fact that, "times have changed since the days of Henry Dunant when it was enough to convince a few princes and heads of state to get an idea accepted immediately put into effect on the battlefield."¹⁵⁵ The Tansley Report prepared to help the ICRC reappraise its efforts too chastened the ICRC's policy of discretion in sharing information¹⁵⁶ It argued that this "unwritten principle" justified on the grounds of protecting the victims had also generated an unprecedented degree of comfort between the ICRC and the nation-states.¹⁵⁷ It suggested that the "ultimate test of Red Cross acceptability is action within the bounds of expectations. If there is any general expectation that Red Cross should use some degree of publicity,

¹⁵⁴ A. Modoux, "Public Relations: Policy and Practice of the ICRC," *International Review of the Red Cross*, no.207, (November-December, 1978), 311

¹⁵⁵ Modoux, "Public Relations: Policy and Practice of the ICRC," 311

¹⁵⁶ "ICRC Policy on Operational Information-Comment by the ICRC," *International Review of the Red Cross*, no.207, (November-December, 1978), 326-330

¹⁵⁷ "ICRC Policy on Operational Information-Comment by the ICRC," 327

then such action should be acceptable even if opposed by a particular party.”¹⁵⁸ In response to this report, the ICRC acknowledged in 1978, that “discretion has its limits.”¹⁵⁹ In making this argument the ICRC explicitly stated the following:

The International Committee has in fact found it difficult, if not impossible, to advance the law of Geneva, while ignoring the loopholes in the law of The Hague, the interdependence of these two laws having become more obvious in practice. The ICRC therefore proposed that the draft Protocols additional to the Geneva Conventions should include several provisions in the field of the law of The Hague...

As a result, the ICRC will in the future face problems of application of the Protocol provisions relating to the conduct of hostilities. If these provisions are violated it may be *obliged to make its voice heard*.¹⁶⁰

¹⁵⁸ “ICRC Policy on Operational Information-Comment by the ICRC,” 327

¹⁵⁹ “ICRC Policy on Operational Information-Comment by the ICRC,” 327

¹⁶⁰ “ICRC Policy on Operational Information-Comment by the ICRC,” 329 (italics inserted)

However, it was only in 1994, to further the cause of protecting civilian populations, the ICRC, took the exceptional measure of launching an official publicity campaign advocating total prohibition against landmines which in its view is a weapon "too cheap, too small and too difficult to use according to international humanitarian law to be controlled by means short of an absolute prohibition."¹⁶¹ To have any effect, it was imperative that the information on landmines collected by the ICRC be disseminated not only among the heads of nation-states, military and medical professionals but to the public at large. To generate this effect, the ICRC adopted a strategy similar to that used by Henry Dunant in the late nineteenth century.

To awaken the public conscience against the use of anti-personnel landmines, ICRC President Cornelio Sommaruga claimed that "through its field operations in conflict zones on four continents" the ICRC is "a

¹⁶¹ Speech by Dr. Cornelio Sommaruga, President of the ICRC, at the Joint Meeting of the UN Secretary General's Advisory Board for Disarmament Matters and Heads of Delegations to the Conference on Disarmament, Genève, 2 July 1996, ICRC Publications, Reports 1990-1996, Source: ICBL Fonds R 11308, Box 2, Library & Archives Canada, Ottawa

direct witness to the landmine carnage.”¹⁶² To register ICRC’s claim as a direct witness, he argued that:

Our doctors and nurses every single day have to look into the eyes of children writhing in pain from a limb turned into a bloody tangle of blood, dirt, plastic bits, bone fragments and flesh. Eyes which ask us “why, why, why?” to which we have no answer.

Landmine injuries are among the most horrific known to our war surgeons. They require more units of blood, longer hospital stays, more surgical interventions and far more resources than most other injuries. They also require lifetime prosthetic care and rehabilitation-which is often not available. And those who reach medical care are the lucky ones; for just as many are estimated to die.¹⁶³

¹⁶² Speech by Sommaruga, at the Joint Meeting of the UN Secretary General’s Advisory Board for Disarmament Matters and Heads of Delegations to the Conference on Disarmament, Geneva, 2 July 1996

¹⁶³ Speech by Sommaruga, at the Joint Meeting of the UN Secretary General’s Advisory Board for Disarmament Matters and Heads of Delegations to the Conference on Disarmament, Geneva, 2 July 1996

On a more personal note President Sommaruga acknowledged that, "I could not continue to witness the persistent heavy suffering caused by antipersonnel mines."¹⁶⁴ It was his experiences as a witness to the sufferings of victims in field hospitals that made President Sommaruga make this statement. It is possible to interpret this statement as a different cry from that of his predecessor President Huber and his ideas of a Good Samaritan but this interpretation has its limits.

This is because during the ICRC publicity campaign the particular voices of ICRC delegates as witnesses to the sufferings of the victims of landmines remained confined to a policy of silence according to which, "The ICRC says and shows what it does, but remains very circumspect as to what it sees and hears through its delegates."¹⁶⁵ The publicity campaign deliberately deployed testimonies of victims carefully so as not to reveal "particular names, dates and places."¹⁶⁶ The identities of victims are revealed only in the form of general information pertaining to their age, first names and nationalities. The victims are typically a "Mozambican child", a "Somali child" and a "Cambodian grandfather." Sometimes the

¹⁶⁴ Speech by Dr. Cornelio Sommaruga, President of the Geneva International Centre for Humanitarian Demining, former President of the International Committee of the Red Cross at the 10th Anniversary of the 1997 Mine Ban Convention, Oslo, September 18, 2007

¹⁶⁵ Modux, "Public Relations: Policy & Practice of the ICRC," 309

¹⁶⁶ "ICRC Policy on Operational Information-Comment by the ICRC," 328

identities of victims are simply depicted as “the child, the soldier and the rice farmer.”¹⁶⁷ The cursory introduction to victims is followed by a brief passive narrative on feelings of pain, shame, bereavement, a composite of sufferings endured by the victims of landmines. It is claimed that profiles of victims can be established from the ICRC database. The representative sampling from the catalogue of victims is used to further arguments and provide evidence on needs, constraints and strategy for assistance to mine victims.

This representation of suffering of mine victims is augmented by a publicity campaign using audio-visual means of communication by the ICRC. The website of the ICRC exhibited photographs on “Seven Days in Minefield” by Tim Page, a renowned war photographer.¹⁶⁸ These photographs displayed for seven consecutive days graphically demonstrated problems faced by mine infested communities in their everyday life. The ICRC made a decision to strategically display this photographic exhibition on its website at a time when “daily reports on the proceedings of the Ottawa Conference will also appear on the site.”

¹⁶⁷ Dr. Robin Coupland, “Assistance for Victims of Anti-Personnel Mines-Needs, Constraints and Strategy” ICRC Publications and Reports, ICBL Fonds R 11308, Box 3, Library & Archives Canada, Ottawa

¹⁶⁸ “Seven days in a minefield” and the Ottawa Conference from 29 September to 5 October 1996, ICBL Fonds R 11308, Box 3, Library & Archives Canada, Ottawa

By undertaking these measures, the ICRC continued to keep alive images of unnecessary suffering to stimulate a humanitarian perspective on the problem of mines. Reports prepared by the ICRC portrayed gruesome pictures of the injuries suffered by the mine victims. These pictures served to generate an experience of trauma and revulsion among the spectators gazing at these photographs.

The testimonies and the photographic images deployed by the ICRC in its publicity campaign helped “stabilize” the fluidity of practices generating and ameliorating suffering.¹⁶⁹ They serve to mobilize “coherent narratives” on the effects of mines on victims.¹⁷⁰ But is it sufficient to privilege such imagery on the basis of intentionality alone?¹⁷¹ Dauphinee suggests that one must question the ethics of practices that rely on a “techno-logic of the visual to validate their respective projects” and “rely on the circulation of abject imagery to illustrate and support their political claims.”¹⁷² In this ethical undertaking one must be alert to possibilities that “the body in pain is produced as an aesthetic visual image, a symbolic icon that stand in for itself as the referent object of

¹⁶⁹ Elizabeth Dauphinee, “The Politics of the Body in Pain: Reading the Ethics of Imagery,” *Security Dialogue*, 38, no.2, (2007), 149

¹⁷⁰ Dauphinee, “The Politics of the Body in Pain,” 149

¹⁷¹ Dauphinee, “The Politics of the Body in Pain,” 145

¹⁷² Dauphinee, “The Politics of the Body in Pain,” 140

political violence” to deliberately encourage particular forms of witnessing and responsibility. If the visual expression of pain is restricted to tracing the “visible causes or expressions of pain” to provide a sense of reassurance to the sense of doubt that accompanies such witnessing, the act of witnessing, will only be partial and imperfect, as it will elude and even evacuate the “specificity of the interior experience of pain, and of the subject that experiences it.”¹⁷³ This in turn will lead to addressing the question of responsibility with political and ethical hopelessness. But the ethical imperative does not allow for any such complacency and demands consideration whether we need to “accept the avoidance of politics that the photograph announces or to actively attempt to reinsert a politics.”¹⁷⁴ This consideration has not received the attention it deserves in any analyses of the ICRC’s publicity campaign against landmines. A sense of complacency pervades and characterizes the testimonies and photographs deployed by the ICRC as instruments of resistance to violence.

By exposing the “human face of a global tragedy” in a calculated manner, the ICRC urges “states to face their responsibilities.”¹⁷⁵ The testimonies

¹⁷³ Dauphinee, “The Politics of the Body in Pain,” 142

¹⁷⁴ Dauphinee, “The Politics of the Body in Pain,” 145

¹⁷⁵ Speech by Sommaruga, at the Joint Meeting of the UN Secretary General’s Advisory Board for Disarmament Matters and Heads of Delegations to the Conference on Disarmament, Genève, 2 July

of victims and the photographic images of sufferings endured by the victims, serve to shame and circulate this feeling of shame, to encourage nation-states to question their practices of using landmines. But the arousal of shame is not enough. The response to shame is equally important. While urging nation-states to accept responsibility, the question of political responsibility is marginalized by the ICRC with its insistence that, "There is no need to attribute responsibility. Mines have been produced and sold by some fifty States from both north and south. They have been used indiscriminately in many others."¹⁷⁶ This suggestion facilitates a political compromise among nation-states, it acts as an escape clause from individual responsibility while asserting collective responsibility to redress the sufferings of the victims. It empowers the humanitarian actor's demand for a humanitarian space in the field of ACD and addresses the ethics of responsibility among nation-states in minimalist terms.

1996; Statement of Mr. Cornelio Sommaruga, President of the ICRC in Vienna on 26 September 1995, at the Review Conference of the States Parties to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, ICBL Fonds R 11308, Box 2, Library & Archives Canada, Ottawa

¹⁷⁶ Statement of Mr. Cornelio Sommaruga, President of the ICRC in Vienna on 26 September 1995, at the Review Conference of the States Parties to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons.

To wage its campaign against landmines, the ICRC presents the information at its disposal in a very powerful and publicly accessible language. This language is carefully crafted to appeal to the military and medical sensibilities of its audience. On the one hand, the anti-personnel landmines are described by the ICRC as “perverse weapons”, weapons of “mass destruction in slow motion” sowing seeds of terror.¹⁷⁷ On the other hand, the problem of anti-personnel landmines is depicted as a “global epidemic”, a public health issue to which a “preventive” and not simply a reactive approach was necessary.¹⁷⁸ This descriptive language of effects of mines on the health of victims is propagated by the ICRC with the help of the national Red Cross societies and a core group of human rights organizations constituting the core group of the International Campaign to Ban Landmines (ICBL). The ICRC continued to focus on human dignity and did not use the language of human rights or “human security” that was being advocated by human rights organizations and by academics critical of national security practices framing ACD discourses.¹⁷⁹ It is possible that the ICRC feared that the language of human security could

¹⁷⁷ Statement of Mr. Cornelio Sommaruga, President of the ICRC in Vienna on 26 September 1995, at the Review Conference of the States Parties to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons.

¹⁷⁸ Robin Coupland, “The Effect of Weapons on Health,” *Lancet*, no.347, 1996, 450-451; Robin Coupland, “Wounds, weapons and the doctor,” *Military Medicine*, vol.72, no.2, 1995, 33-35; Douglas Holdstock, “International Committee of the Red Cross: The Medical Profession and the Effects of Weapons,” *Medicine, Conflict and Survival*, no.12, 1996, 254-256

¹⁷⁹ Richard A. Matthew, et al, ed. *Landmines and Human Security-International Politics & War's Hidden Legacy*, (New York: State University of New York, 2004)

be construed as a threat to the national security discourse preferred by nation-states.

But in making its case for the victims of anti-personnel landmines the ICRC did not hesitate from advertising how these particular weapons were often a source of loss of income and livelihood for individuals. The arguments on freedom from fear and freedom from want were embedded in the ICRC's public advertisement campaigns but never became a part of its public discourse. For example, the ICRC represents the suffering of a Mozambican child in the following words, "Maria lives near a minefield and her mother must chain her to a tree when she goes off for the day to find water and firewood. Unfortunately, her mother stepped on a mine far from medical help and never returned."¹⁸⁰ The ICRC also supported claims for victim assistance and rehabilitation for the victims of landmines. Its special appeal for "Assistance to Mine Victims" sought to raise approximately 225,000 Swiss francs to support costs of awareness, assistance, and advocacy on behalf of the mine victims.¹⁸¹

¹⁸⁰ Speech by Sommaruga, at the Joint Meeting of the UN Secretary General's Advisory Board for Disarmament Matters and Heads of Delegations to the Conference on Disarmament, Genève, 2 July 1996,

¹⁸¹ ICRC's Special Appeal for Assistance to Mine Victims, 1998, ICRC Publication Reports 1999, ICBL Fonds R 11308, Box 2, Library & Archives Canada, Ottawa.

Interestingly in advocating a preventive approach to address the scourge of landmines, the ICRC 's humanitarian intervention was no longer constrained only to "use" of particular weapons as argued during the process of drafting the Additional Protocols. In its report to the first review conference of the CCW, the ICRC argued that the "core prohibition on use could be effectively implemented only if it was supported by corresponding duties not to manufacture, supply, or maintain stocks of the weapon."¹⁸² In other words, the pragmatic ICRC was now demanding a comprehensive ban with regard to manufacturing, stockpiling, verification and transfer of anti-personnel landmines. The problem of verification that had flummoxed the diffident ICRC in the past on chemical weapons issue, now only encouraged it to make two bold proposals.¹⁸³ First, establish an independent body to investigate credible reports on the use of antipersonnel mines. Second, criminally prosecute treaty violators irrespective of nationality or place of alleged crime. The mechanics of the latter proposal were never elaborated by the ICRC.

However, its proposal to establish a Mine Information System (MIS) for systematic collection of data pertaining to mines and their victims

¹⁸² Maslen, "The Role of the International Committee of the Red Cross," 11

¹⁸³ Maslen, "The Role of the International Committee of the Red Cross," 91-92

emulated its past practice of serving as an information resource centre on chemical weapons.¹⁸⁴ A century long effort in addressing the problem of regulating and prohibiting weapons attuned the ICRC to arguments on paucity of data on victims and technical expertise on particular weapons. It entrusted this responsibility within its own organization to specialized Arms Unit and Weapons Contamination Unit devoted expressly to addressing the problem of weapons. These specialized units constituted during the landmines campaign, thus represent attempts by the ICRC to thwart criticism, that it does not possess the necessary technical competence and specialization to address the problem of weapons and to unquestionably ground its claim to expertise on the problem of weapons. The ICRC has also explicitly stated that the objective of its “humanitarian diplomacy” is to advocate on behalf of the victims in relation to landmines.¹⁸⁵ This entails accepting responsibility to promote adherence to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Ottawa treaty) as well as amended Protocol II of the 1980 Convention on Certain Conventional Weapons (CCW) and to assist nation-states in treaty

¹⁸⁴ Giannou, “Antipersonnel landmines,” 1454

¹⁸⁵ “Humanitarian Diplomacy and Communication,” ICRC Website, accessed March 6, 2011 <http://www.icrc.org/eng/what-we-do/other-activities/humanitarian-diplomacy/index.jsp>.

implementation, and cooperation to prevent the undermining of the above treaties by new technologies.¹⁸⁶

Conclusion

To conclude, the experience of the Cold War and the development of the laws of war taught the ICRC that launching any direct action to achieve disarmament was “dangerous” as aspersions would be cast on its neutrality.¹⁸⁷ Each nation-state had its own precious strategy advocating disarmament and these ranged from incremental to absolute measures. The ICRC’s preference for any one strategy would be considered a political position. Thus the ICRC concentrated its efforts in codifying the laws of war in armed conflict and treated the problem of conventional weapons as an ancillary issue. The engagement with codifying the laws of war gave the ICRC an insight into the political practices of military necessity and unnecessary suffering. These practices contributed to generating only incremental responsibility among nation-states in addressing the problem of conventional weapons. But the changing political climate and the

¹⁸⁶ ICRC Annexe to Landmine Monitor 1999 March 1999 (see section on humanitarian diplomacy), ICBL Fonds R 11308, Box 2, Library & Archives Canada, Ottawa.

¹⁸⁷ “The ICRC and Disarmament,” 98-99

experience of the mines ban campaign instilled a sense of confidence in the ICRC and the Red Cross movement as whole. It came to realize that “the principle of neutrality is intended to ensure that all victims of war may receive protection and assistance—it is therefore a means to an end, not an end in itself.”¹⁸⁸

This realization empowered the actor to heed the spirit of the Red Cross and advocate on behalf of the victims of mines, just like its delegates such as Sidney Brown and Marcel Junod had in the past on behalf of the victims of chemical and nuclear weapons respectively. In this advocacy it prudently adhered to the insistent guidance of Gustave Moynier and Max Huber to develop a sound legal framework from which to initiate such action. Finally, the creativity exercised by the ICRC as a humanitarian actor enabled it pays a modest tribute to the testimony of Henry Dunant. It listened to the traumatized voices of victims and its delegates as they suffered from weapons used in the battlefields and instead of keeping silent, loudly proclaimed that “Landmines Must Be Stopped.”¹⁸⁹

¹⁸⁸ Maslen, “The Role of the International Committee of the Red Cross,” 95

¹⁸⁹ “Landmines Must Be Stopped,” *Red Cross Crescent- The Magazine of the International Red Cross & Crescent*, 2, 1997, cover page, ICBL Fonds, R 11308, Box 2

CHAPTER NINE - CONCLUDING STATEMENT - EFFECTS BASED APPROACH TO WEAPONS

Introduction

The ICRC's position that "Landmines Must Be Stopped" facilitated the regulation and prohibition of anti-personnel landmines.¹ This position embedded in an effects based approach to weapons generates optimism with regard to constituting alternative discourses in addressing the problem of weapons. In response to this enthusiasm, it is imperative that we pause and once again reflect on the two principal questions raised in this study. How has the ICRC addressed problems of arms control and disarmament? What are the effects of its practices on the actor itself and on the broader field of arms control and disarmament? In addressing these questions, this chapter first recapitulates the central insights of this thesis and then proceeds to engage with concerns regarding the path forward with an effects based approach to weapons.

¹ "Landmines must be Stopped," *Red Cross Crescent- The Magazine of the International Red Cross & Crescent*, 2, 1997, cover page, ICBL Fonds,R11308, Box 2

Question One

How has the ICRC addressed problems of arms control and disarmament? A response to this question is based on the premise that the problem of regulating and prohibiting weapons is “a complex social function” that has to be studied by focusing on how practices of humanitarianism and arms control and disarmament constitute a “common matrix.”² In this matrix it is possible to discern specific techniques such as medicalization, legalization and testimonialization that invest actors and their practices with power to represent a “whole corpus of ‘scientific’ knowledge.”³ The exercise of this “micro-physics of power” as a “strategy” through “dispositions, maneuvers, tactics, techniques, functions” can be deciphered in a network of relations that are constantly in tension with each other.⁴ In this network of relations it is possible for particular actors such as the ICRC to have recourse to power and they can “use, select, or impose certain of its methods.”⁵ An understanding of this power can be gained with the help of a critical and effective history of the ICRC. Such

² Michel Foucault, *Discipline and Punish-The Birth of the Prison*, (London & New York: Penguin Books, 1977), 23

³ Foucault, *Discipline and Punish*, 24

⁴ Foucault, *Discipline and Punish*, 26, 139

⁵ Foucault, *Discipline and Punish*, 25-26

a history interrogates and illuminates its present engagement with the problem of weapons, not simply as an instantaneous act of spontaneity, but as a ritualistic exercise in power made possible due to the embeddedness of the humanitarian actor in existing social arrangements in the field of ACD. The full implications of the exercise of this power on the humanitarian actor and the broader field of arms control can be accounted for in terms an effects based approach to weapons.⁶

To investigate and grasp the significance of these social arrangements this study began by engaging in conversations with the representatives of the ICRC to understand their approach to the problem of regulating and prohibiting weapons. These conversations revealed the insistence of humanitarian actors to take note of the fragmented nature of discourses on arms control and disarmament. It is this refusal to succumb to any overarching discourse on ACD and assertion of attentiveness to the particularity of a discourse deliberately pursued by a humanitarian actor that underscored the need for studying alternative discourses in addressing the problem of regulating and prohibiting weapons.

⁶ Foucault, *Discipline and Punish*, 26-27

The complexity of this humanitarian discourse became apparent as multiple expert vocabularies pertaining to IHL and medical responses to suffering sought to explicate this problem. However, the discourses on expertise seemed insufficient, even as the interviewees delved into their past and present practices, to help configure the ICRC's approach to the problem of weapons. Despite the considerations of expertise and resources, the need for a firmer grasp of the ethical orientation of the actor based on its experiences of responsibility seemed to suggest a perpetual struggle within the actor to shape its identity and affirmative commitment to addressing the problem of weapons.

This struggle in the humanitarian actor's efforts to address the problem of weapons is scarcely mentioned in the existing literature on the ICRC. The peripheral treatment accorded to the humanitarian actor's engagement with the problem of weapons persists in the existing literature on arms control and disarmament too. A survey of these bodies of literature demonstrates contestations among scholars and practitioners on who writes a history of the ICRC, to what purpose, and how it could be written? An engagement with these questions results in an interesting exercise in historiography. These historiographical contestations persist throughout the text as the scholars seek to give different interpretations as

to the approach pursued by the ICRC in addressing the problem of chemical, nuclear or conventional weapons. These contestations are evolutionary and chronological accounts of the ICRC's growth as a humanitarian actor and are not specifically interested in its efforts to address the problem of weapons. Similarly the literature on social constructivism, human security and disarmament as humanitarian action with their emphasis on representing the contributions of non-state actors as mere supplements to socialize the behaviour of nation-states is not persuasive enough to undertake a detailed exploration of the humanitarian practices of ACD pursued by the ICRC.

In an effort to distinguish itself as a genealogical account of the humanitarian practices of ACD this study strives to write a "history of the present" that questions the air of inevitability that surrounds the ICRC as an existing humanitarian actor engaged with the problem of weapons.⁷ It focuses on the particular experiences of the humanitarian actor that have been "contained, subjugated or excluded" as it tries to address the problem of weapons.⁸ This study does not assume continuity in the ICRC's

⁷ Michel Foucault, *Discipline and Punish- The Birth of the Prison*, trans. Allen Lane, (London & New York: Penguin Books, 1977), 30-31

⁸ William E. Connolly, *The Terms of Political Discourses*, (New Jersey: Princeton University Press, 1983), 232

engagement with the problem of weapons as a coherent endeavour. It allows for possibilities and contingencies that can render its engagement ad-hoc and arbitrary and even permit for practices that coalesce to give an appearance of necessity. As these practices coalesce it is possible to thematize the strategies pursued by the humanitarian actor to address the problem of weapons. These strategies help the humanitarian actor to frame the problem of weapons as a humanitarian problem and establish “standards of responsibility” in the field of arms control and disarmament.⁹ The reiteration of these themes in a strategic manner in the ICRC’s efforts to address the problem of weapons makes it possible to glean transformations in the humanitarian actor itself and the broader field of ACD. These subtle transformations suggest a promise of future possibilities of change in addressing the problem of weapons.

With the help of this critical and effective approach that this study argues that the ICRC has articulated an effects-based approach to weapons that focuses on the sufferings of the victims vis-à-vis the demands of military necessity. The effectiveness of this approach, pursued by the ICRC is contingent on the possibilities and limitations of its three-pronged strategy of testimonialization (practices of witnesses and their

⁹ Connolly, *Political Discourses*, 194-203

testimonies, medicalization (representation of suffering), and legalization (development of the laws of war). The complex interplay of these practices of power and their rhetorical effects is traced from the late nineteenth century to the end of the twentieth century with regard to particular weapons categorized in the field of ACD as conventional weapons and weapons of mass destruction.

Practices of Testimonialization

In exploring the possibilities and limitations of the practices of testimonialization this study investigates the experiences of ICRC delegates such as Henry Dunant, Sidney Brown, Marcel Junod as they witness the use of particular weapons on battlefields. It notes how these delegates as witnesses register a sense of horror and how their feelings of trauma and revulsion are expressed in their testimonies. It also demonstrates how the testimonies of these delegates, are appropriated by their audiences, in an exercise of power wielded to determine, how these particular testimonies are to be deployed strategically or tactically to pursue ACD. The discretion wielded in practices of silencing particular witnesses and their testimonies vis-à-vis practices of deploying particular witnesses and their testimonies in a voice of authority shows that

practices of testimonialization by the ICRC in the field of ACD is a political decision. This decision has enabled the actor to strategically draw attention to itself time and again by representing itself as a “Living witness”, a “Good Samaritan”, a “Warrior Without Weapons” with a moral authority intervening on behalf of the victims suffering from the effects of particular weapons.¹⁰ The moral pathos and indignation expressed through practices of testimonialization can initiate a dialogue on practices of ACD among humanitarian actors and nation-states. But the discretion exercised by the ICRC in choosing to assert its voice as a “Living witness” or engaging in practices of silence as a “Good Samaritan” and a “Warrior Without Weapons” is appreciated by nation-states as they recognize that the actor is a participant in the realpolitik of ACD. It makes the ICRC more acceptable to nation-states as an intervening moral authority and a legal draftsman preparing documents that facilitate ACD negotiations.

¹⁰ “Appeal Against the Use of Poison Gas, Letter and Memorandum from the International Committee of the Red Cross to the League of Nations,” ICRC Archives, CR-159-5, Carton 150; Max Huber, *The Good Samaritan*, (London: Victor Gollancz Ltd, 1945); Marcel Junod, *Warrior Without Weapons*, trans. Edward Fitzgerald, (Oxford: Alden Press, 1951)

Practices of Legalization

This study also demonstrates the possibilities and limitations of the ICRC practices of legalization. It traces this from the late nineteenth century when the ICRC acknowledges the irony of its efforts to render war more humane through development and transformation of the laws of war into IHL. The ICRC tries to represent itself as a guardian of the Geneva Law and maintains a careful distance from the Hague Laws when it feels threatened but eagerly observes developments in this body of law and does not hesitate to take credit for it. But it is only when the humanitarian actor faces a personal challenge in terms of its authority, expertise and competence to address the problem of ACD, that the ICRC makes deliberate efforts to represent itself as an “expert” in IHL. It transforms the laws of war into IHL when it finds that the principles of the laws of war needed more stringent rules to address the problem of weapons and this could only be achieved by combining the Geneva and The Hague laws. Thus the ICRC’s practices of legalization impart to the actor a sense of technical competence with which it can participate in ACD negotiations. At the same time its efforts to interpret customary IHL and treaty texts with regard to regulating and prohibiting particular weapons has met with resistance from nation-states. It has also raised concerns

about how the practices of “expertise” in the field of ACD encourages practices of inclusion and exclusion of particular actors according to their proficiency in the technical jargon.

Practices of Medicalization

Despite constituting itself as a legal expert and a medical expert in war surgeries, for more than a century, the ICRC is unable to bridge the gap between means of destruction and means of protection. The malaise of technical legal discourse on “unnecessary suffering” and “military necessity” compels the actor to make claims that a balance must be struck between these two contending claims.¹¹ In an effort to calibrate this balance, the ICRC facilitates meetings and workshops, collects data from its field hospitals but repeated encounters with difficulties in striking this balance makes the actor sentient to the difficulties of bridging this gap. This provokes the actor to invoke a continued sense of horror and revulsion that accompanies practices of medicalization. It invokes this sense of horror by mobilizing images of the sufferings of victims and demanding that the only way to address their wounds is by actively

¹¹ St. Petersburg Declaration 1868; Hague Convention 1907

pursuing ACD. It therefore stakes a claim for a humanitarian space representing the sufferings of victims and their need for rehabilitation through ACD. The very premise of ACD practices is grounded in the need to ameliorate the sufferings of the victims.

In short, the problem of regulating and prohibiting weapons has been addressed by the ICRC with the help of the practices of testimonialization that help initiate a dialogue in addressing the problem of weapons. However this dialogue can only be sustained with the help of practices of legalization and medicalization. By representing themselves as experts capable of participating in technical discourses the humanitarian actors can demonstrate a competence that will help them get a seat at the table addressing the problem of weapons. However, as these practices of expertise reach their limit and produce a stalemate it will compel the humanitarian actor to reassert its voice as a witness with a testimony. It is this cyclical nature of these strategies that with time matures to a humanitarian discourse possessing a “specific density, solidity, facticity.”¹² It is this discourse based on a triad of strategies that is

¹² Mitchell Dean, *Critical and Effective Histories-Foucault's Methods and Historical Sociology*, (London & New York: Routledge, 1994), 17

recognized as an effects based approach to weapons that then stimulates queries on “how far a specific language can be used?”¹³

Question Two

How does an *effects based approach* to the problem of weapons further our understanding of the humanitarian actor itself and what implications does it have for the broader field of ACD? In addressing these concerns it is important to note that this study is a refutation of a critique that critical security studies approaches neglect conceptual and sustained empirical analysis.¹⁴ This study is a detailed empirical analysis of the ICRC’s engagement with the problem of weapons for more than a century. It also provides a clear conceptual framework based on a triad of practices of legalization, medicalization and testimonialization that are deployed by the humanitarian actor to address the problem of regulating and prohibiting weapons. A detailed empirical and conceptual analysis in addressing the problem of chemical, nuclear and conventional weapons

¹³ Dean, *Critical and Effective Histories*, 16-17, 2

¹⁴ Richard Price and Christian Reus-Smit, “Dangerous Liassions: Critical International Theory and Constructivism,” *European Journal of International Relations*, 4 (3), 1998, 259-294; Robert O Keohane, *International Institutions and State Power*, (Westview: Boulder University Press, 1989), 174; Judith Goldstein & Robert O Keohane, eds, *Ideas and Foreign Policy*, (Ithaca: Cornell University Press, 1993), 6

helps understand the changes in the humanitarian actor's approach to the problem of weapons and its deliberate efforts to constitute an alternative discourse on weapons.

Unlike other genealogical accounts, this study does focus particularly on the ICRC as a humanitarian actor in the field of arms control and disarmament. This is not to suggest that the emergence of the ICRC is an originary moment in the field of humanitarianism and arms control and disarmament. It is but an effort to investigate the ICRC's position as an "exceptional actor" embedded in a multiplicity of circulating discourses and counter-discourses on militarism, pacifism, humanitarianism, human-rights, human security and ACD.¹⁵ Despite the multiplicity of circulating discourses it is the effects based approach to weapons championed by the ICRC that surfaces as the dominant discourse vis-à-vis other competing discourses championed by other actors in the international system.

Furthermore, attentiveness to this particular actor and its practices enables one to address a critique of relativism levied against post-

¹⁵ Brigitte Troyon and Daniel Palmieri, "The ICRC delegate: an exceptional humanitarian player?" *International Review of the Red Cross*, 89, 865, March 2007, 97-111

structural analyses of discourses. The effort here is to posit the ICRC as a representative actor that bring the “positive reality” of an effects based approach to weapons into focus and facilitates a description of its “systems of formation.”¹⁶ By situating the ICRC as a humanitarian actor in a multiplicity of circulating discourses this study demonstrates how an actor is constantly engaged in crafting its own identity and becomes visible as it affirms its own experiences of responsibility.

Despite this growing visibility, this study recognizes that the ICRC is visible as a disciplined actor that seeks to resist the invisible disciplinary power wielded by nation-states in the field of arms control and disarmament. The ICRC is subject to a “principle of compulsory visibility.”¹⁷ It is this principle of compulsory visibility that “assures the hold of power that is exercised over them.”¹⁸ But this understanding of discipline is tempered by a recognition that discipline as power “comprising of a whole set of instruments, techniques, procedures, levels of application, targets” wielded by nation-states can also be “taken over by ‘specialized institutions’” such as the ICRC that make “discipline their

¹⁶ Dean, *Critical and Effective Histories*, 17

¹⁷ Foucault, *Discipline and Punish*, p.187

¹⁸ Foucault, *Discipline and Punish*, p.187

principle of internal functioning” to achieve “a particular end.”¹⁹ This study shows the power of the discipline experienced by the humanitarian actor is not only external but also internal. The external discipline is apparent in terms of the possibilities and constraints that the ICRC experiences as it tries to serve as an alternative forum available to other actors to address the problem of weapons. The internal self-discipline becomes manifest as it imposes constraints on its own practices of witnessing and sharing of testimonies and battles to provide a meaningful understanding of unnecessary suffering vis-à-vis military necessity. The force of discipline and the struggle to address the problem of weapons become acute in the compulsion that the humanitarian actor confronts to articulate an alternative discourse in addressing the problem of weapons.

In understanding this disciplinary power further, this study asserts that it is extremely important to distinguish between norms and normalization. The social constructivist literature is obsessed in its concern with norms and norm creation. It does not sufficiently grasp the logic of normalization. Social constructivism is unable to grasp the problem of normalization as it is too centered on creating universal frameworks that explain the functions of advocacy networks with a core nucleus of actors

¹⁹ Foucault, *Discipline and Punish*, pp. 215-216

engaging in activities such as information gathering to socialize the behaviour of nation-states.²⁰ For example, the norms literature suggests that testimonies of actors are one among several other sources of information, but a sensitivity to practices of normalization will demand that testimonies be problematised and be regarded as more than a mere source of information. Attentiveness to practices of normalization will demand a scrutiny of the politics involved in the practices of legalization and medicalization instead of simply applauding these measures as instrumental in norm creation.

A critical security studies approach emphasizes engaging with practices of normalization such as testimonialization, legalization and medicalization and grasp the dangers associated with them. Normalization enables us to recognize that a degree of complicity exists between the ICRC as a humanitarian actor and the nation-states that helps sustain the architecture of arms control and disarmament. This normalization is so subtle that it will represent itself as a transformative force without arousing consciousness of its dangerous effects. This complicit normalization will induce only incremental changes in addressing the problem of weapons.

²⁰ Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders- Advocacy Networks in International Politics*, (Ithaca & London: Cornell University Press, 1998), 1-38

It is possible to trace these incremental changes by situating the practices of normalization in a historical trajectory to gauge the life cycle of these practices. The life cycle of these practices generates further consciousness of the circumstances that encourage or constrain the growth of these practices. A study of the life cycle of these practices generates questions that have not been raised in the field of arms control and disarmament. For instance: what are the possibilities and limits of practices of medicalization, legalization and medicalization in the field of ACD? In order to address this question, this study has emphasized the importance of understanding the tensions inherent in each of the practices of testimonialization, legalization and medicalization and as they intersect with each other.

These tensions and dangers have been demonstrated in detail in the text as the ICRC has engaged with the problem of weapons. A brief summary of them here suggests that the appeals issued by the ICRC against the use of particular weapons has been premised on the consideration that they are witnesses to the suffering inflicted by the use of these weapons. In scrutinizing these appeals, attention has been devoted to their texts and tonality. These appeals demonstrate ICRC's decision to embrace

responsibility towards the victims. However, the appeal as testimony is sometimes a choreographed and a mediated response that “carries within it the voices of the other and all the others.”²¹ It cannot always command the same authority as a victim. The ICRC’s appeal against the use of poisonous and asphyxiating gases and the more recent appeal against the use landmines pales in comparison to the overwhelming effectiveness of Henry Dunant’s appeal as a direct witness. The ICRC’s two appeals against the use of nuclear weapons have been considered ineffective in regulating and prohibiting the use of these weapons.

The ICRC practices of legalization have produced the Geneva Conventions (1864, 1949), the Geneva Protocol (1925), the Additional Protocols (1977), the Conventional Weapons Conventions (1980) and the Ottawa Treaty banning the use of anti-personnel landmines (1997). It has also tried to prepare a Draft Rules and showed an interest in an advisory opinion of the International Court of Justice on the legality of the use of nuclear weapons without much success. Despite decades of efforts and this long list of legal agreements it is debatable whether these agreements have acquired a force strong enough to restrain the use of particular

²¹ James Hatley, *Suffering Witness: The Quandary of Responsibility after the Irreparable*, (Albany, New York: State University of New York: 2000), 125

weapons. The texts of these documents is considered to be “porous” generating ambivalence on their application and development in specific contexts. These practices have raised concerns that ritualistic documentation and rule following has resulted only in deferment of hard consequences.

To record the progress achieved in medicalization of suffering the ICRC organized international exhibitions, encouraged the development of masks, clothing and reagents that could protect from chemical warfare, supported a health based approach to weapons that tried to address the atomic bomb disease or hiroshimitis, established orthopaedic hospitals and rehabilitation centres for the victims of landmines. In its institutionalized response to suffering the humanitarian actor has shown a willingness to engage in “market talk” that documents, classifies and calibrates suffering as necessary and unnecessary.²² In this market talk it has deployed statistics that simplifies, abstracts and transforms the suffering of a victim and has also resorted to discreet naming of the victims in a weak attempt to restore their dignity in addressing the problem of weapons.

²² Foucault, *Discipline and Punish*, 91-92

This ambivalent record of the effectiveness of the strategies deployed in an effects based approach raises questions on authority and accountability. This study emphasizes the need to generate an understanding of authority and accountability that refuses to be constrained by demands of expertise in the field of arms control and disarmament. A consideration of authority and accountability acquires a great deal of significance and urgency as the effects based approach based on a triad of practices proliferates among other actors in the international system. This experience of normalization becomes acute as these strategies of testimonialization, legalization and medicalization proliferate and represent themselves as forces of transformation in the field of ACD.

Increasingly activists such as Susan Strange and academics like Robert DeChaine alert us on a growing number of humanitarian actors such as Handicap International, Medecins Sans Frontiers and others that are officially following a policy of being witnesses with a testimony, claiming expertise in IHL and offering medical palliatives to the suffering. Robert DeChaine observes,

Temoignage, translated literally as "testimony" or "witnessing" is the term employed by MSF to signify its practice of bearing witness to, and speaking out against, perceived human injustices that its volunteers encounter... MSF's articulation, via temoignage, of morality and justice as humanitarian imperatives reveals a fascinating rhetorical construction: that of a morally ordained right of the organization to interfere in others' affairs while, at the same time, somehow maintaining a steadfast obligation to neutrality.²³

As a growing number of humanitarian actors increasingly resort to practices such as testimonialization, legalization and medicalization is it sufficient to give a simple endorsement of an effects based approach to regulating and prohibiting weapons? This study acknowledges the need for alternative discourses in addressing the problem of weapons and recognizes the creativity of the ICRC in constituting an effects based approach to weapons but cautions against such a simplistic endorsement.

²³ Robert DeChaine, *Global Humanitarianism- NGOs and the Crafting of Community*, (Oxford: Lexington Books, 2005), 83-84

On the contrary, it seeks to encourage reflexivity on the possibilities and limits of an effects based approach to weapons.

An effects based approach is appealing and dangerous as it feeds into the image of humanitarian actors as being pragmatists and competent in addressing the problem of weapons through expertise in legal and medical issues. It generates a sense of complacency that the problem of weapons is being addressed in an incremental manner. It also induces a sense of cynicism towards the deployment of testimonies by humanitarian organization. This cynicism, pragmatism and complacency creates an illusion of progress in the field of ACD. Yet it is difficult to adopt a sense of resignation towards an effects based approach to weapons because it is an approach that has been crafted in extremely difficult circumstances and represents a force of resistance to the disciplinary power of nation-states in the field of ACD. It is in the last resort an expression of freedom and solidarity of the humanitarian actor with the victims.

As such this study is only an attempt to consider the effects based approach as only one among several other discourses on addressing the problem of regulating and prohibiting weapons. It is an effort to

encourage further studies to enrich our understanding of an effects based approach to weapons and other alternative discourses addressing the problem of regulating and prohibiting weapons. This will be possible as in the coming years more archival data becomes available, especially from the ICRC archives, helping us to trace the humanitarian actor's contributions to some more specific ACD agreements such as the Chemical Weapons Treaty, Biological Weapons Treaty and Cluster Munitions Treaty.

The effects based approach demonstrates an attempt by the ICRC to constitute a universalizing humanitarian discourse to address the problems of arms control and disarmament. It tried to understand the risks and dangers of the complicity of humanitarian discourses in establishing "standards of civilization" to regulate and prohibit the use of particular weapons.²⁴ The contestation of these "standards of civilization" amongst actors, the inclusive and exclusive access to forums where these standards are negotiated and the professional military, legal and medical vocabularies that accompany these practices have their effects in regulating and prohibiting weapons. But, the need to constitute a

²⁴ Cornelio Sommaruga, "Humanitarian Challenges on the Threshold of the Twenty-First Century," *International Review of the Red Cross*, 36, 1996, 20-35

universal humanitarian discourse to engage with the problem of regulating and prohibiting particular weapons, cannot in effect be segregated from an exploration of the purchase enjoyed by “particularistic” discourses on “race” in the field of arms control and disarmament. This area of research is of acute importance given Samuel Huntington’s study on a clash of civilizations and the growing response of social constructivist scholarship to this challenge.²⁵ As such the discourses on racism and arms control and disarmament can be another interesting avenue of research.

An effects based approach to weapons further suggests the need to study the role of affect or emotions in addressing the problem of regulating and prohibiting weapons. A study of affect will help us investigate “how emotions are bound up with the securing of social hierarchy” that classifies the problem of weapons as an area of hard politics that cannot be addressed by practices of soft politics.²⁶ It will help us to engage with the problem of weapons by acknowledging that “hardness is not the absence of emotion, but a different emotional orientation towards

²⁵ Samuel P. Huntington, *The Clash of Civilizations and the Remaking of the World Order*, (New York: Simon & Schuster, 1996); Peter J. Katzenstein, ed. *Civilizations in World Politics: Plural and Pluralist Perspectives*, (Oxford & New York: Routledge, 2010)

²⁶ Sara Ahmed, *The Cultural Politics of Emotion*, (New York: Routledge, 2004), 4

others.”²⁷ It is by tracking “how emotions circulate among bodies” in the field of ACD that we will be able to address the problem of regulating and prohibiting weapons in a meaningful manner.²⁸ It is imperative that a serious consideration of “sociality of emotions” be given due respect in addressing the problem of weapons.²⁹ Several biographical and medical accounts exist independently that need to be woven together to address this problem. The entire collection of the ICRC war photos can in itself serve as an important reservoir for doing research in this field.

An effects based approach to weapons also contributes to our understanding of practices of global governance. It shows the importance of interventions by other actors in the international system in fields that are tightly regulated and protected by sovereign nation states claiming to protect their respective national interests. It demonstrates how non-state humanitarian actors such as the ICRC are capable of making interventions and alliances in constituting a humanitarian space within the field of ACD. An effects based approach demonstrates how power circulates in constituting a more inclusive space as compromises and contestations take place between humanitarian actors and nation-states. An effects based

²⁷ Sara Ahmed, *The Cultural Politics of Emotion*, 4

²⁸ Sara Ahmed, *The Cultural Politics of Emotion*, 4

²⁹ Sara Ahmed, *The Cultural Politics of Emotion*, 8

approach encourages constitution of more inclusive spaces that enable humanitarian actors vis-à-vis nation states to delimit, define and decide the possibilities and limits of regulating and prohibiting particular weapons. As such the field of ACD can no longer ignore the presence of other actors and their discourses in addressing the problem of weapons.

In sum, an effects based approach is an alternative discourse available to address the problem of regulating and prohibiting weapons. This discourse has been crafted within a network of relations in which the ICRC as a humanitarian actor embedded itself. It is a discourse that has gained in strength even as it has competed with a multiplicity of other discourses. As an alternative discourse, the effects based approach, enables the ICRC to make interventions in the field of arms control and disarmament. An effects based approach is a political discourse based on a triad of strategies of legalization, medicalization and testimonialization that articulates the ethical, legal and medical dimensions of the problem of regulating and prohibiting weapons. This triad of strategies intersect with each other and operate in a cyclical manner. This generates a density of discourse that cannot be ignored as it is capable of producing change. The possibilities of transformation and change in the practices of ACD is dependent on attentiveness to alternative discourses articulated by

humanitarian actors such as the ICRC and its effects based approach to weapons.

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