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# INTERNATIONAL REVIEW

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## OF THE RED CROSS



Published every two months by the  
International Committee of the Red Cross  
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and Red Crescent Movement



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The **ICRC**, which gave rise to the Movement, is an independent humanitarian institution. As a neutral intermediary in the event of armed conflict or unrest it endeavours, on its own initiative or on the basis of the Geneva Conventions, to bring protection and assistance to the victims of international and non-international armed conflict and internal disturbances and tension.

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## **A note from the Editor**

*Last year, international humanitarian law experts gave special thought to Fyodor Fyodorovich Martens (1845-1909) on the 150th anniversary of his birth. The Review is pleased to include in this issue an article about that renowned authority on international law. It is written by Professor Vladimir Pustogarov, a well-known Russian scholar whose works include a biography of Martens (as yet available only in Russian). The Review also hopes that publication of his article will pave the way for a further extension of its relations with the Russian-speaking world.*

*The Review Conference of the 1980 United Nations Weapons Convention, which ended on 3 May last, produced two specific results. Louise Doswald-Beck reports on the development and scope of the new Protocol IV prohibiting the use of blinding laser weapons in war, a very commendable achievement. The other, less commendable, result of the Review Conference is dealt with by Peter Herby in his report on the revision of Protocol II on mines, and the failure of the representatives of the States party to the Convention to agree on a satisfactory text. As a result of their failure, the law still provides civilians in particular with no effective protection against the scourge of those cruel devices.*

*In his article, Paul Berman describes the organization and work of the ICRC's new Advisory Service on international humanitarian law, set up to help implement the recommendations of the 1993 Conference for the Protection of War Victims and thereby promote greater compliance with the Geneva Conventions in all armed conflicts.*

*Finally, it is the Review's sad duty to report the killing of three ICRC delegates on 4 June last in Burundi, when an ICRC convoy came under fire. Three young men who sought to bring some small measure of humanity to that tormented country paid for their dedication with their lives. The ICRC has had to suspend its work in Burundi, as the red cross emblem obviously no longer provides the guarantee of protection essential for its delegates' activities. A lamentable fact in a lamentable situation.*

*The Review*

# New Protocol on Blinding Laser Weapons

by Louise Doswald-Beck

## Introduction

On 13 October 1995, the first Review Conference of the 1980 Convention on Certain Conventional Weapons<sup>1</sup> (CCW) adopted during its first session in Vienna<sup>2</sup> a new fourth Protocol entitled "Protocol on Blinding Laser Weapons".<sup>3</sup> The 1980 Convention comprises a framework Convention (containing technical provisions such as applicability, entry into force and amendment) and annexed Protocols containing the substantive rules relating to certain weapons.<sup>4</sup> Although many weapons had been discussed during the preparatory stages of this Convention, only three Protocols were adopted in 1980.<sup>5</sup> However, the structure chosen enabled new Protocols to be added in order to accommodate future weapons which needed to be prohibited or otherwise regulated.

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<sup>1</sup> Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, adopted on 10 October 1980 and opened for signature on 10 April 1981. For the text of the Convention, see *International Review of the Red Cross (IRRC)*, No. 220, January-February 1981, p. 41.

<sup>2</sup> Held from 25 September to 13 October 1995. Subsequent sessions of the Review Conference, which concentrated on the problem of anti-personnel landmines and the possible amendment of Protocol II, were held in Geneva from 15 to 19 January and from 22 April to 3 May 1996.

<sup>3</sup> CCW/CONF.I/7. The text of the Protocol is annexed to this article.

<sup>4</sup> For greater detail on the Convention and its Protocols, see *IRRC*, No. 279, November-December 1990, pp. 469-577.

<sup>5</sup> Protocol I on Non-Detectable Fragments; Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices; Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons.

The International Committee of the Red Cross (ICRC) was particularly active in the development of the new fourth Protocol. This article outlines the work that the ICRC undertook in order to establish the facts as regards the likely effects of new blinding laser weapons and how the ICRC sought the necessary international support<sup>6</sup> for a new Protocol on these weapons. It then describes the *travaux préparatoires* for the Protocol, namely the discussions during the Review Conference process that led to the wording of each Article of the new Protocol.<sup>7</sup> Finally it comments on the Protocol's likely influence in banning blinding as a method of warfare.

### **Putting blinding laser weapons on the international agenda**

#### *Twenty-fifth International Conference of the Red Cross*

The ICRC's attention was first drawn to this issue during the 25th International Conference of the Red Cross held in 1986. The governments of Sweden and Switzerland submitted a draft resolution which would have pronounced the anti-personnel use of laser weapons to be illegal because they would cause unnecessary suffering or superfluous injury.<sup>8</sup> This wording was not accepted because of opposition from a few States interested in such weapons; there was little discussion because the vast majority of States were unaware of developments and thought that such weapons were science-fiction.<sup>9</sup> In the end the resolution simply appealed to governments to exercise care not to violate standards in international humanitarian law in the development of new

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<sup>6</sup> Including the support of persons and institutions which helped influence governments.

<sup>7</sup> A number of facts stated in this article are based on the experience of the author during the negotiating process. At the time of writing there are no comprehensive official records of the *travaux préparatoires* for Protocol IV of the CCW.

<sup>8</sup> The draft resolution in its section B, operative paragraph 4, "notes that the development of laser technology for military use includes a risk that laser equipment of armed forces can be specifically used for anti-personnel purposes on the battlefield, such as causing permanent blindness of human beings, and that such use may be considered already prohibited under existing international law". Doc. CI/2.6/PR3, Commission I, Item 2.6.

<sup>9</sup> The possible use of lasers in outer space in the context of the Strategic Defense Initiative was generally known, but not developments for battlefield anti-personnel use.

weapons.<sup>10</sup> Subsequently, the government of Sweden raised the issue at the First Committee of the forty-first and the forty-second sessions of the United Nations General Assembly,<sup>11</sup> proposing a prohibition of the anti-personnel use of laser weapons which met with the same indifference as the original proposal before the 25th International Conference of the Red Cross and probably for the same reasons.

### *Expert meetings convened by the ICRC*

After the 25th International Conference the ICRC began to look out for articles in specialized literature to see if there was a development of anti-personnel laser weapons intended to blind. As this indeed seemed to be the case,<sup>12</sup> it decided to hold a meeting of experts in 1989<sup>13</sup> to establish whether such weapons were likely to be manufactured on any scale, whether they would indeed blind in most cases of anti-personnel use, whether such use would already be a violation of international humanitarian law and whether a legal regulation was possible or desirable. This

<sup>10</sup> Resolution VII, paras. 6 and 7, read as follows: "notes that some governments have voiced their concern about the developments of new weapons technologies the use of which, in certain circumstances, could be prohibited under existing international law; appeals to governments, with a view to meeting the standards laid down in international humanitarian law, to coordinate their efforts to clarify the law in these fields and exercise the utmost care in the development of new weapons technologies", *IRRC*, No. 255, November-December 1986, p. 350.

<sup>11</sup> Verbatim record of the thirty-third session of the First Committee, UN Doc. A/C.1/41/PV.33 of 21 November 1986, and of the thirty-fourth meeting, UN Doc. A/C.1/42/PV.34 of 9 November 1987. Sweden's statement at the thirty-fourth session of the First Committee of the General Assembly was as follows: "There seems to be a risk of developing lasers for anti-personnel purposes on the conventional battlefield. It is already technically possible to develop and manufacture specific anti-personnel laser weapons, the main effect of which would be to blind the adversary's soldiers permanently. It can be argued that methods of warfare which are intended and may be expected to cause irreversible injury to the human eye are already prohibited under existing principles of humanitarian law. These principles should be laid down in an international instrument in order effectively to prevent such methods of warfare. There is therefore a need to elaborate a prohibition on the use of battlefield laser weapons specifically designed for anti-personnel use. On the other hand, it is evident that anti-matériel laser weapons would not, as such, violate international standards, even if they were to have secondary anti-personnel effects". In 1987, Sweden distributed a paper on this issue entitled *Battlefield laser weapons and the question of anti-personnel use of such weapons*; on file with the author.

<sup>12</sup> There were several articles to this effect, e.g. in *The Army*, August 1985; *Infantry*, March-April 1987; *Military Review*, May 1987; *Defense News*, October 1987.

<sup>13</sup> First Round Table of Experts, 19-21 June 1989, which brought together technical and military experts in laser weapons, ophthalmologists, psychologists specialized in the effects of blindness and specialists in international humanitarian law.

meeting turned out to be the first of four as the participants in this meeting recommended that these issues be investigated further.<sup>14</sup> The second meeting<sup>15</sup> undertook a detailed study of the technical and medical aspects of the use of battlefield laser weapons. The third<sup>16</sup> reviewed statistics of injuries suffered in battle, analysed the functional and psychological effects of different types of disabilities and assessed the particular problems that battle-induced blindness was likely to cause. This third meeting was considered necessary because States which were against any regulation of battlefield laser weapons argued that it was better to be blinded than killed and that blindness was no worse than other injuries likely to be sustained on the battlefield.<sup>17</sup> The last meeting in April 1991<sup>18</sup> discussed, on the basis of the material gathered in the previous two meetings, whether the anti-personnel use of laser weapons to blind would be already against the law, in particular the rule prohibiting the use of weapons of a nature to cause unnecessary suffering or superfluous injury, and whether for policy reasons it would be appropriate to have a treaty regulation of such weapons. Although there was a division of opinions as to whether such a use of lasers would already be illegal, the vast majority of participants were of the opinion that a specific legal regulation would be advisable and suggested an additional Protocol to the 1980 CCW as being the most sensible course to follow.

The 26th International Conference of the Red Cross and Red Crescent was due to take place just a few months after this meeting,<sup>19</sup> and as at the time there was no knowing whether there would be a review conference of

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<sup>14</sup> A short summary of the findings of the four meetings is to be found in *IRRC*, No. 299, March-April 1994, pp. 150-153.

<sup>15</sup> First working group of experts (31 May-1 June 1990), which comprised highly specialized experts in lasers and their effects on the eye. See the report *Blinding Weapons: reports of the meetings of experts convened by the International Committee of the Red Cross on Battlefield Laser Weapons 1989-1991*, hereinafter *Blinding Weapons: reports*, ICRC (L. Doswald-Beck, ed.), Geneva, 1993.

<sup>16</sup> Second working group of experts (5-7 November 1990), which comprised doctors, surgeons and psychiatrists with experience with different types of war injuries and disabilities, *ibid.*, pp. 175-317.

<sup>17</sup> See, for example, the position of the US Judge Advocate General in "Memorandum of Law: The Use of Lasers as Antipersonnel Weapons", *The Army Lawyer*, November 1988, p. 4. Reproduced in *ibid.*, pp. 367-371.

<sup>18</sup> Second Round Table of Experts, 9-11 April 1991, which was attended in a personal capacity by 37 government officials from 22 countries and six of the scientists who had participated in the previous working group meetings. See *ibid.*, pp. 319-366.

<sup>19</sup> The fourth meeting of experts was held in April 1991 and the 26th International Conference was due to take place in Budapest in November-December 1991.

the 1980 CCW in the near future,<sup>20</sup> the ICRC decided to submit the question to the 26th International Conference,<sup>21</sup> together with a draft resolution which would have outlawed blinding as a method of warfare<sup>22</sup>. As the Conference was suspended,<sup>23</sup> the proposed resolution was neither negotiated nor adopted. However, some initial discussions showed that a few States were very reticent to adopt such a resolution, and it was clear that despite the recommendations made by the majority of participants at the fourth meeting of experts a formal decision by governments was going to be difficult to achieve. This was not only because of objections by the few governments that were actively interested in using anti-personnel laser weapons, but also because of the general indifference of many other governments that were not interested in a potential problem the urgency of which had not been proved. Linked to this was a general unwillingness to add to existing humanitarian law treaties as a matter of principle.

Another not inconsiderable problem was the scepticism the ICRC frequently encountered as to the pertinence and real application of the rule prohibiting the use of weapons causing unnecessary suffering. Quite apart from the difficulty of defining this notion and applying it to a particular weapon, many government officials had difficulty in accepting the idea that there were limits on the damage that could be inflicted on soldiers during actual hostilities, although the need to protect civilians as much as possible from the effects of weapons was readily accepted in principle. The fact that lasers are not indiscriminate in nature and that the blinding lasers in question would not inflict death created a particular difficulty in this regard.<sup>24</sup>

<sup>20</sup> The CCW Convention does not provide for automatic review (Article 8 of the framework Convention).

<sup>21</sup> Document drawn up by the ICRC for the 26th International Conference of the Red Cross and Red Crescent (1991) and entitled *Prohibitions or Restrictions on the Use of Certain Weapons and Methods in Armed Conflicts: Developments in Relation to Certain Conventional Weapons and New Weapons Technologies*, Doc. C.1/6.3.2/1, pp. 6-18. Several of the experts attending the fourth expert meeting also suggested submitting the question to this Conference.

<sup>22</sup> Doc. C.1/6.3.2/Res.1. The draft, dated 1 November 1991, was circulated to all States prior to the intended conference for comment. The operative paragraphs read as follows: "1. *condemns* blinding as a method of warfare; 2. *considers unacceptable* the use of weapons against persons with the sole or principal intention of damaging their eyesight; 3. *urges* States not to produce weapons to be used for this purpose; 4. *urges* particular care in the use of weapons systems that are dangerous for eyesight so as to avoid as far as possible accidental blinding".

<sup>23</sup> It finally took place in Geneva in December 1995.

<sup>24</sup> On the difficulty of achieving a specific regulation of new weapons, see comments in ICRC document, *op. cit.* (note 21), pp. 4-5, and also L. Doswald-Beck, "Obstacles to regulating new weaponry: battlefield laser weapons", in H. Fox and M. Meyer (eds.), *Effecting Compliance, Armed Conflict and the New Law*, Vol. II, The British Institute of International and Comparative Law, London, 1993, p. 107.

However, the meetings of experts had given the ICRC sufficient information as to the horrific effects of blinding laser weapons both on their victims and on society and the fact that such systems, being small arms, would be likely to proliferate widely; it accordingly felt that it could mobilize sufficient international support for a legal regulation.

The ICRC therefore decided to publish in one volume the full findings of the four meetings of experts it had convened;<sup>25</sup> this was sent to all States and its publication was announced to the press.<sup>26</sup> The ICRC also continued to keep up with any developments published in unclassified literature, which confirmed the continued research into and development of these weapons but, significantly, played down the permanent blinding effects of these weapons.<sup>27</sup>

*Preparation of the Review Conference of the CCW: the meetings of the Group of Governmental Experts*

ICRC activity encouraging a new Protocol began in earnest when it became clear that there would be a review conference of the CCW. In February 1993 the government of France requested such a conference<sup>28</sup> and in December of the same year, 29 States Parties signed a letter to the same effect,<sup>29</sup> at the same time recommending the preparation of the conference by a Group of Governmental Experts. It should be stressed

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<sup>25</sup> *Blinding Weapons: reports.*

<sup>26</sup> "Blinding Weapons", *ICRC News*, 10 February 1994.

<sup>27</sup> These developments tended to mention only the flashblinding or dazzling effects of the weapons when used against personnel, without mentioning the fact that any laser that temporarily blinds at a certain distance will inevitably blind at a closer distance. See, for example, articles in *International Defense Review* 1992; *Defence*, April 1993; *Defense Electronics*, February 1993; *Laser Focus World*, September 1994. The permanent blinding effect of battlefield laser weapons that were meant also to have an anti-sensor use was in fact likely to be at least several hundred metres or even a kilometre for the naked eye, and several kilometres for a person using optics. However, some articles continued to mention permanent blinding as an effect, for example, articles in *New Scientist*, Vol. 135, No. 1833, and *National Defense*, December 1993.

<sup>28</sup> In a letter to the United Nations Secretary-General dated 9 February 1993, France based its request on Article 8, para. 3(a), of the Convention, which stipulates that if no review conference has taken place ten years after the entry into force of the Convention (it came into force on 2 December 1983), the Depository must call for such a conference if one State Party so requests.

<sup>29</sup> Dated 22 December 1993.

here that the purpose of the Review Conference was to amend Protocol II on landmines because of the outcry by a number of non-governmental organizations and some political leaders about the effects of anti-personnel landmines.<sup>30</sup> Both the letter sent to the UN Secretary-General and the General Assembly resolution<sup>31</sup> made this clear, and it was only as a result of persistent and intensive pressure by the government of Sweden that a possibility for adopting a new protocol was provided for in these documents.<sup>32</sup> However, most governments were reluctant to negotiate a treaty on a new weapon and stressed the importance of not diverting attention away from negotiations to amend the landmines Protocol.

Four meetings of the Group of Governmental Experts were held to prepare the Review Conference,<sup>33</sup> and it was only during the third that a session was allotted to discussing possible new protocols to the Convention. Two written proposals on laser weapons, one by Sweden and the other by the ICRC, were submitted at this meeting.<sup>34</sup> Sweden's proposal read as follows:

“It is prohibited to use laser beams as an anti-personnel method of warfare, with the intention or expected result of seriously damaging the eyesight of persons.”<sup>35</sup>

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<sup>30</sup> See, in particular, articles by Jody Williams and Anita Parlow in *IRRC*, No. 307, July-August 1995, pp. 375 and 391, respectively.

<sup>31</sup> GA res. 48/79 of 16 December 1993.

<sup>32</sup> The letter suggested the preparation of the Review Conference by a Group of Governmental Experts. An oblique reference to a possible new Protocol was made in these terms: “Once the experts have made significant progress in their efforts to amend Protocol II, the group could also consider any other proposal relating to the Convention and its existing or future Protocols”. Neither the letter nor the GA resolution made any reference to laser weapons.

<sup>33</sup> The dates of the meetings were as follows: 28 February-4 March 1994 (primarily a meeting on procedure); 16-27 May 1994; 8-19 August 1994 and 9-20 January 1995. It was initially thought that there would only be three preparatory meetings, but during the August session it became clear that insufficient progress on the landmines issue meant that a fourth preparatory meeting was necessary.

<sup>34</sup> There was also a proposal by Sweden for a Protocol on Naval Mines (Doc. CCW/CONF.1/GE/12) and by Switzerland on Small-calibre Weapon Systems (i.e. bullets, Doc. CCW/CONF.1/GE/16). In practice these two items received very little attention and the ICRC decided that as a matter of priority it was necessary at least to achieve a proper negotiation of a new Protocol on blinding laser weapons.

<sup>35</sup> Doc. CCW/CONF.1/GE.11, dated 9 August 1994.

The ICRC's proposal had a similar intent but attempted to be more explicit by avoiding any reference to intention or foreseeability:

- “1. Blinding as a method of warfare is prohibited;
2. Laser weapons may not be used against the eyesight of persons.”<sup>36</sup>

The ICRC's formula tried, in particular, to ban blinding rather than just a type of weapon (which was the approach that had been recommended by the majority of experts at the fourth meeting of experts organized by the ICRC in April 1991<sup>37</sup>). Twelve countries<sup>38</sup> out of the 13 that spoke at this session indicated their approval of a ban on the use of lasers for the purpose of blinding but many stressed the importance of adopting wording that protected the normal use of lasers, for range-finding and target designation in particular.

Negotiation as such took place only during the fourth meeting of governmental experts,<sup>39</sup> during which two working sessions were devoted to the subject. In addition, the ICRC organized an informal meeting in order to discuss possible wording. During this discussion, several countries indicated that, although they were ready to accept a ban on blinding with laser weapons, they were uncomfortable with the idea of banning blinding weapons as such without specifying the type of weapon, and could therefore not accept the ICRC's proposal. During the two sessions<sup>40</sup> that debated the necessity for a new Protocol and the wording that ought to be adopted, 25 countries expressed their support for such a Protocol.<sup>41</sup> At the second session, the Chairman submitted to the delegations the following draft resulting from private consultations:

*“Article 1*

It is prohibited to employ laser beams of a nature to cause permanent blindness [serious damage] against the eyesight of persons as a method of warfare.

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<sup>36</sup> Doc. CCW/CONF.1/GE/CRP.28, dated 12 August 1994.

<sup>37</sup> See footnote 18 above, and *Blinding Weapons: reports*, pp. 353-356.

<sup>38</sup> Australia, Cuba, Cyprus, Germany, Iran, Mexico, Netherlands, New Zealand, Norway, Russia, Spain and Switzerland.

<sup>39</sup> See note 33.

<sup>40</sup> 13 and 17 January 1995.

<sup>41</sup> In addition to Sweden and the 12 countries listed in note 38, the following: Austria, Belgium, Bulgaria, Cambodia, Finland, France, Greece, India, Ireland, Pakistan, Poland and the United Kingdom.

*Article 2*

It is prohibited to [produce and] employ laser weapons primarily designed to blind [permanently].

*Article 3*

Blinding as an incidental or collateral effect of the legitimate employment of laser beams on the battlefield is not covered by this prohibition.”

Most delegations were reasonably happy with this wording, especially as Article 3 provides for incidental blinding caused by the use of lasers not actually intended for this purpose, in particular range-finders. However, two delegations indicated that they had problems with draft Article 1. France indicated its acceptance of the prohibition of the deliberate blinding of persons as a method of warfare, but felt that the wording chosen should not restrict the use of lasers for the detection of optical instruments. Further, it expressed a concern that the wording might not sufficiently protect soldiers who used lasers and incidentally produced blindness in an adversary. The second concern was shared by the United Kingdom, which felt that Article 1 might have the effect of excessively restricting the use of an otherwise acceptable weapon for fear that soldiers would be accused of having deliberately caused blindness with them. Both delegations thought that draft Article 3 was not sufficient to allay this concern. The delegation of the United States was the only one that indicated its opposition to the existence of a new Protocol on this subject. The decision was made by the Chairman to forward the draft Protocol to the Review Conference, without the addition of extra square brackets, together with an indication that the wording did not commit any delegation.<sup>42</sup>

## **Achieving consensus in favour of a ban on blinding laser weapons**

### *ICRC, NGOs and political action*

Although by the fourth meeting of governmental experts in January 1995 a large number of States from all continents were in favour of a protocol on blinding laser weapons, it had not been at all evident when

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<sup>42</sup> Annex II to the Final Report of the Group of Governmental Experts, 20 January 1995, UN Doc. CCW/CONF.1/GE/23.

the process began that a majority of States would be in favour. Indeed, several States had shown considerable reticence when the Group of Governmental Experts first met and most others had not been particularly interested. As it appeared likely that the Review Conference would decide to require consensus for any new protocol, the few States clearly not in favour of the protocol could block its adoption.

The ICRC therefore began a major effort to gain support from government ministries and National Red Cross and Red Crescent Societies. It also contacted some non-governmental organizations, in particular medical associations and organizations already active in trying to counter weapons problems, and informed the press. For this purpose it needed a tool which was more readily usable than the book containing the complete reports of the expert meetings it had held.<sup>43</sup> In September 1994 it therefore published an eight-page brochure on the subject, entitled *Blinding Weapons: Gas 1918...Lasers 1990s?*, with a cover picture of soldiers blinded by chemical weapons in the First World War. The brochure summarized known developments in anti-personnel laser weapons, indicated how they blind and why there is no protection possible, outlined the disabilities and severe depression caused by sudden blindness, and finally appealed "to the conscience of humanity to ensure that a flood of blinded soldiers or civilians will not be needed before intentional blinding is also outlawed". The ICRC also provided a "Questions and Answers" paper, which replied to the typical questions posed by the sceptical, such as "isn't it better to blind than to kill?", or "would a prohibition of blinding interfere with other legitimate military uses of lasers?".

Delegates of the ICRC visited several countries in order to discuss the matter with government officials, and in addition a large number of National Societies gave active support by contacting political figures<sup>44</sup> and generating public debate.<sup>45</sup> After receiving the ICRC's material, and in

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<sup>43</sup> *Blinding Weapons: reports.*

<sup>44</sup> For example, the President of the French Red Cross sent a letter dated 17 November 1994 to French Prime Minister E. Balladur, urging the government to do all in its power to avoid the manufacture and proliferation of anti-personnel laser weapons and giving his opinion that the 1980 Convention would be the appropriate means to ban blinding as a method of warfare.

<sup>45</sup> For example, debates in the United Kingdom's House of Lords, 14 March 1994, *Hansard*, Vol. 553, pp. 7-8; and in the House of Commons, 19 January 1995, *Hansard*, Vol. 262, No. 34, pp. 689-690, in which, in reply to a question, the Secretary of State for Defence indicated that: "the UK has no plans to develop or test a laser weapon designed permanently to blind human beings. The feasibility of making use of temporary dazzle effects was investigated in 1983 and tests on one system were conducted which were subsequently discontinued".

some cases further explanation, several significant professional associations and non-governmental organizations joined the ICRC's call for a ban on blinding weapons. They included the World Medical Association,<sup>46</sup> the World Blind Union,<sup>47</sup> the Cristoffel-Blindenmission,<sup>48</sup> the International Initiative Against Avoidable Disability,<sup>49</sup> the Blinded Veterans Association<sup>50</sup> and the World Veterans Association<sup>51</sup>. Some mainstream human rights non-governmental organizations also became active in working for a ban, most significantly Human Rights Watch,<sup>52</sup> and others such as Physicians for Social Responsibility, Pax Christi International and the International Society for Human Rights. Their activity, in addition to that of the ICRC, generated a certain number of articles in the press, most of which were favourable to a ban.<sup>53</sup>

Support was also sought from three international bodies, namely the European Parliament, the Organization of African Unity (OAU) and the Inter-Parliamentary Union. In all three cases, the subject was brought up in the context of discussions and resolutions on landmines, a problem far more in the public eye than blinding laser weapons. On 29 June 1995, the European Parliament adopted a "resolution on landmines and blinding laser weapons", calling on the Council of Europe to take joint action to, *inter alia*, add a Protocol to the 1980 CCW "banning blinding laser weapons".<sup>54</sup> The resolution on landmines adopted by the Council of

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<sup>46</sup> Public statement of 24 April 1995: "...the development of anti-personnel lasers as blinding weapons represent[s] one of the biggest public health issues facing the world today. The World Medical Association fully supports the ICRC in its efforts to combat this growing menace". Support was also given in the Editorial of the *Lancet*, Vol. 344, 17 December 1994.

<sup>47</sup> Statement made at the Vienna session of the Review Conference of the CCW.

<sup>48</sup> *Idem*.

<sup>49</sup> *Idem*.

<sup>50</sup> Resolution 26-95.

<sup>51</sup> Resolution 23, *Prohibition of anti-personnel blinding laser weapons*, adopted at its 21st General Assembly (1994).

<sup>52</sup> See below for more detail on their contribution. It should also be mentioned that several influential members of Pugwash became active in working towards a ban after the subject was discussed during its 44th Annual Conference (1994).

<sup>53</sup> See, for example, "Eyewash no defense", *International Defense Review*, Vol. 28, July 1995; "Thou shalt not blind", *The Economist*, 15 October 1994; "A very ugly genie", *Military Technology*, MILTECH — 5/95; Barry Fridling, *Blinding Lasers: The Need for Control*, US Naval Institute, October 1988; Colman McCarthy, "Battlefield instruments of blindness", *Washington Post*, 16 May 1995.

<sup>54</sup> Resolution A4-0119/95, operative para. 6 (a) (iii). See also preambular paras. O and P.

Ministers of the OAU on 23 June 1995 contained an operative provision supporting “the adoption, by the Review Conference, of a Protocol banning blinding laser weapons”<sup>55</sup> and similar wording was contained in the resolution adopted by the 93rd Inter-Parliamentary Conference.<sup>56</sup>

*Developments relating to the imminent manufacture of certain laser weapons*

Between the end of the fourth meeting of Governmental Experts and the Review Conference itself there were indications that two types of portable laser weapons, ostensibly or allegedly intended for anti-personnel use, were at the point of manufacture and sale.<sup>57</sup>

The first concerned a laser marketed by NORINCO, a Chinese company, at an arms fair in South-East Asia in spring 1995.<sup>58</sup> The device, called a “Portable Laser Disturber”, was described in the sales leaflet as follows: “one of its major applications is, by means of high-power laser pulses, to injure or dizzy (*sic*) the eyes of an enemy combatant, and especially anybody who is sighting and firing at us with an optical instrument, so as to cause him to lose combat ability or to result in suppression of his observation and sighting operation. Besides, the high-power laser beam can damage or invalidate any enemy photo-electric sensor in highly converging optical system...”.

The second was a laser developed in the USA, the Laser Countermeasure System (LCMS),<sup>59</sup> mounted on an M16 rifle, which had been developed and tested a few years previously but was due to be manufactured for sale to the army in 1995. This system was described as having “the

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<sup>55</sup> Resolution on the 1980 United Nations Convention on Certain Conventional Weapons and problems posed by the proliferation of anti-personnel mines in Africa, operative para. 7, also preambular para. 8.

<sup>56</sup> Resolution adopted by consensus on 1 April 1995 and entitled *The international community in the face of the challenges posed by calamities arising from armed conflicts and by natural or man-made disasters*.

<sup>57</sup> The only example of a blinding laser that was actually deployed was the “Laser Dazzle Sight” placed on British battleships in the early 1980s and since discontinued; see *Blinding Weapons: reports*, pp. 109-110 and 170-172, and note 45.

<sup>58</sup> China North Industries Corp. (NORINCO). Reports in *Jane's Defence Weekly*, 27 May 1995, p. 3; *International Defense Review*, May 1995, pp. 19-21.

<sup>59</sup> Also referred to as the PLQ-5. The system was developed by Lockheed-Sanders and the army hoped for government approval in June 1995 for a full-scale production contract with the same company. Congress decided to delay its decision. See Human Rights Watch Arms Project, *U.S. Blinding Laser Weapons*, New York/Washington DC, Vol. 7, No. 5, pp. 2 and 9; *Inside the Pentagon*, 13 July 1995, p. 9.

primary objective to detect, jam and suppress threat fire control, optical and electro-optical subsystems".<sup>60</sup> It certainly had the capacity to blind permanently at considerable distances (up to one kilometre), and use of this purpose was not excluded.<sup>61</sup>

These developments seemed somewhat discouraging for those working for a ban of blinding laser weapons, but actually they had the beneficial effect of eliminating a certain indifference on the part of many government ministries which still believed that such developments would probably take place only in the distant future — if at all. They also proved that blinding laser weapons would not be limited to very few armies but that proliferation would be likely to occur rapidly, as the experts convened by the ICRC in 1991 had warned.

A very important step was the decision by Human Rights Watch Arms Project to become actively involved in this issue. It researched into the various military laser systems that were being developed in the United States and were intended to damage optical systems and/or eyesight.<sup>62</sup> In May 1995 it released a report<sup>63</sup> containing not only details on these systems but also a number of recommendations. These included the cancellation by all countries<sup>64</sup> of the development of all tactical laser weapons because of their potential use as blinding laser weapons and the adoption of a new Protocol to the CCW prohibiting blinding as a method of warfare. The publication of this report, subsequent press comment and further contacts by the ICRC prompted a detailed high-level study within the United States Department of Defense on the desirability of these systems and a review of the United States' hitherto objection<sup>65</sup> to the adoption of a Protocol on this subject.

Another major factor was the interest in the issue taken by three politicians, namely, Senator Patrick Leahy and Congressmen Lane Evans

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<sup>60</sup> Lockheed-Sanders Fact Sheet, Laser Countermeasure System (LCMS), AN/PLQ-5, 1994.

<sup>61</sup> *Law of War Review* of 16 September 1994, DAJA-10 (27-1a), US Department of the Army.

<sup>62</sup> It refers to these as "tactical laser weapons".

<sup>63</sup> Human Rights Watch Arms Project, *op. cit.* (note 59).

<sup>64</sup> In addition to detailed information on ten active or dormant blinding laser programmes in the United States, the report named the following countries as having allegedly also done some research into blinding laser weapons: China, France, Germany, Israel, Russia and the United Kingdom, *ibid.*, pp. 14-15.

<sup>65</sup> US opposition to a Protocol was also criticized in the press, e.g. Colman McCarthy, "Battlefield instruments of blindness", *Washington Post*, 16 May 1995.

and Ronald Dellums. They wrote letters to President Clinton and the Secretaries of State and Defense in December 1994 and January 1995, respectively, indicating their desire for the United States to support a new Protocol banning blinding laser weapons. The report by Human Rights Watch provided further impetus and a similar letter, signed this time by 51 Senators and Members of Congress was sent to the Secretary to Defense on 31 July 1995.<sup>66</sup>

The new policy of the United States Department of Defense was announced by Secretary of Defense William Perry in a News Release on 1 September 1995, three weeks before the opening of the Review Conference of the CCW in Vienna. The announcement read as follows:

“The Department of Defense prohibits the use of lasers specifically designed to cause permanent blindness of unenhanced vision and supports negotiations prohibiting the use of such weapons. However, laser systems are absolutely vital to our modern military. Among other things, they are currently used for detection, targeting, range-finding communications and target destruction. They provide a critical technological edge to US forces and allow our forces to fight, win and survive on an increasingly lethal battlefield. In addition, lasers provide significant humanitarian benefits. They allow weapons systems to be increasingly discriminate, thereby reducing collateral damage to civilian lives and property. The Department of Defense recognizes that accidental or incidental eye injuries may occur on the battlefield as the result of the use of legitimate laser systems. Therefore, we continue to strive, through training and doctrine, to minimize these injuries.”

### **Negotiation of Protocol IV during the Review Conference**

Ambassador Hoffmann of Germany was elected Chairman of Main Committee III, which was given the task of negotiating Protocol IV on Blinding Laser Weapons. As the main topic of the Review Conference was the amendment of the landmines protocol, Ambassador Hoffmann indicated his determination to conclude the negotiations on draft Protocol IV as quickly as possible and set aside for this purpose four sessions (i.e. four half days). The principal session was on 3 October; during this

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<sup>66</sup> Letters on file with Human Rights Watch Arms Project, Washington DC.

session a consultation took place between a small number of States which effectively decided on the wording of what are now Articles 2 and 3, Article 2 having been throughout the most controversial. This wording was a compromise worked out between the few States most closely concerned and was represented by those States as the only one possible. The session of 5 October was therefore in practice limited to general statements of support for the new Protocol, although many governments stressed that the new Protocol was not as strict as they would have wished.<sup>67</sup>

As each session discussed several Articles of the Protocol, it will be easier to describe the negotiating history of the Protocol by analysing each Article rather than by giving a strictly chronological description of events. However, it should be mentioned at this stage that Ambassador Hoffmann began the negotiations with not only the Chairman's text, which had been submitted to the Review Conference by the Group of Governmental Experts, but also with a rather more elaborate text submitted to the Conference by the government of Austria. During the sessions, additional proposals were put forward by the United States, Bulgaria and Germany. A background paper was also submitted by the Netherlands,<sup>68</sup> which, however, did not include suggested wording.

The other point worthy of note is that it was not certain at the opening of the Review Conference whether China would support this new Protocol, as it had thus far expressed no opinion on the subject other than a general indication that the Conference should concentrate on landmines. Both the prospective Chairman of Committee III and some governments had approached China prior to the Conference in order to encourage it to support the proposed Protocol. The representative of China made it clear during the first session on 26 September that his country was ready to negotiate the wording of the new Protocol.

## **Protocol IV: the content**

### *Scope*

There is no particular Article on the scope of application of Protocol IV and therefore it would seem at first sight to be governed by

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<sup>67</sup> Fifteen States made a statement to this effect.

<sup>68</sup> Doc. CCW/CONF.I/MCIII/WP.1, 26 September 1995.

Article 1 of the framework Convention, i.e. international armed conflicts as described in Article 2 of the Geneva Conventions of 1949. However, the negotiations in Vienna made it clear that delegations intended this Protocol also to apply at least to non-international armed conflicts as described in Article 3 of the 1949 Geneva Conventions.

The issue of scope of application was discussed in the first and third sessions. The Austrian proposal was to the following effect:

“this Protocol shall apply in all circumstances including armed conflict and times of peace”.<sup>69</sup>

Seven States indicated their preference for the Protocol to be applicable “in all circumstances” and three preferred it to apply to international and non-international armed conflicts. China proposed that the scope of application be the same as that agreed to in the context of amended Protocol II, which was expected to be non-international armed conflicts as defined in common Article 3 of the Geneva Conventions. Agreement was reached on this basis and recorded in the report of Main Committee III to the plenary.<sup>70</sup>

The only reason why this scope of application is not specified in Protocol IV is because negotiations on the landmines Protocol broke down in Vienna (for reasons other than the scope Article); as the final wording was not adopted for Protocol II, it was not possible to include it in Protocol IV. However, it was felt worthwhile by all in Vienna to adopt Protocol IV, and a number of delegations thought that the issue of a scope Article could be taken up again if necessary at a subsequent review conference.

A confirmation of the intention of the Vienna Conference is to be found in a resolution adopted by the 26th International Conference of the Red Cross and Red Crescent, which:

“welcomes the general agreement achieved at the Review Conference that the scope of application of this Protocol should cover not only international armed conflicts”.<sup>71</sup>

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<sup>69</sup> Doc. CCW/CONF.I/MCIII/WP.2, 26 September 1995, Article 1, para. 2 .

<sup>70</sup> Doc. CCW/CONF.1/4, 12 October 1995. See also Doc. CCW/CONF.1/MCIII/WP.4/Rev.2, 5 October 1995, which is the Protocol as it appeared when negotiations concluded in the Third Committee and which includes the scope in Article 1 but leaves open the exact wording.

<sup>71</sup> 26th International Conference of the Red Cross and Red Crescent (1995), Resolution 2, Section H, para. (f), *IRRC*, No. 310, January-February 1996, p. 68.

A stronger indication of the intention never to use the weapon is to be found in the Final Declaration of the Review Conference,<sup>72</sup> in which the High Contracting Parties of the 1980 Convention:

“solemnly declare ... their recognition of the need for achieving the total prohibition of blinding laser weapons, the use and transfer of which are prohibited in Protocol IV”.

### *Article 1*

#### *The prohibited weapon*

This is a revised version of what was originally Article 2 of the Chairman's text. The final version was heavily influenced by the wording of the new United States Department of Defense policy, i.e. the prohibition of the employment of “laser weapons specifically designed to cause permanent blindness to unenhanced vision”; a proposal to this effect was included in the working paper submitted by the USA.<sup>73</sup>

Many delegations were of the opinion that this proposal was not sufficiently clear. First of all it was felt that “unenhanced vision” needed explanation. The wording adopted, namely “to the naked eye or to the eye with corrective eyesight devices”, was proposed by the US delegation, which also explained that “corrective eyesight devices” meant prescription glasses or contact lenses. The delegation also explained that the term “unenhanced vision” was included in order to exclude systems used for countering optical systems. However, as several new laser systems appeared to have a dual use (namely, use against optical systems and against eyesight), the term “specifically designed” was clearly of critical importance for the meaning of this provision. It is not surprising, therefore, that much discussion centred on this issue.

The United States delegation stated several times that “specifically” would cover the situation where only one of the functions of the laser was to blind persons. However, the delegation of France understood the word to mean “exclusively”, whereas the UK delegation indicated that it preferred the use of the word “primarily”, which was the wording in the Chairman's text. The delegate of the ICRC strongly argued that a prohibition of a weapon should not depend on an ambiguous word that was

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<sup>72</sup> Doc. CCW/CONF.I/16.

<sup>73</sup> Doc. CCW/CONF.I/MCIII/WP.3, 27 September 1995.

also likely to lead to difficulties in translation. The ICRC therefore urged the delegates to spell out in the provision the meaning that the US delegation attributed to the word “specifically”, thus removing all doubt. After consultations with both capitals and between interested States, this was agreed to by the final session on 5 October 1995. All delegates were of the opinion that this was the best definition of the prohibited weapon that could be achieved in the time allotted and no one suggested describing the technical characteristics of such a weapon.<sup>74</sup>

### *Production and transfer*

The prohibition of production was already included in square brackets in the Chairman’s text and the prohibition of transfer was first introduced in the Austrian proposal.<sup>75</sup>

Ten States wished to have production of the weapon prohibited in the Protocol, but four States spoke against, arguing that this would require verification measures and that there was no time to negotiate the issue. The Chairman was also of the opinion that a ban on production would certainly need intrusive verification measures and therefore had doubts as to its inclusion in the Protocol. However, on adoption of the Protocol, the States in favour of a ban on production included in the final report of Main Committee III<sup>76</sup> a reference to taking the matter up again at a future Review Conference.

The ban on transfer met with success, however. Austria strongly argued in favour of this proposal, pointing out the particular danger of a State party to the Protocol transferring the weapon to a non-party State which might well then use it. Austria’s position was supported by most delegations. Several States were sceptical and argued that as they were having enough difficulty agreeing on the wording regulating use, they should not complicate matters by starting negotiations on transfer. However, in the face of the determination of many delegations, they agreed to seek further instructions from their capitals on this point. By the final meeting on 5 October this provision could be inserted, although as late as the third meeting on 3 October it was uncertain whether this would be the case.

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<sup>74</sup> The ICRC was also of the opinion that the Protocol should not attempt a technical description, as this would be extremely difficult to do and would therefore considerably delay the adoption of a Protocol.

<sup>75</sup> See note 69, Article 3, para. 3.

<sup>76</sup> See note 70.

## *Article 2*

This is a radically modified form of Article 1 of the Chairman's text, which, it will be recalled, reads as follows: "It is prohibited to employ laser beams of a nature to cause permanent blindness [serious damage] against the eyesight of persons as a method of warfare".

This provision caused the greatest difficulty, as it was intended not only to prohibit blinding laser weapons meant for anti-personnel use but also to prevent other lasers from being used in this way. The phrases that posed the most problems were: "it is prohibited to" and "as a method of warfare".

With regard to the first phrase, the governments of the United Kingdom and the United States stressed that, as many lasers were already used on the battlefield on a regular basis for range-finding and target designation, there was a clear danger that soldiers would inadvertently or incidentally blind. Despite draft Article 3, they were concerned that soldiers would find themselves open to war crimes charges and they therefore felt that the obligation should be aimed at the State rather than at the soldier. The United Kingdom indicated that if the wording in the Chairman's draft were adopted, the UK would have to restrict the normal use of lasers in order to avoid all possibility of blindness, and this would be at the expense of the accuracy of other weapons. Two other States recognized that this was a problem.

This concern was not shared by all; the delegation of Germany in particular pointed out that the real issue to be concerned about was potential victims of blinding and not potential war criminals. Most delegations were not willing to give up a general rule of this nature and therefore major efforts were made to find a formula that would be meaningful and still be acceptable to States which could not accept the Chairman's draft.

On 29 September the German delegation submitted a text which attempted to solve the problem by referring to orders given:

"It is prohibited to order the use of laser beams for the purpose of blinding a person permanently or to conduct hostilities on this basis".<sup>77</sup>

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<sup>77</sup> Working paper of 29 September 1995; on file with the author. The wording was inspired by Article 40 of Additional Protocol I of 1977, which provides that: "It is prohibited to order that there shall be no survivors, to threaten an adversary therewith or to conduct hostilities on this basis".

A number of delegations had difficulties with this formula. Some believed that as soldiers give orders it did not solve the problem of personal liability; moreover, it introduced the element of intent, which was difficult to prove. Others, including the Chairman and the ICRC delegation, pointed out that both domestic criminal law and existing humanitarian law impose prohibitions on certain actions by combatants where the element of intent needs to be shown, and therefore this would not be anything new. On the other hand, the German formula was opposed by the delegation of China, which felt that the formula was not strict enough as it would not cover a soldier blinding combatants on his own initiative.

With regard to the phrase “method of warfare”, the United States indicated that it could not accept such ambiguous language.<sup>78</sup> The German proposal “conduct hostilities on this basis” was meant to address this problem and there was also a proposal by Bulgaria which avoided the phrase altogether:

“It is prohibited to employ laser beams or any other laser device as a laser weapon, as defined under Article 1”.<sup>79</sup>

It is worth noting, however, that most States would have accepted a ban on using laser weapons to blind “as a method of warfare”.<sup>80</sup>

No agreement could be found during the session of 29 September. In preparation for the next session of 3 October, the Chairman submitted a text which borrowed language from the statement of the United States Secretary of State, which referred to “minimizing these injuries” (i.e. blindness) “through training and doctrine”. His draft Article read as follows:

“It is prohibited to employ laser beams or any other laser device as a laser weapon ... States shall seek to implement this obligation through training and other appropriate measures in their armed forces”.<sup>81</sup>

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<sup>78</sup> This was actually a reflection of the fact that the phrase “method of warfare” had created difficulty for the United States in the context of the 1993 Chemical Weapons Convention; it therefore wished to avoid further use of such wording in any context.

<sup>79</sup> Doc. CCW/CONF.1/MCIII/CRP.1, 29 September 1995.

<sup>80</sup> The President of France, for example, in reply to Parliamentary questions, indicated that “*Il est à souligner que la France souscrit également à l'objectif de prohibition de l'aveuglement délibéré des personnes en tant que méthode de guerre*”, Questions écrites des parlementaires, SIRPA ACTUALITE, No. 30, 9 September 1995. It is also worth noting a preambular paragraph in the Final Declaration of the Review Conference: “*conscious of the urgent need to counter the silent and invisible threat to human sight posed by the threat of blinding laser weapons*”.

<sup>81</sup> Doc. CCW/CONF.1/MCIII/CRP.XX, 2 October 1995.

The first part still caused problems for a few delegations because it contained an element of intent, whereas others thought that it did not specify clearly enough the prohibition of blinding. However, it was generally felt that there was common ground that laser systems should not be misused as blinding weapons.

A small working group was organized by the Vice-Chairman, Mr Poptchev of the Bulgarian delegation, which resulted in the following text:

“The High Contracting Parties shall issue instructions to their armed forces to use laser [systems] in accordance with their normal function and take other practical measures in order to minimize and exclude, to the extent possible, the incidents of permanent blindness to unenhanced vision ... as a result of the [legitimate] use of laser [systems]”.<sup>82</sup>

Shortly after the presentation of this document, the delegation of Sweden indicated to the Chairman its desire to meet again informally with a few other delegations in order to improve on this wording. It was of the opinion that the expression “in accordance with their normal function” was not explicit enough and was convinced that a little more negotiation would result in a much better formulation. It was already late in the evening at this stage and the rest of the time was spent in these informal negotiations. The present language of the Protocol emerged from these negotiations and unfortunately the author of this article is not in a position to indicate the process which led to this final version. However, it would appear that the idea of using the term “feasible precautions” came from the Netherlands delegation.

The wording which emerged was presented at the meeting of 5 October and was not contested by delegations.

One can see from the formulation that the duty has been placed on the level of the State, as desired by some delegations, and takes the form of appropriate training and “other practical measures”. This clearly means that orders cannot be given to use lasers to blind combatants and that efforts must be made to train soldiers to use laser equipment so as to avoid such a result as far as possible. It also means that, if lasers were to be used to counter optical equipment, particular efforts would have to be made to avoid blinding individuals, as in practice such lasers would be the most serious hazard to eyesight. This issue will be commented on further below. Finally, regarding the term “other practical measures”, delegations did not list examples of such measures during the sessions, but some indicated

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<sup>82</sup> Doc. CCW/CONF.I/MCIII/CRP.3, 3 October 1995.

informally that they could certainly include the introduction of eye-safe range-finders, as some States are already beginning to do.

### *Article 3*

This Article is very similar to Article 3 of the Chairman's text. The word "legitimate" was questioned by a few delegations during the negotiations. It was explained that it was included in order to specify that there were correct and appropriate uses of lasers on the battlefield. By implication, however, we may also conclude that there are illegitimate uses.

The main purpose of this Article is to allow for the continued use of battlefield lasers, which has been common for some time, and which have not until recently been designed for use against eyesight. However, in the same way that humanitarian law prohibits direct attacks on the civilian population but recognizes that it can be affected by bombardments against military objectives, this Article recognizes that lasers may not be used directly against the eyesight of soldiers but that they may be incidentally affected when lasers are used for other purposes. However, to take the analogy further, Article 2 provides that precautions must be taken to avoid this as far as possible, just as Article 57 of Additional Protocol I requires precautions when planning attacks against military objectives which might affect the civilian population. It is sincerely hoped, however, that this Protocol will be more successful in avoiding incidental blindness than has been the case for civilian casualties resulting from attacks against military objectives. It goes without saying that this Protocol bans the deliberate blinding of both soldiers and civilians.

The phrase "including laser systems used against optical equipment" was introduced only during the last informal consultations that took place at the request of Sweden on the evening of 3 October. Up until that moment, delegations had indicated that the version in the Chairman's text was satisfactory. This phrase was apparently included so that certain delegations could accept the final formulation of Article 2.

Both the term "unenhanced vision" found in Articles 1 and 2 and the phrase "including laser systems used against optical equipment" were included in order to take into account lasers used for the detection and destruction of certain optical systems.<sup>83</sup>

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<sup>83</sup> For example, the statement of the French President: "*Elle a cependant besoin de pouvoir employer le laser dans ses usages courants, ainsi qu'à des fins de détection et de neutralisation des capteurs*", Questions écrites des parlementaires, *op. cit.* (note 80).

However, the interpretation of Article 3 is not without difficulty. The provision speaks of "incidental or collateral effects" when lasers are used against optical equipment. If the optics concerned are systems which view the battlefield and do not involve the laser passing through them directly into the eyes of the person making use of them, then the use of that laser can be seen as an anti-matériel use and certainly not an anti-personnel use. In this case, incidental blindness might indeed be caused in an individual who happened to be in the path of the beam but was not intentionally targeted. However, if lasers were used against direct optics, such as binoculars, the lasers would have no effect at all on the binoculars but would certainly blind the individual holding them. Such blindness could hardly be called "incidental or collateral" as it would be deliberate and direct. It is submitted, therefore, that according to a normal interpretation of Article 3 the phrase "including laser systems used against optical equipment" could not be used to legitimize the deliberate blinding of persons using binoculars or other direct optics.

#### *Article 4*

It will be recalled that the Chairman's text contained no definition. The Austrian proposal did contain a number of suggested definitions, but only a definition of "permanent blindness" was felt necessary by some delegations. The United States explained that a precise figure needed to be given in order to ensure compliance with the Protocol, especially as blindness did not necessarily mean total loss of vision and that indeed the use of lasers would frequently not result in such total loss. However, Main Committee III experienced great difficulty in deciding on a definition because the types of blindness caused by lasers have not been quantified; definitions of blindness that do exist are based on loss of sight caused by disease.

The Austrian proposal referred to the definition of "blindness and low vision as defined in the International Statistical Classification of Diseases and Related Health Problems of the World Health Organization". "Blindness and low vision" is quantified by the WHO (using what is known as the "Snellen" scale) as visual acuity of less than 20/200, which means that a person cannot see at 20 feet what a normally sighted person can see at 200 feet. The United States proposal used the figure 20/400,<sup>84</sup> which is the WHO definition of "blindness".

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<sup>84</sup> See note 73, Article 4; 20/400 means that a person cannot see at 20 feet what a normal person can see at 400 feet.

Before the session of 3 October, the ICRC arranged for a visit to Vienna by Professor Marshall, a leading specialist on the effects of lasers on the eye who had already contributed to ICRC expert meetings between 1989 and 1991. In an informal meeting he explained to a number of delegations that visual acuity, on which the WHO definition was based, measured in practice the extent to which vision was blurred, as WHO definitions were largely influenced by the organization's work on the treatment of cataracts. Blinding by laser weapons would involve the destruction of certain portions of the retina. Loss of central vision, which was a very likely result, would result in the total loss of visual acuity, so a definition based on visual acuity was irrelevant to blindness caused by laser weapons.<sup>85</sup> Professor Marshall therefore strongly recommended a functional test rather than one based on WHO figures. This opinion was shared by the UNDP representative at the Conference, Sir John Wilson, a specialist on the definition of blindness as assessed by the WHO. Both he and Professor Marshall suggested using the phrase "loss of sight that is permanent, seriously disabling and irreparable". A few delegations, however, insisted on maintaining a figure as, they said, this was important for establishing whether the Protocol had been violated. One delegation added that it was also important for its weapons designers! They conceded, however, that a figure alone would be meaningless for non-specialists and that a descriptive phrase would be useful.

The utility of the description in Article 4 is to confirm that "blindness" does not necessarily mean total loss of sight, a fact which is not generally known to non-specialists. This is important point: damage by laser weapons may result in partial loss of sight, although this will depend on the energy level of the weapon and the distance of the victim, for military lasers are certainly capable of inflicting total blindness. The other criteria, namely, "irreversible", "uncorrectable" and "no prospect of recovery" are the normal result of laser injury. With regard to the measurement of visual acuity, it has already been indicated that this is not appropriate for laser injury. However, Professor Marshall explained that in cases of cataract, people with visual acuity of less than 20/200 were not able to read or to get around, and such functional loss was also likely to result from laser injury.

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<sup>85</sup> For greater detail on the blinding effects of laser weapons, see *Blinding Weapons: reports* (note 15), First Round Table of Experts, pp. 29-45, and First Working Group of Experts, pp. 98-99 and 102-139.

Delegates were aware that the Snellen scale was not very suitable for measuring blindness caused by lasers, especially as it did not contain any reference to loss of field of vision, but as it was the only internationally recognized measurement they wished to maintain it. However, in the Final Declaration of the Conference they indicated their wish to return to this problem of definition should the need arise.<sup>86</sup>

### ***Implementation***

Article 4 of the Austrian proposal was a draft Article on "Compliance" containing the following:

"The States Parties undertake to consult each other and to cooperate with each other in order to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol".

The proposal was strongly supported by India but unfortunately was not followed up. This was not really because of opposition by other States but because of lack of time and the difficulty of arriving at an agreed version of what is now Article 2.

### **The likely effect of the new Protocol**

There can be no doubt that Protocol IV represents a major achievement. It is the first time since 1868<sup>87</sup> that a weapon has been prohibited before it has been used on the battlefield. It has also stigmatized deliberate blinding.<sup>88</sup> Although the Protocol does not contain a simple prohibition

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<sup>86</sup> See note 72. The Declaration states that "The High Contracting Parties ... solemnly declare ... their wish to keep the blinding effects related to the use of laser systems under consideration...". The preamble also notes that a number of issues could be considered in the future, for example the definition of "permanent blindness", including the concept of field of vision.

<sup>87</sup> When exploding bullets were prohibited by the St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight.

<sup>88</sup> Several States indicated in the formal plenary meeting of Committee III on 6 October that they interpreted the Protocol as banning blinding as a method of warfare. It is also worth noting the resolution of the European Parliament entitled *Resolution on the failure of the international conference on anti-personnel mines and laser weapons* of 16 November 1995, paras. H and I of which read as follows: "welcoming the agreement on a Protocol to the Convention on Certain Conventional Weapons to restrict the use and transfer of blinding laser weapons, but regretting that the Protocol fails to ban the production of blinding laser weapons and provides loopholes for the production, use and transfer of some blinding laser weapons, including those that target optical systems; believing that blinding as a method of warfare is abhorrent and in contravention of established custom, the principles of humanity and the dictates of the public conscience...".

of blinding as a method of warfare, there can be no doubt that it was adopted because of the concern felt about a weapon designed to be aimed at eyesight. As a Director of the ICRC, Mr Yves Sandoz, stated at the final plenary in Vienna, this Protocol represents a victory of civilization over barbarity.<sup>89</sup>

The Protocol requires 20 States to notify their consent to be bound by it before it enters into force;<sup>90</sup> at the time of writing one State has already done so.<sup>91</sup> Most States are likely to submit Protocol IV to their Parliaments at the same time as amended Protocol II<sup>92</sup> and this may cause a little delay. The Final Declaration<sup>93</sup> of the of the Review Conference states that: "The High Contracting Parties ... Solemnly Declare ... Their desire that all States, pending the entry into force, respect and ensure respect of the substantive provisions of Protocol IV to the fullest extent possible".

State practice so far is encouraging. At a news briefing held on 12 October 1996, the US Department of Defense announced that the Army had been ordered on 5 October to stop the LCMS program and that it had been terminated. The reason given, as reported at the briefing, was as follows:

"Deputy Secretary John White determined that [the laser countermeasures program] did not fit in under the proscription against blinding lasers that are intended to blind ... We have an opportunity to stop a proliferation of a new and dangerous weapon, we hope. We are now engaged in discussions at the Conference on Conventional Weapons in Vienna to do just that. Secretary Perry felt strongly that we should take a lead role in that by swearing off the development and use of lasers intentionally designed to blind people".<sup>94</sup>

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<sup>89</sup> The original French text was as follows: "*L'adoption du Protocole sur les armes à laser aveuglantes est un succès de la civilisation sur la barbarie. Au-delà du seul texte de ce Protocole, ce que nous retiendrons en effet de la décision prise aujourd'hui, ce que les peuples comprendront, c'est que les Etats n'acceptent pas l'idée que les hommes puissent délibérément aveugler d'autres hommes, en quelque circonstance que ce soit*". On file with the author.

<sup>90</sup> Article 5, para. 3, of the framework Convention.

<sup>91</sup> Finland, on 11 January 1996.

<sup>92</sup> Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices as Amended on 3 May 1996. Adopted by the first Review Conference of the 1980 CCW.

<sup>93</sup> See note 72.

<sup>94</sup> Defenselink transcript, Department of Defense News Briefing, 12 October 1995.

At the final plenary session in Vienna, the Chinese delegate welcomed Protocol IV, stating that it would reduce the cruelty of war and that all States should ratify it. There are indications that NORINCO has withdrawn the anti-personnel laser from the market and there is no evidence that any other anti-personnel laser programmes are being pursued elsewhere.

It is noteworthy that State practice so far seems to be in keeping with the general intent of the new Protocol and is not being based on the wording of the Protocol, which appears to exempt the use of lasers against optics. Indeed, some States were reticent to adopt a provision simply prohibiting the use of lasers against eyesight as a method of warfare (as originally suggested by Sweden) for fear of being accused of violating the Protocol should blindness incidentally occur when range-finders were being used. Therefore it is difficult to imagine how they could introduce anti-optics lasers given that these pose a much greater threat to eyesight than any other lasers. In the technical literature, so-called anti-sensor lasers were frequently alluded to as being useful for anti-personnel purposes and the withdrawal of the LCMS, together with the explanation given, seems to confirm this.

It is earnestly hoped that this trend will continue and that the Protocol will have the necessary effect without need for further negotiation. In the Final Declaration,<sup>95</sup> the Review Conference notes that "a number of issues could be considered in the future, for example at a review conference, taking into account scientific and technological developments, including the questions of prohibition on the use, production, stockpiling and transfer of blinding laser weapons and the question of compliance with regard to such weapons...".

It is the author's opinion that none of this will be necessary if States implement the Protocol in accordance with its general goal, as appears to be the case so far. However, vigilance will be required both on the national and the international level to ensure that this is done.

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<sup>95</sup> See note 72.

*Annex*

**CONVENTION ON PROHIBITIONS OR RESTRICTIONS  
ON THE USE OF CERTAIN CONVENTIONAL WEAPONS  
WHICH MAY BE DEEMED TO BE EXCESSIVELY  
INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS**

**Protocol on Blinding Laser Weapons**

**(Protocol IV)**

Adopted 13 October 1995

*Article 1*

It is prohibited to employ laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices. The High Contracting Parties shall not transfer such weapons to any State or non-State entity.

*Article 2*

In the employment of laser systems, the High Contracting Parties shall take all feasible precautions to avoid the incidence of permanent blindness to unenhanced vision. Such precautions shall include training of their armed forces and other practical measures.

*Article 3*

Blinding as an incidental or collateral effect of the legitimate military employment of laser systems, including laser systems used against optical equipment, is not covered by the prohibition of this Protocol.

*Article 4*

For the purpose of this protocol “permanent blindness” means irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery. Serious disability is equivalent to visual acuity of less than 20/200 Snellen measured using both eyes.

# Fyodor Fyodorovich Martens (1845-1909) a humanist of modern times

by Vladimir Pustogarov

In the history of humankind, no matter how far back we look into the past, peaceful relations between people and nations have always been the ideal, and yet this history abounds in wars and bloodshed. The



*Fyodor Fyodorovich  
Martens (1845-1909)*

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Original: Russian.

documentary evidence, oral tradition and the mute testimony of archaeological sites tell an incontrovertible tale of man's cruelty and violence against his fellow man. Nevertheless, manifestations of compassion, mercy and mutual aid have a no less ancient record. Peace and war, goodneighbourly attitudes and aggression, brutality and humanity exist side by side in the contemporary world as well.

The primary task of modern times is to break this vicious chain and to put an end to war and violence — a goal which is all the more vital because of its close links with the need to prevent the ecological disaster that threatens the whole planet and its inhabitants.

Recipes for the elimination of war are many and varied and are all worthy of attention, but at the same time no one can question the significance and fruitfulness of the noble idea of protecting the life, honour and dignity of human beings by legal means, with the ultimate aim of banishing war itself from international relations. In this connection, the importance of promoting legal awareness is primordial, since *homo sapiens* behaves in accordance with conceptions formed in his mind, and a legal norm can come into effect only when it becomes inherent in the way of thinking of a large enough number of people. The Ten Commandments of the Bible can be carved on stone tablets, cast in bronze or stamped on steel plates, but will nevertheless remain a dead letter unless they become part of the legal consciousness of society.

The evolution of the moral values that determine the concept of justice (*justitia*) entails changes in the law, including international law, and the crowning points of this development are marked by the names of outstanding lawyers. It is indeed regrettable that our cultural tradition — at least, since the fall of ancient Rome - has placed lawyers far from the vanguard, behind emperors and army commanders, men of letters and painters. The poems of the 12th century minnesinger Walter von der Vogelweide are still included in anthologies of German verse, Napoleon and Suvorov are still legendary heroes of the past and the canvases of Titian and Rubens are still regarded as masterpieces — but who remembers Eike von Rāphoff, the first codifier of mediaeval law and the author of the rhymed *Saxon Mirror*?

It was not until the 17th century that Hugo Grotius became widely known in Europe and more centuries passed before international developments in the last quarter of the 19th century brought forth a brilliant galaxy of international law experts from various countries who laid the foundations of contemporary international law.

One of the most outstanding representatives of this pleiad was *Fyodor Fyodorovich Martens* (1845-1909), a Russian jurist, diplomat and publicist whose influence on international law is appreciable to this day.

### **Martens as an international lawyer**

F.F. Martens was born into a poor family in the town of Pernov (now Pärnu) of the Liefland province of the Russian Empire. At that time the province comprised the territory of modern Latvia and Estonia.

At the age of nine he lost both his parents and was sent to a Lutheran orphanage in St. Petersburg, where he successfully completed the full course of studies at a German high school and in 1863 entered the law faculty of St. Petersburg University.

Very little is known of his childhood and youth. No doubt they were not easy. He himself did not like to recall those years, although sometimes the accumulated bitterness would suddenly burst forth, and he would write in his diary such entries as this one on the occasion of his 60th birthday: "I have never had a worse day in my life, even if I think back to my childhood years".<sup>1</sup> Apparently the hardships of his childhood had not faded from his memory...

At the university the young man was a brilliant student and his gifts caught the attention of I.I. Ivanovsky, the faculty dean, whose support enabled him to continue his studies at the university and to obtain the degree of professor of international law.

Martens soon defended his master's thesis *On the law of private property in time of war* and was sent on a study tour abroad, attending lectures at the universities of Vienna, Heidelberg and Leipzig. As may be seen from his later works, he was mainly influenced by A.D. Gradovsky, professor of St. Petersburg University, who advocated the ideas of the rights of the individual and West European constitutionalism, by L. von Stein, professor at the University of Vienna, well known for his works on management and "social intercommunication" across State boundaries, and by J.K. Bluntschli, professor at Heidelberg University, who published *The Modern International Law of Civilized States* in the form of a code.

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<sup>1</sup> Archives of Russian Foreign Policy (ARFP), Inventory 787, File 9, Storage unit 6, pp. 73-74.

His growing knowledge of Russian and West European schools of thought helped to broaden his outlook and to develop his spirit of innovation and independent thinking. When delivering his first lecture to students in January 1871, he defied tradition by not continuing the course begun by his predecessor, but by criticizing the current state of the science of international law, on the grounds that it was not yet based on the study of material factors, was not trying to identify the objective laws of development and “made no attempt to investigate the internal laws of communication between States and of international relations”. Martens believed that it was time to “start looking into the laws of the historical development of nations in their international life”.<sup>2</sup> It was indeed bold of the young academic to claim to have created his own school of thought in international law.

Martens was above all opposed to any concept implying that law was based on force. He regarded such views as unworthy of human beings and pernicious for international relations, pointing out that in such cases even prominent experts were confusing law enforcement procedures with law itself, for the fact that law was safeguarded by force did not mean that force should serve as the basis for law. According to Martens, the inviolability of human life, honour and dignity is recognized to be the right of everyone, not because it is protected by criminal law, but because everyone has an inalienable right to life, honour and dignity.

With regard to the driving force of international law, Martens saw it in the development of international relations, reflecting the nations’ need to communicate among themselves: “*ubi societas ibi jus est*” (“where there is communication there is law”). He wrote: “The idea of international communication under which every independent State is an organic part of a single whole, linked with the other States by their common interests and rights, should serve as the basis for a scientific system of contemporary international law”.<sup>3</sup>

The real needs of States are constituted by international relations, which in turn are expressed in international law. At the same time, international law is not merely a device for recording the formation of

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<sup>2</sup> F.F. Martens, *On the goals of contemporary international law*, St. Petersburg, 1871 (in Russian).

<sup>3</sup> F.F. Martens, *The contemporary international law of civilized nations*, vol. 1, St. Petersburg, 1882, p. 178 (in Russian).

relations between States, but is also a manifestation of the moral values of the human race.

Although a down-to-earth realist, Martens stressed the “ideal power of law”, the power of the ideals of justice and humanity, and as a jurist and a humanist, he saw the basis for an equitable legal order, not in State sovereignty, “political balance” or nationalistic ideas, but solely in law: it is only law and the absolute rule of law that can ever serve as a basis for a properly organized life, free from war and violence.

In his analysis of the history of antiquity, feudalism and the modern era, Martens recorded a steady shift in the correlation between law and force in favour of law. He believed that “in the area of international relations, too, the time will come when the great law of social life will finally prevail, and each nation will exist for the world and the world for each nation”.<sup>4</sup>

Martens’ sublime humanism and foresight caused him to situate the human being at the centre of international life. He concludes that there is but one law running through the entire history of nations, namely “the principle of respect for the human person”.<sup>5</sup>

It is to his credit that he placed the human being at the centre of international law in spite of the views prevailing at the time. Martens considered protection of the rights, interests and property of a human being to be the substance of the entire system of international relations and regarded respect for human rights as a yardstick of the degree of civilization of States and international relations. “It is our conviction,” he wrote, “that once the human being as such is recognized by the State to be the source of civil and political rights, international life will reach a high degree of development, law and order. And the reverse is also true — international relations can neither be developed nor established on a firm basis with a State in which the human person enjoys no rights and is oppressed”.<sup>6</sup> The wording of Martens’ credo is outstandingly clear: “Protection of the individual is the ultimate purpose of the State and goal of international relations”<sup>7</sup> — an idea and formulation worthy of the UN Charter or the Universal Declaration of Human Rights!

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<sup>4</sup> F.F. Martens, *The Eastern War and the Brussels Conference*, St. Petersburg, 1879, p. 45 (in Russian).

<sup>5</sup> F.F. Martens, *op. cit.* (note 3), pp. 23-34.

<sup>6</sup> *Idem*, pp. 110-129.

<sup>7</sup> *Idem*.

Martens' humanism was incompatible with the spirit of militarism — even that emanating from his own homeland. The essay he contributed to a St. Petersburg journal in connection with the celebration of the 150th anniversary of the University of Bern (Switzerland), to which he was invited as guest of honour, is noteworthy in this respect. Martens was fascinated by the fact that a country as small as Switzerland had seven universities, that the university jubilee was being celebrated as a public holiday by the town and the whole canton of Bern and that this little canton maintained a university and provided for it better than Russia did for her institutions. "For us Russians," he wrote, "the history of this small cantonal University of Bern is enlightening at least by familiarizing us with the experiences and vicissitudes of cultural life". To this he added: "The Swiss realized long ago what constitutes the true, essential and unshakeable might of every nation. It is not millions of bayonets, an immense national territory or a vast population, but it is the power before which everyone must bow and which triumphs over everything — the power of superior culture, intellect and talent".<sup>8</sup>

Martens' scholarly outlook determined his practical activities as both a lawyer and a diplomat.

### **Martens as a diplomat**

Unlike pacifists and representatives of similar trends, Martens considered the idea of the abolition of war in the immediate or more distant future to be purely utopian. In his opinion, the only solution that was compatible with the humane goals of law was to limit the horrors of war by means of clearly defined rules accepted by all States.

It is worth mentioning that in Martens' time an anti-war offensive was being launched from many quarters and along different lines. The number of peace associations was growing. After emerging in the USA and Great Britain, they soon sprang up in a considerable number of countries. By 1895 there were 125 of them, including 36 in Great Britain, 26 in Germany, 14 in France, 14 in Italy, 9 in Switzerland and so forth, and at the beginning of the 20th century Russia was the only European country in which there were none. In Brussels in 1848, the peace associations held their first congress, which then became an annual event. Their activities influenced world public opinion by decrying the glorification of war, and

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<sup>8</sup> "The European Herald", St. Petersburg, 1884, No. 10, pp. 852-858 (in Russian).

the Interparliamentary Conferences held regularly after the first such conference in Paris in 1899 had a similar effect.<sup>9</sup>

The idea of joining the civilized States in a single union within which all conflicts would be resolved peacefully was quite popular at the time. One of its most ardent supporters was L.A. Kamarovsky (1846-1909), a Russian jurist best known as the initiator of a permanent international court, who suggested as a first step the establishment of a union of European and American States along the lines of the USA,<sup>10</sup> in the belief that strengthening the practice of federalism was important for promoting the idea of peace.<sup>11</sup>

The demand for the reduction of armaments and — in some circles — the concept of universal disarmament received relatively wide support among the general public.

The development and production of increasingly devastating weapons triggered a counterreaction, and in 1868, at the initiative of Russia, a number of States signed the St. Petersburg Declaration, renouncing the use, in time of war at sea or on land, “of any projectile of a weight below 400 grammes which is either explosive or charged with fulminating or inflammable substances”.<sup>12</sup> That provision was motivated by the desire to avoid excessive human suffering.

Attention is usually concentrated on this particular rule, whereas the Declaration of 1868 contains a number of other important principles, for instance, that “the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy”. On the basis of the laws of humanity, the Declaration banned all arms, the use of which would exceed that object of war and called for control to be exercised over future technical improvements of armaments.

Another fast-growing trend in mitigating the horrors of war was towards providing care for the wounded, prisoners of war and civilians. This work received a strong impetus from the activities of Henry Dunant,

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<sup>9</sup> L.A. Kamarovsky, *The success of the idea of peace*, Moscow, 1898, pp. 89-179 (in Russian).

<sup>10</sup> L.A. Kamarovsky, *On an international court*, Moscow, 1881, pp. 483-501 (in Russian).

<sup>11</sup> L.A. Kamarovsky, *The question of an international organization. The United States of Europe*. Moscow, 1905 (in Russian).

<sup>12</sup> Declaration renouncing the use, in time of war, of explosive projectiles under 400 grammes weight, St. Petersburg 1868 (“Declaration of St. Petersburg”).

a young Swiss who had witnessed the aftermath of the bloody battle of Solferino (during the Franco-Austro-Italian War of 1859) and had written a book about that experience: "A Memory of Solferino". At the end of his book, Dunant proposed that every country should set up a society to care for the wounded and that an international congress should be held on the subject. The proposals fell on fertile soil: the first meeting of the *International Committee for Aid to Wounded Soldiers* was held in 1863, and 1864 saw the adoption of the (Geneva) *Convention for the Amelioration of the Condition of the Wounded in Armies in the Field*. Societies for relief to the wounded began to emerge in various countries, and in 1880 Dunant's original Committee became known as the *International Committee of the Red Cross (ICRC)*.

The picture outlined above should not, however, give a false impression of States' willingness to impose restrictions on armaments and means of warfare or to introduce more humane rules for the conduct of war. At that stage, a new legal awareness was only putting out its first shoots and the law-making process was in its early beginnings. As a matter of fact, Martens himself was soon to face some harsh realities.

### **Martens and the laws of war**

With the backing of D.A. Miliutin, the Defence Minister who was close to the Tsar, Martens prepared a draft convention on the laws and customs of war, an instrument which was intended to establish universal rules of warfare for all belligerent States and included regulations for the treatment of the civilian population and of non-combatants in general. The rules were designed to mitigate the horrors of war, in accordance with the legal awareness and humanism that were growing among the general public.

At the initiative of Russia, Martens' draft was submitted to the International Conference convened in Brussels in 1874, but that assembly failed to adopt the convention. Although the text itself did not meet with any objection, the idea of restricting war by international rules came up against widespread resistance. The draft was finally adopted as a declaration of the Conference and did not become a convention until two decades later.

The results of the Brussels Conference did not discourage Martens, who defended his views in the press. In 1879, he published a voluminous work entitled *The Eastern War and the Brussels Conference* in which he strongly castigated the apologists of war. Of great significance was his two-volume course *The Contemporary International Law of Civilized*

*Nations*, published in 1881-1882, which ran into five editions and continued to be the most authoritative textbook in Russian universities for the next 30 years. It was soon translated into seven languages and was used by various foreign universities.

The publication of the *Collection of Treaties and Conventions Concluded by Russia with Foreign States* brought him world-wide fame. Its 15 bulky volumes, based on materials in the Russian archives, were issued in 1874-1909. By prefacing each treaty and convention with an essay on its history, Martens turned the collection into "a historical and diplomatic encyclopaedia of Russia's foreign relations".<sup>13</sup>

Martens was an active member of the Ghent Institute of International Law, participating, *inter alia*, in its work on documents relating to Red Cross activities. As from 1884, Martens represented Russia at all Red Cross conferences and was particularly active in the review of the initial Red Cross Convention at the Geneva Conference of 1906. In 1902, F.F. Martens received the Red Cross Distinguished Service Award for his services to society.

Martens' authoritative status gradually gained international recognition. During his 40 years of service in the Russian Ministry of Foreign Affairs, he represented Russia at nearly all the international conferences in which it participated. He thus took an active part in preparing the documents for the Berlin Conference on Africa (November 1884-February 1885) and the Brussels Conference on African Affairs (1889-1890), and also in drafting the main provisions of the "General Act on international measures for combating the maritime traffic in negroes". In 1893, Martens was a delegate to the First Conference on International Private Law and later represented Russia at the Second, Third and Fourth Conferences (1904). He acted as arbitrator in international disputes on a number of occasions, the best-known being his arbitration in the dispute between Great Britain and Holland in 1892: not only did his award satisfy both parties, but he also laid down the principle of a captain's jurisdiction, under the laws of the vessel's flag, for offences committed on the high seas. In 1899, as an umpire of the court of arbitration, Martens examined the territorial dispute between Great Britain and Venezuela (whose interests were represented by the USA). The demarcation line drawn by the court along the Orinoco river basin has ever since constituted the

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<sup>13</sup> M.A. Taube, *F.F. Martens (1845-1909) - An obituary*, St. Petersburg, 1909, p. 9 (in Russian). The volumes were published simultaneously in Russian and French.

frontier between Venezuela and Guyana. Martens was also a member of the Russian delegation which signed the peace treaty with Japan in Portsmouth (USA) in 1905.

### **The Hague Peace Conferences**

The hour of Martens' triumph as a jurist and a diplomat came with the organization and conduct of the First World Peace Conference in The Hague in 1899.

We now know from archival documents that it was none other than Martens who drew up the programme of the Conference. On 12 August 1898, M.N. Muravyov, the Russian Minister for Foreign Affairs, circulated a note among the foreign envoys in St. Petersburg proposing that an international conference be convened with a view to ensuring "genuine peace and primarily putting an end to the progressive development of armaments". The note, drawn up without any prior consultations, came as a complete surprise to foreign States and was not substantiated by any preliminary drafts or well-considered plans in the Russian Ministry of Foreign Affairs itself. It was, so to speak, "a bare idea", intended to produce a general impact.

As it happened, the proposal to convene a disarmament conference did meet with an enthusiastic response among certain circles in several countries, and out of consideration for those feelings the Governments of Great Britain, France, Germany and other countries supported the Russian initiative. It was nevertheless clear to Martens who was following the foreign press coverage of the issue and to the senior officials of the Ministry of Foreign Affairs that none of the Powers were prepared to disarm. Martens was to learn this from his personal experience: when drawing up the conference programme, he quite reasonably assumed that Russia as the initiator should set a tangible, even if minor, example of disarmament, and therefore proposed to declare at the conference that in the year of its holding Russia would reduce the number of its army recruits during that year. Tsar Nicholas II, however, commented as follows on the draft programme: "I find it difficult to agree to a decrease in the strength of the Russian army".<sup>14</sup>

Having obtained a positive public response and seeing that any form of disarmament was utopian, the senior officials of the Ministry of Foreign

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<sup>14</sup> ARFP, Inventory 470, file 63, È.450.

Affairs were inclined to give the plan for the conference a quiet burial. Minister M.N. Muravyov, for instance, suggested that a meeting of the ambassadors accredited to St. Petersburg, which might come up with some kind of a declaration, should be substituted for the conference.

Martens, who had shouldered the burden of preparations for the conference, was of a different opinion. Although by now he did not believe in the feasibility of any reduction of armaments, he found a way out by transforming the conference on disarmament into the first peace conference.

The programme drawn up by Martens which later served as a basis for the work of the 1899 Hague Conference provided that:

1. With regard to disarmament, a declaration should be adopted to the effect that the States parties "in the near future undertake not to resort to military force for the protection of their rights and legal interests without prior endeavours to seek good offices, mediation or arbitration proceedings".

In addition to the above it was proposed to discuss some measures for freezing armaments.

2. Another aspect of the Conference's work concerned the establishment of a permanent court of international arbitration.

3. The third aspect of its work was the adoption of a convention on the laws and customs of war.<sup>15</sup>

The conference programme suggested by Martens not only brought the disarmament initiative of Russian diplomacy out of a deadlock, but also created a practicable basis for measures aimed at strengthening peaceful relations between nations and mitigating the horrors of war.

When the First Hague Conference opened on 6 May 1899, bringing together the representatives of 27 States (21 European countries, the USA, Mexico, China, Japan, Persia and Siam), Martens was elected Chairman of the Third Commission, dealing with the laws and customs of war.

Although the relevant draft convention had been submitted as early as 1874 in Brussels, the conciliation process in the Third Commission ran into a number of difficulties. At one point, a situation arose which Martens described as "critical": a group of small countries headed by Belgium

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<sup>15</sup> ARFP, Inventory 787, file 9, storage unit 4, pp. 80-86.

opposed the very principle of the rights and duties of armies of occupation, and demanded an unlimited right of resistance for the population of occupied territories. A solution was found in the form of the so-called "Martens clause", the reservation that he proposed to insert in the preamble to the convention, reading as follows: "... in cases not included in the Regulations adopted by them (*the States Parties* — V.P.), the inhabitants and the belligerents remain under the protection and rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience".<sup>16</sup> Martens' proposal was greeted by applause and the whole convention was adopted unanimously.

In addition to presiding over the Third Commission, Martens repeatedly addressed the plenary meetings of the Conference and spoke in its Second Commission. His merits were so widely recognized that he came to be called "the life and soul of the Conference".

As a result of the discussions, the First Peace Conference adopted a resolution on the desirability of restricting military budgets, the Convention Respecting the Laws and Customs of War on Land and the Convention for the Pacific Settlement of International Disputes, which provided in particular for the establishment of a Permanent Court of Arbitration.

The significance of the Conventions signed at the First Peace Conference and the impact they had and still have on the development of contemporary international law do not require any further comment. Individual clauses of the Hague Conventions (including those signed in 1907) have given rise to the development of separate branches of law which have become so topical today. These Conventions are a memorial to F.F. Martens, that outstanding Russian jurist, diplomat and humanitarian. In evaluating Martens' contribution to the overall results of the Conference, Jean Pictet, a well-known expert on international humanitarian law, wrote that the Martens clause had been brought into existence by its author's "genius".<sup>17</sup> It is noteworthy that the full text of a slightly amended version of the Martens clause was included in Additional Protocol I to the Geneva Conventions of 1949.<sup>18</sup>

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<sup>16</sup> As adopted by Convention (IV) Respecting the Laws and Customs of War on Land, of 18 October 1907, 8th preambular paragraph.

<sup>17</sup> J. Pictet, *Development and Principles of International Humanitarian Law*, Dordrecht/Boston/Lancaster/Geneva, 1985, p. 60.

<sup>18</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, Article 1, par. 2.

The articles of the Hague Convention on the Laws and Customs of War look strange to the modern reader. "Prisoners of war may be set at liberty on parole..." (Article 10); it is forbidden "to kill or wound treacherously individuals belonging to the hostile nation or army", "to declare that no quarter will be given" (Article 23 (a) and (d)); "the pillage of a town or place, even when taken by assault, is prohibited" (Article 28); or (for occupied territories) "pillage is formally forbidden" (Article 47). But all this was a reflection of the contemporary realities of war, and it cannot be said that the provisions of the Hague Conventions are always observed in present-day conflicts. In any case, their humanitarian significance and their effect on legal awareness can hardly be overestimated.

### **The Martens clause**

The Second World Peace Conference met in The Hague on 15 June 1907 with 44 countries participating. It was practically a world assembly, or "an international parliament" as Martens put it.

Martens again had to take a most active part in preparing the Conference programme, in its proceedings and in bringing about the adoption of agreed texts of the conventions. On the one hand, the organizational work was considerably facilitated by the fact that the way had been paved by the 1899 Conference, but on the other hand a substantial number of complex questions, left unsettled because of their difficulty, had accumulated for consideration by the Second Conference. In addition, that work had to be carried out in an atmosphere of deteriorating relations between the world Powers and of the formation of military blocs in preparation for a new war. The naval rivalry between Great Britain and Germany was particularly acute.

In the light of this new situation, the Tsar's Government decided to send Martens on a tour round the European capitals with a view to sounding out opinions and holding consultations.

In Berlin he met Kaiser Wilhelm II, in Paris — President Fallières, in London — Lord Grey, the Foreign Secretary, and King Edward VII, in The Hague — the whole royal family, in Italy — King Victor Emmanuel III and in Vienna — the Minister of Foreign Affairs von Ehrental and the Emperor Franz Josef. There were also numerous meetings with senior government officials and public figures. This tour by "Professor Martens" created quite a sensation and helped to promote the preparations for the Conference, although it naturally could not smooth over the existing Anglo-German and Franco-German differences. Wilhelm II, in

particular, strongly objected to any discussion of the British proposal for the reduction of armaments, threatening to disrupt the conference if such a discussion were to be held. Tsar Nicholas II was greatly influenced by Wilhelm II's position on this issue and Martens had to prove to him the "harmlessness" of the British proposal. The Tsar continued to vacillate, however, and was even thinking of cancelling the Conference altogether.

Those were the circumstances in which the Second Peace Conference, attended by delegates from 44 countries, started its work in The Hague on 15 June 1907. It should be noted in this connection that in Martens' theoretical course congresses of States, regularly convened at a world-wide level, were assigned the role of legislative bodies for the international community, as it was believed at the time that the prevailing trend was towards strengthening that community on the basis of law.

Four commissions were set up at the Conference, and Martens was elected Chairman of the Fourth, or "naval", Commission, which he called "the most difficult", since the Anglo-German rivalry was most clearly manifested there and Martens often had to settle differences between the protagonists. The Fourth Commission was nevertheless the first to complete its work, thanks to Martens' experience.

The Second Hague Conference ultimately adopted a Final Act to which 13 Conventions and a Declaration were annexed. The States parties agreed to convene the Third World Peace Conference after a specified interval.

The 1907 Conference revised and further developed a number of the provisions adopted in 1899, with the result that the documents of the First Conference are usually quoted in the form in which they were amended in 1907. The First Peace Conference has in a way been absorbed by its successor, and when reference is made to a Hague Convention it is an instrument of the 1907 Conference that is usually implied. The oblivion into which the First Peace Conference has fallen is politically and legally unjustified, and it would be more equitable to consider both conferences from the point of view of their interrelationship. Russia's initiative to mark the centenary of the 1899 Conference by convening the Third World Peace Conference is therefore worthy of support.

As we have already mentioned, the anti-war offensive was launched from different directions and took various forms, but practical realities soon channelled these activities into two trends which, although interrelated, are legally and structurally quite distinct. One trend focused on the protection of war victims — the wounded, prisoners of war,

internees and other non-combatants; the beginning of the codification process in this area being connected with the Geneva Conference of 1864 and the activities of the International Committee of the Red Cross. This trend is referred to in the literature as “the Law of Geneva”, while the other trend, focused on the rules of the conduct of war and constraints on the means of warfare and hence mainly concerned with combatants, has become known as “the Law of The Hague”.

Martens himself personified the unity and organic interrelationship of “the Law of Geneva” and “the Law of The Hague”. He took an active part in the development of “the Law of Geneva” and at the 1899 Hague Conference worked successfully for the adoption of a number of important provisions on non-combatants, primarily defining the status of prisoners of war, the wounded and the shipwrecked during hostilities at sea, as well as the status of civilians in occupied territories. Those provisions were subsequently incorporated in the Geneva Conventions of 1929 and 1949.

### **Martens and human rights**

Martens has already been assigned his rightful place among the creators of international humanitarian law with respect to its “Law of Geneva” and “Law of the Hague” branches, but now we can include him among those who laid the foundations of another branch, that of the protection of fundamental human rights. Its codification is considered to start with the Universal Declaration of Human Rights of 1948, and which some jurists distinguish as “the Law of New York”.<sup>19</sup> It was Martens who in his works and lawmaking activities placed the human person at the centre of international life and recognized the protection of the human being to be the ultimate objective of international law.

Fedor Fedorovich Martens died in 1909 and was buried in St. Petersburg.

**Vladimir Vasilievich Pustogarov**, an international jurist and Doctor of Law, was Deputy Director of the Institute of State and Law, Academy of Sciences (USSR), and is currently Senior Researcher at the Institute of Law and Government of the Russian Academy of Sciences. He is the author of the first monograph on F.F. Martens: “... *With the olive branch of peace. F.F. Martens - jurist, diplomat and publicist*” (Moscow 1993, 287 pages). In March 1996, he was awarded the *Martens Prize of the Russian Academy of Sciences*.

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<sup>19</sup> F. Kalshoven, *Constraints on the waging of war*, ICRC, Geneva, 1987, pp. 7-23.

# The Esperantist Movement's humanitarian activities in the two World Wars and its relationship with the International Red Cross

*In memory of Rafael Fiol Paredes, distinguished physician, soldier and Esperantist, the preserver of Andalusia's devotion to the Esperantist ideal.*

**by José María Rodríguez Hernández**

Esperantism as a movement began at the end of the nineteenth century. It advocated the adoption as an international language of the auxiliary language invented by Dr Lazarus Zamenhof, a Pole, in 1887. At first only the dream of a young man appalled by the violence in his native city Bialystok, whose four cultures, four religions and four languages were perpetually at loggerheads, Esperanto became over the years what it now is, the foremost international language ever invented.

Because of the humanitarian ideas inherent in its universal scope, Esperantism, at first a purely linguistic idea, soon became an international, or rather supranational, movement; a movement concerned with the human condition, upholding human rights, civil liberties and the rights of peoples. The Esperantist Movement is a child of its age, the latter half of the nineteenth century, when the first international organizations were formed. Among these were the precursor of the International Labour Office, which protects workers' rights, the Universal Postal Union, which regulates national postal services, and the Red

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Original: Spanish.

Cross itself. From the very outset the Esperantist Movement was in touch with the Red Cross, sharing its aims of international understanding and cooperation.

The first official to popularize the use of Esperanto within the International Red Cross was Captain Bayol,<sup>1</sup> a Frenchman who in 1906 published a leaflet in Esperanto on the proper treatment of prisoners, intended for military medical personnel of various countries. Subsequently a number of local committees, including those of Antwerp in Belgium and Königsberg, then a German city, recommended that their members learn Esperanto, and in 1910 the French Red Cross published a review entitled *Espéranto et Croix-Rouge*.

It was only in 1921, however, after the tragic experience of the First World War, that the Red Cross gave its official blessing to Esperanto. It did so at the 10th International Conference of the Red Cross, which unanimously adopted a resolution proposed by the Chinese delegation, led by Dr Wang, urging all National Societies to encourage their members, especially Red Cross Youth, to learn Esperanto. This, the resolution said, would facilitate relief for the wounded and prisoners of war, be useful in organizing Conferences of the Red Cross, and promote international understanding and cooperation.

A number of National Societies, including the Spanish Red Cross, accordingly included the recommendation in their new statutes.

### *The First World War*

The Esperantist Movement made spectacular progress in the first two decades of this century, holding congress after congress in many countries and publishing numerous books and pamphlets, while the number of Esperanto speakers increased by leaps and bounds. The outbreak of the First World War interrupted the pursuit of its international aims.

The Xth World Esperanto Congress was due to begin on 2 August 1914 in Paris.<sup>2</sup> Only a few days earlier the terrible events that led to the First World War took place in Sarajevo, and at 4 p.m. on 1 August 1914 the French government ordered general mobilization. By then many

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<sup>1</sup> Sirjaev I. *Enciklopedio de Esperanto*. Hungara Esperanto-Asocio, Budapest, 1986, pp. 41, 473-474.

<sup>2</sup> Courtinat L. *Historia de Esperanto*. Published by the author, Agen, 1966, pp. 309, 402.

delegates to the Congress had already reached Paris, but some others, especially those of German or Russian nationality, were stopped at the German border and were refused permission to enter France. Esperantists already meeting in Paris found the capital in a state of fevered excitement because of the mobilization and saw thousands of soldiers leave for the German border.

The Organizing Committee of the Congress held an emergency meeting, and although it could not believe that the war would begin as soon as the day after mobilization it considered whether the Congress could still be held. It decided to go ahead if possible with the first day's programme, including the various religious services and the solemn opening session. Few delegates were present at the official opening ceremony; only 900 of the expected 4,000 delegates were able to present their credentials to the Organizing Committee. During the night of 1 August the situation became so complicated that as a precautionary measure the French government advised foreign Esperanto delegates to leave Paris on the following day rather than risk being stranded there, perhaps for an indefinite period. Finally the organizers called off the Congress. War broke out on 2 August and the delegates to the Congress began to leave Paris. The Russian delegates and those from Balkan States had great difficulty returning to their home countries and had to do so via Switzerland or Scandinavia. Nationals of other countries, including Britain, had to stay on in Paris for some weeks.

The start of the First World War was a grievous blow to the Esperantist Movement. Thousands of its members were killed or wounded in battle, but even so it found scope for its humanitarian work. The outbreak of war caught thousands of people working, studying or holidaying abroad; many of them went to bed as "guests" and awakened as "enemies".

The Universala Esperanto-Asocio (UEA — Universal Esperanto Association) accordingly provided a new service<sup>3</sup> on the initiative of its Nuremberg representative, Dr Orthal. This official wrote to the Head Office of the UEA in Geneva asking for information on persons in "enemy territory" of whom nothing more had been heard. His request gave the Swiss founder of the UEA, Hector Hodler, the happy idea of extending such a service to a wider public. He promptly sent a letter to all UEA representatives the world over, who translated it into their national languages and had it published in hundreds of newspapers and periodicals.

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<sup>3</sup> Courtinat L. *op. cit.*, pp. 309-402.

The letter pointed out that the sudden outbreak of war had caught many people by surprise in enemy countries and that they had not been able to get in touch with their families. To help them, the UEA Head Office in Geneva had informed its representatives in the countries at war that the UEA was willing to act as an intermediary for the exchange of private letters. Letters were to be sent to the UEA's office in Geneva, which would send them on, if necessary with a translation. Only unsealed letters containing no mention of political or military matters would be accepted.

At first this announcement yielded meagre results — about ten or fifteen letters a day. Later on 50 to 100, and in the end about 400 requests were received daily. To cope with this new situation the Geneva Head Office enlisted the aid of a dozen volunteers and set up separate sections to forward letters, trace individuals, send parcels of various kinds, contact civilian internees in concentration camps, repatriate young persons and children, aid prisoners of war, and, finally, negotiate with military authorities and the International Red Cross.

The largest section, the one dealing with letters, was continually seeking new ways of helping enquirers. For example, when the Russian army occupied Galicia in Polish territory, cutting Russian-occupied Galicia off from the part of Galicia already occupied by the German army, the UEA's Head Office in Geneva daily passed on letters to its Moscow representatives for forwarding via the Russian Field Post Office and sent letters for German-occupied Galicia to Berlin. Families living only a few kilometres apart but separated by a front line thus had to communicate with each other over distances of thousands of kilometres, but by this means thousands of people were able to get in touch with their families, thousands joined relatives and others were sent parcels of food, clothing and medicine. The successful conclusion of this enormous task was due in part to the remarkable efficiency of a network of UEA representatives having a common language, and to the humanitarian spirit inspiring their Association.

Besides restoring contact between civilians in warring countries, the UEA asked its representatives there to apply to the military authorities for permission to visit prison camps, always in association with the International Red Cross. The request was a useful one, for the UEA had always believed that the first thing that makes people look upon each other as enemies is that they do not speak the same language. Once this difficulty has been overcome by using a common, neutral language — that is, a language that is not that of any of the warring powers — one is well on the way to believing that, as the Red Cross proclaims, the wounded and prisoners are not enemies. For that reason a number of Esperantist

and other organizations supported the teaching of Esperanto in internment camps. The YMCA, for example, sent prisoners thousands of manuals for the study of Esperanto. In addition, Esperanto-speaking prisoners taught their fellow prisoners Esperanto, often with the permission of the officer in charge of their prison camp; for in the First World War none of the powers involved objected to Esperanto or the Esperantist Movement.

By the end of the First World War living conditions in the defeated countries were appalling. Galloping inflation and food shortages were rife in Central Europe, and in some parts of Germany and Austria there was extreme poverty. Early in 1920 the Esperantist Society in Styria, Austria, wrote to the Esperantist Association Frateco (Brotherhood), of Zaragoza, Spain, appealing for aid. Describing the privation experienced by hundreds of children in that part of Austria,<sup>4</sup> it urged the Spanish Esperantist Movement, and especially its Zaragoza group, to send help, seeing that Spain had remained neutral during the war and had not suffered its consequences. The President of the Association called a general meeting in February 1920 to discuss ways of helping Austrian children.

The meeting showed its solidarity by deciding to grant all requests made to it to give a home to Austrian children for as long as necessary, and formed a Committee for the purpose chaired by the Aragonese Esperantist Emilio Gaston. After great difficulties the first group of Austrian children reached Barcelona by sea on 10 October 1920, and a week later a second group arrived with Karl Bartel, the Austrian coordinator of the operation. Many families took the children into their homes and the Association itself housed one of them at its headquarters. To cut a long story short, the children spent over a year in Zaragoza before returning to Austria in July 1922.

The recent exodus of refugees from the former Yugoslavia to safer countries was a terrible ordeal, even when facilitated by rapid transport and means of communication within almost everyone's reach. How much more admirable, therefore, was the solidarity shown by the Zaragoza Esperantists, who in 1920 freely offered all they could give to alleviate the plight of those who suffer most in war: children.

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<sup>4</sup> Marco Botella A. *Analoi de la Esperanta Movado en Hispanujo*. Frateco, Zaragoza, 1987, pp. 132-134.

*The Second World War*

A few years before the Second World War the Esperantist Movement was harshly persecuted in the USSR and even more so in Germany. The totalitarian régimes of those countries, especially the Nazis, did not look kindly on a Movement that was in touch with foreign countries, a Movement that did not believe that one race was superior to all others or support the systematic persecution of the Jewish people. They therefore outlawed the Esperantist Associations and broke up the network of representatives of the Universal Esperanto Association that had worked so well in the First World War.

Nevertheless, in 1936 the organization Esperantista Interhelpo<sup>5</sup> (Esperantist Aid) was formed in the countries of Central Europe to aid victims of the Nazi terror, especially German Jews. When the Second World War broke out this organization extended its services to Czechoslovakia, Austria, Poland and the other countries occupied one after another by the National Socialist forces. Its main purpose was to help civilians who had had to flee from their homes and had reached neutral countries. It also cooperated with the International Red Cross and the Swiss government in sending mail and food to concentration camp inmates. In addition, Esperantista Interhelpo channelled economic aid from the United States to victims of the pro-Nazi régime in Romania. The Nazis' iron grip on the postal services and the isolation of the Swiss government unfortunately cut off this lifeline in 1942.

Despite these setbacks, the history of World War Two offers innumerable examples of aid given by individual Esperantists to prisoners, victims of persecution and indeed all kinds of innocent victims of human barbarity. Sometimes even German soldiers who spoke Esperanto risked their lives to help fellow Esperantists in occupied countries. In Denmark,<sup>6</sup> for example, several Jewish families were given timely warning, by means of a microphone secretly installed by an Esperantist German soldier and linking German army headquarters in Copenhagen to the home of a Danish Esperantist, that they were to be arrested. In other cases help came in the form of letters of guarantee sent to the German government by Esperantists in neutral countries, which facilitated the release and repatriation of certain persons detained by the Nazi régime. Also worthy of mention is the Swiss journalist Hans Ugger<sup>7</sup> of Associated Press, who was

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<sup>5</sup> Lapena I. *et al. Esperanto en perspektivo: Faktoj kaj analizoj pri la intemacia Lingvo*, CED, London-Rotterdam, 1974, pp. 367-368.

<sup>6</sup> Lins U. *La Dangera Lingvo*, Bleicher, Gerlingen, 1988, p. 132.

<sup>7</sup> *Ibid.*, p. 127.

arrested and interrogated by the Gestapo for keeping in touch with, and helping, persecuted German Esperantists.

The most outstanding example of humanitarian aid by an Esperantist during the Second World War is, however, that of Swedish journalist Valdemar Langlet.<sup>8</sup> Langlet learned the international language in 1890. He was later instrumental in founding the Uppsala Esperantist Club and was active in the Swedish Esperanto Association, of which he was President from 1906 to 1909. He was also the editor of the review *Lingvo Internacia*. From 1890 to 1900 he travelled widely in Russia, Asia and all over Europe as a journalist writing for Swedish periodicals.

Valdemar Langlet took up residence in Hungary in 1932, working simultaneously as Reader in Swedish at Budapest University and as an employee of the Swedish Consulate, helping families in need. He was caught in Hungary when the Second World War broke out. On 19 March 1944 the country was occupied by the German army, and the Gestapo immediately began arresting persons on previously prepared lists. After meeting a young man who had managed to escape from a concentration camp, Langlet decided to help victims of Nazi persecution. He had already seen that unaided attempts to help them made by the Red Cross and the Swedish Legation had come to nothing. As the Budapest representative of the Swedish Red Cross he decided to organize a safety net on a grand scale, providing thousands of people with Swedish Red Cross letters of protection. This document was soon baptized the "Langlet Passport".

More than once his conduct bordered on the heroic, when he saved the lives of people already lined up against a wall to be shot, and with his wife Nina barred the way to groups of Hungarian collaborators about to force their way into a convent. His most distinguished act, however, was on 14 November 1944, when on arrival at the Swedish Red Cross office in Budapest he found a large group of Jews waiting at the entrance to the Legation, surrounded by members of the Hungarian Nazi movement who had begun to evict them from the premises. Langlet at once made a direct complaint to the Hungarian authorities, and the attackers began to withdraw. Some of them, however, forcibly abducted a number of the refugees. Langlet ran after them, a riot supervened, and with his bare hands he tried to free the captives from dozens of armed men. The Hungarians began to fire in the air and one of them prepared to throw

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<sup>8</sup> Knivilä K. Esperantisto kontraŭ malhomeco. *Esperanto*, Rotterdam, May 1995, pp. 82-84.

a hand-grenade at the Swedish Red Cross offices. Jozsef Hejnrah, like Langlet a member of the Swedish Red Cross, stopped the would-be assailant and warned him that the building formed part of the Swedish Embassy. It was therefore Swedish territory, and any attack on it could be interpreted as an act of aggression against a neutral country. In the end all the arrested persons were set free.

In May 1945 Valdemar Langlet and all the officials of the Swedish Red Cross in Budapest had to leave Hungary. On his return to Sweden Langlet formed a committee to provide aid to Hungary, and in 1946 wrote an account of his dramatic experiences under the title *Verk och dagar i Budapest*. In 1955 a street and a school in Budapest were named after this Swedish Esperantist who together with the Red Cross had fought so hard and so long.

The two World Wars were severe setbacks for the Esperantist Movement. Many of the people who from the beginning of the century had so zealously propagated a language created to be international, and had striven for the international ideal it embodied, had died in battle or in concentration camps, and the survivors' internationalist aspirations had been disappointed.

For all that, Bayol, Hodler, Langlet and others of their kind realized that Esperanto, and the Esperantist Movement that promotes and disseminates it, could - emulating and cooperating with the International Red Cross - offer valuable humanitarian protection to civilians caught up in armed conflicts.

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## ***International Committee of the Red Cross***

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### **Three ICRC delegates killed in Burundi**

**Cédric Martin**  
**Reto Neuenschwander**  
**Juan Pastor Ruffino**

On 4 June 1996, two vehicles of the International Committee of the Red Cross returning to Bujumbura (Burundi) were fired upon near the village of Mugina, in the northern part of Cibitoke province. During this attack, three ICRC delegates were killed — Cédric Martin, Reto Neuenschwander and Juan Pastor Ruffino.

In that area particularly affected by the fighting, the ICRC has helped thousands of people by providing water, medicines and essential supplies. Following the tragedy, the ICRC first reduced its activities in the field, in the hope of being able to resume its humanitarian action for the Burundian civilian population at a later date, but on 11 June, after receiving explicit threats against the lives of its delegates, it decided to withdraw all its expatriate staff from Burundi.

### **Three delegates who set a high example of humanitarian commitment**

**Cédric Martin**, 32 years old, entered the service of the ICRC in 1994 for a first mission in the former Yugoslavia. He was profoundly disturbed to see the effects of war on the civilian population and made exceptionally vigorous efforts to alleviate their sorry plight. After a short mission in Rwanda, Cédric Martin had arrived in Burundi in October 1995, at a crucial time when both the humanitarian needs there and the difficulties encountered were enormous. Together with his colleagues, he had been

helping to set up water supply systems essential for survival and, aware of the vital importance of his assignment, he had not hesitated to take the road through the war zone.

**Reto Neuenschwander**, 39 years old, entered the ICRC in 1992. He gave as his reason for joining his desire “to foster peaceful coexistence among peoples and nations”. During the past four years, he had been on mission for the ICRC in Somalia, Sri Lanka, Bosnia-Herzegovina and Afghanistan, before being posted to Burundi as coordinator of relief supplies for the civilian population. Reto Neuenschwander impressed all his colleagues by the strength of his humanitarian motivation, his open mind, his professional conscientiousness and his determination to do a perfect job in every respect. Those fortunate enough to have worked with him will remember him as warm-hearted and upright, outstandingly generous, considerate, always ready to listen to others and exceptionally modest. He had become a mainstay of the ICRC delegation in Burundi.

**Juan Pastor Ruffino** joined the ICRC in 1995 at the age of 36. Humanitarian work, he used to say, gave meaning to his life. From his experience of life and by nature a very stable person in all circumstances, he was also thoughtful and enthusiastic, inspiring friendliness and trust in everyone he met. It was his profound wish to understand and love others — all others — and he willingly admitted that he had long suffered from “knowing without acting”. Last summer he decided “to know and to act”, and he applied to the ICRC, writing that “from Grozny to Sudan, from Timor to Liberia, the ICRC colours always stand for hope”. Burundi was the scene of his first mission. His empathy and his capacity for sharing and communicating with others made him someone whose company was sought after, a delegate appreciated equally by his expatriate colleagues and by the ICRC’s local Burundian staff.

Through the words of its President, Cornelio Sommaruga, the ICRC honoured the memory of the three delegates and voiced its admiration for the work they had accomplished. “I wish to pay tribute to Cédric, Reto and Juan, whose tragic loss has come as a great shock to me. By their work they exemplified to the highest degree those values which are the very essence of the ICRC: a firm belief in the humanitarian ideals, a sense of responsibility towards people in distress, dedication to the cause and action in complete independence, true to the principle of neutrality and upholding the independence, vital for humanitarian success, of the institution itself. (...) To their parents, their partners and friends, I once again express the deep sympathy of the entire ICRC. We share your suffering.

But I should like to thank you too: thank you for having inculcated and nurtured in these men so dear to you the ideals of humanity and the moral strength which led them to give their all in aid of the victims, even their lives. Their memory lives on. They will be an inspiration to us all.”

*The Review*

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*At the Congress on the Future of the German Red Cross (Cologne, 3-5 May 1996), Eric Roethlisberger, Vice-President of the ICRC, gave an address in German on the theme:*

**Faced with today's and tomorrow's challenges, should the International Red Cross and Red Crescent Movement rethink its code of ethics?**

*The Review is publishing an English version of that statement, which reflects the personal views of the author.*

In line with the general theme of this Congress, which is looking to the future, I should like to share with you some personal thoughts about an issue that I would formulate as follows: "Faced with today's and tomorrow's challenges, should the International Red Cross and Red Crescent Movement rethink its code of ethics?"

It is not my intention to indulge in philosophical reflections. The Red Cross — now the Red Cross and Red Crescent — lives through its *action*, which expresses the concepts for which it stands. I therefore propose to confine my comments to operational considerations.

**The challenges**

To begin with, I should like to review some of the challenges facing humanitarian institutions in general and the International Red Cross and Red Crescent Movement in particular.

The *first* of these is constant and absolutely essential: to succeed in reaching, protecting and assisting the victims of natural and man-made disasters, in accordance with the dual humanitarian principle of impartiality and giving priority to the most vulnerable — in many cases children, women, the elderly and the disabled.

That is what our Movement is about and why it exists.

It is essential for the ICRC, whose relief work is carried out in situations of conflict dominated by violence, to be absolutely independent and apolitical. The success of its work depends on its ability to avoid any

political involvement whatsoever in disputes between the parties; in other words, on its ability to remain, and be seen to remain, truly and entirely neutral.

The difficulty of this task should not be underestimated: in the field, delegates find themselves in the position of having to convince the authorities of one warring party of their humanitarian obligations vis-à-vis persons belonging to the other.

The *second* challenge arises from underdevelopment. Outside the OECD area,<sup>1</sup> basic structures are often rudimentary and inadequate, and public authorities may be only partially in control of the situation. The Movement's humanitarian activities have to be conducted against a background of inequality or even social injustice, of demographic pressure, and sometimes of great poverty, famine and ecological devastation. In such conditions, the absence of an adequate support infrastructure is obviously a major problem.

Are our Movement's Fundamental Principles really universal and perceived as such? This is a *third* challenge — a recurring question which has to be addressed. There is every reason to believe that it will arise again in the future, in an international context marked by the following forms of violence:

- ethnic conflicts involving phenomena such as genocide or "ethnic cleansing", in which the civilian population is the target rather than the incidental victim;
- unstructured conflicts, in which the combatants, often minors or armed gangs, are left to their own devices rather than being part of a regularly constituted military or paramilitary organization;
- unrestrained conflicts, in which the public authorities no longer enjoy a monopoly over the use of force and cannot control it. The result amounts to a "privatization" of violence, and hence of humanitarian action. This is a relatively new phenomenon which merits closer examination.

The *fourth* challenge, still in relation to humanitarian action in conflict situations, is this: how can the basic principles of humanitarian behaviour be respected in time of conflict, when passions prevail, if those same

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<sup>1</sup> OECD: Organization for Economic Co-operation and Development.

principles are not respected in what passes for peacetime in a society increasingly prone to violence?

Lastly, and just as a reminder (for the phenomenon dates back some months or even years now), I would mention the politicization of humanitarian action. Without going into too much detail, I wish to emphasize the fact that the ICRC's position has not changed in this respect: political/military action and humanitarian action are and must remain quite separate. Whatever complementarity does and indeed should exist between them must be founded on that clear division, which derives less, in my view, from an abstract principle than from the dual operational objective of bringing both peace and assistance. Events such as those seen recently in Somalia, Bosnia-Herzegovina and Liberia show that this insistence on separation is amply justified.

### **Action**

Secondly, I should like to say a few words about the way our Movement's activities are organized. We must obviously go on trying to do better, for the sake of both effectiveness (doing the right thing) and efficiency (doing things right). This, too, we owe to the victims, since our failure is their loss.

We can derive some encouragement from the recent meetings of the Council of Delegates and from the International Conference<sup>2</sup> of December 1995: functional cooperation between the Federation<sup>3</sup> and the ICRC is to be improved, and the agreement between the international components of the Movement is to encompass the National Societies as well. On behalf of the ICRC, I welcome these developments.

There is no reason to believe that competition between the different humanitarian players — whether international or non-governmental organizations — will be any less keen in the future. Competition is looked upon, and in my view quite rightly so, as a positive and healthy aspect of economic behaviour. I think the same can hold true for humanitarian action, but only insofar as two essential preconditions are fulfilled: first, a concern for the more efficient use of resources in the service of the victims, rather than for institutional posturing or personal prestige; and

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<sup>2</sup> 26th International Conference of the Red Cross and Red Crescent, Geneva.

<sup>3</sup> International Federation of Red Cross and Red Crescent Societies.

secondly, respect for the different agencies' respective mandates and their capacity for effective action, together with their accumulated experience.

Because of failure to respect these principles, much of the action taken by governments and humanitarian institutions nowadays leads to situations of muddle and confusion. This type of “humanitarian hotchpotch” is costly in terms of preventing and alleviating suffering. Anything goes, as long as it is conspicuous. This is “bad humanitarianism”, just as all too often in the past we had “bad development”, which took insufficient account of real needs and the local environment. Inevitably, the price has to be paid sooner or later, and in this case the human cost is considerable.

Here I would add a word on modern management. Efficient management, increasingly geared to requirements, is essential in the field of humanitarian action. In this area as well, human knowledge is not stationary. Adaptability is vital in a world which is changing rapidly. Standing still may mean being left behind. Change, certainly! Not “change for the sake of change”, but change to keep our sights on our objectives, which must be clearly defined beforehand.

As far as humanitarian action is concerned, the real challenge, I feel, resides in the *motivation* for change. Simply “doing the same as others” is hardly convincing. “Doing better *for* others”, namely the victims, on the other hand, rings true. For lasting credibility, solidarity must come before visibility, and compassion before a media image.

### **A new code of ethics for the Red Cross?**

My third and last general query relates to a central point: should our Movement rethink its code of ethics?

By code of ethics, I mean of course, in the first place, the seven Fundamental Principles which we share: *humanity, impartiality, neutrality, independence, universality, voluntary service, and unity*. But I should like to add, in relation to humanitarian relief provided in situations of conflict, a few considerations which I feel are equally fundamental:

- first, the *permanent availability of relief*, which, incidentally, was the real innovation brought by Henry Dunant, the founder of our Movement;
- secondly, the *protection of relief of activities*, meaning the protection both of those who receive assistance (wounded, detained or displaced persons) and of those who give it, namely the delegates;
- thirdly, the *inseparability of assistance*, which must be protected, and *protection*, which must cover that assistance.

It is worth recalling that the indissociable nature of this relationship first became evident to the National Societies, some of which were chiefly responsible for the earliest international relief operations of the Red Cross. Examples include the 1870-1871 Franco-Prussian war, the 1876-1878 war between Russia and the Ottoman Empire, and the Cuban civil war of 1895, by which time the ICRC had taken over the supervision of operations and control of distributions.

Thus, early on in the Movement's history, a threefold objective took shape. It may be summarized as follows:

- relief (assistance and protection), thanks to international solidarity;
- effectiveness, thanks to proper preparation and control of distributions;
- impartiality, thanks to our neutrality and independence.

### **Final comments**

The conclusion I draw should come as no surprise:

- Should we critically and self-critically review the impact of our action and the relevance of the guiding principles on which it is based? Yes! without any doubt.
- Should we rethink — in the sense of attenuating or even replacing them — our ethics of solidarity and compassion? Certainly not! Quite to the contrary: what the Movement needs is to strengthen and reaffirm its code of ethics.

My conviction in this respect is not shaken but rather confirmed by the challenges, serious though they are, which our Movement is facing today, and no doubt will still be facing tomorrow.

**Eric Roethlisberger**  
Vice-President of the ICRC

## **The regional delegations of the International Committee of the Red Cross**

**by Jean-Luc Blondel**

The Red Cross was born on a battlefield; it came into being as a result of war. Not to promote or justify war, of course, but to minimize its effects and alleviate the suffering it causes. Subsequently, going beyond this original purpose, the International Red Cross and Red Crescent Movement was later to engage in important and useful activities in peacetime as well. However, it has never lost sight of its initial aim, and many National Red Cross and Red Crescent Societies continue to provide assistance to victims of armed conflict today. As for the International Committee of the Red Cross (ICRC), the founding body of a Movement that is now universal, it has greatly expanded its activities yet still gives precedence to its original mandate. In accordance with the Movement's Statutes, it "endeavour[s] at all times — as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife — to ensure the protection of and assistance to military and civilian victims of such events and of their direct results".<sup>1</sup>

### **A worldwide network**

While everyone expects to see the ICRC protect and assist war victims and promote and disseminate the Geneva Conventions and their Additional Protocols, the institution's peacetime activities may come as more of a surprise. However, they are but another aspect of the same humanitarian mission.

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Original French.

<sup>1</sup> Statutes of the International Red Cross and Red Crescent Movement, Article 5, para. 2 (d).

It was in the early 1970s that the ICRC began to set up regional delegations in countries not engaged in armed conflict. These delegations were also to cover a number of neighbouring countries in the same situation. Today, of the 50 ICRC delegations in the world, 21 are regional delegations, situated in the various geographical zones in which delegates are working, i.e., Africa (Abidjan, Dakar, Harare, Lagos, Nairobi, Pretoria, Yaoundé), the Americas (Brasilia, Buenos Aires, Guatemala City, Washington), Asia (Bangkok, Hong Kong, Jakarta, Manila, New Delhi), Eastern Europe/Central Asia (Moscow, Kyiv, Tashkent), and the Middle East (Kuwait, Tunis).

From the very start regional delegations were intended to be “spear-heads” in areas prone to tension or instability, where they could make it easier for the ICRC to take action if the situation deteriorated. They may also provide the ICRC with logistic support for its activities in neighbouring countries, and in some cases carry out specific humanitarian operations for certain categories of people in accordance with the mandate conferred on the institution by the international community (visiting prisoners, assisting displaced people, etc.).

Today, the regional delegations’ role as an early-warning system is growing in importance: when tension suddenly rises in part of the region they cover they can quickly assess the humanitarian implications and take steps to provide protection and assistance in good time. In Latin America, for example, the presence of regional delegations in Guatemala City and Brasilia enabled the ICRC to act swiftly during the uprising in the Mexican state of Chiapas in January 1994<sup>2</sup> and the border dispute between Ecuador and Peru in January 1995.

### **Humanitarian mobilization**

There is another function that has assumed more importance for ICRC regional delegations today than in the past: helping to ensure respect for international humanitarian law. By signing the Geneva Conventions, States undertook to “respect and ensure respect for [the Conventions] in all circumstances” (Article 1 common to the four Conventions). To put it in rather simplistic terms, the least signatory States can be expected to do is respect the Conventions should they become involved in an armed

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<sup>2</sup>See B. Mégevand, “Between insurrection and government — ICRC action in Mexico (January-August 1994)”, *IRRC*, No. 304, January-February 1995, pp. 94-108.

conflict. While the duties of States that are not involved in the conflict are perhaps less obvious, those States nonetheless share responsibility for ensuring that international humanitarian law is applied by the belligerents.

In the appeal he launched on 10 January 1985 for a “humanitarian mobilization”, Alexandre Hay, who was then President of the ICRC, made the following statement: “Any government which, while not itself involved in a conflict, is in a position to exert a deterrent influence on a government violating the laws of war, but refrains from doing so, shares the responsibility for the breaches. By failing to react while able to do so, it fosters the process which could lead to its becoming the victim of similar breaches and no longer an accessory by omission”.<sup>3</sup> The term “ensure respect” used in Article 1 common to the four Conventions is just as important as the term “respect”, and each in its own way calls for the commitment of all the States party.<sup>4</sup>

It was precisely to increase this commitment that the ICRC suggested that the Swiss government convene the International Conference for the Protection of War Victims, held in Geneva in 1993. In its Final Declaration the Conference reaffirmed the duty of all States to respect and ensure respect for international humanitarian law.<sup>5</sup> ICRC regional delegations played a major role in rallying support for that Conference, at which a large number of States were represented. The 26th International Conference of the Red Cross and Red Crescent, held in December 1995, adopted the conclusions and recommendations drafted by an intergovernmental group of experts as a follow-up to the 1993 Conference.<sup>6</sup>

By facilitating the ICRC’s permanent dialogue with States, the regional delegations reflect the universality of the institution’s mandate and of the treaties that afford protection for war victims.<sup>7</sup> If the ICRC is to

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<sup>3</sup> ICRC appeal for a humanitarian mobilization, *IRRC*, No. 244, January-February 1985, pp. 30-34.

<sup>4</sup> See U. Palwankar, “Measures available to States for fulfilling their obligation to ensure respect for international humanitarian law”, *IRRC*, No. 298, January-February 1994, pp. 9-25.

<sup>5</sup> Final Declaration of the International Conference for the Protection of War Victims (Geneva, 30 August-1 September 1993), *IRRC*, No. 296, September-October 1993, pp. 377-381; and *IRRC*, No. 310, January-February 1996, pp. 79-82. See also Recommendations of the Intergovernmental Group of Experts, *ibid.*, pp. 83-88.

<sup>6</sup> 26th International Conference of the Red Cross and Red Crescent, Resolution 1, *ibid.*, pp. 58-60.

<sup>7</sup> As at 31 December 1995, 186 States were party to the Geneva Conventions of 1949; 143 States had also ratified Additional Protocol I, and 134 States Additional Protocol II.

perform the duties entrusted to it under international humanitarian law and the Movement's Statutes, it needs financial support, of course, but also the diplomatic support of the entire international community. It is the role of the ICRC's regional delegates to seek this support and to provide governments with all the information needed to secure and increase their commitment.

Such contacts are established not only on the bilateral level, although that is the main dimension of what might be called "humanitarian diplomacy". ICRC delegations may also maintain links with international organizations, whether regional or worldwide. The increasingly frequent exchanges of views between the ICRC and the United Nations is a case in point. Today the UN is present in areas with which it is unfamiliar, or in which for years it has taken only limited action. On account of its mandate, and by force of circumstances, the contingents which are put at the UN's disposal for peace-keeping operations — and which come from countries that are themselves at peace — are deployed in regions where there is considerable tension or even actual fighting. Whether they are engaged in a purely peace-keeping operation or whether they have to take even limited action to enforce peace, these troops have to know, and in some cases apply, the humanitarian rules contained in the Geneva Conventions and, where appropriate, their Additional Protocols.

If the troops have not been specifically trained in international humanitarian law during their period of military instruction in their own countries, this shortcoming has to be remedied before they take up their duties, or at least once they are on the spot. ICRC regional delegations often assist in this task when UN contingents provided by various countries are being prepared for their mission.

### **Implementation of international humanitarian law**

It is obviously in situations of armed conflict that there is the greatest need for compliance with international humanitarian law. However, the Geneva Conventions and their Additional Protocols contain a whole series of provisions applicable in peacetime as well. For example, the States party are required to adopt a number of national measures to ensure that the law is effectively implemented.<sup>8</sup> Here too ICRC regional delegates can offer

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<sup>8</sup> See the special section on implementation of international humanitarian law in *IRRC*, No. 281, March-April 1991; F. Kalshoven and Y. Sandoz, *Implementation of international humanitarian law*, Nijhoff, Dordrecht, 1989; and M. Bothe, ed., *National implementation of international humanitarian law*, Nijhoff, Dordrecht, 1990.

valuable assistance to governments in carrying out the legal and administrative work that must be done to meet their obligations under international law. Such assistance is additional to that provided by the ICRC's Advisory Service, whose establishment was confirmed at the 26th International Conference.<sup>9</sup>

While it is true that many rules of international humanitarian law are self-executing, that is, automatically applicable in every country in the absence of national legislation, in the case of other rules specific measures must be taken by governments (or parliaments, as the case may be) to ensure that they are known and applied. Such measures include, for example, legislation prohibiting misuse of the distinctive sign of the red cross or red crescent, penal sanctions in the event of breaches of international humanitarian law, and teaching and dissemination of the law.

### **Dissemination of international humanitarian law and prevention of violations**

It is primarily the responsibility of governments to give instruction in the rules of the Geneva Conventions and their Additional Protocols and to ensure that they are respected. The ICRC and the National Red Cross and Red Crescent Societies play only a supporting — but far from minor — role in this regard.

It would be difficult to overstate the importance of dissemination in preventing breaches of the law. True, ignorance is far from being the only reason why such breaches occur. Since there is no general mechanism for repressing them, however, one of the best strategies for ensuring respect for the law is to disseminate it as often and as widely as possible. That is why the ICRC and the Movement as a whole attach such importance to dissemination and have specially trained delegates in the field at all times.<sup>10</sup>

Indeed, dissemination is one of the main activities of the ICRC's regional delegations, which seek to introduce or develop the teaching of international humanitarian law to various target groups, in particular the armed forces and police, diplomats and senior government officials,

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<sup>9</sup>26th International Conference of the Red Cross and Red Crescent — International humanitarian law: from law to action. ICRC report on the follow-up to the International Conference for the Protection of War Victims, *IRRC*, No. 311, March-April 1996, pp. 194-222.

<sup>10</sup>See in particular the ICRC's "Guidelines for the '90s" concerning dissemination, in *IRRC*, No. 287, March-April 1992, pp. 175-178.

academic circles, and naturally the National Red Cross and Red Crescent Societies.

### **Cooperation with National Red Cross and Red Crescent Societies**

In accordance with the Movement's Statutes and in daily practice, cooperation between the ICRC and the National Societies is close and takes many forms. In situations of armed conflict, the ICRC tries to involve the National Societies in its activities as widely as possible in all areas that do not require action by an independent and specifically neutral body. In peacetime, the ICRC plays a more limited role: it is mainly up to the National Societies to put the Movement's principles and ideals into practice, and it is mainly the responsibility of the International Federation of Red Cross and Red Crescent Societies to promote the Societies' development. However, the ICRC does not remain inactive in this respect. Through its regional delegations it performs, together with the National Societies, various tasks included in its mandate. In an internal document later made public, the ICRC set out its general principles for cooperation with the National Societies.<sup>11</sup> In peacetime the most important areas of cooperation are the following:

- dissemination of the basic principles of international humanitarian law;
- legal assistance in implementing humanitarian law and ensuring compliance with the Movement's Statutes (emblem, revision of National Society statutes);
- restoring family ties (tracing missing persons, forwarding Red Cross messages, etc.).

The ICRC can also provide assistance by preparing National Societies for activities to be carried out in the event of conflict. In such cases it can:

- train auxiliary medical personnel and first-aid workers;
- explain its principles and working criteria for the conduct of relief operations.

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<sup>11</sup>"ICRC Contribution to the Development of National Societies", of 5 July 1990, published in *Development — The Role of the League, National Societies and the International Committee*, Report to the 26th International Conference of the Red Cross and Red Crescent Societies, Geneva 1991.

Wherever possible the ICRC, in cooperation with the International Federation, strives to increase the National Societies' operational capacity. This is part of the regional delegations' regular work, aimed at achieving greater unity and solidarity within the Movement.

### **Ensuring greater respect for humanitarian law and action**

Some people believe that our times show all the signs of decline in historical terms and are concerned about what might be called a loss of values. It is not for the International Red Cross and Red Crescent Movement to propound a philosophy of history and it stands apart from such views. Nonetheless, it is the Movement's duty to ensure that such a decline does not occur. The Red Cross thus plays a general role in society that might be described as educational, endeavouring, along with others, to promote and uphold a humanitarian spirit of solidarity and peace. In this respect, spreading knowledge of the Movement's ideals and principles — a task performed by the ICRC's regional as well as its operational delegations — can play a significant part.

It is rightly deplored that humanitarian law is all too often disregarded or violated, and that the ICRC's task is made so difficult in the midst of often ferociously cruel conflicts. There are those who tend not only to despair of specific situations but also to doubt the effectiveness of humanitarian law. But to do so is to make the victim pay for the crime! The message of the International Red Cross and Red Crescent Movement is quite different: in no circumstances does the Movement lose its faith in individuals or in mankind as a whole. It is this message of solidarity, this determination to help and protect the victims of violence and to prevent future suffering, that ICRC regional delegations carry forth into the world.

**Jean-Luc Blondel** has been an ICRC delegate since 1982 and is currently the regional delegate in Buenos Aires. From July 1996 he will head the Division for Principles and Relations with the Movement at ICRC headquarters.

## **The ICRC's Advisory Service on International Humanitarian Law: the challenge of national implementation**

**by Paul Berman**

Implementation is the major challenge facing international humanitarian law today. The problem of translating States' legal obligations into action is common to all areas of international law. There is however a particularly acute contrast between humanitarian law's highly developed rules, many of which enjoy nearly universal acceptance, and the repeated violations of those rules in conflicts around the world.

While a number of international mechanisms have been developed to promote compliance with humanitarian law,<sup>1</sup> it is States themselves which have the primary responsibility for implementation. Under the 1949 Geneva Conventions and their 1977 Additional Protocols, States have clear obligations to ensure that humanitarian law is implemented and respected, and to this end to adopt a range of national legislative and administrative measures.<sup>2</sup> It is in order to help States discharge their

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<sup>1</sup> On implementation in general, see Adam Roberts, "The Laws of War: Problems of Implementation in Contemporary Conflicts", in *Law in humanitarian crises*, Vol. I, European Commission, Luxembourg, 1995, pp. 13-82; Hazel Fox, Michael Meyer (eds), *Effecting Compliance: Armed Conflict and the New Law*, Vol. II, British Institute of International and Comparative Law, London, 1993; Frits Kalshoven, Yves Sandoz, *Implementation of international humanitarian law*, Martinus Nijhoff, Dordrecht/Boston/London, 1989; Yves Sandoz, "Implementing International Humanitarian Law", in *International Dimensions of Humanitarian Law*, Henry Dunant Institute, UNESCO, Martinus Nijhoff, Paris/Geneva/Dordrecht/Boston/London, 1988, pp. 259-282.

<sup>2</sup> On national implementation, see Dieter Fleck, "Implementing international humanitarian law: Problems and priorities", *International Review of the Red Cross (IRRC)*, No. 281, March-April 1991, pp. 140-153; Michael Bothe, Peter Macalister-Smith, Thomas Kurzidem (eds), *National implementation of international humanitarian law*, Martinus Nijhoff, Dordrecht/Boston/London, 1990; Zidane Mériboute, "Mesures nationales de mise en œuvre du droit international humanitaire dès les temps de paix", in *International Institute of Humanitarian Law Yearbook 1986-87*, San Remo, pp. 103-114.

international obligations, and to promote these national implementing measures, that the ICRC has established an Advisory Service on International Humanitarian Law.

## Establishment of the Advisory Service

The promotion of national implementing measures has been a long-standing concern of the ICRC and has frequently been included on the agendas of International Conferences of the Red Cross and Red Crescent. Following the adoption at a resolution on "National measures to implement international humanitarian law" of the 25th International Conference (1986), the ICRC wrote to States in 1988 and again in 1991 concerning the adoption of such measures.<sup>3</sup>

These efforts received strong support from the International Conference for the Protection of War Victims, convened by the Swiss government in Geneva in 1993, which urged States to:

"Adopt and implement, at the national level, all appropriate regulations, laws and measures to ensure respect for international humanitarian law applicable in the event of armed conflict and to punish violations thereof."<sup>4</sup>

The 1993 Conference called for the convening of an Intergovernmental Group of Experts to study practical means of promoting full respect for and compliance with humanitarian law. The Group of Experts met in Geneva in January 1995. Amongst its recommendations were the establishment of national committees to advise and assist governments in the implementation and dissemination of humanitarian law, the exchange of information on implementation measures, and the strengthening of the ICRC's "capacity to provide advisory services to States, with their consent, in their efforts to implement and disseminate IHL".<sup>5</sup>

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<sup>3</sup> See *National measures to implement international humanitarian law: Resolution V of the 25th International Conference of the Red Cross (Geneva, 1986): Written representations by the International Committee of the Red Cross*, ICRC, Geneva, October 1991; "National measures to implement international humanitarian law: A new move by the ICRC", *IRRC*, No. 263, March-April 1988, pp. 121-140.

<sup>4</sup> "Final Declaration of the Conference", Section II, para. 5, *IRRC*, No. 296, September-October 1993, pp. 377-381.

<sup>5</sup> "Meeting of the Intergovernmental Group of Experts for the Protection of War Victims (Geneva, 23-27 January 1995): Recommendations" (hereinafter referred to as "Recommendations"), Sections III, V, VI, *IRRC*, No. 304, January-February 1995, pp. 33-38.

The ICRC responded quickly to the Experts' Recommendations. By the time of the 26th International Conference of the Red Cross and Red Crescent in December 1995, it was able to report the establishment of a new unit within its Legal Division, the Advisory Service on International Humanitarian Law, aimed at providing specialist legal advice to governments on national implementation.<sup>6</sup> The Recommendations of the Intergovernmental Group of Experts were endorsed by Resolution 1 of the 26th International Conference,<sup>7</sup> adopted by consensus, with a number of delegations specifically welcoming the establishment of the new Advisory Service.

### **Structure of the Advisory Service**

The Advisory Service became fully operational in early 1996. While not the ICRC's first departure into the area of implementation,<sup>8</sup> the Service constitutes an attempt to create a specialized structure to tackle the issue of national implementation on a systematic basis. In focusing on legal advice to governments, it complements other ICRC activities aimed at increasing respect for international humanitarian law — notably the institution's long-standing dissemination activities.

The Advisory Service is intended to supplement governments' own resources by raising awareness of the need for implementing measures, providing specialist advice and promoting the exchange of information between governments themselves. While responding to requests for advice, the Service has also, where appropriate, actively offered its assistance. In all cases, however, the Advisory Service is designed to work in close cooperation with governments, taking account of both their specific requirements and their respective political and legal systems.

This is reflected in the decentralized structure of the Advisory Service itself. In addition to a team operating from ICRC headquarters in Geneva,

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<sup>6</sup> "International humanitarian law: From law to action", report presented by the ICRC, in consultation with the International Federation of Red Cross and Red Crescent Societies, on the follow-up to the International Conference for the Protection of War Victims, *IRRC*, No. 311, March-April 1996, pp. 194-222.

<sup>7</sup> See *IRRC*, No. 310, January-February 1996, pp. 58-60.

<sup>8</sup> On the ICRC's role in relation to implementation, see Toni Pfanner, "Le rôle du Comité international de la Croix-Rouge dans la mise en œuvre du droit international humanitaire", in *Law in humanitarian crises*, *op. cit.* (note 1).

the Service comprises a number of lawyers based at ICRC delegations around the world.<sup>9</sup> Even with this decentralized structure, it is still essential to have local legal advice. In some cases this may be provided by the legal adviser to the National Red Cross or Red Crescent Society, while in others it is necessary to appoint a local consultant. In all cases knowledge of local needs and conditions is paramount.

## National measures

The work of the Advisory Service encompasses advice on all legal and administrative measures which States must take in order to comply with their obligations under international humanitarian law. It focuses in particular on those measures which all States are obliged or advised to take, regardless of whether they are currently parties to a conflict.<sup>10</sup>

The 1949 Geneva Conventions and their 1977 Additional Protocols stipulate a range of national measures which States must take in peacetime as much as in time of armed conflict. Some of these measures require legislation while others may, depending on the legal system concerned, be implemented through regulations or administrative provisions. A number of obligations, while strictly applicable only in time of conflict, require legislative or administrative action that can realistically be undertaken only in peacetime.

These obligations are discussed in detail elsewhere,<sup>11</sup> but may be summarized as follows:

- (a) to adopt legislation punishing grave breaches of the Geneva Conventions and (where applicable) their Additional Protocols;

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<sup>9</sup> By mid-1996, the Service comprised three lawyers and a researcher based in Geneva, and five lawyers based in Abidjan, Amman, Bogota, Moscow, and New Delhi.

<sup>10</sup> The Advisory Service has also assumed responsibility for the ICRC's role in encouraging States to become party to the 1977 Additional Protocols. An important part of this task is to explain to governments the obligations which this entails. See Hans-Peter Gasser, "Universal acceptance of international humanitarian law — Promotional activities of the ICRC", *IRRC*, No 302, September-October 1994, pp. 450-457.

<sup>11</sup> See notes 1 and 2 above and in particular Dieter Fleck, "Implementing humanitarian law: Problems and priorities", *op. cit.* (note 2). The ICRC has prepared an "indicative list" of those articles of the Geneva Conventions and their Additional Protocols which may require national implementing measures, published in the *IRRC*, No. 263, March-April 1988, pp. 133-140. See also "Implementation of the Protocols", *IRRC*, No. 217, August 1980, pp. 198-199.

- (b) to protect the use of the Red Cross and Red Crescent emblems;
- (c) to define and guarantee the status of protected persons;
- (d) to ensure fundamental guarantees of humane treatment and due legal process in time of armed conflict;
- (e) to disseminate humanitarian law as widely as possible;
- (f) to train and appoint personnel qualified in humanitarian law, including legal advisers within the armed forces;
- (g) to ensure that protected sites are properly situated and marked.<sup>12</sup>

## Promoting implementation

The Advisory Service has a number of means of pursuing its objective of promoting the full implementation of humanitarian law. Initial bilateral contacts between the Service and the relevant government authorities may be made through the local ICRC delegation, the National Red Cross or Red Crescent Society or the State's diplomatic mission in Geneva. This may lead to bilateral discussions aimed at explaining the need to adopt implementing measures or providing more detailed advice. In some cases such contacts may follow a request by the government concerned or may arise in the context of broader discussions between the ICRC and national authorities. In other cases, the Advisory Service may approach a government following the latter's decision to become a party to the Additional Protocols or as part of systematic efforts to promote implementation in a particular region.

Seminars, bringing together representatives of national authorities, have proven a useful method of promoting implementation. Organized on a national or regional basis, they provide an opportunity to examine the issue of implementation, having regard to the local context, and to analyse

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<sup>12</sup> For a discussion of national implementation legislation, see e.g. Michael Meyer and Peter Rowe, "The Geneva Conventions (Amendments) Act 1995: A Generally Minimalist Approach", *International and Comparative Law Quarterly*, April 1996, Vol. 45, Part 2, pp. 476-484; Lauri Hannikainen, "Implementation of International Humanitarian Law in Finnish Law", in Lauri Hannikainen, Raija Hanski and Allan Rosas, *Implementing Humanitarian Law Applicable in Armed Conflict: The Case of Finland*, Martinus Nijhoff, Dordrecht/Boston/London, 1992, pp. 114-145; Krzysztof Drzewicki, "International humanitarian law and domestic legislation with special reference to Polish law", *Revue de droit pénal militaire et de droit de la guerre*, XXIV-1-2, 1985, pp. 29-52.

existing measures and future action. They are also intended to promote contacts among all those who might contribute to the task of national implementation, including government ministries, the armed forces, civil defence organizations, local authorities, academic experts and the National Red Cross or Red Crescent Society.

Since its establishment in 1995, the Advisory Service has participated in seminars attended by representatives from some 16 countries.<sup>13</sup> While a number of these seminars were planned directly by the ICRC, others were held on the initiative of a National Red Cross or Red Crescent Society. National Societies, with their wide range of contacts and local expertise, are essential partners in the Advisory Service's efforts to promote implementation.<sup>14</sup> Some seminars have been organized in cooperation with international or regional organizations such as UNESCO, the Organization for Security and Cooperation in Europe and the Council of Europe. Many of these organizations have long experience in providing advice on the implementation of international obligations, as well as valuable regional expertise. While their mandates and approaches may differ from those of the ICRC, their cooperation and experience is greatly valued in the promotion of humanitarian law.

Seminars can usually only provide the starting point. Detailed follow-up work is often required — notably in the preparation and promotion of implementing legislation. In this area, the work of the Advisory Service may vary from general support to detailed and specific advice. Through its Documentation Centre, the Advisory Service can provide examples of existing national legislation and relevant literature. Members of the Service are also engaged in on-going research aimed at clarifying States' obligations in the area of implementation, examining the adequacy of existing national measures and, where appropriate, identifying suitable model legislation and regulations. There is however no substitute for direct, detailed discussions with national officials. The Service is therefore

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<sup>13</sup> Armenia, Azerbaijan, the Czech Republic, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Namibia, Slovenia, Tadjikistan, Turkmenistan, Uzbekistan, Zambia, and Zimbabwe. An example of the conclusions of one of these seminars (Namibia) is published below on pp. 348-350.

<sup>14</sup> The Intergovernmental Group of Experts referred to the assistance of National Societies and of the International Federation of Red Cross and Red Crescent Societies in providing advisory services ("Recommendations", *op. cit.* (note 5), Section III, para. 1). A meeting of ICRC, the Federation and National Society experts was held in Geneva in November 1995 to discuss the work of the Advisory Service.

always open to requests for its lawyers or consultants to work *in situ* with those responsible for implementation.

## **The Advisory Service Documentation Centre**

The exchange of information is an essential means of promoting and facilitating the implementation of humanitarian law. The Intergovernmental Group of Experts for the Protection of War Victims recommended that States participate in the "fullest possible exchange" on implementation measures and provide the ICRC with information which might be of assistance to other States. It also recommended that the ICRC "collect, assemble and transmit" such information.<sup>15</sup> To this end, the Advisory Service established a Documentation Centre at ICRC headquarters in 1995.

The Centre, which is open to government officials, National Societies, interested institutions and researchers, seeks to make available a wide range of legal material relevant to national implementation. This includes national constitutions, legislation and regulations; national and international case-law; translations of the Geneva Conventions and their Additional Protocols; articles, commentaries and reference works; military manuals and details of national dissemination programmes.

In compiling this information, the Centre relies not only on the ICRC's own resources, but also on the assistance of governments, National Societies, international organizations, academic institutions and individual experts. It may also call on the resources of universities, libraries and other documentation centres.

In addition to compiling material in traditional print form, the Centre is seeking to establish an electronic database of national measures which will be cross-referenced with the texts of the Geneva Conventions and their Additional Protocols. This is intended to provide a powerful research tool which, when completed, will be made available for consultation at the Documentation Centre and will be published in an updated version of the ICRC's CD-ROM on international humanitarian law.

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<sup>15</sup> "Recommendations", *op. cit.* (note 5), Section VI.

## National committees

National implementation of humanitarian law is an on-going process requiring the cooperation of a range of government ministries and national organizations. A number of States have therefore established national committees or working groups<sup>16</sup> on international humanitarian law bringing together national authorities, experts, and in some cases organizations such as the National Red Cross or Red Crescent Society. The role and composition of these committees vary from country to country, in some cases covering both human rights and humanitarian law. While there is no legal obligation to establish such committees, they have been found to be a valuable means of promoting national implementation.

The Intergovernmental Group of Experts for the Protection of War Victims recommended that States “be encouraged to create national committees, with the possible support of National Societies, to advise and assist governments in implementing and disseminating IHL” and “to facilitate cooperation between national committees and the ICRC”.<sup>17</sup> The Advisory Service therefore seeks, where appropriate, to promote the establishment of national committees, working groups or similar structures responsible for the on-going implementation of humanitarian law. As part of this effort, and on the recommendation of the Group of Experts,<sup>18</sup> the Service is planning a meeting of national experts, both from States with national committees and from other interested States, to discuss the establishment, composition and role of such committees.<sup>19</sup>

## Annual reports

The Advisory Service has already embarked on a series of seminars, meetings and studies aimed at promoting implementing measures and national committees. However, while the preliminary structure of the

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<sup>16</sup> These include Albania, Argentina, Australia, Austria, Belgium, Bolivia, Bulgaria, Chile, Denmark, Finland, Germany, Indonesia, Italy, Norway, Portugal, Sweden, Uruguay and Zimbabwe. For a description of the composition and work of a national committee, see Marc Offermans, “The Belgian Interdepartmental Commission for Humanitarian Law”, *IRRC*, No. 281, March-April 1991, pp. 154-166.

<sup>17</sup> “Recommendations”, *op. cit.* (note 5), Section V, paras 1-2.

<sup>18</sup> *Ibid.*, para. 3.

<sup>19</sup> This meeting will be held in Geneva in October 1996.

Advisory Service is already in place, much work remains to be done in collecting and analysing information, building up networks of contacts and consultants, and undertaking legal research and national studies.

On the recommendation of the Intergovernmental Group of Experts,<sup>20</sup> the ICRC will submit annual reports on its advisory services to States party to the 1949 Geneva Conventions, as well as to the International Conference of the Red Cross and Red Crescent and other interested bodies. These reports will cover the full range of advisory services provided by the ICRC, comprising not only the efforts of the Advisory Service on International Humanitarian Law, but also advisory work undertaken by the Dissemination Division and the Division for Dissemination to the Armed Forces. These reports will in addition enable the ICRC to circulate information on measures taken by States themselves to promote implementation.

## Conclusion

Last year's recommendations of the Intergovernmental Group of Experts for the Protection of War Victims, unanimously endorsed by the 26th International Conference of the Red Cross and Red Crescent, reflect increasing international concern about the national implementation of international humanitarian law. The ICRC has sought to respond quickly to this concern by establishing, through the Advisory Service, a structure designed to provide States with advice and information tailored to local requirements and conditions. However, the task of promoting national implementation is vast. It requires close cooperation with other components of the Red Cross and Red Crescent Movement, international and regional organizations, and academic and professional institutions. Even where national laws and regulations are adopted, much will depend on how effectively and readily such measures are used. National implementation is the responsibility of States, and it is on States that full and effective compliance with humanitarian law will ultimately depend.

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<sup>20</sup> "Recommendations", *op. cit.*, Note 5, Section III, para. 3.

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*As an illustration of the work done in seminars organized to promote implementation of the 1949 Geneva Conventions and their Additional Protocols, the Review is publishing a summary of the conclusions and recommendations adopted by the participants in a workshop held in Namibia from 21 to 23 February 1996.*

## **National workshop on the implementation of international humanitarian law in Namibia**

Midgard Resort, 21-23 February 1996

### **Summary of conclusions and recommendations adopted by the participants**

The ICRC, in cooperation with the Namibian Ministry of Justice, organized a workshop on the implementation of international humanitarian law (IHL) in Namibia from 21 to 23 February 1996. The workshop was attended by policy-makers from several ministries, members of the Interministerial Committee for Human Rights and International Humanitarian Law, senior officers of the defence forces, and academics. The Minister of Justice, the Hon. N. Tjiriange, was also present for the first two days. The main objectives of the workshop were to highlight areas of IHL that require action on the national level, to make an inventory of and assess measures already adopted, to identify the tasks ahead and to propose new measures, priorities and working methods.

At the end of the workshop, a general plan of action for the future was drawn up. The plan ended with the major conclusions and recommendations outlined below.

### **Main activities to be undertaken**

1. The Geneva Conventions of 1949 and their Additional Protocols of 1977, to which Namibia is a party, should be published in the Government Gazette.
2. The provisions relating to use of the emblem contained in the Namibia Red Cross Act of 1991 were considered insufficient if not confusing. It was suggested that regulations be adopted to complete and clarify Section 3 of the Act and to provide for more appropriate sanctions for misuse of the emblem. Furthermore, an authority responsible for monitoring use of the emblem should be designated.

It was suggested that the Ministry of Defence regulate protective use of the emblem within the framework of the regulations governing the armed forces.

3. Although Namibian courts can apply the provisions of the IHL treaties directly, it was considered necessary and useful that a specific act of Parliament be adopted to create a legal basis for the arrest of suspected war criminals, to specify the offences that constitute war crimes, to provide adequate sanctions for the latter and to define the procedure applicable to such offences and the jurisdiction of the courts.
4. The Ministry of Health should draft regulations with regard to the definition of medical personnel and authorization and notification of medical activities so as to help clarify who is entitled to display the emblem.
5. With the assistance of the Namibia Red Cross and the ICRC, efforts in the field of dissemination of and instruction in IHL, as stipulated in the 1949 Geneva Conventions (GCI/47, GCII/48, GCIII/127, GCIV/144) and the two 1977 Additional Protocols (API/83, APII/19), should be stepped up. Not only should such instruction be part of the regular training programme of the armed forces; it should also be included in the training programmes of the Ministries of Health and of Home Affairs and in the curriculum of the Law Faculty of the University of Namibia.
6. The Interministerial Committee for Human Rights and International Humanitarian Law should strengthen its capacity to deal with IHL-related topics. It was suggested that the Commission focus as a matter of priority on drawing up an annotated list of measures that need to be adopted and make proposals to the competent ministries.

7. The ICRC should be asked to second an expert to advise the relevant authorities on the drafting of the necessary legislation.

**Further suggested measures**

1. In the planning and development of urban zones in particular, the requirements that civilians and civilian facilities, especially hospitals, be separated from potential military objectives should be taken into account.
2. Insofar as relevant to Namibia, steps should be taken to provide special protection for dams and dykes and for cultural property and places of worship.
3. A National Information Bureau as provided for in Article 122 of the Third Geneva Convention and Article 136 of the Fourth Geneva Convention for the purpose of identifying persons separated by armed conflict and restoring links between them should be created, possibly under the authority of the Ministry of Home Affairs.
4. Namibia being the only country in the region which has made the declaration under Article 90 of Additional Protocol I recognizing the competence of the Fact-Finding Commission, its government should encourage other countries to do likewise, either through bilateral efforts or in the context of regional fora.
5. An appropriate legal instrument (Act of Parliament) should be adopted for the purpose of regulating emergency preparedness and response to natural and man-made disasters (including conflicts) and defining the responsibilities of each authority and organization involved.

*The Review does not normally report on the ICRC's operational activities in various regions of the world. Situations are constantly changing and news — including press reports — rapidly becomes outdated. Nevertheless, from time to time the Review would like to publish an ICRC press release or other text dealing with an operational matter which is of more than immediate interest or can serve as an example.*

## **Now back in Liberia, ICRC calls for fundamental reappraisal**

(22 April 1996)

Two delegates of the International Committee of the Red Cross (ICRC) arrived in Monrovia from Freetown on Sunday 21 April aboard a helicopter loaded with emergency supplies. The main task of the two delegates, who spent the night outside the city centre, is to support volunteers from the Liberia National Red Cross Society in their work to identify the most pressing needs of the country's people.

This mission has begun eight days after the ICRC delegation's premises, in the Mamba Point neighbourhood, were looted and the delegates were consequently withdrawn. In the present situation there are no plans to base an ICRC team in Monrovia. Working with the ICRC's local Liberian employees and using those vehicles that it has proved possible to recover, the Red Cross will endeavour to take the injured to the city's hospitals and to collect the dozens of bodies that are strewn around the streets, presenting a serious health hazard.

The ICRC feels that the present needs can be met only through a large-scale operation, but that no such operation can be carried out unless steps are taken to ensure the safety both of the victims and of those coming to their aid. The humanitarian agencies' supplies, equipment and vehicles have been regularly and systematically stolen and used to increase the means at the disposal of the warring factions.

In view of the fact that the civilian population has been spared no suffering or humiliation over the past six years — and in particular since the present fighting started on 6 April — the ICRC feels that a thorough reappraisal is needed. It therefore calls on the community of States to take into account the particular nature of this type of conflict in its urgent search for ways to restore order and stability.

ICRC  
Press Release No. 96/15  
22 April 1996

*The ICRC's Delegate General for Africa gave the Review his initial thoughts on the issue raised in the press release reproduced above.*

### **Liberia: humanitarian logistics in question**

Since 6 April 1996, there have been new and dramatic developments in the conflict in Liberia, and there are again grounds for fearing the worst with regard to the survival of the civilian population. The ICRC once more deplores and condemns the serious and systematic violations of the elementary rules of international humanitarian law and of the minimum principles of humanity that have been committed since the start of the conflict in December 1989.

For six and a half years the civilian population, the wounded, persons placed *hors de combat* and prisoners have been regularly subjected to killings, torture, mutilation, hostage-taking, forced labour, looting, destruction of property and forced displacements. Children have been enlisted to fight and even dead bodies have been desecrated. Tens of thousands of people have been killed or wounded, more than half of the country's inhabitants have been driven from their homes, traditional mechanisms of cohabitation among different groups have been swept away, moral boundaries and all reference to the principles and values that underlie and unite any human community have disappeared. The efforts made by the international community to put an end to the tragedy have not succeeded in checking this inexorable degradation.

None of the many peace accords negotiated with great patience and in the face of major difficulties has been observed by the various factions involved. There has never been any real security or respect for the individual despite the presence of troops — mainly West African — charged with keeping the peace, United Nations military observers, UN specialized agencies, non-governmental organizations and the Red Cross.

Once again, after its temporary withdrawals from part of the country in July 1990 and in October 1992, and following the tragic events in the interior of the country in September 1994, the ICRC lost most of its equipment and stocks during the recent developments in Monrovia. The logistic resources of the humanitarian players on the spot have been repeatedly looted and have thus served to strengthen the operational capacity of the warring factions. Vehicles and radio and telecommunications equipment, to mention only the most sensitive items, are in the hands of increasingly undisciplined combatants. Year after year, the humanitarian organizations have replaced these logistic resources and have thus unwillingly contributed to a continuous cycle of looting carried out in all impunity.

Moreover, the proliferation of humanitarian organizations present in Liberia has inevitably led to compromises which have resulted in a deterioration in working procedures and in the quality of the services provided. In these circumstances, conducting a neutral and impartial humanitarian operation is becoming ever more difficult and uncertain.

The ICRC has observed that successive changes in the situation have put the civilian population at the mercy of the various combatants, who live at its expense; while benefiting from emergency humanitarian aid to help them survive, civilians are also suffering its pernicious effects.

The ICRC feels that the time has come for a reappraisal, and that it is no longer possible to continue assistance operations automatically, with the same predictable consequences for the victims.

Humanitarian action must not serve as a pretext to mask the grim reality of a country where the law and minimum values of humanity are flouted daily, and where a false sense of security gives rise to disasters such as the one witnessed since 6 April.

In the ICRC's opinion, solidarity with the victims of the situation in Liberia is and will remain indispensable. However, a humanitarian operation with lasting effects will be possible only if security is guaranteed, not only for the victims of the conflict but also for humanitarian workers. To this end, a genuine effort must be made to restore order and maintain

stability. This effort must precede and be carried out independently from the humanitarian operations that will have to be set up as a matter of utmost urgency in the coming weeks.

Primary responsibility lies indisputably with the Liberians themselves, and particularly with the transitional government and/or the faction leaders. Moreover, to remedy the country's chronic instability and to avoid negative repercussions in the region, the community of States, seeing that Liberia is spinning out of control, cannot limit its response to funding emergency humanitarian operations. It should step up its efforts to work out a comprehensive political solution involving the taking of decisions, diplomatic moves and practical action. Thus, should the current peace-keeping operation be maintained, it should receive support in terms of funds, equipment and manpower, to ensure that it is in a position to fulfil its mandate effectively and in all neutrality. Such an approach would make it possible to undertake the humanitarian operations that are so urgently needed to relieve the suffering endured by Liberia's civilian population, while avoiding the untoward effects that such operations have had in the past.

*Jean-Daniel Tauxe*  
ICRC Delegate General for Africa

## **ICRC appeals for respect for civilian population in Lebanon and northern Israel**

(16 April 1996)

The International Committee of the Red Cross (ICRC) is gravely concerned by the violence of the bombardments that have occurred in southern Lebanon and northern Israel during the last few days. The bombing in southern Lebanon has forced most of the Lebanese civilian inhabitants to flee their towns and villages. The civilian population of northern Israel is also affected by rocket attacks. The ICRC estimates that nearly 400,000 people have had to flee their homes in southern Lebanon and another 10,000 in northern Israel.

To help meet the most pressing needs of the population affected by the events, the ICRC has set up an emergency programme throughout the region, giving priority to people who have remained in their homes.

The ICRC hereby issues a solemn reminder to the warring parties of their duty to comply with the rules of international humanitarian law, which protect the victims of war. In particular, it stresses that the following acts are prohibited:

- attacks on civilians or civilian property;
- indiscriminate attacks likely to affect civilians and civilian property as well as military objectives;
- attacks on medical facilities, transports or units;
- acts or threats of violence whose primary purpose is to spread terror among the civilian population.

The ICRC also reminds the parties of the following:

- to ensure that civilians are spared, combatants must distinguish themselves from the population and refrain from using it for military purposes, in particular to protect themselves from hostilities;

- staff, vehicles and buildings used for medical and humanitarian purposes must be respected in all circumstances;
- work to protect and assist the civilian population, the wounded and sick, and prisoners must be authorized and facilitated; to this end, ICRC delegates must be guaranteed access to all victims, in accordance with the provisions of international humanitarian law.

*ICRC*  
*Press Release No. 1806*  
*16 April 1996*

## **In the Red Cross and Red Crescent World**

*A Vietnamese reader has just sent the Review an article entitled "A look at the Red Cross of Viet Nam". He tells us of the challenges Viet Nam is currently facing, especially in view of its new open policy towards the other countries in South-East Asia. We are publishing below some extracts dealing directly with the work of the Red Cross of Viet Nam, while preserving the author's very individual style.*

### **A look at the Red Cross of Viet Nam**

I should like to talk about the efficiency which consolidates, strengthens and embellishes the work of the Red Cross of Viet Nam in the most trying of times, such as the present. Whether it is a question of protecting human lives and alleviating suffering, combating hunger and disease, or promoting tolerance and solidarity, the same attitude always prevails. This attitude is based not only on the moral grounds for and the urgency of a humanitarian operation, but also — in the interests of all — on whether it is appropriate and necessary.

Everyone knows that each year a dozen typhoons from the Pacific Ocean wreak havoc on almost all Viet Nam's seaboard provinces, from the north to the south. Moreover, the Mekong Delta, which is the country's granary, is repeatedly devastated by flooding. The immense losses for the population caused by such disasters, which recur year after year, are estimated at tens of millions of dollars and are difficult to recoup.

Nevertheless, the victims do not give up in despair. As soon as the worst is over, the farmers go back to their fields and start again from scratch. Initially this seems an impossible task, for they are left with nothing: no food, no homes, no clothes or farming tools. Never mind, they get by with whatever they can find on the spot: they fish, gather edible plants and catch anything that can be eaten in order to survive. With the aid of their fellow countrymen living in safer areas, they make up what has been lost and through sheer hard work transform the barren soil into

a rich storehouse. The plains, shimmering with golden rice as far as the eye can see, are dotted with plantations and all kinds of orchards, which are the wealth of the nation. Such is the landscape. But what is behind this appearance of confidence, conscience and optimism? In fact, it is all due to the efficiency of mutual aid. The population is united; joys and sorrows are shared and dangers and perils are faced together. As a result, although utterly destitute, people manage to live for months on end without anyone going hungry. They help each other and eat whatever comes to hand. What is particularly praiseworthy in these efforts is that as well as demonstrating remarkable courage these people have always acted in the most rational way, showing the greatest understanding among themselves and vis-à-vis the world community.

In 1995 there was widespread flooding along the Mekong River and an extremely violent typhoon caused devastation that will take years to repair. Organizations like the Red Cross did not launch appeals for aid to the world at large because they believe it is more decent and reasonable to start by meeting their own needs, whatever the circumstances. Nevertheless, external voluntary aid is always appreciated; it is no surprise that several friendly nations provided assistance which in a way constitutes the cement that holds together the house of humanity. Relief supplies of all kinds will be pouring in, but it is most unlikely that the adverse effects of aid provided for the victims of natural disasters will occur this time. There is no sign of long-term dependency, or of disruption to the regional economy with the arrival of large amounts of food and medicines; and no social upheaval has been invented by any undesirable intruder. The hapless victims do nothing that might harm the community; indeed, their attitude is worthy of the highest praise.

So what can explain this fortunate outcome, rather than the disturbances that were feared? The real reason lies in the spirit of discipline and solidarity that is deeply rooted in the history of this people, whose glorious episodes and laurel wreaths have always been etched in blood and sweat. The same spirit imbues the Red Cross. Wherever there are people in need of help, there too is the Red Cross. It is present in schools and factories, on farms, in railway stations, in villages - in short, at the heart of society. In this country, the tenets of the Red Cross are indistinguishable from the spirit of solidarity and human kindness which shines out like a jade gemstone — a *leitmotiv* — set in the altar of Vietnamese traditions. First and foremost, the Red Cross is very much involved in education. This is the way to inculcate moral qualities such as humanitarianism, a sense of responsibility, active involvement in society, a capacity for organization and for doing one's duty. Involving the Red

Cross in teaching creates a climate which makes it easier for schools to organize their educational activities and thereby expect to achieve good results among young people.

*After describing various needs in the health sector, the author concludes:*

Clearly, lack of the necessary resources and funds [...] has placed severe limitations on the social work done by the Red Cross of Viet Nam to help people in distress. Nevertheless, this humanitarian institution is increasingly active, alongside governmental and non-governmental organizations, among the most underprivileged people in the country.

As well as inculcating proper principles and providing health education, schools must stress the benefits of gymnastics and sport. Sporting activities raise the general level of health and well-being and increase efficiency at work. Sport transforms men and women by endowing them with strength, endurance, vivacity and courage. Every school, every group of pupils living in a given region must create its own climate of well-being and *joie de vivre*. Each morning at sunrise, young and old alike must assemble to do gymnastics or practise various sports such as badminton or Olympic disciplines. All these activities provide a background against which young people can learn to live healthy lives and promote among the population the desire to establish a new culture.

Promoting and disseminating knowledge relating to health protection and physical culture are thus vital aspects of Red Cross teaching activities. Each school can teach these precepts during school hours and put into practice what has been taught afterwards. It is constructive and humanitarian work which directly inculcates moral values in schoolchildren.

At the moment both schoolchildren and students are quite actively involved in Red Cross programmes: they help with the medical treatment provided every weekend and during the holidays for poor people in crowded city areas and in remote villages. It goes without saying that, without being asked, young people have become the most dedicated and active "shock troopers" of the Red Cross. Their participation in other campaigns and movements with set objectives has highly significant effects on the population's everyday life.

And this is the crucial factor that has transformed the Red Cross of Viet Nam from a simple movement into an organization which quite naturally forms part of an ongoing tradition.

*Dr Nguyen Van Noi*  
Member of the Red Cross  
of Viet Nam, Ho Chi Minh City

## **Mali: women and war**

How do women see their role in conflict prevention and management? This was the subject of a seminar held in Bamako at the end of March 1996 which brought together about 20 members of the National Women's Movement for Peace and National Unity and representatives of the ICRC.

An increasing number of women in Mali are seeking to become more fully involved in the life of their country. The movement was established with a view to increasing women's motivation and encouraging their participation in dealing with the Tuareg problem in the north. Women can fulfil a vital role in maintaining social cohesion among various ethnic groups and promoting acceptance of cultural diversity. The members of the women's movement expressed the wish to learn more about international humanitarian law; during the seminar the ICRC explained that under this law women, whether combatants or not, are entitled to special protection.

Discussions centred on the importance of listening to the other person's point of view, the need to take due account of resentment caused by social inequalities, the sensitive issue of rape in armed conflict and its consequences for the victim. The participants felt that they had a role to play in consolidating peace and dealing with the aftermath of the conflict, since they are so close to reality and, as wives and mothers, they offer advice and act as a moderating force in their everyday environment. The dialogue and exchange of information between the women's movement and the ICRC will continue.

*ICRC News 96/15*

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## **Reports and Documents**

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*Landmine negotiations conclude with modest results*

### **Third Session of the Review Conference of States Parties to the 1980 United Nations Convention on Certain Conventional Weapons (CCW)**

Geneva, 22 April-3 May 1996

**by Peter Herby**

After two years of tortuous negotiations and despite support for a total ban on anti-personnel mines by nearly half of the 51 States participating in the final session of the Review Conference of the 1980 United Nations Convention on Certain Conventional Weapons (CCW),<sup>1</sup> held in Geneva from 22 April to 3 May 1996, only minimal restrictions on the use of anti-personnel landmines were finally adopted.<sup>2</sup> Nine years after entry into force of amended Protocol II, anti-personnel mines will have to be detectable and those scattered outside of marked minefields, by air, artillery or other means, will have to self-destruct after 30 days. However, long-lived mines will remain available for production, export and use — including indiscriminate use. Regrettably, this modest legal response to a major international humanitarian crisis, though adopted by consensus, is unlikely to significantly reduce the horrendous level of mine casualties.

Amended Protocol II of the CCW, on mines, boobytraps and other devices, is the end of a negotiating process which began in February 1994

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<sup>1</sup> Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, adopted on 10 October 1980; 59 States party (as at 30 April 1996).

<sup>2</sup> Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II as amended on 3 May 1996). See text below.

in the Group of Governmental Experts charged with preparing the revision of this Protocol and with considering the need for possible new Protocols on specific weapons. The results of the Group's efforts were submitted to the first Review Conference session, held in Vienna from 25 September to 13 October 1995, which ended in deadlock on the landmine issue. Negotiations resumed in Geneva in January and continued in the final session, covered by this report, of April/May 1996. In many respects, the results achieved by the Group of Governmental Experts and by successive Review Conference sessions became progressively weaker until the lowest common denominator required for consensus was finally reached with the adoption of Protocol II as amended.

The International Committee of the Red Cross (ICRC) was invited as an expert/observer to participate in all sessions of the Group of Governmental Experts as well as the Review Conference and contributed to the negotiating process by providing substantial background documentation on the humanitarian and legal aspects of the landmine issue.<sup>3</sup> Resolutions adopted in December 1995 by the Council of Delegates<sup>4</sup> and by the 26th International Conference of the Red Cross and Red Crescent<sup>5</sup> reflect the concern of the entire Red Cross and Red Crescent Movement with regard to the landmine crisis. In many cases the active commitment of National Red Cross and Red Crescent Societies helped to bring about important decisions by governments to change their policies on landmines.

### **Results of the negotiations**

On 3 May 1996 the Review Conference adopted an amended Protocol II on mines, booby traps and other devices<sup>6</sup>, which will enter into force six months after 20 States Parties declare their consent to be bound by it. This is expected to take two to three years. States Parties will continue to be bound by the original Protocol II<sup>7</sup> until entry into force, for them, of the amended version.

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<sup>3</sup> See the ICRC's reports in *IRRC*, No. 307, July-August 1995, pp. 363-367 (on its position on the issues discussed), and No. 309, November-December 1995, pp. 672-677 (on the first session of the Review Conference).

<sup>4</sup> Resolution 10 — Anti-personnel landmines — adopted by the Council of Delegates, December 1995, in: *IRRC*, No. 310, January-February 1996, p. 151.

<sup>5</sup> Resolution 2, part G — on anti-personnel landmines — of the 26th International Conference of the Red Cross and Red Crescent, Geneva 3-7 December 1995, in: *IRRC*, No. 310, January-February 1996, pp. 66-67.

<sup>6</sup> See note 2.

<sup>7</sup> Adopted on 10 October 1980.

*General provisions*

The most notable steps forward are contained in amended Protocol II's general provisions. They include the codification of a number of new principles and the introduction of new provisions. Key elements are as follows:

- A specific *definition of anti-personnel mines*, which are now subject to stricter control than anti-tank or vehicle mines, was introduced. Anti-personnel mines are defined<sup>8</sup> as those “primarily designed to be exploded by the presence, proximity or contact of a person...”. The inclusion of “primarily” in the definition could be interpreted to exclude any dual-use anti-personnel mines which can be claimed to serve another “primary” purpose. The ICRC objected vigorously to this wording, and many government delegations considered it unnecessarily ambiguous. Twenty mainly Western States, led by Germany, introduced an official interpretation of the word “primarily” indicating that it means only that anti-tank mines with anti-handling devices are not anti-personnel mines.
- Extension of the Protocol's field of application to *non-international armed conflicts*.
- Assignment of *clearance responsibility* to those who deploy mines. This obligation will nonetheless be difficult to enforce when parties do not have the resources or expertise for mine clearance — as is often the case in internal armed conflicts.
- The location of all mines must be *mapped* and *recorded* in all circumstances, rather than only when used in “pre-planned” minefields, as was stipulated in the original Protocol. This too will be difficult to implement in the case of remotely-delivered mines, the accurate recording of which is virtually impossible.
- *Protection for Red Cross and Red Crescent personnel (ICRC, National Societies and International Federation) and other humanitarian missions*, including provisions to provide heads of missions with information on minefields and safe routes around them and, in certain cases, to clear a route through mined areas when it is necessary for access to victims.

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<sup>8</sup> Protocol II, Article 2, para. 3.

- A new provision on *transfers of mines* prohibits the international transfer of non-detectable anti-personnel mines, and of any mine to entities other than States. However, transfers to non-party States are permitted if they “agree to apply” the provisions of the Protocol. A stronger prohibition on transfers to such States would have provided an incentive for adherence to the CCW.
- The provision on compliance requires States Parties to enact *penal legislation to suppress serious violations* of the Protocol.
- *Annual consultations* among States Parties shall be held to review the operation of the Protocol and prepare future review conferences.

The amended Protocol does not, however, contain any provisions for the verification of either the reliability of its technical requirements (described below) or of possible violations of its provisions on the use of landmines.

#### *New restrictions on the use of anti-personnel landmines*

The new restrictions adopted by the Review Conference on the *use* of anti-personnel landmines reflect only modest progress over existing law and may be more difficult to implement for States without adequate resources. The major innovations are as follows.

- *Long-lived anti-personnel mines (“dumb” mines)* may be produced, transferred and used as before, provided that:
  - they are detectable (compliance with this provision becomes mandatory no later than nine years after entry into force of the amended Protocol), and
  - they are placed in areas that are fenced, marked and guarded in order to keep civilians out (except when a party to conflict is prevented by direct enemy military action from taking these precautions).
- *Short-lived anti-personnel mines (“smart” mines)* may be produced, transferred and used as before, provided that (compliance likewise becomes mandatory no later than nine years after entry into force of the amended Protocol):
  - they self-destruct within 30 days (with 90% reliability), if used outside marked, fenced and guarded areas;
  - those mines which fail to self-destruct will self-deactivate within 120 days (with 99.9% reliability), and
  - they are detectable.

No specific restrictions on the placement of “smart” mines were adopted, although the general rules of humanitarian law, including prohibitions on the targeting of civilian populations and civilian objects, still apply. A large proportion of such mines are likely to be remotely delivered models, the locations of which will be difficult or impossible to record. It may be argued that the production, transfer and use of “smart” mines are implicitly encouraged by the amended Protocol because fewer restrictions apply to them than to “dumb” mines.

- The rules on the use of *anti-tank/vehicle mines, including remotely delivered models*, have not been changed:
  - no detectability requirement;
  - no specific restrictions on placement;
  - no prohibition of anti-handling devices;
  - no maximum lifetime.

As a result, only the general rules of humanitarian law, such as the protection of civilians, and amended Protocol II’s requirements for recording and removal apply to these types of mine.

- The use of devices which cause a mine to *explode when detected by an electronic sensor* is prohibited for all types of mine.

### **The ICRC’s response**

In its statement to the closing plenary meeting of the Review Conference the ICRC welcomed the strengthened general provisions of amended Protocol II, but pointedly described the restrictions on the use of landmines as “woefully inadequate”. It indicated that such provisions alone were “unlikely to significantly reduce the level of civilian landmine casualties”. The principal points made by the ICRC in its response to the Review Conference to date have been as follows.

- The Review Conference was an important process which has led to dramatic developments in the policies of many States on the production, transfer and use of anti-personnel mines.
- The general provisions of Protocol II as amended include a number of welcome improvements:
  - extension of the scope of application to non-international armed conflicts;
  - clear assignment of mine-clearance responsibility;

- a provision on the transfer of mines (a new and important element for international humanitarian law);
  - new protection for humanitarian workers;
  - an obligation to repress serious violations of the new rules;
  - annual consultations among Parties to the Protocol.
- The definition of an anti-personnel mine is, however, unnecessarily ambiguous. The ICRC is of the opinion that such a mine must continue to be understood as any mine which is “designed to be exploded or detonated by the presence, proximity or contact of a person”,<sup>9</sup> whatever other functions the munition may also have.
  - The restrictions on use are inadequate and, on their own, are unlikely to have a significant impact on the level of civilian casualties. If the humanitarian crisis caused by landmines is to be effectively addressed, States must do far more individually than could be agreed by consensus within the framework of an amended Protocol II. This includes maintaining existing *comprehensive* moratoria on the transfer of anti-personnel mines and completely ending their production and use.
  - The ICRC deeply regrets that Protocol II as amended not only does *not* prohibit the use of a weapon with indiscriminate effects but even indirectly promotes the development and use of *new* weapons which will have precisely the same effects, at least in the short term. This is the first time that a humanitarian law instrument may have the effect of promoting the use of a new weapon.
  - However, the text adopted by the Review Conference does not tell the whole story:
    - The Review Conference is only one aspect of what is happening politically in the world at large, where anti-personnel mines are being stigmatized in the public conscience, military forces are questioning the utility of such weapons and State practice is changing rapidly.
    - Whereas the Review Conference yielded disappointing results, efforts to achieve a *total ban on anti-personnel landmines* are succeeding at a pace which was inconceivable only two years ago. Forty States now support a ban; seventeen of them have renounced

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<sup>9</sup> I.e. the definition as contained in new Article 2(3) but without the word “primarily”.

and six have suspended the use of anti-personnel mines. Nine States are destroying existing stocks. This trend is likely to gather momentum, partly thanks to the results, modest though they may be, achieved in Geneva.

- It can be hoped that a global ban on anti-personnel landmines will be achieved once there is a critical mass of States reconsidering their own use of mines and supporting a ban as the only effective and verifiable solution to the problems caused by these weapons in humanitarian terms.
- It is essential to focus on national and regional initiatives to end production, use and transfer of anti-personnel landmines and to build further support for a global ban. The Canadian initiative to bring pro-ban countries together in Ottawa in September 1996 to consider further steps which they can take to this effect is the beginning of an important new process. A number of States and regions are considering unilateral steps towards a ban. In this regard, an “Anti-personnel Mines Free Zone” in the Americas will be under consideration by the members of the Organization of American States.

#### **Protocol IV on blinding laser weapons<sup>10</sup>**

New Protocol IV on blinding laser weapons, adopted by the Vienna session of the Review Conference, is a landmark achievement. It is particularly encouraging that the Protocol contains an absolute prohibition on both the *use* and the *transfer* of blinding laser weapons — a first in the history of international humanitarian law. Contrary to the proposal by the 26th International Conference of the Red Cross and Red Crescent and agreements reached at the first session of the Review Conference in Vienna, the scope of this Protocol was not extended beyond international armed conflicts. States should, however, be encouraged to declare, when adhering to Protocol IV, that they consider the Protocol to apply under all circumstances.

#### **Concluding remarks**

Looking beyond the Review Conference, Yves Sandoz, Director of the ICRC Department for Principles, Law and Relations with the Move-

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<sup>10</sup> Protocol on Blinding Laser Weapons (Protocol IV), adopted on 13 October 1995. See the comprehensive study by L. Doswald-Beck, “New Protocol on Blinding Weapons”, in this issue, pp. 272-298.

ment, reflected in an article the organization's hopes and determination with regard to the landmine issue.<sup>11</sup>

*Taken together, the awakening of the public conscience, the beginnings of dramatic changes in State practice and authoritative questioning of anti-personnel mine use from within military circles could lead to an end to the use of these arms in large parts of the world in coming years. On that basis the next Review Conference of the 1980 Convention in 2001, or possibly another forum, could be expected to produce agreement on outlawing this indiscriminate weapon.*

*Though attention has recently focused on globally negotiated solutions, the landmine crisis will be ended through the insistence of the public, through decisions of States which seek to protect their population and territories from the terrible scourge of these weapons and by the decisions of individual commanders who judge their human costs unacceptable.*

*A global legal ban will be the result, not the cause, of such actions. It will be a victory of human compassion and solidarity. It is the only fitting response to the carnage which continues to cost the lives and livelihoods of two thousand victims each and every month. The ICRC, together with the entire Red Cross and Red Crescent Movement, will tirelessly continue its efforts with both military and humanitarian organizations to ensure that anti-personnel mines are banned sooner rather than later.*

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<sup>11</sup> "Anti-personnel mines will be banned", May 1996 (to be published shortly in several journals).

**Convention on Prohibitions or Restrictions  
on the Use of Certain Conventional Weapons  
Which May Be Deemed to Be Excessively Injurious  
or to Have Indiscriminate Effects**

**Protocol on Prohibitions or Restrictions on  
the Use of Mines, Booby-Traps and Other Devices  
as Amended on 3 May 1996  
(Protocol II as amended on 3 May 1996)**

*Article 1 — Scope of application*

1. This Protocol relates to the use on land of the mines, booby-traps and other devices, defined herein, including mines laid to interdict beaches, waterway crossings or river crossings, but does not apply to the use of anti-ship mines at sea or in inland waterways.

2. This Protocol shall apply, in addition to situations referred to in Article 1 of this Convention, to situations referred to in Article 3 common to the Geneva Conventions of 12 August 1949. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

3. In case of armed conflicts 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 the prohibitions and restrictions of this Protocol.

4. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government,

by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

5. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

6. The application of the provisions of this Protocol to parties to a conflict, which are not High Contracting Parties that have accepted this Protocol, shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

### *Article 2 — Definitions*

For the purpose of this Protocol:

1. “Mine” means a munition placed under, on or near the ground or other surface area and designed to be exploded by the presence, proximity or contact of a person or vehicle.

2. “Remotely-delivered mine” means a mine not directly emplaced but delivered by artillery, missile, rocket, mortar, or similar means, or dropped from an aircraft. Mines delivered from a land-based system from less than 500 metres are not considered to be “remotely delivered”, provided that they are used in accordance with Article 5 and other relevant Articles of this Protocol.

3. “Anti-personnel mine” means a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.

4. “Booby-trap” means any device or material which is designed, constructed or adapted to kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act.

5. “Other devices” means manually-emplaced munitions and devices including improvised explosive devices designed to kill, injure or damage and which are actuated manually, by remote control or automatically after a lapse of time.

6. “Military objective” means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective

contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

7. “Civilian objects” are all objects which are not military objectives as defined in paragraph 6 of this Article.

8. “Minefield” is a defined area in which mines have been emplaced and “mined area” is an area which is dangerous due to the presence of mines. “Phoney minefield” means an area free of mines that simulates a minefield. The term “minefield” includes phoney minefields.

9. “Recording” means a physical, administrative and technical operation designed to obtain, for the purpose of registration in official records, all available information facilitating the location of minefields, mined areas, mines, booby-traps and other devices.

10. “Self-destruction mechanism” means an incorporated or externally attached automatically-functioning mechanism which secures the destruction of the munition into which it is incorporated or to which it is attached.

11. “Self-neutralization mechanism” means an incorporated automatically-functioning mechanism which renders inoperable the munition into which it is incorporated.

12. “Self-deactivating” means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example, a battery, that is essential to the operation of the munition.

13. “Remote control” means control by commands from a distance.

14. “Anti-handling device” means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with the mine.

15. “Transfer” involves, in addition to the physical movement of mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced mines.

*Article 3 — General restrictions on the use, of mines, booby-traps and other devices*

1. This Article applies to:

(a) mines;

(b) booby-traps; and

(c) other devices.

2. Each High Contracting Party or party to a conflict is, in accordance with the provisions of this Protocol, responsible for all mines, booby-traps, and other devices employed by it and undertakes to clear, remove, destroy or maintain them as specified in Article 10 of this Protocol.

3. It is prohibited in all circumstances to use any mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering.

4. Weapons to which this Article applies shall strictly comply with the standards and limitations specified in the Technical Annex with respect to each particular category.

5. It is prohibited to use mines, booby-traps or other devices which employ a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations.

6. It is prohibited to use a self-deactivating mine equipped with an anti-handling device that is designed in such a manner that the anti-handling device is capable of functioning after the mine has ceased to be capable of functioning.

7. It is prohibited in all circumstances to direct weapons to which this Article applies, either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians or civilian objects.

8. The indiscriminate use of weapons to which this Article applies is prohibited. Indiscriminate use is any placement of such weapons:

(a) which is not on, or directed against, a military objective. In case of doubt as to whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used; or

(b) which employs a method or means of delivery which cannot be directed at a specific military objective; or

(c) which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof,

which would be excessive in relation to the concrete and direct military advantage anticipated.

9. Several clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are not to be treated as a single military objective.

10. All feasible precautions shall be taken to protect civilians from the effects of weapons to which this Article applies. Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations. These circumstances include, but are not limited to:

(a) the short- and long-term effect of mines upon the local civilian population for the duration of the minefield;

(b) possible measures to protect civilians (for example, fencing, signs, warning and monitoring);

(c) the availability and feasibility of using alternatives; and

(d) the short- and long-term military requirements for a minefield.

11. Effective advance warning shall be given of any emplacement of mines, booby-traps and other devices which may affect the civilian population, unless circumstances do not permit.

#### *Article 4 — Restrictions on the use of anti-personnel mines*

It is prohibited to use anti-personnel mines which are not detectable, as specified in paragraph 2 of the Technical Annex.

#### *Article 5 — Restrictions on the use of anti-personnel mines other than remotely-delivered mines*

1. This Article applies to anti-personnel mines other than remotely-delivered mines.

2. It is prohibited to use weapons to which this Article applies which are not in compliance with the provisions on self-destruction and self-deactivation in the Technical Annex, unless:

(a) such weapons are placed within a perimeter-marked area which is monitored by military personnel and protected by fencing or other

means, to ensure the effective exclusion of civilians from the area. The marking must be of a distinct and durable character and must at least be visible to a person who is about to enter the perimeter-marked area; and

(b) such weapons are cleared before the area is abandoned, unless the area is turned over to the forces of another State which accept responsibility for the maintenance of the protections required by this Article and the subsequent clearance of those weapons.

3. A party to a conflict is relieved from further compliance with the provisions of subparagraphs 2 (a) and 2 (b) of this Article only if such compliance is not feasible due to forcible loss of control of the area as a result of enemy military action, including situations where direct enemy military action makes it impossible to comply. If that party regains control of the area, it shall resume compliance with the provisions of sub-paragraphs 2 (a) and 2 (b) of this Article.

4. If the forces of a party to a conflict gain control of an area in which weapons to which this Article applies have been laid, such forces shall, to the maximum extent feasible, maintain and, if necessary, establish the protections required by this Article until such weapons have been cleared.

5. All feasible measures shall be taken to prevent the unauthorized removal, defacement, destruction or concealment of any device, system or material used to establish the perimeter of a perimeter-marked area.

6. Weapons to which this Article applies which propel fragments in a horizontal arc of less than 90 degrees and which are placed on or above the ground may be used without the measures provided for in sub-paragraph 2 (a) of this Article for a maximum period of 72 hours, if:

(a) they are located in immediate proximity to the military unit that emplaced them; and

(b) the area is monitored by military personnel to ensure the effective exclusion of civilians.

*Article 6—Restrictions on the use of remotely-delivered mines*

1. It is prohibited to use remotely-delivered mines unless they are recorded in accordance with sub-paragraph I (b) of the Technical Annex.

2. It is prohibited to use remotely-delivered anti-personnel mines which are not in compliance with the provisions on self-destruction and self-deactivation in the Technical Annex.

3. It is prohibited to use remotely-delivered mines other than anti-personnel mines, unless, to the extent feasible, they are equipped with an effective self-destruction or self-neutralization mechanism and have a back-up self-deactivation feature, which is designed so that the mine will no longer function as a mine when the mine no longer serves the military purpose for which it was placed in position.

4. Effective advance warning shall be given of any delivery or dropping of remotely-delivered mines which may affect the civilian population, unless circumstances do not permit.

*Article 7 — Prohibitions on the use of booby-traps and other devices*

1. Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, it is prohibited in all circumstances to use booby-traps and other devices which are in any way attached to or associated with:

- (a) internationally recognized protective emblems, signs or signals;
- (b) sick, wounded or dead persons;
- (c) burial or cremation sites or graves;
- (d) medical facilities, medical equipment, medical supplies or medical transportation;
- (e) children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;
- (f) food or drink;
- (g) kitchen utensils or appliances except in military establishments, military locations or military supply depots;
- (h) objects clearly of a religious nature;
- (i) historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; or
- (j) animals or their carcasses.

2. It is prohibited to use booby-traps or other devices in the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material.

3. Without prejudice to the provisions of Article 3, it is prohibited to use weapons to which this Article applies in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either:

(a) they are placed on or in the close vicinity of a military objective; or

(b) measures are taken to protect civilians from their effects, for example, the posting of warning sentries, the issuing of warnings or the provision of fences.

#### *Article 8—Transfers*

1. In order to promote the purposes of this Protocol, each High Contracting Party:

(a) undertakes not to transfer any mine the use of which is prohibited by this Protocol;

(b) undertakes not to transfer any mine to any recipient other than a State or a State agency authorized to receive such transfers;

(c) undertakes to exercise restraint in the transfer of any mine the use of which is restricted by this Protocol. In particular, each High Contracting Party undertakes not to transfer any anti-personnel mines to States which are not bound by this Protocol, unless the recipient State agrees to apply this Protocol; and

(d) undertakes to ensure that any transfer in accordance with this Article takes place in full compliance, by both the transferring and the recipient State, with the relevant provisions of this Protocol and the applicable norms of international humanitarian law.

2. In the event that a High Contracting Party declares that it will defer compliance with specific provisions on the use of certain mines, as provided for in the Technical Annex, sub-paragraph 1 (a) of this Article shall however apply to such mines.

3. All High Contracting Parties, pending the entry into force of this Protocol, will refrain from any actions which would be inconsistent with sub-paragraph I (a) of this Article.

*Article 9—Recording and use of information on minefields, mined areas, mines, booby-traps and other devices*

1. All information concerning minefields, mined areas, mines, booby-traps and other devices shall be recorded in accordance with the provisions of the Technical Annex.

2. All such records shall be retained by the parties to a conflict, who shall, without delay after the cessation of active hostilities, take all necessary and appropriate measures, including the use of such information, to protect civilians from the effects of minefields, mined areas, mines, booby-traps and other devices in areas under their control.

At the same time, they shall also make available to the other party or parties to the conflict and to the Secretary-General of the United Nations all such information in their possession concerning minefields, mined areas, mines, booby-traps and other devices laid by them in areas no longer under their control; provided, however, subject to reciprocity, where the forces of a party to a conflict are in the territory of an adverse party, either party may withhold such information from the Secretary-General and the other party, to the extent that security interests require such withholding, until neither party is in the territory of the other. In the latter case, the information withheld shall be disclosed as soon as those security interests permit. Wherever possible, the parties to the conflict shall seek, by mutual agreement, to provide for the release of such information at the earliest possible time in a manner consistent with the security interests of each party.

3. This Article is without prejudice to the provisions of Articles 10 and 12 of this Protocol.

*Article 10—Removal of minefields, mined areas, mines, booby-traps and other devices and international cooperation*

1. Without delay after the cessation of active hostilities, all minefields, mined areas, mines, booby-traps and other devices shall be cleared, removed, destroyed or maintained in accordance with Article 3 and paragraph 2 of Article 5 of this Protocol.

2. High Contracting Parties and parties to a conflict bear such responsibility with respect to minefields, mined areas, mines, booby-traps and other devices in areas under their control.

3. With respect to minefields, mined areas, mines, booby-traps and other devices laid by a party in areas over which it no longer exercises

control, such party shall provide to the party in control of the area pursuant to paragraph 2 of this Article, to the extent permitted by such party, technical and material assistance necessary to fulfil such responsibility.

4. At all times necessary, the parties shall endeavour to reach agreement, both among themselves and, where appropriate, with other States and with international organizations, on the provision of technical and material assistance, including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil such responsibilities.

#### *Article 11 — Technological cooperation and assistance*

1. Each High Contracting Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Protocol and means of mine clearance. In particular, High Contracting Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.

2. Each High Contracting Party undertakes to provide information to the database on mine clearance established within the United Nations System, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.

3. Each High Contracting Party in a position to do so shall provide assistance for mine clearance through the United Nations System, other international bodies or on a bilateral basis, or contribute to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance.

4. Requests by High Contracting Parties for assistance, substantiated by relevant information, may be submitted to the United Nations, to other appropriate bodies or to other States. These requests may be submitted to the Secretary-General of the United Nations, who shall transmit them to all High Contracting Parties and to relevant international organizations.

5. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and, in cooperation with the requesting High Contracting Party, determine the appropriate provision of assistance in mine clearance or implementation of the Protocol. The Secretary-General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required.

6. Without prejudice to their constitutional and other legal provisions, the High Contracting Parties undertake to cooperate and transfer technology to facilitate the implementation of the relevant prohibitions and restrictions set out in this Protocol.

7. Each High Contracting Party has the right to seek and receive technical assistance, where appropriate, from another High Contracting Party on specific relevant technology, other than weapons technology, as necessary and feasible, with a view to reducing any period of deferral for which provision is made in the Technical Annex.

*Article 12 — Protection from the effects of minefields, mined areas, mines, booby-traps and other devices*

*1. Application*

(a) With the exception of the forces and missions referred to in sub-paragraph 2(a) (i) of this Article, this Article applies only to missions which are performing functions in an area with the consent of the High Contracting Party on whose territory the functions are performed.

(b) The application of the provisions of this Article to parties to a conflict which are not High Contracting Parties shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

(c) The provisions of this Article are without prejudice to existing international humanitarian law, or other international instruments as applicable, or decisions by the Security Council of the United Nations, which provide for a higher level of protection to personnel functioning in accordance with this Article.

*2. Peace-keeping and certain other forces and missions*

(a) This paragraph applies to:

- (i) any United Nations force or mission performing peace-keeping, observation or similar functions in any area in accordance with the Charter of the United Nations;
- (ii) any mission established pursuant to Chapter VIII of the Charter of the United Nations and performing its functions in the area of a conflict.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a force or mission to which this paragraph applies, shall:

- (i) so far as it is able, take such measures as are necessary to protect the force or mission from the effects of mines, booby-traps and other devices in any area under its control;
- (ii) if necessary in order effectively to protect such personnel, remove or render harmless, so far as it is able, all mines, booby-traps and other devices in that area; and
- (iii) inform the head of the force or mission of the location of all known minefields, mined areas, mines, booby-traps and other devices in the area in which the force or mission is performing its functions and, so far as is feasible, make available to the head of the force or mission all information in its possession concerning such minefields, mined areas, mines, booby-traps and other devices.

### *3. Humanitarian and fact-finding missions of the United Nations System*

(a) This paragraph applies to any humanitarian or fact-finding mission of the United Nations System.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:

- (i) provide the personnel of the mission with the protections set out in sub-paragraph 2(b) (i) of this Article; and
- (ii) if access to or through any place under its control is necessary for the performance of the mission's functions and in order to provide the personnel of the mission with safe passage to or through that place:
  - (aa) unless on-going hostilities prevent, inform the head of the mission of a safe route to that place if such information is available; or
  - (bb) if information identifying a safe route is not provided in accordance with sub-paragraph (aa), so far as is necessary and feasible, clear a lane through minefields.

### *4. Missions of the International Committee of the Red Cross*

(a) This paragraph applies to any mission of the International Committee of the Red Cross performing functions with the consent of the host

State or States as provided for by the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:

- (i) provide the personnel of the mission with the protections set out in sub-paragraph 2(b) (i) of this Article; and
- (ii) take the measures set out in sub-paragraph 3(b) (ii) of this Article.

#### *5. Other humanitarian missions and missions of enquiry*

(a) Insofar as paragraphs 2, 3 and 4 above do not apply to them, this paragraph applies to the following missions when they are performing functions in the area of a conflict or to assist the victims of a conflict:

- (i) any humanitarian mission of a national Red Cross or Red Crescent Society or of their International Federation;
- (ii) any mission of an impartial humanitarian organization, including any impartial humanitarian demining mission; and
- (iii) any mission of enquiry established pursuant to the provisions of the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.

(b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall, so far as is feasible:

- (i) provide the personnel of the mission with the protections set out in sub-paragraph 2(b) (i) of this Article, and
- (ii) take the measures set out in sub-paragraph 3(b) (ii) of this Article.

#### *6. Confidentiality*

All information provided in confidence pursuant to this Article shall be treated by the recipient in strict confidence and shall not be released outside the force or mission concerned without the express authorization of the provider of the information.

#### *7. Respect for laws and regulations*

Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, personnel participating in the forces and missions referred to in this Article shall:

- (a) respect the laws and regulations of the host State; and
- (b) refrain from any action or activity incompatible with the impartial and international nature of their duties.

*Article 13 — Consultations of High Contracting Parties*

1. The High Contracting Parties undertake to consult and cooperate with each other on all issues related to the operation of this Protocol. For this purpose, a conference of High Contracting Parties shall be held annually.

2. Participation in the annual conferences shall be determined by their agreed Rules of Procedure.

3. The work of the conference shall include:

- (a) review of the operation and status of this Protocol;
- (b) consideration of matters arising from reports by High Contracting Parties according to paragraph 4 of this Article;
- (c) preparation for review conferences; and
- (d) consideration of the development of technologies to protect civilians against indiscriminate effects of mines.

4. The High Contracting Parties shall provide annual reports to the Depositary, who shall circulate them to all High Contracting Parties in advance of the Conference, on any of the following matters:

- (a) dissemination of information on this Protocol to their armed forces and to the civilian population;
- (b) mine clearance and rehabilitation programmes;
- (c) steps taken to meet technical requirements of this Protocol and any other relevant information pertaining thereto;
- (d) legislation related to this Protocol;
- (e) measures taken on international technical information exchange, on international cooperation on mine clearance, and on technical cooperation and assistance; and
- (f) other relevant matters.

5. The cost of the Conference of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the work of the Conference, in accordance with the United Nations scale of assessment adjusted appropriately.

*Article 14— Compliance*

1. Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this Protocol by persons or on territory under its jurisdiction or control.

2. The measures envisaged in paragraph 1 of this Article include appropriate measures to ensure the imposition of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of this Protocol, wilfully kill or cause serious injury to civilians and to bring such persons to justice.

3. Each High Contracting Party shall also require that its armed forces issue relevant military instructions and operating procedures and that armed forces personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Protocol.

4. The High Contracting Parties undertake to consult each other and to cooperate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

**Technical Annex**

*1. Recording*

(a) Recording of the location of mines other than remotely-delivered mines, minefields, mined areas, booby-traps and other devices shall be carried out in accordance with the following provisions:

- (i) the location of the minefields, mined areas and areas of booby-traps and other devices shall be specified accurately by relation to the coordinates of at least two reference points and the estimated dimensions of the area containing these weapons in relation to those reference points;
- (ii) maps, diagrams or other records shall be made in such a way as to indicate the location of minefields, mined areas, booby-traps and other devices in relation to reference points, and these records shall also indicate their perimeters and extent;
- (iii) for purposes of detection and clearance of mines, booby-traps and other devices, maps, diagrams or other records shall contain complete information on the type, number, emplacing method,

type of fuse and life time, date and time of laying, anti-handling devices (if any) and other relevant information on all these weapons laid. Whenever feasible the minefield record shall show the exact location of every mine, except in row minefields where the row location is sufficient. The precise location and operating mechanism of each booby-trap laid shall be individually recorded.

(b) The estimated location and area of remotely-delivered mines shall be specified by coordinates of reference points (normally corner points) and shall be ascertained and when feasible marked on the ground at the earliest opportunity. The total number and types of mines laid, the date and time of laying and the self-destruction time periods shall also be recorded.

(c) Copies of records shall be held at a level of command sufficient to guarantee their safety as far as possible.

(d) The use of mines produced after the entry into force of this Protocol is prohibited unless they are marked in English or in the respective national language or languages with the following information:

- (i) name of the country of origin;
- (ii) month and year of production; and
- (iii) serial number or lot number.

The marking should be visible, legible, durable and resistant to environmental effects, as far as possible.

## *2. Specifications on detectability*

(a) With respect to anti-personnel mines produced after 1 January 1997, such mines shall incorporate in their construction a material or device that enables the mine to be detected by commonly-available technical mine detection equipment and provides a response signal equivalent to a signal from 8 grammes or more of iron in a single coherent mass.

(b) With respect to anti-personnel mines produced before 1 January 1997, such mines shall either incorporate in their construction, or have attached prior to their emplacement, in a manner not easily removable, a material or device that enables the mine to be detected by commonly-available technical mine detection equipment and provides a response signal equivalent to a signal from 8 grammes or more of iron in a single coherent mass.

(c) In the event that a High Contracting Party determines that it cannot immediately comply with sub-paragraph (b), it may declare at the time of its notification of consent to be bound by this Protocol that it will defer compliance with sub-paragraph (b) for a period not to exceed 9 years from the entry into force of this Protocol. In the meantime it shall, to the extent feasible, minimize the use of anti-personnel mines that do not so comply.

### 3. *Specifications on self-destruction and self-deactivation*

(a) All remotely-delivered anti-personnel mines shall be designed and constructed so that no more than 10% of activated mines will fail to self-destruct within 30 days after emplacement, and each mine shall have a back-up self-deactivation feature designed and constructed so that, in combination with the self-destruction mechanism, no more than one in one thousand activated mines will function as a mine 120 days after emplacement.

(b) All non-remotely delivered anti-personnel mines, used outside marked areas, as defined in Article 5 of this Protocol, shall comply with the requirements for self-destruction and self-deactivation stated in sub-paragraph (a).

(c) In the event that a High Contracting Party determines that it cannot immediately comply with sub-paragraphs (a) and/or (b), it may declare at the time of its notification of consent to be bound by this Protocol, that it will, with respect to mines produced prior to the entry into force of this Protocol defer compliance with sub-paragraphs (a) and/or (b) for a period not to exceed 9 years from the entry into force of this Protocol.

During this period of deferral, the High Contracting Party shall:

- (i) undertake to minimize, to the extent feasible, the use of anti-personnel mines that do not so comply, and
- (ii) with respect to remotely-delivered anti-personnel mines, comply with either the requirements for self-destruction or the requirements for self-deactivation and, with respect to other anti-personnel mines comply with at least the requirements for self-deactivation.

### 4. *International signs for minefields and mined areas*

Signs similar to the example attached<sup>1</sup> and as specified below shall be utilized in the marking of minefields and mined areas to ensure their visibility and recognition by the civilian population:

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<sup>1</sup> not reproduced here.

(a) size and shape: a triangle or square no smaller than 28 centimetres (11 inches) by 20 centimetres (7.9 inches) for a triangle, and 15 centimetres (6 inches) per side for a square;

(b) colour: red or orange with a yellow reflecting border;

(c) symbol: the symbol illustrated in the Attachment, or an alternative readily recognizable in the area in which the sign is to be displayed as identifying a dangerous area;

(d) language: the sign should contain the word “mines” in one of the six official languages of the Convention (Arabic, Chinese, English, French, Russian and Spanish) and the language or languages prevalent in that area;

(e) spacing: signs should be placed around the minefield or mined area at a distance sufficient to ensure their visibility at any point by a civilian approaching the area.

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## **Bosnia and Herzegovina: tracing missing persons**

Every war brings its share of missing persons, whether military or civilian. And every individual reported missing is then sought by a family anxiously awaiting news of their loved one. These families cannot be left in such a state of anguish. For the truth, however painful it may be, is preferable to the torture of uncertainty and false hope. In Bosnia and Herzegovina civilians were especially affected by a conflict in which belligerents pursued a policy of ethnic cleansing by expelling minority groups from certain regions. Thousands of people who disappeared in combat or were thrown into prison, summarily executed or massacred, are still being sought by their families.

### **What is a missing person?**

International humanitarian law contains several provisions stipulating that families have the right to know what has happened to their missing relatives and that the warring parties must use every means at their disposal to provide those families with information.<sup>1</sup> Taking these two cardinal principles in particular as a basis for action, the International Committee of the Red Cross (ICRC) has set up various mechanisms to assist families suffering the agony of uncertainty, even after the guns have fallen silent.

In any conflict the ICRC starts out by trying to assess the problem of persons reported missing. Families without news of their relatives are asked to fill out tracing requests describing the circumstances in which the individual sought was last seen. Each request is then turned over to the authorities with whom the person in question last had contacts. This working method means that the number of people gone missing does not

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<sup>1</sup> Articles 15, 16 and 17 of the First Geneva Convention of 1949; Articles 122 and 123 of the Third Convention; Articles 26 and 136 to 140 of the Fourth Convention; and Articles 32, 33 and 34 of Additional Protocol I of 1977.

correspond to the actual number of conflict victims — a gruesome count which the ICRC does not intend to perform. In Bosnia and Herzegovina, more than 10,000 families have so far submitted tracing requests to the ICRC or to the National Red Cross or Red Crescent Societies in their countries of asylum.

### **Agreements for Peace in Bosnia and Herzegovina**

In early 1995, following the cease-fire negotiated by former United States President Jimmy Carter, the ICRC brought the belligerents together on numerous occasions at Sarajevo airport and asked them to reply to the tracing requests that its delegates had gathered from families. The only practical result it achieved, however, was to be able to explain in detail what would constitute a credible and satisfactory reply.

Prior to the drafting of the General Framework Agreement for Peace in Bosnia and Herzegovina, which the parties negotiated in Dayton, Ohio, in autumn 1995, the United States consulted the main humanitarian organizations. With the ICRC it discussed the release of detainees and the tracing of missing persons. The first of these issues is dealt with in the Annex on Military Aspects of the Peace Settlement, and the second is covered in the Framework Agreement's provisions pertaining to civilians. Thus Article V, Annex 7, of the Agreement stipulates that: "The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for". The terms of this Article take up and confirm the core principles of international humanitarian law.

The Framework Agreement also confers on the ICRC the task of organizing, in consultation with the parties involved, and overseeing the release and transfer of all civilian and military prisoners held in connection with the conflict. The ICRC performed this task in cooperation with the Implementation Force (IFOR) entrusted with carrying out the military provisions of the Framework Agreement.

### **ICRC action**

Despite resistance from the parties, over 1,000 prisoners were returned home. Throughout the operation, which lasted about two months, the ICRC firmly refused to link the release process with the problem of missing persons, just as it had refused to become involved in the reciprocity game the parties used to play during the conflict. The success of

the operation was also ensured by the international community, which was convinced that the ICRC was taking the right approach and pressured the parties to cooperate. Since many detainees had been withheld from the ICRC and were therefore being sought by their families, it was important to empty the prisons before addressing the issue of missing persons.

On the basis of the General Framework Agreement for Peace in Bosnia and Herzegovina, the ICRC thus proposed that the former belligerents set up a Working Group on the Process for Tracing Persons Unaccounted for in Connection with the Conflict on the Territory of Bosnia and Herzegovina — a convoluted title reflecting the nature of the political negotiations that led to the establishment of this body. While the parties endorsed the proposal itself, they engaged in endless quibbling over the wording of the Rules of Procedure and of the Terms of Reference drafted by the ICRC. Nevertheless, the Working Group, which is chaired by the ICRC, has already met three times in the Sarajevo offices of the High Representative for Bosnia and Herzegovina<sup>2</sup> in the presence of the ambassadors of the Contact Group on Bosnia and Herzegovina,<sup>3</sup> the representative of the presiding member of the European Union<sup>4</sup> and the representatives of Croatia and the Federal Republic of Yugoslavia. These meetings were also attended by IFOR and the United Nations Expert on Missing Persons in the Former Yugoslavia.<sup>5</sup>

Despite numerous plenary and bilateral working sessions, it has not been possible to bring the parties to agree on matters of participation and representation (the question under discussion is whether or not the former belligerents are the same as the parties that signed the Framework Agreement) or formally to adopt the Rules of Procedure. However, these Rules have been tacitly agreed on in the plenary meetings, making it possible to begin practical work: more than 10,000 detailed cases of persons

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<sup>2</sup> Former Swedish Prime Minister Carl Bildt's appointment to this post was confirmed by the United Nations Security Council shortly before the General Framework Agreement for Peace in Bosnia and Herzegovina was signed in Paris on 14 December 1995. Just as IFOR, which is made up of NATO troops and Russian troops, is entrusted with implementing the military provisions of the Framework Agreement, so it is the task of the High Representative to implement the Agreement's provisions pertaining to civilians.

<sup>3</sup> France, Germany, the Russian Federation, the United Kingdom and the United States.

<sup>4</sup> Italy at the time of writing.

<sup>5</sup> Manfred Nowak, who in 1994 was appointed by the UN Commission on Human Rights as the Expert in charge of the Special Process on Missing Persons in the Territory of the Former Yugoslavia.

reported missing by their families have already been submitted to the parties, which must now provide replies.

In a remarkable departure from the procedure normally followed in such cases, the Working Group has adopted a rule whereby the information contained in the tracing requests, as well as the replies that the parties are called on to provide, are not only exchanged bilaterally between the families and the parties concerned through the intermediary of the ICRC, but are also communicated to all the members of the Working Group, that is, to all the former belligerents, and to the High Representative. Such a policy of openness is meant to prevent further politicization of the issue and the ICRC intends to pursue it, in particular by issuing a gazette that lists the names of all missing persons and by publishing these names on the Internet. This should prompt possible witnesses to approach the ICRC with confidential information concerning the fate of individuals who have gone missing, which the organization could then pass on to the families concerned.

Indeed, after every war families seek news of missing relatives and the settlement of this question is always a highly political issue. One reason is that for a party to provide information is to admit that it knows something, which may give it the feeling that it is owning up to some crime. Another reason is that the anguish of families with missing relatives is such that they generally band together and pressure their authorities to obtain information from the opposite party, which may be tempted to use these families to destabilize the other side.

### **The issue of exhumations**

As the tragic result of more than three years of conflict, Bosnia and Herzegovina is strewn with mass graves in which thousands of civilians are buried like animals. The graves in the region of Srebrenica are a horrifying example. Displaced families in Tuzla interviewed by the ICRC allege that more than 3,000 people were arrested by Bosnian Serb forces immediately after the fall of the enclave in mid-July 1995. Since the authorities in Pale have persistently refused to say what happened to these people, the ICRC has concluded that all of them were killed.

Families now wish to recover the bodies of their missing relatives in the wild hope of being able to identify them. Before this can be done, however, an *ante mortem* database<sup>6</sup> must be set up so as to have a pool

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<sup>6</sup> A database containing all pertinent medical information that can be obtained from families with missing relatives.

of information with which forensic evidence can later be compared. Between the two operations, the bodies must be exhumed, knowing that most of the mass graves in Bosnia and Herzegovina are situated on the other side of ethnic boundaries, which prevents families and the relevant authorities from gaining access to them.

Families are also demanding that justice be done. That is the role of the International Criminal Tribunal for the Former Yugoslavia, set up by the United Nations Security Council while the fighting was still raging in Bosnia and Herzegovina. The Tribunal intends to exhume a number of bodies to establish the cause of death and gather evidence and proof of massacres. However, it is not the Tribunal's responsibility to identify the bodies or to arrange for their proper burial.

Between the families' need and right to know what has become of their missing relatives, and that justice must be done, lie thousands of bodies in the mass graves. While it would probably be unrealistic to imagine that all the bodies buried in Bosnia and Herzegovina could ever be exhumed and identified,<sup>7</sup> the moral issue of their proper burial must still be addressed. Without the cooperation of the former belligerents and of IFOR, however, all discussion remains purely theoretical. Only when people have peace in their hearts and when justice has been done will thoughts of revenge be forgotten and belief in peace and justice be restored in every individual and every community.

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and Central Europe and the Balkans

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<sup>7</sup> According to the forensic experts of the American organization, *Physicians for Human Rights*, who exhumed bodies for the International Criminal Tribunal that was set up following the horrific massacres in Rwanda, the success rate for identifying remains exhumed from a grave containing several hundred bodies is no higher than 10 to 20 per cent, providing a detailed *ante mortem* database is available.

## **Accession to the Protocols by the Commonwealth of Dominica**

The Commonwealth of Dominica acceded on 25 April 1996, without making any declaration or reservations, to the Protocols additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Commonwealth of Dominica on 25 October 1996.

This accession brings to **144** the number of States party to Protocol I and to **136** those party to Protocol II.

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## **Colombia: Declaration in accordance with Article 90 of Protocol I**

On 17 April 1996 the Republic of Colombia made a declaration accepting the competence of the International Fact-Finding Commission, in accordance with Article 90, paragraph 2 (*a*), of Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I). It thereby recognizes *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the International Fact-Finding Commission to enquire into allegations by such other Party.

The Republic of Colombia is the **forty-eighth** State to recognize the competence of the Fact-Finding Commission.

## **Books and Reviews**

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**Claude Emanuelli, *Les actions militaires de l'ONU et le droit international humanitaire*, Éditions Wilson & Lafleur Itée, Montreal, 1995, 112 pp.**

Establishing the value of having undertaken a legal essay on UN military operations and international humanitarian law was certainly the easiest of the tasks accomplished by Prof. Emanuelli in his latest book. In fact, it can hardly be disputed that the 70,000 troops currently deployed under UN orders around the globe are often engaged in military action lacking a coherent legal framework insofar as international humanitarian law is concerned. It can only be regretted, and the author takes each opportunity to emphasize this, that there is no clear commitment to that law on the part of an organization which, although it has found it necessary to launch no fewer than fifteen new peacekeeping operations since 1988, has surprisingly limited itself to saying that the UN forces are bound by "the principles and the spirit of international humanitarian rules". Hence the need to decipher such sibylline statements and advance suggestions for reform.

Prof. Emanuelli's study does not claim to be either a documentary history of recent UN military operations or an exhaustive treatise on international humanitarian law. It aspires only to promote the recently revived discussion on the humanitarian constraints for UN action in restoring international peace and security. The work is divided into two main parts. The first explores the applicability of international humanitarian law to different types of UN military operations, while the second attempts to identify the specific rules of customary international humanitarian law applicable to such operations, and also to address the delicate issue of the international responsibility of the UN for violations of international humanitarian law committed in the course of them.

Part one of the study, regarding the applicability of international humanitarian law to UN military operations in general, begins with a most interesting analysis and classification of those operations, which continue to proliferate without always corresponding to either the traditional con-

cept of peacekeeping or the model of coercive action envisaged in Chapter VII of the UN Charter. Carefully avoiding a long narration of recent UN operations which would confuse the reader with often unnecessary details, Prof. Emanuelli distinguishes first between coercive and non-coercive military action. From an operational point of view, coercive action can be undertaken or authorized in order to (i) respond to an act of aggression, (ii) support military peacekeeping operations (the idea of so-called “peace enforcement”), and (iii) deal with situations *sui generis* such as the disastrous events in Rwanda or the political unrest in Haiti, which had been qualified by the UN Security Council as threats to peace and security although not involving an armed conflict.

Non-coercive military action, on the other hand, has to do with the traditional peacekeeping (blue helmet) type of operation. From a conceptual and legal point of view, peacekeeping aims at preventing the outbreak of hostilities, is subject to the explicit consent of both parties to the conflict, and is entrusted to lightly armed forces acting as subsidiary UN organs established under Articles 22 or 29 of the UN Charter. Two main activities come within the purview of long-practised peacekeeping: (i) missions by observers and involving unarmed civilian personnel (e.g. monitoring respect for a cease-fire, establishing a demarcation line, reporting on the withdrawal of troops pursuant to a peace agreement etc.), and (ii) missions by emergency forces comprising UN military contingents (e.g. constituting a buffer zone between former belligerents, verifying the observance of an armistice, inspecting the disengagement of troops, etc.).

With reference to the applicability of international humanitarian law to the various types of UN military operations, the author constructs his analysis around the following two premises: first, the United Nations, possessing a distinct legal personality from that of the member States, can be an autonomous subject of international humanitarian law; and second, the military operations undertaken or authorized by the United Nations pertain or in any case can be assimilated to international armed conflicts. Whether carried out directly by UN forces acting on behalf of the UN, or by armed contingents operating strictly under national command, these operations can either qualify *per se* as international armed conflicts (e.g. UN-authorized operation to repel an aggression — Kuwait type of situation), or be treated as such (e.g. peacekeepers resorting to armed force in self-defence), or finally result in the “internationalization” of a conflict which might originally have been internal (e.g. peace enforcement operation in the context of a civil strife — Somalia type of situation).

In the second part of his study, the author starts off with a reminder that the UN Organization as such has not become a party to any inter-

national instrument dealing with either the conduct of hostilities or the protection of victims of armed conflicts, and looks briefly into the four Geneva Conventions of 1949 and the two Additional Protocols of 1977 in order to single out those customary rules and other general principles of international humanitarian law which could still be binding on the UN in its operations involving the use of armed force. By means of a rather lengthy analysis, Prof. Emanuelli reaffirms by and large the widely accepted view that most of the fundamental principles enunciated in basic humanitarian texts such as the 1907 Hague Regulations, the four Geneva Conventions or Additional Protocol I should be held applicable *per analogiam* to UN operations.

This conclusion relates as much to the rules concerning the conduct of hostilities (e.g. the principle according to which the right of belligerents to adopt means of injuring the enemy is not unlimited, the prohibition to resort to perfidious tactics, the prohibition to employ arms or methods of combat calculated to cause unnecessary suffering, the obligation to distinguish at all times between the civilian population and combatants as well as between civilian objects and military objectives, the obligation to give effective advance warning of attacks affecting the civilian population, the principle of proportionality in assessing an indiscriminate attack resulting in excessive collateral damage etc.) as to those regarding the protection of war victims (e.g. the obligation to treat humanely and care for the wounded, sick or shipwrecked, to respect medical personnel, medical establishments or hospital ships, the obligation after an engagement to search for the wounded and sick and to ensure honourable burial of the dead, the prohibition of reprisals against persons, buildings or equipment protected under the First and Second Geneva Conventions, etc.). Furthermore, most of the rules governing the treatment of prisoners of war and the protection of civilians that are contained in the Third and Fourth Geneva Conventions respectively seem to be equally applicable by analogy to UN military operations.

In contrast, and here again the traditional view is simply confirmed, the author considers that some other provisions of the Geneva Conventions (principally those relating to Protecting Powers, the criminal repression of grave breaches, or the administration of occupied territory) presuppose belligerent States and would thus clearly be unsuitable and inoperative in the event of military action undertaken by armed forces of an international organization.

Immediately after the detailed, somewhat technical description of the rules possibly applicable to UN operations, the reader may find it disap-

pointing that the international responsibility of the UN for violations of international humanitarian law by UN forces — a delicate issue that is truly worth scrutinizing — is treated succinctly at best. Indeed, the author contents himself with saying that in the Chapter VII type of operations the United Nations should bear exclusive responsibility for any illicit act by its subsidiary organs, whereas in cases of UN-authorized action the misconduct of a specific contingent should engage the individual responsibility of the national State. This aspect no doubt provides very fertile ground for further reflection, especially in the light of recent experiences such as the questionable attitude of the Dutch blue helmets during the Srebrenica massacre.<sup>1</sup>

In his concluding remarks, Prof. Emanuelli stresses once more the continued ambiguity governing the interrelationship between UN military operations and the *corpus* of international humanitarian law, and reasons that the elaboration of an international convention which would specifically address the questions arising from the far from rare military “presence” of the United Nations in the world’s hot spots would be the most appropriate answer to the problem. Realizing, however, the poor prospects for such an undertaking in the foreseeable future, he would envisage as a second-best solution the adoption of a UN Security Council declaration, or the drafting of a UN military manual, explicitly setting out the humanitarian law principles and rules applicable to UN military operations, and proceeds to review the merits and shortcomings of those alternatives.

Finally, mention should be made of the 1994 *Convention on the Safety of United Nations and Associated Personnel* which is reproduced at the end of the work.<sup>2</sup> Also annexed is a selected (almost sketchy) bibliography and an analytical index.

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<sup>1</sup> Certain authors, for instance, would support the idea of a double, or parallel, responsibility of the UN and the contingent-contributing State for illicit acts occurring in the context of peacekeeping operations. For some penetrating remarks on this, see L. Condorelli, “Le statut des forces de l’ONU et le droit international humanitaire” 78 *Rivista di diritto internazionale*, 1995, pp. 881-906, and M. Pérez González, “Les organisations internationales et le droit de la responsabilité”, 1988, pp. 85-86. Cf. T. Kamenov, “The origin of state and entity responsibility for violations of international humanitarian law in armed conflicts” in F. Kalshoven & Y. Sandoz (eds.), *Implementation of International Humanitarian Law*, 1989, pp.187-193.

<sup>2</sup> For a critical analysis of this instrument, see C. Emanuelli, “La Convention sur la sécurité du personnel des Nations Unies et du personnel associé: des rayons et des ombres”, 99 *R.G.D.I.P.*, 1995, pp. 849-880, and C. Bourloyannis-Vrailas, “The Convention on the Safety of United Nations and Associated Personnel”, 44 *I.C.L.Q.*, 1995, pp. 560-590.

Overall, the 88-page book offers clear and agreeable reading. It strikes a balance between in-depth legal analysis and generality, and as such it can only be recommended to any academic scholar or UN practitioner wishing to have a quick and updated reference work on a topic which is definitely destined to supplement the indexes of legal literature for many years to come. The book's principal merit consists neither in some original conceptualization of the legal issues nor in any fresh ideas, but rather in the subtle and orderly way in which stock has been taken of this long-standing debate.

One or two minor criticisms can be made: namely, the occasionally cursory, rather descriptive analysis of certain issues which risks leaving the well-versed reader unsatisfied; and the often elementary, not to say poor bibliographical support of various points of law and fact about which the work provides little information (however understandable it may appear to someone writing amidst a steady stream of the latest news, the monograph could only have gained in quality by avoiding the frequent references to daily newspapers and focusing instead on scholarly writings). Admittedly, the reason for this may only be the extreme topicality of the events covered in the study, and in this sense the author should already consider the possibility of updating his study by commenting on further developments such as the currently unfolding IFOR operation in former Yugoslavia, a truly pioneering experience which only confirms — if need be — that the maintenance of international peace involves *inter alia* an unrelenting exercise in legal resourcefulness.

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**A.P.V. Rogers, *Law on the Battlefield*, Manchester University Press, Manchester and New York, 1996, 170 pp.**

This 170-page book meets most of the needs of the military commander in the field. It is about the legal rules that should be known and incorporated into the military decision-making process by all officers holding command responsibility, before they issue orders to their subor-

dinates. *Law on the Battlefield* is not a manual, it is not a legal treatise, it is not a handbook. Although the author, Major General A.P.V. Rogers, is himself a lawyer in the British armed forces, the precise and concise language of this "Vademecum for the military commander" is written in language understandable to all. It has the merit of shedding light on some rather obscure aspects of the law of armed conflict, without becoming too technical for the non-lawyer.

The book does not cover all aspects of the law of armed conflict. The author has tried to single out those rules that are relevant on the battlefield, as indicated in the title. Therefore the emphasis has been placed on "Hague-type law". "Geneva-type law", i.e. the law protecting the victims of armed conflict, has been left out.

If only one page of this book were to be spared in the event of fire, I hope it would be page 70, in the conclusion to Chapter 3, "Precautions in attack". That page gives a most useful "checklist" of principles of law that should be engraved in every commander's mind. At least all professional soldiers should know the eight listed rules by heart. Much human misery and hardship and many political and also military difficulties could then be avoided. All those who read this little book will come to the conclusion that peace and war must be subject to certain rules if there are to be no further Rwanda or Yugoslavia.

Although *Law on the Battlefield* seems to be meant for the practitioner, the lawyer (civilian or military) and the interested layman will also find plenty of useful information, references and historical examples that illustrate problems encountered by military commanders in recent history, including the 1990-91 Gulf war.

Maybe a chapter summing up the customary rules governing the conduct of hostilities would have been useful in view of the various types of present-time conflicts that very often are but marginally covered by international humanitarian law. Some thoughts of the author about military operations under the umbrella of the United Nations might have been interesting as well.

In conclusion, I feel that General Rogers has written a most useful book. Perhaps the chapters devoted to cultural property and the environment are somewhat too technical and some remarks about the problems related to the use of mines might have enriched this publication, which should nonetheless find its place in every military unit.

For any military readers who are short of time I recommend the "General Principles" and all the conclusions to the chapters. If they

assimilate this information, incorporate it in their daily military duties and pass it on to their subordinates, maybe the judges of the international criminal tribunals currently being set up will have some spare time to listen to Franz Schubert's music, which the author seems to cherish...

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to the Armed Forces

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**Rony Brauman, *Le dilemme humanitaire. Entretien avec Philippe Petit*,<sup>1</sup> Éditions Textuel, Paris, 1996, 106 pp.**

What is very stimulating about Rony Brauman is the free-thinking approach, whether spontaneous or reflective, that he adopts in order to gain a clearer picture of the purpose of humanitarian action in today's world. In this short collection of interviews with the journalist Philippe Petit, the former President (1982 - 1994) of MSF-France<sup>2</sup> gives the reader a generous insight into his thought and creativity as he talks about the way humanitarian action has evolved and the main challenges it has to face. Compared with the current trend of stereotyped thinking, there is true delight to be found in this philosophical exercise offered by an accomplished practitioner of modern philanthropy, who at his best proves to be brilliant at demolishing generally accepted ideas.

With conventional "stamps of approval" excluded by definition from the conversation, the exchange of questions and answers spotlights the errors and shortcomings of humanitarian players against the setting of this century's major tragedies. We take a look back at the Second World War and the ICRC's deathly silence on the Jewish question, which Rony Brauman interprets as a logical consequence of all that remained unspoken from 1938, when the German Red Cross expelled its Jewish members in

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<sup>1</sup> *The humanitarian dilemma. Interview with Philippe Petit.*

<sup>2</sup> MSF: *Médecins sans frontières.*

droves. Stressing the untypical nature of this moral abdication, which can be explained to some extent by the prevalent refusal to see what was going on, he points out that the ICRC had condemned the use of gas in warfare during the First World War. During the decolonization period of the 1950s and 60s, development aid was at the top of the solidarity agenda, well ahead of humanitarian action. The 1970s, on the other hand, saw the emergence of, as Rosenau put it, "new agents free of national sovereignty",<sup>3</sup> including private charities, which began to move into areas traditionally reserved for States and diplomacy. *Médecins sans frontières* was created in 1971, after the Nigeria-Biafra war, by French Red Cross doctors led by Bernard Kouchner who were unhappy with neutrality. Emergency aid then became overlaid with a duty to speak out in public, an attitude which, in the author's view, amounted in the event to involuntary propaganda in favour of the Biafran secessionist cause. In 1979, after some very lively internal debates, MSF took a majority decision to adopt an independent and more operational structure, detaching itself by the same token from the informal early "legitimists", represented by Bernard Kouchner. Making MSF more professional was also, for Rony Brauman, a way of undoing the harm done by the sort of "third-worldism and poetic illusion" which was so deeply ingrained in the minds of young left-wingers at the time. "With Claude Malhuret, we began systematically to criticize tyrannies in virtuous disguise." This deconditioning was followed up by increasingly firm opposition to State humanitarianism, institutionalized in 1988 by the ever-present Bernard Kouchner, who had meanwhile been elevated to the status of Minister of the Republic: "A State is always suspected of ulterior motives (...) and inevitably places contacts with the authorities on the level of political transaction". What really arouses Brauman's indignation, however, is the shameful "cover-up" of injustice that results from State humanitarianism, as in Kurdistan, Somalia, Rwanda or Bosnia-Herzegovina, insofar as it "served more to mask our own collective abdication in the face of large-scale excesses than to strengthen any resolve to eliminate them". As a means of countering this trend, Rony Brauman quite rightly urges governments to make use of the instruments of international humanitarian law which they have ratified.

For MSF-France, one of the great testing grounds has been Ethiopia, which from 1984 was ravaged by famine. "MSF protested against the

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<sup>3</sup> All quotations are ICRC translations.

forced population transfers organized by the Ethiopian government using the logistic resources of international aid (...). The idea that humanitarian action can be used to impose a cruel political measure, and will not necessarily serve the interests of the victims in the end, is the basic lesson to emerge from Ethiopia." This stance was to lead to the expulsion of MSF from the country in 1986, for which Rony Brauman accepts full responsibility. He sets this responsibility in clear opposition to the demagogic sentimentality of Bob Geldof, the organizer of the "concert of the century", who "just made the situation worse and aggravated the plight of the very people he was trying to help".

Whence the notion of the humanitarian trap, which became a commonplace in the debate on the right of interference.

Taking his consideration of the perverse effects of humanitarian aid a step further, the author roundly condemns "the mechanization of humanitarian action", with all its paraphernalia of "trucks, four-wheel drive vehicles, walkie-talkies, satellite-operated telephones and computers, which create an artificial environment, placing the teams in a quasi-virtual world where time and space are measured in units quite foreign to the country where they are operating". This "bubble" effect, the antidote for which consists in greater simplicity and common sense, tends to make the "humanitarian horde" behave irresponsibly and to increase the risks in the field.

A further concern is the excessive media attention focused on humanitarian action. While admitting the need for information, and especially the value of pictures, which are so often indispensable for the conduct of relief work, Rony Brauman rejects the view that television could prevent "another Auschwitz". "For a mere technique to become, as if by magic, a moral or political standard is already dubious. But to go on spouting such inanities after all the horrors that have occurred at the end of this century is frankly beyond belief."

With his scrutiny of the links between humanitarian and political action, Rony Brauman drives a wedge into the sacrosanct principle that one should not abandon victims unless forced to do so. Taking the view that the margin allowed for humanitarian action was not always wide enough to work in, and that humanitarian operations were all too clearly a fig-leaf for political inaction, MSF-France took the decision to withdraw, either provisionally or *sine die*, from situations as varied as Somalia, Zaire, the former Yugoslavia (after Vukovar), or Bougainville in Papua New Guinea. To leave or to stay is a dilemma that can arise anywhere at any time, as the ICRC well knows. The choice becomes even more

difficult when it depends on parameters such as the degree of danger or ethical doubts, areas in which the threshold of acceptability is particularly hard to establish. What will become of the French-led "ethic of refusal" remains to be seen, in view of MSF's current efforts to strengthen its central structure and make it more international.

Displaying a lucidity which is at times disheartening, Rony Brauman occasionally indulges in sweeping generalizations, such as when he states that non-governmental organizations maintain an artificial climate of emergency to serve their own material ends and to keep a high profile. To avoid picking the wrong target, he might have done better to support his argument with a sharper reminder of the root causes of conflicts. In this sense, his systematic but rather reductive dismantling of the humanitarian phenomenon could ultimately have a demotivating effect. There is no denying, however, the relevance of most of his clinical observations, which show no trace of leniency. And if some admissions of failure seem to be attributable to passing moments of disillusion, they may also be a way of arousing our vigilance, which is so easily dissipated.

*Jean-François Berger*  
ICRC Delegate

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### **Recent publications**

*Annual Report 1995*, by the International Committee of the Red Cross, Geneva, 1996, 346 pp.

The *Annual Report* gives a full account of the ICRC's operational activities in 1995 and of its work to promote international humanitarian law, including the 26th International Conference of the Red Cross and the Red Crescent. The reader will also find useful information of a general nature on the ICRC.

*World Disaster Report 1996*, by the International Federation of Red Cross and Red Crescent Societies, Oxford University Press, 1996, 178 pp.

Launched in 1993, the *World Disaster Report* is an annual, global and interdisciplinary publication focusing on all aspects of disaster cause and effect, and the growing millions of people affected by catastrophes ranging from flood and famine to war and economic collapse. The publication is intended to meet the needs of all those involved in disaster relief, from policy makers to relief workers.

The *World Disaster Report 1996* comprises the following main chapters: Key issues, Methodologies, The year in disasters 1995, Disasters database, and Red Cross and Red Crescent.

Pauline Samuelson (ed.), *I owe my life ... / British Red Cross - Celebrating 125 years*, Bloomsbury, London, 1995, 214 pp.

A description of, and at the same time a tribute to, the varied work of the British Red Cross, by different authors.

William Maley (ed.), *Shelters from the storm: developments in international humanitarian law*, Australian Defence Studies Center, Canberra, 1995, 360 pp.

From 12 to 14 December 1994, the Australian Red Cross and the Australian Defence Studies Centre hosted in Canberra the Second Regional Conference on International Humanitarian Law. The book contains the papers presented at the conference, together with selected commentaries, under the following headings: The significance of international humanitarian law, The dissemination and implementation of international humanitarian law, The regulation and protection of peacekeeping forces, Non-combatants in war, Enforcement of humanitarian law, The Asia-Pacific region, and Prospects and conclusions.

*Contemporary international law issues: conflicts and convergence*, W.P. Heere (ed.), T.M.C. Asser Instituut, The Hague, 1996, 454 pp.

Proceedings of the Third Joint Conference held in The Hague from 13 to 15 July 1995 by The American Society of International Law and the Nederlandse Vereniging voor Internationaal Recht.

The following chapters deal specifically with issues related to international humanitarian law:

- Humanitarian law in civil war and the right to humanitarian assistance, reports by J.C. Concolato, H.P. Gasser, J. de Milliano, and D. Shelton.
- The judging of war criminals: individual responsibility and jurisdiction (R. Goldstone, A. Cassese, P. Kooijmans).

*Revue de droit militaire et de droit de la guerre/The Military Law and Law of War Review*, XXXIV — 1-2-3-4, 1995, 412 pp.

The following contributions deal with issues relevant to international humanitarian law:

- T. Sverdrup Engelschion, Ethiopia - War crimes and violations of human rights,
- W.J. Fenrick, In the field with UNCOE - Investigating atrocities in the territory of former Yugoslavia,
- H.S. Levie, The law of war since 1949,
- H. McCoubrey, Medical ethics, negligence and the battlefield,
- G. Mazzi, L'abolizione della pena di morte nelle leggi militari di guerra,
- P. Rowe, Liability for "War Crimes" during a non-international armed conflict.

*American Journal of International Law*, Vol. 90, Nos. 1 and 2, 1996

The following contributions deal with issues relating to international humanitarian law:

- G.H. Aldrich, Jurisdiction of the International Criminal Tribunal for the Former Yugoslavia No. 1, January 1996),
- M. Leigh, The Yugoslav Tribunal: use of unnamed witnesses against accused (No. 2, April 1996),
- T. Meron, The continuing role of custom in the formation of international humanitarian law (No. 2, April 1996).

*Revue générale de droit international public*, Tome 100, No. 1, 1996

- M. Sassòli, La première décision de la chambre d'appel du tribunal pénal international pour l'ex-Yougoslavie: Tadic (compétence)

*Humanitäres Völkerrecht — Informationsschriften (HuV-I)*, ed. by Deutsches Rotes Kreuz and Institut für Friedenssicherungsrecht und Humanitäres Völkerrecht (IFHV), Ruhr-Universität Bochum, Nr. 1, 1996

Among the various articles we mention the following:

- C. Emmanuelli, The protection afforded to humanitarian assistance personnel under the Convention on the Safety of United Nations and Associated Personnel
- K. Holderbaum, Humanitäre Hilfe als nationale und internationale Herausforderung
- M. Kuhn, Aktuelle Entwicklungen zum Schutz der Umwelt in bewaffneten Konflikten: "Guidelines for military manuals and instructions on the protection of the environment in times of armed conflict".

*Kriegsvölkerrecht/The Law of War/Droit des gens en temps de guerre/Diritto internazionale bellico*, CD-ROM produced by the Swiss Federal Department of Defence, in cooperation with the ICRC, 1996. Distributed (except for Switzerland) by ICRC, Public Information Division, 19 Avenue de la Paix, CH-1202 Geneva, Switzerland. Other language versions in preparation.

This new computer-assisted teaching aid explains to soldiers the basic rules they must observe in wartime. Its table of contents includes the following key topics: War and humanity, Rules of warfare, Treatment of prisoners of war, Protection of the civilian population, and International distinctive signs. The CD-ROM also gives a brief description of the ICRC. A test is provided to check the user's knowledge.

*The Review*

### The Paul Reuter Prize

The Paul Reuter Fund was created in 1983 thanks to a donation made to the ICRC by the late Paul Reuter, Honorary Professor at the University of Paris and member of the *Institut de droit international*. The Fund's purpose is twofold: its income is used to encourage a work or an undertaking in the field of international humanitarian law and its dissemination, and to finance the *Paul Reuter Prize*.

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