

A faint, light gray map of the Americas, including North and South America, serves as a background for the page. The map is centered and covers most of the page area.

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The findings used in this paper are part of original research on “Non-state conflict management. Possibilities and limitations of NGOs in dealing with non-state arms carriers”, performed at the German Institute for International and Security Affairs (SWP) and the University of Osnabrück (Project leader: Prof. Dr. Ulrich Schneckener), funded by the German Foundation for Peace Research (DSF). The activities carried out during the project included interviews under the principle of confidentiality, so that detailed information on direct contacts and negotiations can herein be reproduced only in abstract form. An earlier version of this paper has been presented at the conference on “Normative Orders,” organised by the Cluster of Excellence at the Goethe University Frankfurt/Main, Germany, in October 2009.

## **NGOs as norm dealers: Norm-Diffusion in Conflict-Management using the example of the ICRC**

Claudia Hofmann

Currently, non-state armed groups, such as rebels, militias, warlords and crime networks, dominate the environment of both conflict and fragile countries in many different ways. They are in breach of international humanitarian law (IHL), commit violence against civilians, and establish criminal and informal economies, typical of postwar societies. On the other hand, they often give voice to social problems, see themselves as representatives of specific interests and sometimes enjoy broad popular support. In this manner, non-state armed groups frequently have the potential to undermine peace and state-building processes or even bring to a complete halt, causing violence to resurge (Bruderlein 2000, Capie 2004, Petrsek 2000).

Whereas state actors have a hard time in dealing with such non-state arms carriers, transnational NGOs have developed strategies specifically designed to diffuse humanitarian norms, and ensure their overall observance among non-state actors. Their purpose is to persuade rebels, paramilitaries and other arms carriers to accept international humanitarian legislation and norms, and to adapt their conduct accordingly. This process of persuasion may take place by way of workshops or other manners of dialogue, wherein NGOs provide clarifications of existing international legislation. In addition, several transnational NGOs carry out capacity building and training exercises, provide mediation services, and facilitate agreements with the arms carriers that render formal commitments to specific norms feasible. For instance, the Swiss NGO Geneva Call provides arms carriers with the possibility

of committing, by means of an agreement, to the provisions set forth in the Ottawa Convention of 1997 on the ban of anti-personnel mines.<sup>1</sup> Among the few transnational NGOs active in this field, the International Committee of the Red Cross (ICRC) is a particularly interesting example as it works based on an official mandate from the international community to protect the victims of human rights violations in armed conflicts. Based on this authority, it provides, *inter alia*, training for arms carriers on IHL and human rights (HR) and carries out awareness campaigns highlighting the obligations inherent to the protection of civilian populations. Its aim is to make IHL an integral part of the arms carriers' doctrines, including qualifying, training and equipment related to the provisions, as well as their internal sanctions mechanisms.

However, what are the methods and under which conditions do NGOs succeed to persuade such non-state arms carriers to comply with international norms?

The purpose of this paper is to shed light on the dynamics and the results of the norm diffusion practices occurring between the ICRC and non-state arms carriers in environments of conflict and fragile statehood. The paper aims to conceptually describe the methods used by the ICRC and to provide an answer regarding the difficulties and chances of success arising out of these interactions. The paper addresses the ICRC's approach for integration and infers its factors for success. These factors are based on well-known socialisation research hypotheses, which are then put to the test in the field. The conclusions point to the ICRC's image as a norms diffuser and highlight the potentials of its activities. Successful norm diffusion can, on the one hand, contribute to increasing the security of civilian populations in conflict areas by persuading non-state arms carriers to abstain from specific violent practices, such as for instance the use of land-mines and child-soldiers. On the other hand, successful norm diffusion may also provide the opportunity for compliance with other aspects of HR and open the door to a broader transformation of non-state arms carriers.

## NGOs and the interaction with non-state arms carriers

The interaction between NGOs and non-state arms carriers has not yet received much systematic attention in research. However, NGOs have developed original approaches that offer new insights when dealing with arms carriers (Debiel/Sticht 2005, Gordenker/Weiss 1996, Keck/Sikkink 1998). By taking a closer look at international NGOs' diverse areas of activity, either via a survey of available literature or inductively through practice, one is able to pinpoint four key types of NGOs whose activities vary in duration, circumstance, and in the manner of their contact with non-state arms carriers (Schneckenner/Hofmann 2007):

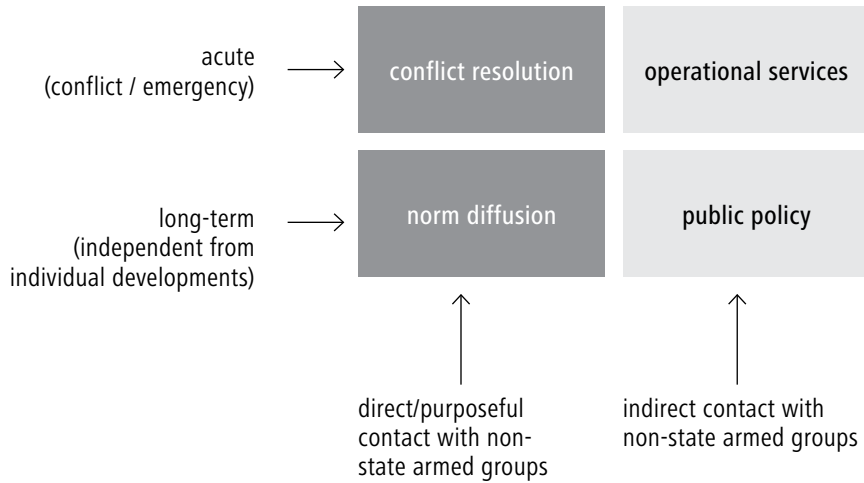
- › Operational Services NGOs are organisations whose primary task is to provide aid to a suffering population during, or subsequent to, a conflict. They must, therefore, frequently negotiate access, for example, with non-state arms carriers so as to carry out

<sup>1</sup> Formally, such a humanitarian law agreement can only be entered into by states. However, an agreement between Geneva Call and an arms carrier, wherein the latter pledges to observe the provisions of the Ottawa Treaty, may be legally, though unilaterally, binding and subject to monitoring.

their mission in conflict/emergency-torn regions. The contact is objective-oriented, given that the main purpose of the operational services NGOs is the provision of aid to a suffering population; non-state arms carriers are not in themselves NGOs' primary targets. This category is comprised primarily of humanitarian aid-oriented NGOs, such as Médecins Sans Frontières or Welthungerhilfe.

- › Public Policy NGOs are focussed on lobbying, monitoring, awareness-building, advocacy and the clarification of norms. They denounce abuse and misconduct ("naming and shaming") and openly appeal to the conflict parties with a view to influencing them to act or refrain from acting; they do not, however, interact with non-state arms carriers directly. Instead, the main points of reference for public policy NGOs are governments and international organisations, which are called upon to take action against the abuse and misconduct of the conflict parties. Contact with the non-state arms carriers is, therefore, indirect, given that they form the subject of reports, rather than of direct action. An example is the International Crisis Group, which seeks to exercise influence on decision-making processes by means of political analysis and recommendations, as well as by increasing the international community's awareness of the problem.
- › Conflict Resolution NGOs are organisations that are actively involved in the conflict, providing good offices or acting as mediators, either officially or unofficially. They keep direct contact with non-state arms carriers to promote negotiation processes. The duration of contact is dependent on favourable conditions for negotiations, but hardly ever goes beyond this stage. Well-known examples are the Carter Center, International Alert and the Finnish Crisis Management Initiative (CMI).
- › Norm diffusion NGOs are organisations whose primary target groups are non-state arms carriers and whose goal is to ensure their compliance with certain provisions of international law. These NGOs, therefore, establish contact with certain arms carriers; their contact with these groups takes place directly and is frequently long-lasting, particularly when agreements regarding the observance of international law are entered into and subject to a monitoring process. Examples are the anti-landmine NGO Geneva Call, as well as the International Committee of the Red Cross.

These four NGO types give rise to the following matrix:



This diagram is merely intended to provide a rough classification of NGOs and their spheres of activities and tasks, particularly as there are a number of NGOs that are (to varying degrees) active in more than one field simultaneously.<sup>2</sup> However, the specific tasks in the diagram must be clearly delineated from each other in view of the varying degrees of interaction with arms carriers they involve. The activities of NGOs in the field of norm diffusion so far have not been discussed much critically in the literature, although the question whether and to which extent, socialisation approaches might be employed in dealing with non-state arms carriers seems particularly relevant in today's world.

### **“Integrating the Law”: norm diffusion through the ICRC**

The diffusion or spreading of norms enshrined in international law constitutes one of the primary tasks of the ICRC, both as regards their observance by states and non-state actors. Its mandate, which describes this task in detail, is set out in the Geneva Convention of 1949 and its additional protocols of 1977. Further to these protocols, the ICRC has been tasked with the protection of human rights in conflict-torn areas, with visiting prisoners, facilitating the reunion of families torn apart in conflicts, and similar humanitarian tasks in the midst of armed confrontations. In addition, the ICRC – by virtue of the Statutes of the International Red Cross and Red Crescent Movement – has been called upon to perform similar tasks in violent situations in which the Geneva Conventions are not applicable (e.g. internal conflicts and violence).

<sup>2</sup> In this manner, for example, **Conciliation Resources** and the **Quaker Peace & Social Witness Program** unite elements of conflict resolution and norm diffusion in their efforts. Their long-lasting commitment vis-à-vis non-state arms carriers for compliance with the provisions set forth in IHL, repeatedly, leads them to a position of volunteering their “good offices” and truce brokering services ad hoc in acute conflict situations.

The ICRC holds, as such, a mixed status: a private association under Swiss civil law on the one hand, and a non-state body, subject to international law, on the other. The statutes of the organisation are reconfirmed every four years at a conference attended by member states of the Geneva Conventions. In this manner, the ICRC holds a quasi-legal or “soft law” status; its existence is not itself mandated by the state, but rather its functions and tasks.

The overarching concept and aim of the ICRC is the diffusion and implementation of humanitarian norms of international law set forth in Common Article 3 of the Geneva Conventions’ regarding the protection of civilians, of the wounded and sick, protection against torture and preservation of personal dignity (ICRC 2007, see Zegveld 2002).<sup>3</sup> The ICRC acts under the premise that the aforementioned law is an integral part of human behaviour and should, therefore, also be observed in war-torn situations. This process usually begins by explaining and clarifying existing humanitarian provisions; one cannot presume that armed groups are fully familiarised with humanitarian legislation, or indeed have an idea of how it translates to the operational level (Interview, 23<sup>rd</sup> July 2009). Information and familiarisation are, therefore, a fundamental first step. Only from such a point is it possible to elucidate the consequences, which in concrete situations may pave the way to proper conduct.

The Statutes of the International Red Cross and Red Crescent Movements set forth this process as follows: Article 5.2 (g) describes the obligation of the ICRC “to work for the understanding and dissemination of knowledge of IHL applicable in armed conflicts and to prepare any development thereof”; Article 5.3 explains, that the ICRC “may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution”. Resolution 21 of the 1949 Diplomatic Conference reinforces this.

As per this logic, the ICRC derives its legitimacy for exercising influence on the parties to any given conflict, regardless whether they deal with state or non-state actors. The ICRC considers the conflict as a holistic phenomenon and therefore does not recognise any normative difference between parties to inter-state or internal conflicts. Consequently, combatants of both sides are provided with similar support. Pursuant

<sup>3</sup> In 1986, the International Criminal Court in the Hague confirmed Common Article 3 as Customary Law (Military and Paramilitary Activities In and Against Nicaragua, IGH Report, S. 114, §218 and 219). Since then, said article is deemed as the minimum Standard, from which no Party to a Violent Conflict (non-state) is allowed to deviate. The text of Common Article 3, which displays identical wording in all four Geneva Conventions, is the following: “In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: 1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; b) taking of hostages; c) outrages upon personal dignity, in particular, humiliating and degrading treatment; d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. 2. The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.”

to the principle of neutrality, talks addressing the responsibilities and obligations of actors in conflict take place at the highest level with both parties to any given conflict (Interview, July 23<sup>rd</sup> 2009). However, when dealing with armed groups, the actual feasibility of this principle is dictated by the security situation, rather than by political circumstances. In general, neither party is deemed the aggressor.

Within its activities, the ICRC deals with more than 100 non-state arms carriers in some 30 countries. The size of the ICRC delegation varies from venue to venue and depends on several factors, such as, for instance, the onsite acceptance of the ICRC, the scope of the mission, its estimated duration, the country's size, the lines of contact already established vis-à-vis the parties in conflict, and the current stage of the conflict itself (Interview, July 23<sup>rd</sup> 2009). At the very least, a delegation of 15 so-called expats, i.e. international officials of the ICRC, will for a given time be appointed to the mission, in addition to approximately 120 local officials. To date, the ICRC's largest mission has been to the Sudan, comprised of 150 expats and 1000 local officials.

### **The integration concept**

Four aspects are particularly important with regard to the ICRC's integration concept, namely, doctrine, qualification, training and equipment of the actor to be socialised – irrespective of whether state or non-state – as well as, the internal sanction mechanisms of the actor (ICRC 2007). These four influencing factors form a mutually reinforcing cycle, wherein changes in one area have impact on the other areas (progress as well as setbacks). These factors are not independent of each other and require separate analyses, although the identification of cross-linkages and dependencies in different areas may give rise to a process that supports a sustainable integration of IHL law in the conduct of arms carriers.

Generally, the simple addition of international humanitarian norms via rules and principles to manuals and procedures is not enough to ensure their integration in non-state arms carriers' doctrine. To prompt action, these norms need to become an integral part of the carriers' doctrine. To this end, arms carriers need to become familiarised with all the constituent parts of the doctrine – directives, procedures, rules of conduct and manuals – which mould the training, the vocabulary and the decision-making processes of the combatants, both in the tactical sphere and in combat operations. Furthermore, based on this information, combatants need to have a clear idea of how to decipher the scope of their duties and how to forward the information to all pertinent command levels. For this purpose, manuals directed at experts in different spheres of activity are issued for all command level combatants, which enables them to supervise the conduct of combat units, for instance within inhabited areas. To achieve a balance between the desired military successes and the protection of civilians, a doctrine needs to have, readily available, the following guidelines for combatants at all command levels (ICRC 2007):

- › the definition of military success and the protection of civilians;
- › the means to infer the consequences of different combat strategies with regard to military success and the protection of civilians;
- › the mechanism to convey to the commanding officer the recommendations in this regard;
- › the monitoring of specific commitments by intelligence and operative personnel and the monitoring and evaluation of the balance between the decision and the combat strategy.

A similar procedure is applicable to the use of force in law enforcement. In order to regulate its use, the doctrine must have the following guidelines at the ready:

- › the definition of the necessity principle and guidelines regarding the circumstances wherein the use of force is authorised by international law;
- › means to achieve a balance between necessity and proportionality in the decision-making process;
- › specific requirements within differing command levels, in order to evaluate and register the balance between the decision regarding the situation, the manner of action employed, and extent of the use of force.

The principles set forth in the doctrine must, in turn, be transmitted to the command levels and combatants through qualification and training. For this purpose, the internal training structure of the arms carrier may be used. Even though there may be no systematic curriculum verification, there is always a training system within non-state armed groups, providing at least familiarisation with weaponry (possibly through peer-to-peer teaching) and activities that might be used for humanitarian purposes (Interview, October 22<sup>nd</sup> 2008).

On the one hand, during their qualifying and training, both commanders and combatants of the arms carrier need to be clearly briefed on the theoretical principles of the relevant IHL provisions. On the other hand, when it comes to the lower ranks of the arms carrier, these principles must be imparted in a practical and understandable manner.<sup>4</sup> The combatants must, for example, become fully aware about the meaning of civil society, civilians and civilian property. Furthermore, each command level must be aware of the commitments they enter into regarding the protection of civilians, the management options at their disposal with a view to not endangering civilians, and how these options are carried out. This may include the choice of weapons as well as the evacuation of civilians from a conflict zone. Furthermore, the respect of relevant principles of international law must become an integral part of daily training. In this manner, practical drills have shown themselves as the most effective training method.

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<sup>4</sup> At higher levels, a rather more academic approach may also be pursued.

The repeated drilling in IHL principles by way of controlled practical experiences, in which obligations and management options are directly lived through dramatically strengthens the knowledge of the applicability of IHL principles. By staging these realistic situations, combatants learn how they should conduct themselves in actual combat situations. Lower-ranking combatants receive precise instructions on how to treat conflict prisoners; officers, meanwhile, are briefed on peaceful methods of conflict resolution, such as negotiation and mediation – with the aim of defusing critical situations – as well as on the principle of proportionality in the use of force. To support this process, the ICRC provides training for teachers, trainers and legal advisers (i.e. train the trainers). In rare cases, the ICRC employs external trainers, e.g. former police officers for the schooling of police forces, or former military officers for the briefing of military units on the protection of civilians (Interview, July 23<sup>rd</sup> 2009).

Continuous evaluation and, where necessary, adaptation of the process is important to ensure effective qualification and training. In order to efficiently and repeatedly monitor the entire process, the ICRC has developed a score card, which on the one hand shows which stage the group has reached in the integration process, and on the other it shows the violations of IHL and of HR committed by or within the group (Interview, July 23<sup>rd</sup>, 2009).

Equally, it is viewed as the duty of the highest command level to provide its combatants with equipment that does not violate IHL or HR. Realistic training situations can be used to verify whether the equipment of an armed group or the manner in which it is deployed comply with the provisions of IHL. These experiences also ensure that combatants are aware of the impact that their weapons will have on potential victims. What type of equipment is placed in the hands of combatants must in turn become part of the doctrine of the arms carrier. Especially in recent years, cooperation between the ICRC and its delegates has increased both with trainers on the ground and in command posts to ensure that IHL is enforced at the operational level.

A final point refers to what occurs in case of a transgression of the doctrine or specific instructions. In such a scenario the transgressor must be disciplined within the group through effective sanction mechanisms. These mechanisms must also fall within the scope of IHL and HR and need to be strengthened within the entire chain of command. On the one hand, the (disciplinary) sanctions make the combatants aware of the consequences inherent to a transgression of the rules (ICRC 2007). On the other hand, a conscientious implementation of sanctions also emphasises the seriousness of command (Interview, October 22<sup>nd</sup> 2008).

### **Success factors for the ICRC's integration processes**

Drawing from the experience of the ICRC in dealing with non-state arms carriers, with the purpose of incorporating IHL and HR in their doctrines and operations, a number of factors responsible for the (relative) success or failure of NGOs stand out: Four overarching groups of factors seem to be particularly relevant: general environmental factors, the attributes of the NGO, the attributes of the non-state arms carrier and the quality of the interaction (Schneckener / Hofmann 2007).

## General environmental factors

An integration process is carried out with greater success when a peace process or peace talks are underway, or when the conflict involving non-state arms carriers has not yet reached a high-intensity level (Interview, July 23<sup>rd</sup> 2009). However, if an armed group is in the midst of large-scale military operations, other priorities will inevitably prevail over long-term compliance with IHL. The ICRC seeks engagement with non-state arms carriers as early as possible in the conflict process. Firstly, a point rather more pragmatic in nature: it is precisely at the beginning of a conflict that contact with these groups is more convenient, i.e. prior to the possibility of the state imposing strict safeguards or setting out political restrictions regarding contact with the arms carrier (such as the inclusion of the arms carriers in an official list of terrorist organisations). Secondly, it makes sense to take the grievances of the arms carrier seriously at an early stage of the conflict and to seek an early dialogue in order to avoid further escalation of the conflict (Interview, July 23<sup>rd</sup> 2009; see Berdal/ Malone 2000). The actors involved – state and non-state – are usually less set in their positions at the onset of a conflict; an agreement is thus more likely to be achieved with early dialogue, at least on certain issues. Moreover, it also makes sense to alert arms carriers about their responsibilities vis-à-vis IHL and HR, so as to promote the protection of civilians at an early stage.

The balance of power between parties may be irrelevant for the success of an attempted dialogue. In every conflict stage and in every constellation of forces there are humanitarian violations which impel a need for dialogue with non-state arms carriers, as well as political motives which represent the starting point for such dialogue; for example, the recognition of perceived emergencies or legitimacy within and by the group itself (Interview, July 23<sup>rd</sup> 2009). The respective balances of power only bear consequences to the activities of the ICRC in regard to the possibilities they provide to the parties: if the state party is the stronger one it will, in certain circumstances, not tolerate external interference, which hinders both humanitarian aid and training by the ICRC. In the event that the state party is the weaker one, however, it might be the one to call for the support of the ICRC. These considerations are mirrored on the non-state arms carrier side (Interview, July 23<sup>rd</sup> 2009).

## Attributes of the NGO

The ICRC has two fundamental attributes, which are particularly suited for interaction with arms carriers and that yield positive effects for cooperation. On the one hand, the ICRC is widely recognised as neutral and independent. Nevertheless, this perception is not absolute and the ICRC has repeatedly been reproached for being a “Western organisation” (Probert 2002). However, its neutrality is set forth in the Geneva Conventions and their Additional Protocols, which refer to the ICRC as an “impartial humanitarian organisation”; the statutes of the international Red Cross and Red Crescent Movement equally refer to its “neutral and independent” role. The ICRC’s non-state position as an organisation, added to the rights and obligations that have been entrusted to it by states, reinforce the principles of neutrality and independence. These attributes allow the ICRC to bypass the political constraints imposed on

state actors when dealing with non-state arms carriers, and to include this task within its mission (Hofmann 2006). While doing so, the ICRC remains impartial and can in some instances act as the intermediary between states and arms carriers (e.g. through the negotiation of prisoner exchanges).

Meanwhile, by means of its encompassing humanitarian aid work, the ICRC has gained a positive reputation which often leads to its being granted access and trust faster than other organisations. As a result, the first contact with non-state arms carriers often takes place with local Red Cross groups on the operational – rather than political – level.<sup>5</sup> Thus, the organisation is able to refer to past success and experiences of its nearly 150 years of history.

### Attributes of non-state arms carriers

The attributes of non-state arms carriers are of great importance for the success of the ICRC's integration approach insofar as the ICRC is dependent on the engagement with the arms carrier. Should the arms carrier refuse to alter its conduct – be it for reasons of principle or strategy – the ICRC will be significantly hampered in its ability to act. For this reason, one of the most influential factors for the success of integrating IHL into non-state arms carriers' *modus vivendi* has proved to be political ideology, i.e. the basic political principles of the group (Interview, July 23<sup>rd</sup> 2009). If the arms carrier's ideology should give rise to the need of working together with the population, i.e. to protect it, as in “a peoples war” (frequently characterised by means of guerrilla strategies; e.g., Shining Path, New People's Army, Irish Republican Army), the receptivity to an integration of IHL will be more pronounced. Equally important is the arms carrier's ability to enforce any necessary changes in conduct pursuant to the provisions of IHL.

Accordingly, and due to the long-term nature of the integration approach, ensuring the commitment of the top-command echelon of the arms carrier is indispensable. In fact, all relevant command levels (from the strategic to the tactical) must not only permit the permanent dissemination and indoctrination of IHL, but also send a strong signal to subordinate levels so as to ensure that the observance of IHL becomes a clear “top-down” priority. This priority must also remain clear in case of personnel changes, so as to ensure the uninterrupted existence of the process. For this purpose, the commanders must, always and specifically, emphasise the observance of humanitarian norms in the planning, organisation and execution of all combat situations and enforcement measures based on the doctrine in force. With the purpose of supporting the commander-in-chief and various command-levels in carrying out this task, the ICRC provides special seminars and workshops, which are useful for the drafting and revision of doctrine, training programs and deployment directives. If called for, the ICRC also provides assistance in the production of hi-tech products, such as videos, interactive CD-ROMs and DVDs, which aid in the dissemination of IHL (ICRC 2007).

In addition, doctrine-based guidelines need to be turned into concrete programmes, projects and action plans; targets and duties must be determined, and deadlines for

<sup>5</sup> In other cases, the ICRC approaches the arms carriers in a proactive manner (Interview, 23<sup>rd</sup> July 2009).

each step of the process must be stipulated. At the same time, the identification of individual vocations is a necessary step for the successful conversion of doctrine into programmes and projects. These identified persons must rely on their skills and on available tools to effectively manage both programmes and projects, for instance, the writing of new tactical manuals, new training plans, the updating of the current doctrine or even the procurement of new equipment.<sup>6</sup> However, the experience of the ICRC has shown that the establishment of a proprietary department for IHL within a non-state arms carrier is more of a hindrance, given that such a department would separate itself from the rest of the command chain and degenerate into a sheer end in itself. Therefore, the responsibility for the implementation of programmes and projects should rather be delegated to the operational arm of the arms carrier, which is usually also responsible for combatant training (ICRC 2007).

A solidly-established structure within the arms carrier proper is also a decisive factor. Given that the development of the process depends on the existing structure of the arms carrier (effective leadership and command chain, stable qualification and training system), a weak structure within the group leads to a slower process of integration and may even bring it to a complete standstill. However, if the integration process can rely on a solid structure, its costs can be kept at a minimum and, in this manner, the resources of the arms carrier are not a necessary factor for success (Interview, July 23rd, 2009; see Weinstein 2006). Nor, in the case of groups with solidly established structures, is there need to qualify additional trainers if such personnel already exist.

## Quality of the interaction

Much of the interaction between the ICRC and the arms carriers takes place on an interpersonal level and is subject to the personality of the ICRC delegates' and of the arms carriers' representatives. Both parties need to win each other's trust to speak openly about difficult issues. Usually, this takes place through a process of getting to know each other, including small talk and socialising – depending on the culture – and careful listening, in order to become familiarised with the norms, values and prospects of the other side and to properly understand them (ICRC 2007, Interview, July 23rd 2009; see. Bercovitch 2002, Dunn/Kriesberg 2002, Touval/Zartman 1985, Young 1967, Zartman/Rasmussen 1997). How well this is achieved is a matter of personality. Also the manner in which the dialogue is carried out depends on the characters leading the negotiations.

For the purpose of conversation dynamics, initiating talks with a practical problem with a relatively simple solution seems to be an approach that usually promises success (Interview, July 23rd 2009). When this occurs, a positive impression arises on both sides and participants of both sides are able to sense the attitude of the other with regard to the process. Issues relating to the condition of prisoners or the access to a given region/checkpoint are particularly worth mentioning as good approaches for cooperation with arms carriers. Subsequent to an agreement, it becomes possible to build trust upon a basis of prior success.

<sup>6</sup> The ICRC takes no part in the actual drafting process of regulations and programs, although it will provide its expertise upon request.

## Norm-diffusion and the socialisation of non-state arms carriers

Mechanisms and conditions of socialisation are analysed in the relevant literature, which includes successful examples of norm transference from one actor to another (amongst others, Chayes/Chayes 1995, Checkel 2005, 2001, Finnemore 1996, Gheciu 2005, Johnston 2001, Risse/Jetschke/Schmitz 2002, Zürn/Checkel 2005).<sup>7</sup> The possible mechanisms of socialisation are numerous and the conditions are set forth on various levels – covering structural conditions, as well as actor dispositions and process characteristics (Schimmelfennig 2003). In the case of the ICRC and norm diffusion to non-state arms carriers, the investigation is less problematic, inasmuch as the mechanism is clearly identifiable. Pointing to its international role and attributions, the ICRC does not rely on capabilities that would allow it to exert social pressure or to negotiate norm compliance. Neither has it the possibility to recommend social incentives (such as recognition, increased status or image awards), nor can it make political concessions (such as participation and decision-making) nor can it set financial incentives (such as financial support, economic gains or military protection). The imitation mechanism mentioned in the literature is equally not very relevant, given that the organisation and the non-state arms carriers occupy very different terrains: as an international humanitarian organisation, the ICRC can hardly represent a role model for arms carriers. By means of discourses with arms carriers (such as negotiations, workshops, meetings with experts, and via campaigns) the ICRC tries, via use of rhetoric, to justify and disseminate the norms of IHL and HR. In the event that the ICRC has the “better arguments,” the arms carriers allow themselves (in theory) to be persuaded by the correctness of these norms and alter their conduct accordingly. Typically, the change in conduct begins with the acceptance of the correctness of these norms by individuals. Should the norms be incorporated in individuals’ schemata and in the doctrine of the arms carriers, the arms carriers begin to lead the action themselves and the socialisation process is deemed complete.

Regarding the mechanism of persuasion, various authors have widely convergent views on the necessary conditions (see Checkel 2001, 1999, Cortell/Davis 2000, Johnston 2001, Risse 2000). It is considered that norm-diffusion by way of persuasion is more likely to succeed in situations where arms carriers are relatively new to the scene, and in which the conflict is still poorly spread. When the positions of the parties in conflict are not yet fully unyielding, opponents are more prone to agree to dialogue as opposed to engaging in protracted conflict. In other words, norm diffusion is more likely to be effective, when

- › the actor to be persuaded is new or unsure of himself; for instance if the actor is new to the terrain, and is therefore more readily open to the absorption of new information (H1);

<sup>7</sup> “Mechanism” refers to an intermediary process, whereby one actor tries to convince the other in agreeing to accept certain norms, rules and conduct (Zürn and Checkel 2005).

- › the actor to be persuaded has little knowledge of conduct that infringes the new rules and norms (H2);
- › the persuading actor is a member of a renowned in-group of which the actor to be persuaded wishes to form part (H3);
- › the persuading actor does not set forth conditions, but acts based on principles and engages in a serious, advisory (rhetorical) dialogue (H4);
- › the interaction takes place in a less politicised environment (H5);
- › the actor to be persuaded has, over a long time span, been provided with information on new regulations and norms (H6) (Checkel 2001, Johnston 2001).

These conditions allow for simulations regarding when and how a process of persuasion between the ICRC and the arms carriers is more likely to occur and be successful. Analysis of these factors of interaction between the ICRC and arms carriers shows that they coincide with the success factors drawn up by the ICRC itself (herein divided into four factor-bundles, i.e. general environmental factors, ICRC attributes, attributes of the non-state arms carrier, quality of the integration). The first two conditions refer to the attributes of the non-state arms carrier, as well as the latter's general environment, the third and fourth conditions refer to the ICRC, and the last two conditions refer to the quality of the interaction between the two parties. Up to this point in time, these conditions or hypotheses have not been applied to either NGOs or to arms carriers. Instead, socialisation investigations generally addressed the relationship between institutions and state actors within the European space (see: International Organization 59, Fall 2005). Nevertheless, the questions if and to what extent these socialisation approaches may be transferred to the dealing with non-state actors seems particularly relevant.

### **H1: Insecurity and new environment**

As previously mentioned, the ICRC seeks the earliest possible engagement with non-state arms carriers. This is due to several pragmatic reasons: access to the arms carrier is not yet encumbered with state security measures and restrictions; the arms carrier is frequently lacking in knowledge about obligations set forth in IHL and HR; the arms carrier is receptive to information; the position between the parties in conflict is not yet as unyielding and establishing a line of dialogue is still possible. Both the newness of a non-state arms carrier and its insecurity within a new environment are advantageous to the ICRC's integration process.

Internal conflict situations and parties to a given conflict are, however, so diverse, that it is often impossible, even for the ICRC, to contact the arms carrier with a structured approach or plan (ICRC 2008). The motives of an arms carrier for taking part in an IHL clarification process might be of a purely strategic nature (in order to promote international recognition or political legitimacy). In such cases, an integration process is confronted with a decreased receptivity vis-à-vis new information. In addition, the level

of the arms carrier's organisational structure is relevant. As already described, a group relying on high centralisation, strong hierarchy, an effective chain of command and on robust communication is far more capable of implanting changes in doctrine, qualification, training, modifying equipment and implementing sanctions than a group with a lower level of centralisation, i.e. devoid of full autonomy and relying on several splinter groups under a poorly defined command structure. At the beginning of a conflict, if the arms carrier operates within a new environment, one should not automatically assume that its structures are already solidly in place and functioning properly. The lack of territorial control over a given area by the group can give rise to difficult meetings with the ICRC, given that at times such meetings need to take place within insecure terrain (Interview, July 23<sup>rd</sup> 2009). Furthermore, particularly vis-à-vis new groups, disagreements may occur on how important IHL and HR are for the carrier. This might be the case if diverse factions within an arms carrier are present – often deriving from a split between the latter's military and political wings (ICRC 2007).

## H2: Current views

The experience the ICRC has acquired from its interaction with non-state arms carriers has confirmed political ideology as a key success factor, i.e. the political basic principle of the arms carrier forms one of the most influential factors for the success of integration processes (Interview, July 23<sup>rd</sup> 2009). Particularly in “people's war” models, such as in conflicts for the self-determination of a population group, popular support of the arms carrier plays a significant role. Pursuant to its political program, the arms carrier must cooperate with the population and protect it – or at least not curtail its right for self-determination. For the ICRC, such an ideology represents the point of entry for integration of IHL and HR within the arms carrier (by means of doctrine, qualification, training, equipment and sanctions mechanisms). Otherwise put, when the welfare of the population is already part of the arms carrier's attributes and value perceptions, the integration process has increased chances of success because IHL norms are supported by arms carriers' existing views and needs. Usually, the presence of humanitarian provisions or the lack of provisions contrary to HR and IHL encourages a secure dialogue with arms carriers. However, the integration of IHL is not ensured by this factor alone.

Even if protecting the population is part of the arms carriers' current rules and norms, such groups often harbour doubts regarding the applicability of IHL and HR to their specific contexts. This is frequently set out by the argument that both IHL and HR represent laws and provisions set forth and agreed upon by states, and thus applicable only to states. Non-state arms carriers also attempt to justify their noncompliance with IHL through the fact that in a conflict against a government they do not feel bound by obligations ratified by precisely the government against which they are fighting. (ICRC 2008). In such cases it is rare that IHL will be integrated into a framework for arms carriers, particularly when these have a strong ideology.

### H3: Image of the persuading actor

The unique position of the ICRC within the international community and its soft law status pave the way for the institution's unparalleled standing. Firstly, due to its position in the Geneva Convention and additional protocols, the organisation has become a highly respected part of the global community. Secondly, it occupies a specialised position, inasmuch as it is capable of dealing both neutrally and impartially with parties in conflict – in both national and international conflicts. This fact grants it decisive advantages in its interactions with arms carriers for it represents the international community – to which numerous arms carriers aspire to be members and from which they hope to gain legitimacy, recognition or support. Arms carriers which consider the global community as a relevant actor within their conflicts view the ICRC as a representative of the in-group. Simultaneously, the ICRC is not subject to political and diplomatic restrictions to which full members of the international community (namely states) are held accountable. Furthermore, by virtue of its engagement as a provider of humanitarian services in emergency situations and conflicts, the ICRC has built its own reputation, granting it an implicitly trusted head start in conflict regions.

Nevertheless, even the ICRC's status and reputation are at times not enough when dealing with a number of non-state arms carriers. The ICRC is at times accused of being the representative of state interests alone, and is not always greeted as an implicitly trusted actor.

### H4: Talks based on principles

The integration process detailed herein, which the ICRC seeks to enter into with arms carriers, is based upon a range of measures beyond mere information and familiarisation regarding IHL and HR. Instead, the relevant norms are strategically addressed, in a way and manner relevant to the non-state arms carrier and adapted to the context in which they operate (ICRC 2008). The non-state arms carrier should, in this manner, gain a positive attitude vis-à-vis the law, before coming to abide by it. Existing international law should always be presented accurately, without compromising current rules. In this manner, talks take place based on rules and norms rooted in international law, without alteration, adaptation or deferral for and to the non-state arms carriers. Pragmatic concerns and political sensitivity do not pre-empt the principles of IHL.

At the same time, the ICRC cannot be excessively theoretical or academic in its dealings with the arms carrier. Instead, the law in force is presented in a practical manner. The previous knowledge of IHL, the educational level, the motivations and preconceptions of the partner must, at such a point, be taken into account. When particular attributes and the specific situation of the arms carrier are taken into account respectfully, the integration process with the arms carrier is all the more successful (ICRC 2008). With this in mind, the interests and motivations of the arms carrier are worth analysing so as to elucidate why it would be of interest for the latter to comply with IHL and HR. Benefits often include, among other issues:

- › the military benefit of IHL provisions, as opponent-combatants surrender more readily upon knowing that if they are prisoners, they will be treated well; equally, opponents will be more likely to treat the arms carriers' prisoners well, also;
- › the improvement of the arms carrier's image and reputation in public – both with its voters, its allies, and internationally;
- › public support and improved morale since local culture and traditions are often similar to the norms set forth in international law;

In the long-term, repeated infringements of IHL may imply devastating consequences for the arms carrier (ICRC 2008);

- › they put its reputation, its support and social inclusion at risk – a point particularly relevant for arms carriers aspiring to achieve state recognition, or to form the government themselves;
- › they risk prosecution through an international ad hoc court (as for example, the International Criminal Tribunals for former Yugoslavia, ICTY, and Ruanda, ICTR) or through the International Criminal Court (ICC);
- › they lay waste to useful economic resources in cases of senseless destruction of infrastructure or private property.

### **H5: Environment of the interaction**

The ICRC benefits from its neutral and independent position. By focussing on the principles of IHL and HR, without taking sides or furthering a political agenda, the interaction of the ICRC with non-state arms carriers appears as of a rather simple nature. Politicised argumentation, i.e. the linking of political issues with the norms set forth in IHL, do not form part of the ICRC's integration concept.

### **H6: Duration of the integration process**

The ICRC's integration process is a long-term endeavour and subject to numerous hurdles. Firstly, access to the arms carrier represents an initial impediment at the start as well as throughout the process. Not only must the contact between the ICRC and the arms carrier be developed on a basis of trust, but also the security situation has to be stable enough to send ICRC representatives into the arms carrier's terrain without risk to their lives or person. The time it takes for a trusting relationship to be successfully established between the ICRC and the non-state arms carrier is, moreover, dependent on formal aspects, such as the timespan between meetings, or the time required by the arms carrier to inform and consult various relevant hierarchical levels (Interview, July 23<sup>rd</sup> 2009).

Furthermore, once a dialogue is established with the arms carrier and the integration process underway, the networks and dependencies of the four factors worked on by the

ICRC (doctrine, qualification and training, equipment and sanctions) give more often than not rise to delays or setbacks within the process.

Moreover, the integration process is followed by, amongst other things, follow-ups; for instance, the arms carrier may be encouraged to formalise a compliance statement, pledging to comply with IHL and HR. Such compliance statements may encompass special agreements, unilateral statements, inclusion of international law provisions within the arms carrier's code of conduct, as well as compliance with IHL within the framework of ceasefires and peace-agreements. The ICRC provides support to the arms carrier during such follow-up processes, aiding them with the conversion of obligations into practice by means of continuous and confidential bilateral dialogue and additional training regarding their obligations and capacity-building measures (ICRC 2007).

### **Bottom line: norm diffusion in conflict management**

The International Committee of the Red Cross presents itself as a norm diffusion agent of high potential. The analysis confirmed that the conditions stipulated in the relevant literature regarding norm diffusion and socialisation (H1-6) correspond with the conditions of success drawn up by the ICRC itself – herein set forth in four success-factor-bundles (general environmental factors, attributes of the NGO, attributes of the non-state arms carrier, quality of the interaction). This confirms not only the conditions stipulated in the socialisation theory, but also their practical relevance.

The analysis equally confirmed that the integration concept of the ICRC proves to be successful in fulfilling these conditions. Thus, the integration concept presents itself as well-suited for a norm diffusion NGO. The primary target of the concept is persuading non-state actors – such as rebel groups, paramilitaries or warlords – to comply with a number of international law norms. By virtue of its mandate, whilst dealing with non-state arms carriers, the ICRC bases itself, primarily, on Common Article 3 of the Geneva Conventions. The ICRC establishes direct contact with the arms carriers, with the purpose of persuading the latter of the benefits of compliance with IHL and HR. While doing so, the ICRC relies on its own non-state status so as to deal with diplomatic conventions and their retroactive effects, which render state relations with non-state arms carriers more difficult (e.g. the risk of granting recognition and legitimacy through the very acceptance of interaction). Within its persuasion process, the ICRC refers to the provisions of the Geneva Conventions, but not to the political status of the arms carrier or the political interests of a party to the conflict. The pressure on the arms carrier is, by virtue of this soft approach, lower insofar as the compliance with humanitarian norms set forth in international law does not take place hand in hand with political concessions (as would necessarily occur in a negotiation process with a government).

The effects of this engagement are measurable. Some examples:

- › The San José Agreement on human rights between the government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) of 1990 included compliance statements to ensure the observation of the provisions set forth in Common

Article 3, as well as in the 2<sup>nd</sup> complementary protocol of the Geneva Conventions.

- › In 1956, the Front de Libération Nationale (FLN) of Algeria unilaterally declared to comply with the Common Article 3.
- › In September 1987 the Coordinadora Guerrillera Simon Bolivar (CGSB) – an umbrella organisation of various non-state arms carriers in Colombia – declared its intent to comply with norms of IHL.
- › The Free Aceh Movement (GAM) agreed, within the framework of a ceasefire agreement with the Indonesian government in 2002, to renounce the use of force.
- › The People's Liberation Movement/Army (SPLA/M) agreed, within the framework of a ceasefire with the Sudanese government in 2002, to renounce the use of force.

Nevertheless, regardless of these successes, the integration concept of the ICRC also has limitations, particularly when the arms carrier has overriding leadership ideologies or views. The integration concept of the ICRC relies heavily on the cooperation of the arms carriers' leadership for the task of disseminating IHL provisions. It is the aim of the integration process to convince leadership levels that not only would it not be disadvantageous for them to comply with IHL, but indeed that it could even be advantageous. This form of strategic argumentation represents the attempt on the part of the ICRC to pre-empt the current interests and preferences of the arms carrier. In the event that this does not succeed, the integration process fails right at the start. For instance, should the arms carrier consider ethnic cleansing as one of its key goals, it would be next to impossible for the ICRC to persuade the carrier to desist from it by means of an integration of the principles of international law (Interview, July 23<sup>rd</sup> 2009). Similarly, should the arms carrier deem that the employment of land-mines is fundamental for its success, the ICRC will then find itself unable to act against this conviction. In conclusion, the weaknesses of the ICRC's approach are twofold: Firstly, and in principle, the concept is dependent on the support of the non-state arms carrier. Secondly, the ICRC has no means of pressure or leverage other than persuasion in such cases.

Furthermore, the ICRC also suffers from the general difficulties experienced by NGOs: it risks being instrumentalised by other actors, suffers from the difficulties inherent to the monitoring of non-state arms carriers, and must overcome the hurdles of ensuring satisfactory security conditions for its emissaries. However, the ICRC faces fewer problems than most NGOs regarding resources (both human and financial), mission legitimacy, and access to political decision-makers (Bennett 1996). Its internationally mandated status regulates its funding as well as its legitimacy and promotes its access to decision-makers in a significant manner.

This paper illustrates that there are many issues worth future research, particularly with regard to the success factors of the integration process and both short- and long-term effects. Even though sporadic successes have been achieved, the success ratio regarding the missions of the ICRC remains unclear. This paper did not show how

much interaction and persuasion is required to motivate non-state arms carriers to alter their code of conduct. This is particularly worth mentioning in cases wherein the group's political ideology proved to be incompatible with the provisions of IHL and HR. It is uncertain in such cases whether increased interaction and persuasion could have led to increased success. Similarly unclear is how long-lasting the successes of the ICRC indeed are, and under which external circumstances they collapse. The true degree of stability and endurance of the successes of the ICRC remain, thus, to be seen. Additionally, clarification is needed regarding which external aspects may influence the success/non-success of the integration process – and what role they play in supporting, rendering feasible, hindering, or rendering unfeasible the efforts of the ICRC.

## Interviews

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