From armed conflict to urban violence: transformations in the ICRC, international humanitarianism, and the laws of war

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Introduction

In this article, I examine how the International Committee of the Red Cross (ICRC) is responding to situations of urban violence that are not part of a wider armed conflict, and that do not meet the international humanitarian law (IHL) thresholds for armed conflict. The core ICRC mandate is for international and non-international armed conflicts, as defined by IHL, but over the past ten years the ICRC has been at the forefront of a move by international humanitarian agencies to expand their mandates to include urban violence (Harroff-Tavel, 2010; ICRC, 2016b; International Committee of the Red Cross and the All Party Parliamentary Group on Conflict Issues, 2013). Of course, sometimes armed conflict, whether international or non-international, plays out in cities and other urban areas (as, for example, in Baghdad, Kabul, Aleppo, Mogadishu). Violence within a city can also reach the thresholds for IHL. In such cases, the issue is obviously one of international concern—the violence is regulated by IHL, and the international community has some kind of responsibility for the protection of the civilian population (Bradley, 2016a; ICISS, 2001; ICRC, 2008b). However, the focus of this article is on urban violence that falls short of these thresholds—violence that is not regulated by IHL, and that has not traditionally been defined as a matter of international concern. I ask how the ICRC has adapted its modus operandi to such contexts, and what the consequences of that adaptation are for the ICRC, for humanitarianism more broadly, and for the laws of war.

Violent deaths in conflict now represent only a fraction of violent deaths worldwide, and situations of collective violence outside armed conflict are of increasing concern for policymakers, and also of theoretical interest to IR scholars and scholars of conflict and violence (Krause, 2016; Mc Evoy and Hideg, 2017). The high concentration of non-conflict collective violence in cities has made urban violence a particular concern, especially in Latin America, which has 8% of the world's population and 33% of homicides (Moser and McIlwaine, 2006; Muggah and Aguirre Tobón, 2018: 2). In 2017, the five most violent cities in the world (as measured by homicide rate) were all in Latin America, and each of them had a homicide rate of around fifty times the global average (Seguridad Justicia y Paz, 2018). While the magnitude of violence and the resulting human suffering is especially striking in Latin American cities, it is not unique to that continent. Of the 50 most violent cities in 2017, four were in the United States, three in South Africa, and one in Jamaica (Seguridad Justicia y Paz, 2018). Homicide is only the

most visible humanitarian consequence of so-called urban violence, and sexual violence, displacement and disappearances are also commonplace in many cities (Moser and McIlwaine, 2006). Urban violence is perpetrated by non-state actors, such as street gangs and organized crime groups, as well as state security forces, very often including military police and even the military, with shifting patterns of collaboration and conflict between different actors, both state and non-state (Auyero and Sobering, 2019; Barnes, 2017).

In light of ideas about the decline in armed conflict and the transformation of violence, the incorporation of urban violence into the ICRC mandate may seem like common sense. Certainly, violence in cities is the cause of much human suffering. The *mano dura* (iron fist) responses of several Latin American governments to organized crime and gang violence are widely seen to have been ineffective in reducing violence in the long term, and even counter-productive (Jütersonke, Muggah and Rodgers, 2009). The case has instead been made for more developmental approaches, and an emphasis on carrots rather than sticks (Jütersonke, Muggah and Rodgers, 2009; Moser and McIlwaine, 2006). At the same time, a range of humanitarian policy literature makes the case for a humanitarian response to urban violence (Harroff-Tavel, 2010; Lucchi, 2010; Savage and Muggah, 2012).

On the other hand, there is a body of more critical literature that questions the discourse of "urban violence" and "fragile cities," (Miklos and Paoliello, 2017) and related works that problematize the framing of urban violence specifically, and of non-conflict violence in general, as humanitarian crises (Fiori et al., 2016; Reid-Henry and Sending, 2014; Sandvik and Hoelscher, 2016). It is widely recognised that the framing of an issue or a situation as a 'humanitarian problem' or a 'humanitarian crisis' tends to depoliticize, dehistoricize and decontextualize it (Bradley, forthcoming: chapter 1). Casting the primary problem as humanitarian rather than political, the humanitarianization of a situation calls for a humanitarian response focused on meeting immediate needs, rather than political analysis and struggle, or economic analysis and development (Calhoun, 2009: 2; Feldman, 2009). It is not clear whether this *necessarily* limits the possibilities for political solutions (compare Malkki, 1996: 398 and Scott-Smith, 2016: 3), but in practice a humanitarian frame is frequently seen to have this effect. For these reasons, a number of commentators have raised concerns about the humanitarianization of urban violence and the so-called war on drugs (Fiori et al., 2016; Reid-Henry and Sending, 2014; Sandvik and Hoelscher, 2016).

The present article also offers a critical perspective on expanding humanitarian mandates—and specifically, the ICRC mandate—to incorporate urban violence. However, its focus and argument are somewhat different. Rather than emphasizing the ways in which humanitarian concepts are replicated from one context to another, it focuses on how the ICRC has adapted its approach to the specifics of non-conflict urban violence, and asks what the wider institutional consequences of that transformation are. I argue that working without recourse to IHL has required the ICRC to adapt its modus operandi. Rather than limiting its goals to reducing the impact of violence on civilians, in urban violence contexts the ICRC also seeks to prevent or reduce the recourse to violence.

Instead of treating all belligerents equally regardless of their motives and maintaining a commitment to dialogue with all parties to conflict, it has begun to distinguish armed groups according to their motives—and to limit dialogue with those deemed economically-motivated or criminal. This adaptation implies a move away from the institutional neutrality that is so central to the identity of the ICRC. It may also compromise the ICRC's ability to implement its core mandate in contexts of armed conflict, by undermining its moral authority to persuade combatants to comply with IHL, irrespective of the rightness or wrongness of their or their opponents' goals. Furthermore, because the ICRC is such an important humanitarian organization and a major player in international law (Bugnion, 2003b; Forsythe, 1977, 2005; Giladi and Ratner, 2015; Ratner, 2011), this transformation has consequences beyond the ICRC, potentially redefining what it means to be humanitarian and eroding the distinction between *jus ad bellum* and *jus in bello* in the laws of war.

From a theoretical perspective, the article speaks to broader questions about the consequences of mandate expansion in international organizations (IOs)[1] whose mandates are closely linked to a body of international law. The mandates of IOs tend to expand, incorporating tasks for which the IOs were not originally designed (Haas and Haas, 1995: 256; Koch, 2009: 431; Rodio and Schmitz, 2010: 449-450). Most IR literature on the expansion of IO mandates seeks to explain what or who drives expansion, rather than the consequences of that expansion (Betts, 2012; Hall, 2016; Barnett and Finnemore, 2004). Regime complexity literature mostly focuses on the consequences of multiple institutions overlapping in a single issue-area, rather than the expansion of individual organizations to encompass additional issue-areas (Alter and Meunier, 2009; Gómez-Mera, 2015; Hofmann, 2011; Raustiala and Victor, 2004). Theorisation of the consequences of incorporating additional issue areas into the mandate of an IO is limited to analysing the consequences for the *new* issue area, rather than for the core mandate (Bradley, 2016a; 2019). By contrast, the present article focuses on the consequences of IO mandate expansion for the IO's core mandate. Drawing on mostly atheoretical literature on mandate expansion in the UN Refugee Agency (UNHCR) in the 1990s and early 2000s, together with theoretical work on law and authority in international relations, I specify two mechanisms through which an IO whose core mandate is closely linked to a body of international law may compromise its ability to implement that core mandate by expanding to address issue areas outside the relevant legal framework.

First, moving away from a legally-defined mandate can expose the IO to charges of politicisation and hence undermine its moral authority, compromising its ability to implement its core mandate. The idea that implementing, promoting or supervising a body

[1] I use the term in its broad sense, to encompass both intergovernmental organizations (IGOs) and international non-governmental organizations (INGOs). The ICRC is *sui generis*, with both public and private characteristics. It was set up by private individuals, without member states, and is formally independent of any external actors. However, it is not a 'normal' INGO in that: (a) it derives its mandate in part from the broader Red Cross movement and from international law, and states play an important role in both of these; and (b) it is recognised in international law as if it were a public international organization. See Forsythe (2001) and Ratner (2011).

of law is non-political is a fiction: the process by which international law is created and changed is a political process, and the implementation of any given law invariably serves some political interests at the expense of others (Lowe, 2007; Koskenniemi, 1990; Reus-Smit, 2004). Nonetheless, it is a useful fiction: it enables the impartial application of any given law or body of law to be characterised as a non-political act, even when such application has patently political consequences. Moving away from a legally-defined mandate expands the scope for the politicisation of an IO because there is then no internationally agreed framework to apply. IOs seek to influence the behaviour of states (and other relevant actors), and without a set of pre-defined rules to insist on, an IO must make its own decisions about what conduct is acceptable or unacceptable. This increases the potential both for manipulation by other actors, and for being perceived as politically-motivated or self-serving (Bradley, 2016b; Barutciski, 2002). Since the moral authority of an IO depends in part on its perceived objectivity and neutrality (Barnett and Finnemore, 2004: 23; Hall and Biersteker, 2002; 14), working without the fiction of neutrality that characterises the application of law can serve to undermine the moral authority of the IO in question.

Second, such a move can serve to erode the relevant legal framework or the principles that underpin it if the IO tasked with supervising or implementing that body of law is seen to accept different conditions or behaviour in different contexts, rather than insisting on the universal application of the law and/or the principles that underpinning it. This occurred, for example, when UNHCR began to engage in large-scale in-country protection, which some states saw as a substitute for asylum (Barutciski, 1996; Frelick, 1992; Turton, 2011: 10; Krever, 2011). By offering alternatives to asylum, UNHCR arguably made it more difficult to insist on the obligations of states in international refugee law, ultimately eroding the principle of asylum that underpins that body of law. It also occurs when the ICRC avoids legal argumentation even in IHL contexts, settling for some improvement in the conduct of parties to conflict today rather than pushing for full acceptance and internalisation of the relevant laws (Bradley, 2013; Ratner, 2011). By failing to insist on the full application of IHL in all contexts, the ICRC arguably ends up undermining claims of the universality of the legal framework.

The rest of the article proceeds in four main parts. First, I outline the core mandate and modus operandi of the ICRC. Second, I explain how the ICRC justified the expansion of its mandate to include urban violence programming. Third, I examine the discourse, goals and methods that characterize the ICRC approach to urban violence, highlighting the ways in which the ICRC has adapted its modus operandi to working outside the framework of IHL. Fourth, I consider the potential of this adaptation of the ICRC's modus operandi to impact the work of the ICRC more broadly, to shift the definition and boundaries of international humanitarianism, and to erode both the distinction between *jus ad bellum* and *jus in bello* in the laws of war and the ICRC's moral authority to persuade parties to conflict to comply with IHL. Finally, I conclude by drawing out the theoretical insights of the analysis.

The core mandate and modus operandi of the ICRC

The mandate of the ICRC has evolved continuously since the organization was created in the nineteenth century, expanding along three main dimensions: the contexts in which it works; the goals it pursues in those contexts; and the activities it carries out in pursuit of those goals. Each phase of institutional evolution has entailed changes to some institutional characteristics, and the confirmation or crystallization of others. Thus, while the contemporary ICRC is in many respects unrecognizable from the ICRC of the nineteenth century, there are also some important similarities, and certain threads can be clearly traced from 1863 to today. Moreover, identifying those characteristics of these three dimensions that have been confirmed or that have crystallized over time enables us to define the core mandate of the contemporary ICRC. In this section, I set out the parameters of the ICRC's core mandate and modus operandi.

Simply put, I argue that the core mandate of the ICRC—in terms of the contexts and people of concern, and in terms of goals and methods—is delineated by IHL. Historical mandate expansion in the ICRC has generally begun with changes in practice at the field level, followed by changes in institutional policy, and finally codification of those changes in IHL (Armstrong, 1985: 621; Bradley, 2016a: 25). At any given time, then, we could say that the core mandate is that which has been codified in IHL and the non-core mandate is that work undertaken by the ICRC which falls outside the purview of IHL. As the discussion which follows shows, the reality is that IHL provides the ICRC with a stronger mandate for some contexts, goals and activities than others, and hence that there is variation in the ICRC's commitment and capacity even when working within the purview of IHL. Nonetheless, I argue that the main difference is between those situations in which IHL applies, and those in which it does not. Where IHL applies, the ICRC has an obligation to act, and states and de facto authorities have an obligation to accept the ICRC response, unless they have valid and compelling reasons for rejecting it (Akande and Gillard, 2016). By contrast, where IHL does not apply, there is no obligation—any response is at the discretion of both the ICRC and the relevant state.

In those contexts which meet the IHL thresholds for armed conflict, IHL provides a legal foundation for the on-the-ground protection and assistance work of the ICRC (Giladi and Ratner, 2015; Haider, 2013). However, the strength of that foundation varies across different issue areas. It is stronger in international armed conflict than in non-international armed conflict, and especially when it comes to the protection of those deprived of their liberty in international conflicts: Article 126 of the Third Geneva Convention of 1949 gives the ICRC the right to visit prisoners of war and civilian internees, with no requirement for consent from the relevant state. According to Common Article 2 of the 1949 Geneva Conventions, international armed conflict occurs when armed force is used by one or more states against another state, regardless of the intensity of violence and regardless of the motives for the recourse to force (ICRC, 2008b: 1-2). Non-international armed conflict where IHL applies is distinguished from other kinds of violence by thresholds relating to the intensity of violence, and the level of organization and territorial control of participating non-state armed groups (ICRC, 2008b). In determining whether or not IHL applies, the motives of armed actors are irrelevant.

These IHL thresholds are important for the ICRC, whose institutional identity, mandate and day-to-day activities are all centred around IHL, but since its inception in the nineteenth century, the ICRC has also frequently worked beyond the mandate ascribed to it by IHL. During its early years, when the ICRC mandate was more formally circumscribed by IHL, and IHL itself was significantly more limited in scope, this sometimes involved finding creative and pragmatic ways around the limitations implied by the legal framework (Bradley, 2016a: 84-86). In the present day, the ICRC mandate includes a so-called right of initiative to undertake its traditional activities in situations of violence that fall short of the IHL thresholds for armed conflict. According to Article 5(3) of the Statutes of the International Red Cross and Red Crescent Movement, adopted in 1986, 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'. The ICRC considers that this right of initiative has become customary law (Bugnion, 2003b: 355).

While such a right of initiative allows the ICRC to propose a response to all kinds of collective violence, the obligation on the ICRC to do so, and the obligation on the relevant authorities to accept any proposal from the ICRC, are both weaker in contexts that do not meet the thresholds for the application of IHL (Bradley, 2016a: 79-92). The ICRC itself makes a clear distinction between armed conflict, where 'the ICRC's mandate and primary interest' are 'so clear', and other situations of violence, such as urban violence in Rio de Janeiro, which are 'on the periphery of its mandate' (Harroff-Tavel, 2010: 345). Reflecting the difference in mandates, the 2014 policy document, *The ICRC's role in situations of violence below the threshold of armed conflict*, is clear that the institutional commitment to act is greater in IHL contexts, and that state consent is especially important in non-IHL contexts. Regarding the level of institutional commitment, the document specifies that, 'unlike armed conflict situations, in which the ICRC is *always keen and determined to act* …, in other situations of violence the ICRC acts *by choice*, depending on a number of criteria' (ICRC, 2014b: 276, emphasis added). On the issue of state consent, the same document 'recalls that, *in this type of situation in particular*, the ICRC ensures that it has the consent of the State for its work' (ICRC, 2014b: 304, emphasis added). In sum, IHL delineates the core mandate of the ICRC: non-IHL contexts of violence are peripheral, and any ICRC response in such contexts is at the discretion of both the ICRC and the state in question.

IHL has also played a central role in defining the goals and activities of any ICRC response. In both international and non-international armed conflicts, IHL provides for the ICRC or any other impartial humanitarian body to undertake protection and assistance activities. Impartiality means targeting assistance and protection according to the criterion of need and need alone, which in turn means not subordinating humanitarian action to other goals beyond protecting and assisting those with greatest needs. In maintaining a commitment to such limited goals, the ICRC has pushed back against the so-called new humanitarians who have sought to use humanitarian action as a tool in the pursuit of more transformative goals, including conflict resolution, peacebuilding and development (Fox,

2001; Macrae and Leader, 2001; Mills, 2005; Weiss, 1999). Thus while the goals the ICRC pursues in conflict contexts have expanded over time to encompass meeting a wide range of needs including food, shelter, health, education, livelihoods and protection from violence, they are limited in the sense that they do not go beyond addressing the consequences of humanitarian crises: the scope of ambition is limited to meeting these needs, rather than addressing their underlying causes.

Linked to the commitment to impartiality and limited humanitarian goals, the ICRC has maintained the position that humanitarian action should be separate from politics, and promotes strict adherence to the contested principles of neutrality and independence (Harroff-Tavel, 1989; 2003; Labbé and Daudin, 2015; Rieffer-Flanagan, 2009; Terry, 2011). The principle of neutrality prohibits taking 'sides in hostilities or [engaging] at any time in controversies of a political, racial, religious or ideological nature' (Pictet, 1979: 4). The principle of independence entails operating autonomously, independent of influence from other actors with a vested interest, including states and international organizations (Pictet, 1979: 40-41). Arguments in favour of neutral and independent humanitarian action mainly revolve around access and acceptance in conflict contexts. The idea is that a "deal" is struck whereby parties to armed conflict refrain from interfering with humanitarian action if it does not interfere with that conflict, and that such a deal facilitates the access necessary for aid to be provided to those who need it (Leader, 2000: 12).

ICRC neutrality is closely linked to the distinction between *jus ad bellum* and *jus in bello* in the laws of war. Concerned only with *jus in bello* (the subject of IHL), the ICRC does not seek to oppose or address the causes of any given conflict (which it understands as a political goal, beyond the scope of a humanitarian mandate), but rather to impose limits on the way in which it is conducted (which it understands as part of its mandate, and a properly humanitarian goal), and hence to reduce the consequences of that conflict for civilians and others *hors de combat* (Forsythe, 2005: 157-160; 2013: 64; Giladi and Ratner, 2015: para. 16). Working in IHL contexts, the ICRC thus seeks to improve the conduct of conflict and reduce its impact on civilians and other protected persons, without reducing, resolving or preventing conflict and violence per se (Bradley, 2016a: 105, 107). The limits it seeks to impose on the conduct of conflict are those set out in IHL. As an example of what this means in practice, the ICRC does not engage in demobilization except for child soldiers, because child recruitment is a violation of IHL, whereas the demobilization of adult combatants is understood as taking sides and seeking to resolve or shape the course of conflict. As the self-styled 'promoter and guardian' of IHL, the ICRC has fiercely guarded the distinction between *jus ad bellum* and *jus in bello* (Bugnion, 2003a; Weiler and Deshman, 2013). It is through insistence on their separation, and on the autonomy of *jus in bello*, that the ICRC can argue for compliance with IHL, regardless of the justice or injustice of the recourse to conflict.

In those contexts that meet the thresholds for the application of IHL, it is also a key tool in the ICRC's protection activities. While the ICRC protection policy includes a range of different activities, in practice the primary activity is dialogue with parties to conflict,

with the aim of persuading them to improve their compliance with IHL. Given that, whatever its aim, compliance with IHL may in practice affect the course and outcomes of conflict, claims to neutrality depend on dialogue being about 'non-political' issues. ICRC neutrality is thus premised on the artificial distinction between international law and international politics—the 'useful fiction' mentioned in the introduction. ICRC delegates collect testimony from the victims of IHL violations and, providing certain conditions are met, present allegations of those violations to the alleged perpetrators, with the hope of persuading them to put an end to those violations (Bradley, 2013). They additionally provide combatants with training in IHL. The ICRC prides itself on engaging with all parties to conflict, and confidential dialogue with parties to conflict is the ICRC's trademark, especially as part of its protection work (Bradley, 2016a: 162-166; ICRC, 2008c; Ratner, 2011). The preference for confidentiality and discretion, while not absolute, is part of the ICRC's interpretation of neutrality (Bradley, 2016a: 57-58; Forsythe, 2013: 65).

In sum, the contemporary mandate of the ICRC includes non-IHL contexts, but these are seen to be peripheral to its mandate, while its core mandate is to protect and assist the victims of armed conflict. Confidential dialogue, neutrality and the strict separation of *jus ad bellum* and *jus in bello* are central to the core mandate of the ICRC, and even to its institutional identity. While these limitations on ICRC strategy derive in large part from its role in promoting and implementing IHL, they have come to define its modus operandi more broadly, with a single institutional methodology for protection and a single institutional methodology for assistance applicable in all operational contexts, regardless of their classification in IHL or the corresponding strength of the ICRC mandate (ICRC, 2004b; 2008c). As Steven Ratner put it in 2011, 'were the ICRC to choose a radically new set of tactics, e.g., through frequent public condemnations, or consideration of *jus ad bellum* in its assessments, it would, in essence, no longer be the ICRC' (Ratner, 2011: 492). ICRC neutrality and confidential dialogue are not only part of the essence of the organization but, as I detail in the next section, were also central to its justification for engaging in contexts of urban violence outside of IHL.

From armed conflict to urban violence: expanding the ICRC mandate

Over the past fifteen years, the ICRC has incorporated urban violence into its self-defined institutional mandate, initially on an ad hoc basis, and now more systematically. Homicides, sexual assaults, extortion and the displacement of people in cities are not new occurrences, but the designation of urban violence as a problem to be addressed by international humanitarian agencies and, more specifically for the purposes of this paper, by the ICRC, is new. It implies an expansion in the range and scope of problems and contexts defined as 'humanitarian' and deemed to demand a response (Slim, 2015: 8; Barnett, 2018: 325-328). In this section, I outline the main steps taken by the ICRC in that expansion process, and the ICRC's own justification for it.

I do not purport to reveal the underlying motivations for this expansion, but it is reasonable to assume those motivations go beyond the explanation and justification set

out in ICRC publications. The available evidence is consistent with several likely explanations drawn from theoretical literature on the drivers of IO mandate expansion. For example, the competition and marketisation of transnational civil society have been shown to create incentives which shape IO behaviour, sometimes with dysfunctional results (Cooley and Ron, 2002). Such an explanation is consistent with the idea that the ICRC was seeking to maintain relevance and humanitarian market share as the incidence of armed conflict declines (Bradley, 2016a: 88) and with the fact that the ICRC is not alone in expanding in this direction; "urban violence" has also been incorporated into the mandates of many other international humanitarian agencies, including Médecins sans Frontières, Save the Children and World Vision (Fiori et al., 2016: 63-66; Lucchi, 2012; Reid-Henry and Sending, 2014). Another strand of theory points to the external normative environment in which states, NGOs and other actors exert normative influences which shape policy and operational behaviour, including with respect to mandate expansion (Weaver, 2007; Hall, 2016). The fact that the ICRC and several other agencies have all moved in this direction at the same time, following a trend in academic and policy analysis, is consistent with such an explanation (Jütersonke, Muggah and Rodgers, 2009; Moser and McIlwaine, 2006; Winton, 2004).

I also do not wish to suggest that the move to expand the ICRC mandate within the organization was uncontested within the organization. Looking within the "black box" of IOs themselves, recent literature points to the importance of their executive heads in shaping organizational direction and mandate expansion (Hall and Woods, 2017; Betts, 2012), as well as to the role of contestation across different departments of the IO (Bradley, 2016a; Hall, 2016). Again, the evidence is consistent with this kind of explanation—the expansion to address urban violence has occurred as part of a wider expansion process in the ICRC to include other extra-IHL contexts, such as migration, which has accelerated since Peter Maurer became president in 2012 (see Chart 1 below), and there is some evidence of contestation within the organization. The ICRC is in many respects a secretive organization, and does not generally expose internal debate to external scrutiny (Forsythe, 2005: xi). Staff members rarely voice dissent in public, and generally repeat the same rationale for institutional policies (Bradley, 2016a: 36). Yet we know that, historically, the lawyers within the organization have advocated a more restrictive interpretation of the institutional mandate while others have advocated flexibility (Bradley, 2016a: 82; Baudendistel, 2006: 290). We also know that when the idea of working on urban violence was first discussed, it was widely deemed to imply a departure from traditional ICRC activities and not everyone within the organisation was in favour of making this departure (Bradley, 2016a: 88). Whatever the underlying motivations and behind-the-scenes debates, the focus of the rest of this section is on the way the ICRC itself has presented the issue area of urban violence and its own work in this area.

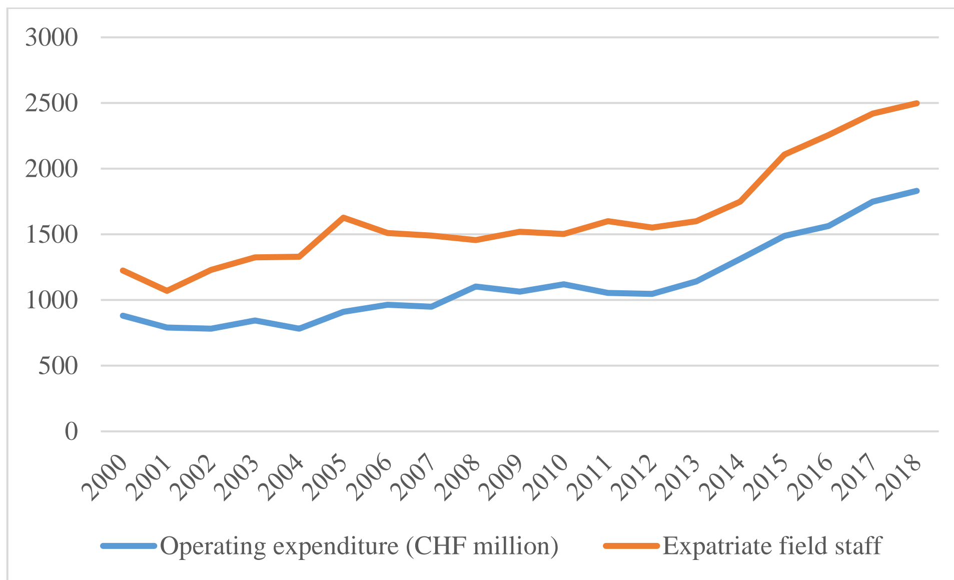

Chart 1: ICRC expansion since 2000 (data taken from ICRC annual reports)

Analysis of ICRC annual reports from 1991 onwards shows that in the late 1990s and early 2000s, the ICRC began to take note of violence in cities, outside the context of armed conflict. In 1996, for example, several delegations 'conducted studies on young people involved in urban violence, particularly those who had formed armed gangs' (ICRC, 1997: 288). Subsequent annual reports made mention of confrontations between demonstrators and police in urban centres in Kenya (ICRC, 1998: 113), high levels of urban violence in Brazil (ICRC, 2000: 220; 2001: 131), an increase in urban violence across Latin America generally (ICRC, 2001: 143), urban crime in Venezuela (ICRC, 2002: 242), urban violence in Argentina (ICRC, 2003: 219), urban criminality and the spread of small arms in the Caribbean region (ICRC, 2003: 221), urban riots in Nigeria (ICRC, 2004a: 106), and insecurity due to organized crime in urban areas of El Salvador, Guatemala and Honduras (ICRC, 2005: 259). From 2005 onwards, several annual reports note that urban violence and criminality had prompted a militarised response from affected states, including in Mexico and Central America (ICRC, 2005: 259; 2010: 332; 2011: 394), the Caribbean (ICRC, 2015: 436), Brazil (ICRC, 2011: 378; 2013: 378; 2016a: 289; 2017: 274; 2018: 275; 2019: 283), Colombia (ICRC, 2017: 263) and Venezuela (ICRC, 2019: 289). Mention has also been made of a blurring of the distinction between political and criminal violence (ICRC, 2006: 46; 2007: 60; 2019: 95).

Also from about 2005, the ICRC was talking about urban violence as a trend at the global level (ICRC, 2006: 46), and began some ad hoc activities to address this kind of violence in Haiti and Brazil (ICRC, 2006: 270, 274; 2007: 287; 2008a: 66, 296; 2009: 9, 66). By 2008, the ICRC had established urban violence as an issue of institutional concern (see, for example, ICRC, 2009: 33, 36), and by 2010 its institutional approach was being formalized with projects up and running in several Latin American cities (Harroff-Tavel, 2010; ICRC, 2011: 567). Over the next few years, practical initiatives continued together with internal and external reflection on the issue (Apraxine et al., 2012; International Committee of the Red Cross and the All Party Parliamentary Group on Conflict Issues,

2013; ICRC, 2012a: 334, 335; 2013: 88, 311, 369, 371, 393; 2014a: 45, 56, 96, 420; 2015: 45, 95, 420, 423, 436, 446, 604; 2016a: 43, 56, 57, 273, 279), and a short policy document on urban violence was published in 2016 (ICRC, 2016b). In April 2018, the position of "Urban Violence Project Manager" was created at headquarters in Geneva.

The ICRC has justified the move to address urban violence through three main steps (not necessarily discrete steps, and not necessarily in this order). First, it is emphasized that the move is consistent with the existing institutional mandate which includes a 'right of initiative', set out in the Statutes of the International Red Cross and Red Crescent Movement and adopted in 1986 by states parties to the Geneva Conventions and the different components of the Movement, to respond to situations not covered by IHL (Gussing, 2012: 9; Harroff-Tavel, 2010: 345; ICRC, 2014b: 276, 303; Ubierna, 2018). Within the ICRC, the urban violence discourse reflects a concretisation of the discourse of 'other situations of violence', a residual category that is defined more by what it is not—armed conflict as per IHL definitions—than what it is. Throughout its history, the ICRC has occasionally worked outside of armed conflicts, and in 2014 published its institutional policy on situations of violence below the threshold of armed conflict (ICRC, 2014b). Whereas armed conflict implies a strong mandate and an obligation for the ICRC to respond, other situations of violence imply a weaker mandate, institutional flexibility or choice as to whether to respond or not, and an expectation of ad hoc rather than systematic response (ICRC, 2014b: 276). When it comes to urban violence specifically, there is some indication that the ICRC commitment to respond is stronger (see, for example, International Committee of the Red Cross and the All Party Parliamentary Group on Conflict Issues, 2013; ICRC, 2016b). However, the response to date is limited to a relatively small number of cities, so the commitment to respond is obviously nowhere near as firm as in IHL contexts.

Second, the ICRC makes the case for its involvement in urban violence with reference to the numbers of fatalities or homicides (Gussing, 2012: 8; Ubierna, 2018). The 2006 annual report, for example, tells us that urban violence in Brazil 'continued to claim around 50,000 lives every year' (ICRC, 2007: 286). A 2010 paper on humanitarian action in violent urban areas tells us that clashes 'between organized armed groups (gangs, drug traffickers, and the like) for the control of economic resources such as the drug and arms trades, can sometimes have a higher death toll than an actual armed conflict' (Harroff-Tavel, 2010: 336). However, the ICRC is not concerned with all types of fatalities. In the United States in 2017, for example, the age-adjusted rate of deaths from (prescription and illegal) drug overdoses was 21.7 per 100,000, yet the ICRC does not turn its attention to the so-called opioid crisis. The ICRC is specifically concerned with violence, but even then it is not concerned with every type of violence that leads to high numbers of fatalities. It does not, for example, seek to address domestic violence, despite the fact that more than 35% of women murdered worldwide are killed by an intimate partner (World Health Organization, 2012). Instead, the ICRC is concerned with situations of collective or organized armed violence (ICRC, 2014b). More generally, it is the level of 'humanitarian consequences' of urban violence that is deemed to legitimate or even demand a response

from the ICRC (Gussing, 2012: 8; ICRC, 2016b: 2; Ubierna, 2018). The notion of 'humanitarian consequences' is central to the ICRC's justification for its work on urban violence (and, for that matter, on any given issue). The term is increasingly used in the discourse of international humanitarian agencies, but its meaning is not self-evident. Examples of 'humanitarian consequences' frequently accompany its use, but no one seems to define the term. In strictly legalistic thinking, it might be understood as consequences arising from violations of IHL, and in more general usage, it might be understood as consequences that are amenable to being addressed by those actors who call themselves humanitarian (for similar claims regarding the notion of 'humanitarian protection', see DuBois, 2009; Durieux, 2009).

Third, it is argued that the ICRC is well placed to respond to this suffering and these needs. Of course, if humanitarian consequences are understood as consequences that are amenable to being addressed by humanitarian actors, the argument that an international humanitarian response is an appropriate way to address urban violence is actually implicit in the language of humanitarian consequences. We additionally see explicit analogies and comparisons between the characteristics of urban violence and the characteristics of armed conflict violence, and between the suffering and needs that arise from each kind of violence—the humanitarian consequences. In a media interview in 2015, ICRC President Peter Maurer talked of gangs in some Latin American cities with "military equipment that dwarfs some of the military equipment we see in conflict" (quoted in Ní Chonghaile, 2015). Drawing an analogy between armed conflict and non-conflict violence associated with organized crime in Colombian cities, the ICRC (2012b: 5) report of activities in Colombia in 2011 tells us that 'the humanitarian repercussions of both phenomena are practically identical for the population. They include loss of life, displacement, disappearance, sexual abuse and recruitment of minors.' In addition to these general claims about the similarities between armed conflicts in which IHL is applicable and contexts of urban violence, the ICRC also makes more specific claims about the value it can add in responding to urban violence. It highlights in particular the value of its neutrality (International Committee of the Red Cross and the All Party Parliamentary Group on Conflict Issues, 2013: 3), its experience in dialogue with weapons-bearers, and its prisons work, through which it can build relationships with members of gangs and other groups active in urban areas (Bradley, 2016a: 88).

Adapting the ICRC modus operandi to address urban violence

While the case for mandate expansion was made on the grounds of analogies between armed conflict and urban violence, the ICRC move to address urban violence does not simply involve superimposing humanitarian concepts and applying standard humanitarian 'kit' (as suggested by, among others, Fiori et al., 2016: 63-66). It also involves adapting the ICRC modus operandi to the specificities of urban violence, and especially to working outside the framework of IHL. In its work in conflict contexts, IHL is not only the main basis of the ICRC's mandate, but also a key tool employed by ICRC delegates in dialogue with armed parties (Bradley, 2016a: 94-97). Working in contexts of urban violence outside of IHL thus implies working with a weaker mandate and without

one of the key tools usually available to the ICRC. These differences, I argue, result in a move away from the institutional commitment to independence and neutrality, from a focus on consequences rather than causes of violence, and from emphasizing dialogue with all weapons bearers as the preferred protection activity. In short, the very characteristics and institutional positions that are highlighted by the ICRC as making it uniquely well placed to respond to urban violence are also transformed or eroded by that response.

In many respects, the activities the ICRC undertakes in response to urban violence do conform to its usual modus operandi. In Brazil, Colombia, El Salvador, Guatemala, Honduras and Mexico, the ICRC has worked to provide (or improve access to) medical services, first aid, and psychosocial support in violence-affected communities (ICRC, 2009: 66; 2011: 379; 2012a: 342, 343; 2013: 371, 380, 396; 2015: 421, 446; 2016a: 279; 2017: 288). In Colombia, El Salvador, Guatemala, Honduras and Jamaica, livelihoods programming, including vocational training and income-generating activities, has been implemented (ICRC, 2012a: 347; 2013: 369, 371; 2014a: 420; 2015: 446; 2018: 290). In Brazil, Chile, Mexico, Paraguay, Central America and the Caribbean, the ICRC has briefed and supported state authorities on implementing international norms governing the use of force (ICRC, 2006: 215, 274; 2013: 311; 2016a: 273; 2019: 285). In many urban violence contexts, the ICRC has engaged in a range of dialogue activities with different weapons bearers and has visited people in prisons and other detention facilities. On closer examination, however, many of these activities are targeted or implemented differently in contexts of urban violence as compared with armed conflict contexts.

Some of the activities mentioned above have different goals in urban violence settings. For example, livelihoods programming in armed conflict contexts may be aimed either at mitigating the consequences of violence, for example by helping people to rebuild livelihoods destroyed in conflict, or at reducing vulnerability, for example by providing people with alternatives to high risk livelihoods strategies (Bradley, 2016a: 182). By contrast, in contexts of urban violence, livelihoods programming is additionally explicitly about providing alternatives to participating in violence, with the aim of preventing young people from joining armed groups. The goal, in other words, is violence reduction. In Colombia, for example, young people receive training and cash grants to facilitate their social integration with the aim of deterring them from joining an armed group, and hence of reducing violence (ICRC, 2013: 369, 371). Similarly, ICRC prisons work is more ambitious in responding to urban violence. In armed conflicts, and in visiting people detained for 'political' activities (such as protests), the ICRC monitors the treatment of detainees and the conditions of detention and seeks to improve treatment and conditions through representations to the detaining authorities and, in some cases, through the direct provision of assistance and services. In contexts of urban violence, and specifically in visiting people imprisoned for criminal activities, the ICRC also works to improve the conditions of detention, but additionally pursues another goal: the socio-economic reintegration of offenders (see, for example, ICRC, 2012a: 335).

In contexts of urban violence, then, the goals of the ICRC have expanded to encompass reducing or preventing violence itself. The ICRC defines its approach to urban violence in terms of positively influencing the behaviour of armed and security services and armed groups, 'in order to minimize the impact of violence on the population, improve people's safety and ensure better respect of human rights' (ICRC, 2016b: 2). However, explanations of ICRC activities in urban violence contexts frequently also list violence prevention as an aim (ICRC, 2012a: 342, 343, 357; 2013: 311, 368; 2016b: 3). Thus the traditional focus on reducing the impact of violence on civilians and other protected persons, but very definitely not working to reduce the level of violence per se, is transformed into activities aimed at violence prevention and violence reduction. This represents a shift in the scope of ICRC ambition—from addressing the consequences of violence to addressing the violence itself. It also implies compromising institutional neutrality, in that the intention is to undermine the recruitment efforts of gangs. The ICRC is, in effect, taking the side of the state.

A close reading of ICRC annual reports also reveals a difference in the nature of dialogue in contexts of urban violence. In armed conflict contexts, the ICRC seeks to engage in dialogue with all parties to conflict, through which ICRC staff seek to improve compliance with IHL (Bradley, 2016a: 162-166; ICRC, 2008c; Ratner, 2011). In contexts of urban violence, the ICRC engages in analogous activities with the police and other public forces, working to get them to comply with international human rights law (IHRL) or domestic legislation on the use of force (ICRC, 2006: 215, 274; 2008a: 296; 2011: 321, 332, 333, 335, 368, 370; 2012a: 342, 344, 347; 2013: 311; 2016a: 273). By contrast, with armed groups dialogue is mostly limited to general discussions about humanitarian principles, ICRC activities, and the need to protect civilians and allow them to access medical care (ICRC, 2010: 317; 2011: 371, 373, 375; 2012a: 337, 338, 339), given there are no international or domestic laws that the ICRC can try to get them to comply with short of asking them to renounce violence altogether. That dialogue is stronger with interlocutors from the state and weaker with non-state actors is not unique to urban violence contexts specifically, or even to non-IHL contexts more generally. In many armed conflicts, the ICRC also has a weaker relationship with armed non-state actors than it does with the armed forces of the state, for reasons that are beyond the control of the ICRC (Bradley, 2016a: 141-148). In Colombia and Haiti, the ICRC has also sought to develop dialogue with gangs and other weapons bearers in the cities, and faced some challenges to doing so (ICRC, 2011: 371, 373, 375; 2013: 374, 375, 376; 2014a: 419, 420; 2015: 420; 2016a: 279; 2017: 265; 2018: 269).

In many contexts of urban violence, however, the weaker relationships with non-state armed groups are at least partly a policy choice on the part of the ICRC. Whereas in armed conflicts, ICRC maintains a commitment to dialogue with all parties, in urban violence settings the ICRC is much more cautious about entering into dialogue with groups whose motives are primarily criminal or economic (Harroff-Tavel, 2010: 346-347; ICRC, 2014b: 297; Ubierna, 2018). This goes against an emerging consensus in academic literature that that even so-called criminal violence should be understood as political

violence (Krause, 2016; Barnes, 2017), and arguments in favour of engaging with gangs and/or treating them as armed groups (for example, Rodgers and Muggah, 2009). It is all the more surprising because it seems inconsistent with the ICRC perspective that the line between criminal and political violence is blurred and it stands in stark contrast to the ICRC commitment to engage in dialogue with all parties to conflict where IHL applies, and the ICRC's record and experience in dialogue was part of its justification for engaging in urban violence contexts.

I suggest that the incorporation of the goals of violence prevention and reduction, the related compromising of the principle of neutrality, the differences in dialogue with state and non-state interlocutors, and the shift to distinguishing armed actors according to their assumed motives, are consequences of adapting an approach grounded in IHL to contexts outside IHL. In armed conflict contexts, where IHL mandates the ICRC to undertake particular activities, the ICRC can be relatively firm about the terms and conditions under which it operates in a country. Without a clear mandate under IHL, however, governments have a much stronger hand in setting the ICRC's terms of engagement in urban violence contexts, and can do so in such a way as to support their own policies and objectives. The lack of a clear legal mandate therefore exposes the ICRC to much greater potential for politicisation in its urban violence work, as compared with its work in IHL contexts, and this may be a factor in the ICRC working to dissuade people from joining gangs and limiting dialogue with groups deemed to be criminal or economically-motivated. Moreover, in non-IHL contexts the ICRC lacks the framework which is central to understanding ICRC neutrality, and around which the traditional dialogue activities of the ICRC are based. Working outside IHL leaves the ICRC without a framework to assess what conduct by non-state armed groups is acceptable and what is unacceptable—under domestic legislation any use of force by such actors is invariably criminal. This has two important implications. First, it leads to the differential treatment of, and dialogue with, the police and other public forces as compared with non-state armed groups. Second, getting armed groups to comply with laws and norms becomes in effect about getting them to stop using violence to achieve their goals.

Transformations in the ICRC, international humanitarianism, and the laws of war

The incorporation of urban violence within humanitarian mandates represents an expansion in the range of contexts and problems understood to require an international humanitarian response. It is surely a good thing that people in dire circumstances receive some kind of external support, but that does not necessarily mean that it should be the ICRC (or international actors in general) providing this support, or that this shift does not raise any concerns. In this short section before concluding, I therefore shift my focus from examining what the ICRC has done up until now, to look at the potential future and wider consequences of the shifts that have occurred as the ICRC has expanded its mandate to respond to urban violence. Such a focus is necessarily prospective, dealing in possibilities rather than certainties, but as I explain here, there are good grounds for concern.

For some states affected by urban violence, the work of the ICRC raises concerns about sovereignty (International Committee of the Red Cross and the All Party Parliamentary Group on Conflict Issues, 2013: 3). The conceptualisation of urban violence as a phenomenon that requires an international humanitarian response serves to justify external intervention in situations that are more commonly deemed internal affairs. The ICRC places great emphasis on state consent in such contexts, but over time as the ICRC response to urban violence is normalised, withholding such consent may become costly to states. Moreover, while for the moment urban violence is being used to justify civilian humanitarian responses, history tells us that the adjective 'humanitarian' can be appropriated by all kinds of actors in an effort to legitimize their actions, including military actions (Chandler, 2001; Chimni, 2000; Mills, 2005).

Related to this, the expansion of the ICRC mandate to incorporate situations of urban violence raises the possibility that in the future the ICRC will in fact advocate for an international treaty for the regulation of urban violence. It may sound unlikely right now, but one hundred years ago—and even 50 years ago—the idea of treaties regulating internal armed conflicts would have sounded highly unlikely too. The negotiation of the 1977 Additional Protocol II relating to the protection of victims of non-international armed conflicts was shaped by concerns about state sovereignty (Forsythe, 1978: 279-282), and while these concerns reduced the scope of protections offered in the protocol, the fact remains that the protocol was agreed and is taken for granted today. If we look to ICRC history, practice on the ground has always come first, followed by the institutionalisation of policy based on that practice and experience, and subsequently the development of international law to codify that policy (Bradley, 2016a: 25).

For the moment, however, the ICRC is working in urban violence contexts without the support of the IHL framework, and this has led to an expansion in the scope of ICRC ambition. The ICRC has traditionally defined humanitarianism in terms of limited goals (addressing the consequences rather than the causes of humanitarian crises) and limited methods (in adherence to the operational principles of neutrality and independence). Yet in expanding its understanding of what constitutes a humanitarian crisis to include contexts of urban violence, the ICRC has incorporated the more transformative goal of violence-reduction.

In line with this more expansive goal, the ICRC has compromised its neutrality in some urban violence settings, effectively siding with the state by trying to discourage young people from joining gangs, and supporting the structures of national authorities (ICRC, 2016b: 3). Given a single institutional methodology for protection (ICRC, 2008c) and a single institutional methodology for assistance (ICRC, 2004b) across all situations in which the ICRC works, changes made to adapt the traditional ICRC response to contexts of urban violence may eventually be incorporated into the single institutional methodologies and hence applied in other contexts. And while efforts to reduce violence and the adoption of a more flexible approach to neutrality might possibly be appropriate in situations of urban violence that fall short of IHL, there is a risk that this leads to a reshaping of the broader institutional approach, including the pursuit of more

transformative goals and a more flexible approach to neutrality even in those contexts where limited goals and strict neutrality are important.

The ways the ICRC has adapted its objectives and activities in responding to urban violence also raise serious concerns about the capacity of the ICRC to implement its core mandate. First, there is the potential for these shifts to erode the ICRC's moral authority and hence to lose some of its power to persuade parties to conflict to comply with IHL. If the moral authority of an IO depends in part on its perceived objectivity and neutrality (Barnett and Finnemore, 2004: 23; Hall and Biersteker, 2002: 14), then the loss of neutrality in urban violence contexts can be expected to undermine ICRC moral authority. As the ICRC's Head of Policy explains in a recent blog post on trust and humanitarian action, sustaining operational trust in the organization depends on working firmly to IHL (Slim, 2019). Given that the ICRC views trust and strong relationships with parties to conflict as crucial to effective dialogue, the loss of trust or moral authority can in turn be expected to compromise the ICRC's ability to implement its core mandate.

Second, there is a risk that the ICRC undermines its own arguments that any given party to conflict must respect IHL regardless of the rightness or wrongness of their opponents' motives. In the introduction, I gave some examples of when an IO whose mandate is closely linked to a body of international law undertakes a task in such a way that contradicts the relevant legal framework or the principles that underpin it, and hence serves to erode or weaken those principles more broadly. In line with this idea, there are serious grounds for concern about the ICRC distinguishing weapons bearers according to their motivations in contexts of urban violence, in contradiction of the principle underpinning IHL that the same rules apply to all parties to conflict, regardless of their motivations. Ultimately, this adaptation in the ICRC approach for working outside IHL in urban violence contexts may serve to erode the distinction between *jus ad bellum* and *jus in bello* which the ICRC has fiercely defended, and on which its core mandate depends.

Because the ICRC is such an important humanitarian agency, its newly flexible approach to neutrality is also likely to have repercussions beyond the organization itself. As two pre-eminent scholars of humanitarianism have put it: 'If there is a high priest of humanitarianism, it is the [ICRC]… for many the ICRC's definition of humanitarianism is the gold standard', and that definition encompasses 'not only what humanitarianism is supposed to do, but also how it is supposed to do it' (Barnett and Weiss, 2011: 9). Indeed, the International Court of Justice, in determining whether activities were humanitarian or not in its 1986 decision on Nicaragua vs the United States, defined humanitarian in reference to what the ICRC does. Furthermore, the ICRC has not only insisted on limited goals in its own work, but also advocates for limited humanitarian ambition more broadly (Barnett, 2011: 168). Taken together, this means that any expansion in the 'humanitarian' goals and activities of the ICRC inevitably has wider implications. Many of the larger humanitarian organizations have long pursued more ambitious goals, and have frequently taken a flexible approach to the principles of humanitarian action, so the shift in the ICRC's own parameters does not affect the outer boundaries of the sector as a whole.

Nonetheless, it is highly significant both because the ICRC is such an important agency, and because it has long been a staunch defender of narrower conceptions of what it means to be humanitarian.

Conclusion

Humanitarianism has three main boundary problems. First, there is a question of 'what state of affairs qualifies as legitimate emergency', and hence legitimates or demands an international humanitarian response (Slim, 2015: 8; Barnett, 2018: 325-328). Second, there are debates over *the goals of humanitarianism*. Many donor governments and external commentators as well as some operational agencies have argued that humanitarian action ought not only to respond to suffering today, but also to address the causes of suffering through development and conflict-reduction initiatives, or promoting human rights. Third, there are heated debates on the best ways to achieve those goals, and especially *over the proper role of principles and politics in humanitarian action*. In this article, I have argued that in expanding its definition of a legitimate humanitarian emergency to include urban violence outside the framework of IHL, the ICRC has additionally expanded the kinds of goals it deems to be legitimate humanitarian goals to include violence prevention and violence reduction, and has further relaxed its commitment to the principle of neutrality.

The core mandate of the ICRC is for protecting and assisting people in armed conflict, as defined by IHL. In implementing its core mandate, the ICRC is committed to the principle of neutrality, confidential dialogue with all parties to conflict, and the associated distinction between *jus ad bellum* and *jus in bello*. In justifying its move to address urban violence, the ICRC has emphasized, *inter alia*, its neutrality, experience of confidential dialogue with weapons bearers, and its work in prisons. However, in this article I have shown that in addressing urban violence, the work of the ICRC is not neutral, with activities aimed at reducing violence by deterring people from joining armed groups, armed actors classified according to their motives, and dialogue with some types of actors limited. In short, working in contexts of urban violence outside of the IHL framework has led the ICRC to adapt the very institutional characteristics that were used to justify the expansion. This adaptation, I have argued, is the consequence of working outside the framework of IHL, and may serve to transform the ICRC more broadly, the parameters of international humanitarianism, and the laws of war.

In making these arguments, I engage with IO theory in two key ways. On the one hand, I contribute to the theorisation of the consequences of mandate expansion in IOs, in that the analysis of the ICRC adaptation of its modus operandi for operations in non-IHL urban violence contexts provides additional evidence of an IO compromising its neutrality, and applying core principles associated with its legal mandate more selectively and less consistently as it works outside the confines and support of the associated legal framework. On the other hand, the theorisation of the longer term consequences of compromising on these principles that I set out in the introduction has informed my more prospective discussion in the last section, leading me to conclude that these compromises

risk undermining the moral authority of the ICRC and eroding the distinction between *jus ad bellum* and *jus in bello* in international law, transformations which can be expected to damage the ICRC's ability to implement its core mandate.

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