



INTERNATIONAL
REVIEW
OF THE RED CROSS



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THE REVIEW IN 1993

In the six issues for 1993 the Review will include the following subjects, among others:

- **Human rights and humanitarian law**
- **The role of the International Red Cross and Red Crescent Movement in promoting respect for human rights**
- **Action taken by the ICRC in situations of internal violence**
- **International rules against internal strife: recent developments**
- **Protection of war victims**
- **The problem of anti-personnel mines (legal, tactical, technical and medical aspects)**
- **Implementation of international humanitarian law (qualified personnel, legal advisers, etc.)**
- **The applicability of humanitarian law with regard to the United Nations peace-keeping forces**
- **Protection of prisoners of war against abuse and public curiosity**
- **The historical background of the humanitarian approach**
- **The 125th anniversary of the Saint-Petersburg Declaration**
- **The 1923 Hague Rules of Air Warfare**

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 of the University of Paris and member of the Institute of International Law. Its 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.

The prize, in the amount of 2,000 Swiss francs, is awarded for a major work in the field of international humanitarian law. The prize has previously been awarded three times: it was first awarded in 1985 to *Mr. Mohamed El Kouhène*, Doctor of Laws, for his doctoral thesis entitled "Les garanties fondamentales de la personne en droit humanitaire et droits de l'homme" (Fundamental guarantees of the individual under humanitarian law and in human rights). The second award was made in 1988 to *Ms. Heather A. Wilson*, Doctor of Laws, for her thesis entitled "International Law and the Use of Force by National Liberation Movements". In an exceptional decision, there were two recipients when it was awarded for the third time in 1991: *Mr. Edward K. Kwakwa*, Doctor of Laws, received the prize for his thesis entitled "Trends in the International Law of Armed Conflict: Claims relating to Personal and Material Fields of Application", and *Mr. Alejandro Valencia Villa*, a lawyer, received the prize for his book entitled "La humanización de la guerra: la aplicación del derecho internacional humanitario al conflicto armado en Colombia".

The prize will be awarded for the fourth time in **1994**. In accordance with the Regulations of the Paul Reuter Prize, to be considered for the award applicants must fulfil the following conditions:

1. The works admitted must be aimed at improving knowledge or understanding of international humanitarian law.
2. It must either be still unpublished or have been published recently, in 1989 or 1990.
3. Authors who meet the above requirements may send their applications to *Mr. Paolo Bernasconi, Chairman of the Commission of the Paul Reuter Fund, International Committee of the Red Cross*, 19, Avenue de la Paix, CH-1202 Geneva, as soon as possible and by **15 November 1993** at the latest.
4. Applications may be submitted in English, French or Spanish, and must include:
 - a brief curriculum vitae;
 - a list of the applicant's publications;
 - three unabridged copies of the works admitted to the Commission.

Humanitarian law and human rights

HUMANITARIAN LAW AND HUMAN RIGHTS LAW ALIKE YET DISTINCT

International humanitarian law and human rights law share a common goal, namely to protect the individual and to ensure respect for human dignity. Yet these two branches of international public law each have their own characteristics and origins and have evolved in different ways.

Nevertheless, the troubled aftermath of the Second World War, the unchecked rise of violence and poverty in recent decades and the resulting need for improved protection of the ever-growing number of victims of violations of fundamental human rights have all contributed not only to the evolution of the two branches of law but also to their convergence, like “two poor crutches on which disarmed victims can lean simultaneously”, to quote an expressive image by Karel Vasak.¹ This expert went so far as to estimate in 1984 that “the convergence of the two branches has led to an overlapping both on paper and, increasingly, in practice as well”.²

Not quite overlapping, but the similarities and mutual influence of the two branches have become more evident. Several events have marked the trend towards a convergence: the adoption of the 1949 Geneva Conventions in a way transcended the limits of humanitarian law by including a provision on situations of non-international conflict. By introducing Article 3 common to the four Geneva Conventions, humanitarian law was no longer confined solely to conflicts between States but also imposed upon them rules governing the treatment of some of their own nationals, as foreshadowed by Francis Lieber in his 1863 *Instructions for the Government of Armies of the United States in the Field*.

Human rights law followed the reverse course. Previously of internal bearing only, it gradually gained international significance, as demonstrated by the adoption of the Universal Declaration of Human Rights in 1948 and

¹ Karel Vasak, “Pour une troisième génération des droits de l’homme” (For a third generation of human rights) in *Studies and essays on international humanitarian law and Red Cross principles, in honour of Jean Pictet*, Christophe Swinarski, ed., ICRC; Martinus Nijhoff Publishers, Geneva, The Hague, 1984, pp. 837-850, ad. 837.

² *Ibid.*

various other international pacts and conventions on human rights by the United Nations and several regional organizations.

While stressing that “peace is the underlying condition for the full observance of human rights and war is their negation”, the International Human Rights Conference of 1968 also proclaimed that “even during the periods of armed conflict, humanitarian principles must prevail”.

The adoption of the 1977 Protocols additional to the Geneva Conventions of 1949, containing rules that correspond to inalienable human rights,³ accentuated still further the convergence between the rules of humanitarian law and certain human rights rules. Moreover, by adopting Protocol II on the protection of victims of non-international armed conflicts, which supplements and defines Article 3 of the Geneva Conventions, and by stipulating in Article 75 of Protocol I and Article 4 of Protocol II respectively the fundamental guarantees concerning the treatment of persons affected by an international or non-international armed conflict, legislators achieved further progress in ensuring respect for human rights.⁴

Around this “hard core”, the mutual influence of human rights law and humanitarian law has emerged in resolutions adopted by the United Nations General Assembly and Security Council. For example, in the case of the conflict in the former Yugoslavia, and particularly with respect to Bosnia-Herzegovina, references to humanitarian law are particularly in evidence in a number of resolutions adopted in 1992 by the UN Security Council and condemning violations of humanitarian law and human rights.

Similarly, recent practice by non-governmental organizations concerned with local conflicts, such as the International Commission of Jurists, Americas Watch or Amnesty International, is significant. There are many examples of recourse to both human rights law and humanitarian law provisions in reports presented by these organizations on human rights violations in conflict situations. Indeed, human rights violations in a non-international armed conflict are often simultaneously serious violations of the provisions contained in Article 3 or in Protocol II.⁵

³ These are the “hard core” of human rights: the right to life, the prohibition of torture and inhuman degrading punishment and treatment, the prohibition of slavery and servitude, and the principles of legality and non-retroactivity.

⁴ See Louise Doswald-Beck and Sylvain Vité, “International humanitarian law and human rights law”, pp. 94-119. After analysing the philosophical basis and the nature of humanitarian law and human rights law and describing their specific characteristics, the authors examine their similarities and mutual influence, citing both textual and practical examples.

⁵ See David Weissbrodt and Peggy L. Hicks, “Implementation of human rights and humanitarian law in situations of armed conflict”, pp. 120-138. In particular, these two authors discuss convergence in the application of human rights law and humanitarian law in conflict situations. They also give considerable space to a comparison of the role of the ICRC and that of the NGOs.

In view of the numerous cases of armed conflict, it is likely that this convergence will become still more marked. Can it be said then that we are moving towards a merging of the two branches of law? The question is an interesting one, but in our view the crux of the matter lies not in whether the “integrationists” in favour of merging will prevail over the “separatists”, who fear that convergence will create confusion, but in examining how both the differences and the growing similarities between each of the two branches can be turned to better account for enhanced protection of the fundamental rights of the individual in situations of violence.

It is useful to recall the specific characteristics of each of the two branches in cases of armed conflict. Humanitarian law, which is an emergency law applicable in armed conflict, has aims which are more limited yet more clearly defined than are those of human rights law; its provisions are mandatory. Human rights law is applicable at all times, hence also in time of armed conflict, but its applicability is restricted by derogation clauses (except for the “hard core” rights) or by the manner in which it is interpreted by the bodies entrusted with its implementation.

Whereas the rules of international humanitarian law governing the protection of the individual in time of armed conflict are set forth in detail and adapted to circumstances, human rights law is more general and its provisions are not always applicable in practice to the various categories of persons affected by an armed conflict. Thus, the advantage of the former is that it covers violations both by governments and by armed opposition groups, whereas the latter deals primarily with the responsibilities of governments.

Finally, the mechanisms for implementation of the two branches of law and for monitoring that implementation remain as fundamentally different as are the organizations entrusted with their development and promotion, namely the ICRC for humanitarian law and regional and international organizations, including the United Nations, for human rights law.

Yet the two branches complement each other, and therein lies a source of greater strength. It should be used to benefit the victims as much as possible.

Although humanitarian law is less vulnerable than are human rights to the dangers of politicization or divergent interpretations and although its rules on the protection of the human being in situations of armed conflict are far more detailed, international human rights law, with its more readily accessible terminology and its own particular momentum, can come to the aid of humanitarian law in cases of internal conflict or strife through the pressure it is capable of bringing to bear on sovereign States. It is to be hoped that through continued recognition of the specific nature and universality of humanitarian law, together with efforts undertaken to implement human rights law, a better application of humanitarian law will be attained.

What can the ICRC and non-governmental organizations each do to reinforce implementation of human rights and humanitarian law? The ICRC's position is distinct from other organizations in that it applies humanitarian law in time of armed conflict while occasionally having recourse, in emergency situations, to standards corresponding to inalienable human rights. Its right of humanitarian initiative also allows it to take appropriate measures in situations of violence not covered by humanitarian law. The *Review* will give special coverage to this important subject in its next issue.

NGOs, on the other hand, apply human rights law in time of peace, in situations of internal strife or armed conflicts, referring to the principles of humanitarian law on a case-by-case basis whenever they consider it relevant. The important thing is that NGOs and United Nations agencies must continue to have recourse to humanitarian law wherever it can support or supplement international human rights law. It will always be in their interests to draw on the experience of the ICRC to safeguard fundamental human rights more effectively in time of armed conflict. While maintaining their autonomy and their own identity, these institutions must more than ever promote the complementary nature of the two systems by ensuring that the principles shared by humanitarian law and human rights law are widely known. These principles are non-discrimination; inviolability, which consecrates each individual's right to life and to physical and moral integrity; and security of person, which provides each individual with legal guarantees and stresses the prohibition of reprisals, collective punishment, hostage-taking and deportations.

Also, they must spread knowledge of the respective instruments of the two branches of law, particularly among the armed forces, paramilitary groups and the police, and finally, they must encourage States to accede to those instruments and to implement them, bearing in mind their specific structures and methods.

* * *

What sort of contribution can the International Red Cross and Red Crescent Movement make towards greater respect for human rights? When retracing the Movement's commitment to human rights as shown in decisions adopted by its statutory bodies and the practical work done by its components, it can be seen that the traditional activities of the International Red Cross do much to enhance respect for human rights. They should be continued and intensified, especially those for which it has become renowned, such as humanitarian assistance to victims of armed conflicts, and of natural disasters.

In referring to the tasks assigned by the Council of Delegates to the Commission on the Red Cross, Red Crescent and Peace, some experts have

stressed the work of the Movement to uphold the rights of the most vulnerable sections of the population, namely minority groups, refugees and displaced persons, women, children and the elderly. Similarly, the Movement should take action to ensure respect for the fundamental rights of the individual, particularly as regards the prohibition of torture, discrimination, forced or involuntary disappearances and racial discrimination. In all these respects the ICRC has a direct role to play at government level, with the support of the National Societies.

Other experts believe that although a great deal has been accomplished, the Movement should invest itself still further, particularly in the light of the serious violations committed in many parts of the world.⁶ Should we therefore be more active in forestalling abuse of human rights, which would imply a greater role for the National Societies in convincing the governments of their respective countries to assume their responsibilities to that effect? Moreover, bearing in mind the experience of the National Societies and of the Federation in health-related activities, would it not be advisable to promote certain economic and social rights such as the right to decent living conditions or the right to education? These are issues which the Movement has not yet addressed and which would require precise guidelines.

In 1969, the International Conference of the Red Cross in Istanbul adopted a declaration proclaiming, among other things, that man has the right to enjoy lasting peace and live a full and satisfactory life founded on respect of his rights and his fundamental liberty. This goal can be achieved only if human rights, as set forth and defined in the Universal Declaration of Human Rights and the humanitarian conventions, are respected and observed.

This message is as vital as ever today: it indicates the path to be followed if the "two crutches" that are humanitarian law and human rights are not to become the white canes of communities blinded by violence and barbarity.

Jacques Meurant

⁶ This is the personal view of Peter Nobel, Secretary General of the Swedish Red Cross, as set forth in his article "The role of the International Red Cross and Red Crescent Movement in promoting respect for human rights", pp. 139-149. The author is also Chairman of the Sub-Commission (Human Rights) of the Commission on the Red Cross, Red Crescent and Peace.

International Humanitarian Law and Human Rights Law

by Louise Doswald-Beck
and Sylvain Vité

Introduction

International humanitarian law is increasingly perceived as part of human rights law applicable in armed conflict. This trend can be traced back to the United Nations Human Rights Conference held in Tehran in 1968¹ which not only encouraged the development of humanitarian law itself, but also marked the beginning of a growing use by the United Nations of humanitarian law during its examination of the human rights situation in certain countries or during its thematic studies. The greater awareness of the relevance of humanitarian law to the protection of people in armed conflict, coupled with the increasing use of human rights law in international affairs, means that both these areas of law now have a much greater international profile and are regularly being used together in the work of both international and non-governmental organizations.

However, as human rights law and humanitarian law have totally different historical origins, the codification of these laws has until very recently followed entirely different lines. The purpose of this paper is to consider the philosophy of these two branches of law in the light of their origins, how in many essential respects they nevertheless coincide, how they have influenced each other in recent developments and, finally, to consider how their similarities and differences could influence their future use.

¹ Resolution XXIII "Human Rights in Armed Conflicts" adopted by the International Conference on Human Rights, Tehran, 12 May 1968.

Origin and nature of human rights law and humanitarian law

The philosophy of humanitarian law

Restrictions on hostile activities are to be found in many cultures and typically originate in religious values and the development of military philosophies. The extent to which these customs resemble each other is of particular interest and in general their similarities relate both to the expected behaviour of combatants between themselves and to the need to spare non-combatants.² Traditional manuals of humanitarian law cite the basic principles of this law as being those of military necessity, humanity and chivalry.³ The last criterion seems out of place in the modern world, but it is of importance for an understanding of the origin and nature of humanitarian law.

The first factor of importance is that humanitarian law was developed at a time when recourse to force was not illegal as an instrument of national policy. Although it is true that one of the influences on the development of the law in Europe was the church's just war doctrine,⁴ which also encompassed the justice of resorting to force, the foundations of international humanitarian law were laid at a time when there was no disgrace in beginning a war. The motivation for restraint in behaviour during war stemmed from notions of what was considered to be honourable and, in the nineteenth century in particular, what was perceived as civilized.⁵ The law was therefore in large part based on the appropriate respect that was due to another professional army. We will use here as a good illustration of the philosophy underlying the customary law of war the Lieber Code of 1863,⁶ as this code was

² For an interesting survey of these customs from different parts of the world, see Part 1 of *International Dimensions of Humanitarian Law*, UNESCO, Paris, Henry Dunant Institute, Geneva, 1988.

³ See, for example, L. Oppenheim, *International Law*, Volume II, *Disputes, War and Neutrality*, Seventh edition, Longmans and Green, London, 1952, pp. 226-227.

⁴ For a good summary of these doctrines, see S. Bailey *Prohibitions and Restraints in War*, Oxford University Press, 1972, Chapter 1.

⁵ There are frequent references in the preambles of nineteenth century humanitarian law instruments to civilization requiring restraints in warfare, for example, the Declaration of St. Petersburg of 1868 to the effect of prohibiting the use of certain projectiles in war time: "Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war..."; 1899 Hague Convention II with Respect to the Laws and Customs of War on Land: "Animated by the desire to serve... the interests of humanity and the ever increasing requirements of civilization...".

⁶ *Instructions for the Government of Armies in the Field*, 24 April 1863,

used as the principal basis for the development of the Hague Conventions of 1899 and 1907 which in turn influenced later developments.

The relevance of war being a lawful activity at the time is reflected in Article 67 of the Lieber Code:

“The law of nations allows every sovereign government to make war upon another sovereign state, and, therefore, admits of no rules or laws different from those of regular warfare, regarding the treatment of prisoners of war, although they may belong to the army of a government which the captor may consider as a wanton and unjust assailant”.

The law was therefore based on what was considered necessary to defeat the enemy and outlawed what was perceived as unnecessary cruelty:

“Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war” (Art. 14).

“Military necessity does not admit of cruelty — that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district...” (Art. 16).

Two basic rules of international humanitarian law, namely the protection of civilians and the decent treatment of prisoners of war, are described in the following terms:

“Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honour as much as the exigencies of war will admit” (Art. 22).

The importance of respectful treatment of prisoners of war is referred to as follows:

prepared by Francis Lieber during the American Civil War, and promulgated by President Lincoln as General Orders N° 100. Reproduced in Schindler and Toman, eds., *The Laws of Armed Conflicts*, Martinus Nijhoff Publishers, Dordrecht, Henry Dunant Institute, Geneva, 1988.

“A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity” (Art. 56).

“Honorable men, when captured, will abstain from giving to the enemy information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information or to punish them for having given false information” (Art. 80).

On the protection of hospitals the Lieber Code states:

“Honorable belligerents often request that the hospitals within the territory of the enemy may be designated, so that they may be spared...” (Art. 116).

“It is justly considered an act of bad faith, of infamy or fiendishness, to deceive the enemy by flags of protection...” (Art. 117).

The chapter relating to occupied territory specifies the action that an occupier may take for military purposes, in particular levying taxes and similar measures, but is very clear about the types of abuses that are prohibited:

“All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense.

*A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior”*⁷ (Art. 44).

Finally, in this small selection of articles, mention should be made of Lieber’s caution to States in their resort to reprisals which were still generally considered lawful at that time:

“Retaliation will ... never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and moreover, cautiously and unavoidably; that is to say, retaliation shall only be

⁷ Needless to say, this punishment would these days be a violation of the right to fair trial of the accused, which is reflected in Article 75 of 1977 Protocol I and equally applies to the treatment of a party’s own soldiers.

resorted to after careful inquiry into the real occurrence, and the character of the misdeeds that may demand retribution.

Unjust or inconsiderate retaliation removes the belligerents farther and farther from the mitigating rules of regular war, and by rapid steps leads them nearer to the internecine wars of savages” (Art. 28).

The Lieber Code was regarded at the time as generally reflecting customary law although in places it particularly stressed the importance of respecting humanitarian treatment which, in practice, was not always accorded. The Code was used as the basis for the first attempted codification of these customs at the Brussels Conference of 1874. Although the conference was not successful in adopting a treaty, the declaration which was adopted is very similar to the Hague Regulations of 1899 and 1907. Those Regulations are considerably less complete than the Lieber Code, and, like later treaties, do not expressly include the explanation for the rules as does the Lieber Code.

The fundamental concepts of the laws of war have remained essentially unchanged and are still based on the balance between military necessity and humanity, although less reference is now made to chivalry. The major characteristic of humanitarian law which first tends to strike a human rights lawyer is the fact that the law makes allowance in its provisions for actions necessary for military purposes. Much of it may therefore not seem very “humanitarian”, and indeed many lawyers and military personnel still prefer to use the traditional name, “the law of war” or “the law of armed conflict.” The way in which humanitarian law incorporates military necessity within its provisions is of particular interest when comparing the protection afforded by this branch of law and human rights law.

Military necessity has been defined as:

*“Measures of regulated force not forbidden by international law which are indispensable for securing the prompt submission of the enemy, with the least possible expenditure of economic and human resources”.*⁸

The Lieber Code describes military necessity as follows:

“Military necessity admits of all direct destruction of life or limb of armed enemies, and of other persons whose destruction is incidentally

⁸ *U.S. Air Force Law of War Manual.* There are similar definitions published in the United States Manual FM 27-10 and in the German Manual ZDv 15/10.

unavoidable in the armed contests of the war; it allows of the capturing of every armed enemy, and every enemy of importance to the hostile government, or of peculiar danger to the captor; it allows of all destruction of property, and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God" (Art. 15).

The fact that military necessity is included in the rules of humanitarian law is well explained in the German Military Manual as follows:

"Military necessity has been already taken into consideration by the conventions on the law of war, because the law of war constitutes a compromise between the necessities to obtain the aims of war and the principles of humanity".⁹

This balance between military necessity¹⁰ and humanity is broadly speaking achieved in four different ways.¹¹ First, some actions do not have any military value at all and are therefore simply prohibited, for example, sadistic acts of cruelty, pillage and other private rampages by soldiers which, far from helping the military purpose of the army, tend to undermine professional disciplined behaviour. In this respect it is worth recalling that many of the early customs of war, which were set down in written instructions to armies,¹² were motivated by a desire to encourage discipline.

Secondly, some acts may have a certain military value, but it has been accepted that humanitarian considerations override these. On this basis, the use of poison and toxic gases has been prohibited.

⁹ ZDv 15/10.

¹⁰ For a very good analysis of the concept of military necessity, see E. Rauch, "Le concept de nécessité militaire dans le droit de la guerre", *Revue de droit pénal militaire et de droit de la guerre*, 1980, p. 205.

¹¹ See G. Schwarzenberger, *International Law as applied by International Courts and Tribunals*, Volume II, *The Law of Armed Conflict*, Stevens, London, 1968, pp. 10-12. These are not legal categories, but rather a conceptual way of grouping the different methods used for this purpose.

¹² *Ibid.* at pp. 15-16.

Thirdly, some rules are a true compromise in that both the military and the humanitarian needs are accepted as important to certain actions and consequently consideration of both is limited to some extent. An example is the rule of proportionality in attacks, which accepts that civilians will suffer “incidental damage” (the limitation with respect to humanitarian needs), but that such attacks must not take place if the incidental damage would be excessive in relation to the value of the target (the limitation with respect to military needs).

Finally, some provisions allow the military needs in a particular situation to override the normally applicable humanitarian rule. Conceptually, these provisions resemble more closely the limitation clauses commonly found in human rights treaties. Some provisions introduce the limitation within the body of the protective rule, for example, medical personnel cannot be attacked unless they engage in hostile military behaviour. Secondly, certain protective actions required by the law are restricted by the military situation. For example, parties to a conflict are to take “all possible measures” to carry out the search for the wounded¹³ and dead, and “whenever circumstances permit” they are to arrange truces to permit the removal of the wounded. There are also a number of limitation clauses that refer directly to military necessity. For example, immunity may in “*exceptional cases of unavoidable military necessity*” be withdrawn from cultural property under special protection.¹⁴ Other examples are Article 53 of the Fourth Geneva Convention which prohibits the destruction of property by occupying authorities in occupied territory “*except where such destruction is rendered absolutely necessary by military operations*”, and Article 54 of 1977 Protocol I which allows the destruction of objects indispensable to the survival of the civilian population in a party’s own territory when this is “*required by imperative military necessity*”.

Unlike human rights law, however, there is no concept of derogation in humanitarian law. Derogation in human rights law is allowed in most general treaties in times of war or other emergency threatening the life of the nation.¹⁵ Humanitarian law is made precisely for those

¹³ Article 15, First Geneva Convention of 1949.

¹⁴ Article 11, 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

¹⁵ Article 4 of the International Covenant on Civil and Political Rights, 1966; Article 15 of the European Convention on Human Rights, 1950; Article 27 of the American Convention on Human Rights, 1969. Curiously, the African Charter on Human and Peoples’ Rights contains no derogation clause, but in general it has more far-reaching limitation clauses.

situations, and the rules are fashioned in a manner that will not undermine the ability of the army in question to win the war. Thus in order to cease respecting the law an army cannot, for example, invoke the fact that it is losing for such violation of the law will not be of sufficient genuine military help to reverse the situation.

The philosophy of human rights law

Turning now to the nature of human rights law, we see that the origin of this law is actually very different and that this has affected its formulation.

The first thing that is noticed when reading human rights treaties is that they are arranged in a series of assertions, each assertion setting forth a right that all individuals have by virtue of the fact that they are human. Thus the law concentrates on the value of the persons themselves, who have the right to expect the benefit of certain freedoms and forms of protection. As such we immediately see a difference in the manner in which humanitarian law and human rights treaties are worded. The former indicates how a party to a conflict is to behave in relation to people at its mercy, whereas human rights law concentrates on the rights of the recipients of a certain treatment.

The second difference in the appearance of the treaty texts is that humanitarian law seems long and complex, whereas human rights treaties are comparatively short and simple.

Thirdly, there is a phenomenon in human rights law which is quite alien to humanitarian law, namely, the concurrent existence of both universal and regional treaties, and also the fact that most of these treaties make a distinction between so-called "civil and political rights" and "economic, social and cultural" rights. The legal difference between these treaties is that the "civil and political" ones require instant respect for the rights enumerated therein, whereas the "economic, social and cultural" ones require the State to take appropriate measures in order to achieve a progressive realization of these rights. The scene has been further complicated by the appearance of so-called "third generation" human rights, namely, universal rights such as the right to development, the right to peace, etc.

We have seen that humanitarian law originated in notions of honourable and civilized behaviour that should be expected from professional armies. Human rights law, on the other hand, has less clearly-defined origins. There are a number of theories that have been used as a basis for human rights law, including those stemming from religion (i.e. the law of God which binds all humans), the law of

nature which is permanent and which should be respected, positivist utilitarianism and socialist movements.¹⁶ However, most people would point to theories by influential writers, such as John Locke, Thomas Paine or Jean-Jacques Rousseau, as having prompted the major developments in human rights in revolutionary constitutions of the eighteenth and nineteenth centuries. These theorists of the natural law school pondered on the relationship between the government and the individual in order to define the basis for a just society. They founded their theories on analysis of the nature of human beings and their relationships with each other and came to conclusions as to the best means of assuring mutual respect and protection. The most commonly cited "classical" natural lawyer is Locke, whose premise is that the state of nature is one of peace, goodwill, mutual assistance and preservation. In his opinion the protection of private rights assures the protection of the common good because people have the right to protect themselves and the obligation to respect the same right of others. However, as the state of nature lacks organization, he saw government as a "social contract" according to which people confer power on the understanding that the government will retain its justification only if it protects those natural rights. He generally referred to them as "life, liberty and estate". Positivist human rights theorists,¹⁷ on the other hand, do not feel bound by any overriding natural law but rather base their advocacy for human rights protection on reason which shows that cooperation and mutual respect are the most advantageous behaviour for both individuals and society. The other important factor to be taken into account in the development of human rights is the existence of various cultural traditions and advocates for social development.¹⁸ Although coming from different starting points, these influences stressed the importance of providing means to maintain life as well as assuring protection from economic and social exploitation. A particularly important development which influenced later human rights law was the creation of the International Labour Organization in 1919

¹⁶ For a good presentation of the different human rights theories, see J. Shestack, "The Jurisprudence of Human Rights" in T. Meron, ed., *Human Rights in International Law*, Oxford University Press, London, 1984, Volume 1, p. 69.

¹⁷ In particular J. Bentham and J. Austin, in T. Meron, ed., *ibid.* p. 79.

¹⁸ Marx is commonly cited as the origin of this social development, but he was not the only theorist of that period to speak of the importance of social and economic rights. We may refer in particular to Thomas Paine who proposed, in *The Rights of Man*, a plan which resembles a type of social security system, including children's allowances, old-age pensions, maternity, marriage and funeral allowances, and publicly endowed employment for the poor.

which made major efforts, through the development of treaties and the installation of supervisory mechanisms, to improve economic and social (including health) conditions for workers.¹⁹

As the development of human rights progressed from theories of social organization to law, it is not surprising that lawyers began to analyse the nature of these rights from the legal theory point of view. Thus there is a plethora of articles arguing over whether human rights are really legal rights if the beneficiary cannot insist on their implementation in court.²⁰ The focus of this argument is on the nature of economic and social rights, which many legal theorists argue cannot therefore be described as legal rights.

However, the first major international instrument defining "human rights", namely the 1948 Universal Declaration of Human Rights, contains not only civil and political but also economic and social rights. In drafting it a conscious effort was made to take into account the different philosophies as to the appropriate content of human rights. It was only when the attempt was made to transform this document into international treaty law that the legal difficulties outlined above made themselves felt. The International Covenant on Civil and Political Rights (CP Covenant), 1966, requires each State Party to "*respect and to ensure to all individuals ...the rights recognized in the present Covenant...*".²¹ On the other hand, the International Covenant on Economic, Social and Cultural Rights (ESC Covenant), 1966, requires each State Party to "*take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant...*".²² The main difference is that civil and political rights are perceived as not requiring any particular level of economic development, as for the most part they consist in individual freedoms. Yet it would not be accurate to say that respect for the CP Covenant does not involve the creation of certain State structures. In particular, the right to fair trial calls for certain infrastructures and professional training, and the same is true as regards the political

¹⁹ For a general article on the work of the ILO, see F. Wolf, "Human Rights and the International Labour Organization" in T. Meron, ed., *Human Rights and International Law, op.cit.*, No. 16 above, Volume II, p. 273.

²⁰ See in particular M. Cranston, *What Are Human Rights?*, 1973. Also, Dowrick, *Human Rights, Problems, Perspectives and Texts*, Saxon House, Farnborough, 1979.

²¹ Article 2.

²² Article 2.

rights listed in Article 25. However, it is a fact that the implementation of most of the economic rights does necessitate some resources and thought as to the best economic arrangement in order to achieve the best standard of living possible. The genuine difficulty thus created in giving a proper interpretation to the ESC Covenant in the particular circumstances of each State has a direct effect on the nature of the individual's economic rights.²³ In 1987 a committee was created in order to examine the reports submitted by States under the Covenant. Such a committee was not originally provided for, and although its creation would appear to show a willingness to examine the implementation of this instrument more carefully, the committee is finding that States are still somewhat reticent about having their economic policies carefully analysed by an international body in order to assess whether they are compatible with the Covenant.²⁴

A further development of importance in the philosophy underlying human rights law is the appearance of what are commonly referred to as "third generation" rights.²⁵ Third World States have in particular pointed out that in order to be able to show proper respect for economic and social rights, the appropriate economic resources are required, and that for this purpose they have a right to development. Other rights in this category are, for example, the right to peace or to a decent environment. It is clear that these factors have a direct effect on the quality of individuals' lives or even their very existence, but legal purists again indicate here that it is not possible to categorize these as human rights as they cannot be implemented by a court and also because the specific corresponding legal duties are unclear.

What is certain, however, is that these doctrinal differences with regard to economic and social rights and third generation rights have resulted in seriously divergent interpretations of human rights obligations, in terms both of what they really entail (economic and social) and of the extent to which they exist, if at all (third generation). Some doubt has even been expressed recently as to the universality of civil and political rights.²⁶ Although it is true that there are some differ-

²³ Illustrative of this problem is the extensive discussion of how the right to food should be implemented in P. Alston and K. Tomasevski, eds., *The Right to Food*, SIM, Utrecht, 1984.

²⁴ See P. Alston, "The Committee on Economic, Social and Cultural Rights" in P. Alston, ed., *The United Nations and Human Rights*, 1992.

²⁵ For a general article on this subject see K. Drzewicki, "The Rights of Solidarity — the Third Revolution of Human Rights", 53 *Nordisk Tidsskrift for International Ret*, 1984, p. 26.

²⁶ There are various articles on the subject in *Interculture*, Volume XVII,

ences in the terms of the United Nations Covenant, the European Convention, the Inter-American Convention and the African Charter, it is the opinion of these authors that their similarities are far more evident, and that they are essentially the same in their protection of basic civil rights and freedoms. Further, the extent to which the United Nations now investigates certain human rights violations, irrespective of whether the State concerned is a party to one of these treaties, indicates that it considers the rights concerned to be customary.

Conceptual similarities in present-day humanitarian law and human rights law

Having looked at the origins and formulation of these two areas of law, we can now turn to their present method of interpretation and implementation.

The most important change as far as humanitarian law is concerned is the fact that recourse to war is no longer a legal means of regulating conflict. In general, humanitarian law is now less perceived as a code of honour for combatants than as a means of sparing non-combatants as much as possible from the horrors of war.²⁷ From a purist human rights point of view, based as it is on respect for human life and well-being, the use of force is in itself a violation of human rights. This was indeed stated at the 1968 Human Rights Conference in Tehran as follows:

*“Peace is the underlying condition for the full observance of human rights and war is their negation”.*²⁸

However, the same conference went on to recommend further developments in humanitarian law in order to ensure a better protection of war victims.²⁹ This was an acknowledgement, therefore, that

Nos. 1-2 1984. An interesting address on “The universality of human rights and their relevance to developing countries” was also given by Dr. Shashi Tharoor at the Friedrich Naumann Stiftung Conference on Human Rights, Sintra, Portugal, 14-16 November 1988 (available from UNHCR).

²⁷ The main justification of the continued applicability of humanitarian law is that most of the rules have as their aim the protection of the vulnerable in armed conflicts and that these rules can be applied in practice only if they are applicable to both sides. Further, as with human rights philosophy, humanitarian law has as its major premise the applicability of protection to all persons, irrespective of whether the individuals are perceived as “good” or “bad”.

²⁸ Note 1 above.

²⁹ *Ibid.*

humanitarian law is an effective mechanism for the protection of people in armed conflict and that such protection remains necessary because unfortunately the legal prohibition of the use of force has not in reality stopped armed conflicts.

A conceptual question of importance is whether human rights law can be applied at all times, thus in armed conflict as well, given that the philosophical basis of human rights is that by virtue of the fact that people are human, they always possess them. The answer in one sense is that they do continue to be applicable. The difficulty as regards human rights treaties is that most of them allow parties to derogate from most provisions in time of war, with the exception of what are commonly termed "hard-core" rights, i.e., those which all such treaties list as being non-derogable. These are the right to life, the prohibition of torture and other inhuman treatment, the prohibition of slavery and the prohibition of retroactive criminal legislation or punishment. However, the other rights do not thereby cease to be applicable, but must be respected in so far as this is possible in the circumstances. Recent jurisprudence and the practice adopted by human rights implementation mechanisms have stressed the importance of this, and also, in particular, the continued applicability of certain judicial guarantees that are essential in order to give effective protection to the "hard-core" rights.³⁰ However, the major difficulty of applying human rights law as enunciated in the treaties is the very general nature of the treaty language. Even outside armed conflict situations, we see that the documents attempt to deal with the relationship between the individual and society by the use of limitation clauses. Thus the manner in which the rights may be applied in practice must be interpreted by the organs instituted to implement the treaty in question. Although the United Nations Human Rights Committee, created by the CP Covenant, has made some general statements on the meaning of certain articles,³¹ the

³⁰ See in particular:

- For the Human Rights Committee: *Lanza de Netto, Weismann and Perdomo v. Uruguay*, Com. No. R.2/8, A/35/40, Annex IV, paragraph 15; *Camargo v. Colombia*, Com. No. R.11/45, Annex XI, paragraph 12.2.
- European Court of Human Rights: *Lawless Case (Merits)*, Judgment of 1st July 1961, paragraph 20 ff.; *Ireland v. United Kingdom*, Judgment of 18 January 1978, Series A No. 25, paragraph 202 ff.
- For the Inter-American Court of Human Rights: *Habeas corpus in emergency situations*, Advisory opinion OC-8/87 of 30 January 1987; *Judicial guarantees in states of emergency*, Advisory opinion OC-9/87 of 6 October 1987.

³¹ See in particular the following general observations:
5(13) on Article 4 of the Covenant, A/36/40, Annex VII;
7(16) on Article 7 of the Covenant, A/37/40, Annex V;

normal method of interpretation by both the United Nations and regional systems has been through a decision or an opinion on whether a particular set of facts constitutes a violation of the article in question. A study of this jurisprudence shows that although at first sight an assertion of an individual right may seem very favourable to the individual, its interpretation in practice reduces its implementation considerably in order to take into account the needs of others.³² Now, if we transfer this to a situation of armed conflict, we can appreciate straight away the inconvenience of having to wait for decisions as to whether every action that takes place is justifiable or not, as the protection of people in armed conflict is usually literally a matter of life or death at that very moment. What is needed, therefore, is a code of action applicable in advance. Human rights lawyers have consequently turned to humanitarian law because, despite its different origins and formulation, compliance with it has the result of protecting the most essential human rights both of the "civil" and the "economic and social" type. The major legal difference is that humanitarian law is not formulated as a series of rights, but rather as a series of duties that combatants have to obey. This does have one very definite advantage from the legal theory point of view, in that humanitarian law is not subject to the kind of arguments that continue to plague the implementation of economic and social rights.

As space does not allow us to go into a detailed assessment of the similarities between human rights law and humanitarian law, we shall limit ourselves here to an impressionistic overview of the most important provisions of humanitarian law that help to protect the most fundamental human rights in practice.

The most important general observation to be made is that, like human rights law, humanitarian law is based on the premise that the protection accorded to victims of war must be without any discrimination. This is such a fundamental rule of human rights that it is specified not only in the United Nations Charter but also in all human rights treaties. One of many examples in humanitarian law is Article 27 of the Fourth Geneva Convention of 1949:

"...all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without

8(16) on Article 9 of the Covenant, A/37/40, Annex V;

13(21) on Article 14 of the Covenant, A/39/40, Annex VI.

³² See Higgins, "Derogations under Human Rights Treaties", *British Yearbook of International Law*, 1976-1977, 281.

any adverse distinction based, in particular, on race, religion or political opinion”.

Given the obvious risk to life in armed conflict, a great deal of humanitarian law is devoted to its protection, thus having a direct beneficial effect on the right to life. First and foremost, victims of war, i.e. those persons directly in the power of the enemy, are not to be murdered as this amounts to an unnecessary act of cruelty. These persons are mainly protected by the 1949 Geneva Conventions, with some extension of this protection in 1977 Additional Protocol I. As far as the protection of life during hostilities is concerned, it is obvious that the lives of combatants cannot be protected whilst they are still fighting. However, humanitarian law is not totally silent even here, for the rule that prohibits the use of weapons of a nature to cause superfluous injury or unnecessary suffering is partly aimed at outlawing those weapons that cause an excessively high death rate among soldiers.³³ With regard to civilians, we have seen that the customary law of the nineteenth century required that they be spared as much as possible. Military tactics at the time made this possible, and civilians were less affected by direct attacks than by starvation during sieges, or shortages due to the use of their resources by occupying troops. However, military developments in the twentieth century, in particular the introduction of bombardment by aircraft or missiles, seriously jeopardized this customary rule.

The most important contribution of Protocol I of 1977 is the careful delimitation of what can be done during hostilities in order to spare civilians as much as possible. The balance between military necessities and humanitarian needs that was explained in the Lieber Code continues to be at the basis of this law, and the States that negotiated this treaty had this firmly in mind so as to codify a law that was acceptable to their military staff. The result is a reaffirmation of the limitation of attacks to military objectives and a definition of what this means,³⁴ but accepting the occurrence of “incidental loss of civilian life” subject to the principle of proportionality.³⁵ This is the provision

³³ The most recent codification of the prohibition of the use of weapons of a nature to cause unnecessary suffering is in Article 35(b) of 1977 Protocol I. This reasoning, however, is most clearly stated in the St. Petersburg Declaration of 1868: “...the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy... this object would be exceeded by the disabled men, or render their death inevitable...”

³⁴ Articles 48 and 52.

³⁵ Article 52(5)(b).

that probably grates most with human rights lawyers, not only because it in effect allows the killing of civilians but also because the assessment of whether an attack may be expected to cause excessive incidental losses, and therefore should not take place, has to be made by the military commander concerned. On the other hand, the Protocol protects life in a way that goes beyond the traditional civil right to life. First, it prohibits the starvation of civilians as a method of warfare and consequently the destruction of their means of survival³⁶ (which is an improvement on earlier customary law). Secondly, it offers means for improving their chance of survival by, for example, providing for the declaration of special zones that contain no military objectives³⁷ and consequently may not be attacked. Thirdly, there are various stipulations in the Geneva Conventions and their Additional Protocols that the wounded must be collected and given the medical care that they need. In human rights treaties this would fall into the category of “economic and social rights”.³⁸ Fourthly, the Geneva Conventions and their Protocols specify in considerable detail the physical conditions that are needed in order to sustain life in as reasonable a condition as possible in an armed conflict. Thus, for example, the living conditions required for prisoners of war are described in the Third Geneva Convention and similar requirements are also laid down for civilian persons interned in an occupied territory. With regard to the general population, an occupying power is required to ensure that the people as a whole have the necessary means of survival and to accept outside relief shipments if necessary to achieve this purpose.³⁹ There are also provisions for relief for the Parties’ own populations, but they are not as absolute as those that apply in occupied territory.⁴⁰ Once again, these kinds of provisions would be categorized by a human rights lawyer as “economic and

³⁶ Article 54.

³⁷ Articles 14 and 15 of the Fourth Geneva Convention and Articles 59 and 60 of 1977 Protocol I. It should be noted, however, that a non-defended area was protected from bombardment in customary law.

³⁸ Article 12 of the ESC Covenant recognizes that everyone has the right to “*the enjoyment of the highest attainable standard of physical and mental health*”. This goes much further of course than what is provided for in humanitarian law, but it is the only human rights provision under which the right to receive needed medical treatment could be categorized.

³⁹ Article 55 of the Fourth Geneva Convention and Article 69 of Additional Protocol I.

⁴⁰ Article 23 of the Fourth Geneva Convention and Article 70 of Additional Protocol I.

social”.⁴¹ Finally in this selection of provisions relevant to the right to life, humanitarian law lays down restrictions on the imposition of the death penalty, in particular, by requiring a delay of at least six months between the sentence and its execution, by providing for supervisory mechanisms, and by prohibiting the death sentence from being pronounced on persons under eighteen or being carried out on pregnant women or mothers of young children. Also of interest is the fact that an occupying power cannot use the death penalty in a country which has abolished it.⁴²

The next “hard-core” right is that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Humanitarian law also contains an absolute prohibition of such behaviour, and not only states this prohibition explicitly in all the appropriate places⁴³ but goes still further, since a large part of the Geneva Conventions can be said in practice to be a detailed description of how to carry out one’s duty to treat victims humanely.

As far as the prohibition of slavery is concerned, this is explicitly laid down in 1977 Protocol II;⁴⁴ the possibility of slavery is furthermore precluded by the various forms of protection given elsewhere in the Geneva Conventions. It is interesting to note in particular that this prohibition was well established in customary law, and is reflected in the Lieber Code’s articles on the treatment of prisoners of war, who are not to be seen as the property of those who captured them,⁴⁵ and on the treatment of the population in occupied territory.⁴⁶

As mentioned above,⁴⁷ human rights bodies are now recognizing the importance of judicial guarantees to protect hard-core rights although, with the exception of the Inter-American Convention, these are unfortunately not expressly listed as non-derogable. If human rights specialists had at an earlier stage taken a close interest in humanitarian law, they would have noted the extensive inclusion of judicial guarantees in the Geneva Conventions. This is because those drawing up humanitarian law treaties had seen from experience the

⁴¹ Article 11 of the ESC Covenant recognizes the right of everyone to “an adequate standard of living... including adequate food, clothing and housing”.

⁴² Articles 68 and 75 of the Fourth Geneva Convention.

⁴³ For example, Article 3 common to the Geneva Conventions prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”.

⁴⁴ Article 4(2)(f).

⁴⁵ Article 74 in particular.

⁴⁶ Articles 42 and 43 in particular.

⁴⁷ Page 106.

crucial importance of judicial control in order to avoid arbitrary executions and other inhuman treatment.

The protection of children and family life is also given a great deal of importance in humanitarian law. It is taken into account in a number of different ways, such as the provision made for children's education and physical care, the separation of children from adults if interned (unless they are members of the same family), and special provisions for children who are orphaned or separated from their families.⁴⁸ The family is protected as far as possible by rules that help prevent its separation by keeping members of dispersed families informed of their respective situation and whereabouts and by transmitting letters between them.⁴⁹

Respect for religious faith is also taken into account in humanitarian law, not only by stipulating that prisoners of war and detained civilians may practise their own religion,⁵⁰ but also by providing for ministers of religion who are given special protection.⁵¹ In addition the Geneva Conventions stipulate that if possible the dead are to be given burial according to the rites of their own religion.⁵²

This very brief review is by no means an exhaustive list of the ways in which humanitarian law overlaps with human rights norms. However, it should be noted that there are a number of human rights, such as the right of association and the political rights, that are not included in humanitarian law because they are not perceived as being of relevance to the protection of persons from the particular dangers of armed conflict.

The mutual influence of human rights and humanitarian law

The separate development of these two branches of international law has always limited the influence which they might have had upon each other. However, their present convergence, as described above,

⁴⁸ For further detail, see D. Plattner, "Protection of children in international humanitarian law", *IRRC*, No. 240, May-June 1984, pp. 140-152.

⁴⁹ The articles are too numerous to list individually, but the majority are to be found in the Third and Fourth Geneva Conventions and their Additional Protocols.

⁵⁰ Article 34, Third Geneva Convention, and Articles 27 and 38(3), Fourth Geneva Convention.

⁵¹ Articles 33 and 35-37, Third Geneva Convention, and Articles 38(3), 58 and 93, Fourth Geneva Convention.

⁵² Article 17, First Geneva Convention; Article 120, Third Geneva Convention; Article 130, Fourth Geneva Convention.

makes the establishment of certain closer links between these two legal domains conceivable.

In this connection, Article 3 common to the Four Geneva Conventions is revealing. A real miniature treaty within the Conventions, common Article 3 lays down the basic rules which States are required to respect when confronted with armed groups on their own territory. It thus diverges from the traditional approach of humanitarian law which, in principle, did not concern itself with the relations between a State and its nationals.⁵³ Such a provision would be more readily associated with the human rights sphere which, in 1949, had just made its entry into international law with the mention of human rights in the 1945 Charter of the United Nations and the adoption of the Universal Declaration of Human Rights in 1948.

The true turning point, when humanitarian law and human rights gradually began to draw closer, came in 1968 during the International Conference on Human Rights in Tehran, at which the United Nations for the first time considered the application of human rights in armed conflict. The delegates adopted a resolution inviting the Secretary-General of the United Nations to examine the development of humanitarian law and to consider steps to be taken to promote respect for it.⁵⁴ Humanitarian law thus branched out from its usual course of development and found a new opening within the UN, which had hitherto neglected it — unlike human rights, to which UN attention had been given from the start.

The convergence which began in 1968 slowly continued over the years and is still in progress today. Human rights texts are increasingly expressing ideas and concepts typical of humanitarian law. The reverse phenomenon, although much rarer, has also occurred. In other terms, the gap which still exists today between human rights and humanitarian law is diminishing. Influences from both sides are gradually tending to bring the two spheres together.⁵⁵

The rest of this chapter will give a few examples illustrating the tendency we have just outlined.

⁵³ Although the Lieber Code did make some mention of forms of protection that could be accorded in civil wars, treaty law did not do so until common Article 3 of the Geneva Conventions.

⁵⁴ See footnote 1 above.

⁵⁵ See: T. Meron, "The protection of the human person under human rights law and humanitarian law", *Bulletin of Human Rights 91/1*, United Nations, New York, 1992.

Some of these illustrations are to be found in the texts of treaties. For example, the adoption in 1977 of the two Protocols additional to the 1949 Geneva Conventions was, in a certain sense, a reflection of what had happened in Tehran nine years earlier. The world of humanitarian law paid tribute to the world of human rights. The subjects and wording of Protocol I's Article 75, entitled "Fundamental guarantees", are in fact directly inspired by the major human rights instruments, for it lays down the principle of non-discrimination, the main prohibitions relating to the physical and mental well-being of individuals, the prohibition of arbitrary detention and the essential legal guarantees. The same could be said of Articles 4, 5 and 6 of Protocol II, which, in situations of non-international armed conflict, are the counterpart to the aforesaid article in Protocol I.

Another example appears in the 1989 Convention on the Rights of the Child. The adoption procedure for this Convention, the substance of the rules which it establishes and the built-in mechanism for its implementation clearly show that it belongs to the family of human rights treaties. That did not prevent it, however, from casting a glance at the law of armed conflicts. It does so in Article 38, on the one hand by making a general reference to the humanitarian law provisions applicable to children (paragraph 1), and on the other hand by laying down rules itself that are applicable in the event of armed conflict.⁵⁶

This tendency can also be seen in international instruments which are legally less binding than the Conventions we have just briefly surveyed. In particular, several United Nations General Assembly resolutions mingle references to humanitarian law and human rights within one and the same text. The General Assembly often states that it is "guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and accepted humanitarian rules as set out in the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, of 1977".⁵⁷

A more restricted forum than that of the United Nations, namely the Islamic Conference of Ministers of Foreign Affairs, adopted an Islamic Declaration of Human Rights in April 1990.⁵⁸ Although expressly

⁵⁶ "Convention on the Rights of the Child", *Human rights in international law, Basic texts*, Council of Europe, Strasbourg, 1991.

⁵⁷ Resolution 46/136 on the situation of human rights in Afghanistan. See also Resolution 46/135 on the situation of human rights in Kuwait under Iraqi occupation and Declaration 47/133 on the protection of all people against forced disappearances.

⁵⁸ This document was published by the UN under reference No. A/CONF.157/PC/35.

claiming to be a human rights instrument, this declaration contains provisions which derive their inspiration directly from humanitarian law. For instance, it stipulates that “in case of use of force or armed conflict”, people who do not participate in the fighting, such as the aged, women and children, the wounded, the sick and prisoners, shall be protected. It also regulates the methods and means of combat.⁵⁹

This declaration is one of the working documents used in preparation for the World Conference on Human Rights to be held in Vienna in June 1993. As such it is a sign that humanitarian law and human rights might again draw a little closer during that conference.

The interlinking of human rights and humanitarian law can also be seen in the work of bodies responsible for monitoring and implementing international law.

In this connection, it is interesting to note that in recent years the Security Council has been citing humanitarian law more and more frequently in support of its resolutions. The latest example of this tendency can be found in Resolution 808 (1993) on the conflict in the former Yugoslavia, in which the Security Council decided to establish an international tribunal “for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991”.⁶⁰

A body more specifically concerned with the implementation of human rights, the Commission on Human Rights, likewise no longer hesitates to invoke humanitarian law to back up its recommendations.⁶¹ The “Report on the Situation of Human Rights in Kuwait under Iraqi Occupation” presented at its 48th session is a clear example.⁶²

To establish the law applicable to the situation in Kuwait, the Special Rapporteur begins by pointing out, in a chapter entitled “Interaction between human rights and humanitarian law”, that “there is consensus with the international community that the fundamental human rights of all persons are to be respected and protected both in times of

⁵⁹ Islamic Declaration of Human Rights, Article 3.

⁶⁰ See also Security Council Resolutions 670 (1990) and 674 (1990) on Iraq’s occupation of Kuwait, and Resolution 780 (1992) establishing a Commission of Experts to enquire into breaches of humanitarian law committed in the territory of the former Yugoslavia. See also the Interim Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992): S/25274.

⁶¹ Among the most recent examples, see in particular the Report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1993/25 paras. 508-510) and its Addendum on the situation in Sri Lanka (E/CN.4/1993/25/Add.1 paras. 40.42), and the Report on Extrajudicial, Summary or Arbitrary Executions (E/CN.4/1993/46 paras. 60, 61, 664 and 684).

⁶² Report on the situation of human rights in Kuwait under Iraqi occupation, prepared by Mr. Walter Kälin (E/CN.4/1992/26).

peace and during periods of armed conflict".⁶³ Customary international law provides the Rapporteur with some of the rules he seeks to apply. There are, *inter alia*, three fundamental rules of humanitarian law which he singles out as being customary principles of human rights protection. These three principles stipulate: "(i) that the right of parties to choose the means and methods of warfare, i.e. the right of the parties to a conflict to adopt means of injuring the enemy, is not unlimited; (ii) that a distinction must be made between persons participating in military operations and those belonging to the civilian population to the effect that the latter be spared as much as possible; and (iii) that it is prohibited to launch attacks against the civilian population as such."⁶⁴ The Rapporteur further considers that the rules of customary law applicable to the occupation of Kuwait include Article 3 common to the 1949 Geneva Conventions, Article 75 of the 1977 Additional Protocol I thereto and the 1948 Universal Declaration of Human Rights. In terms of positive law, he considers that the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and the 1949 Geneva Conventions can also be applied.

This brief review of the legal framework thus defined shows that the Commission on Human Rights is no longer concerned with marking an overly clear distinction between human rights and humanitarian law. Although the Commission was set up to promote the implementation of human rights, it does not hesitate to invoke humanitarian law when the situation so requires. It now seems to consider that its mandate is no longer confined to human rights but takes in a larger area comprising "the principles of the law of nations derived from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience."⁶⁵ This view of its terms of reference thus enables it to draw upon the rules of humanitarian law to make pronouncements on the situations it is asked to examine.

Outside the United Nations, one must look to the Inter-American Commission on Human Rights to find any hint of a similar tendency. In 1983, the organization *Disabled Peoples' International* filed a complaint with the Commission, accusing the United States of violating the right to life guaranteed by Article 1 of the American Declaration of

⁶³ *Ibid*, para. 33.

⁶⁴ *Ibid*, para. 36.

⁶⁵ As in Articles 63, 62, 142 and 158 common to the four 1949 Geneva Conventions. The Rapporteur considers that the principles set out in these articles are relevant to the case he is examining and that they belong both to human rights and to humanitarian law.

the Rights and Duties of Man. During its invasion of Grenada that year, the United States had bombed a mental asylum, killing several patients. In its petition, the organization asked the Commission to interpret Article 1 of the American Declaration on the basis of the principles of humanitarian law. The Commission declared the petition to be admissible. In dealing with the fundamental aspects of the issue, therefore, the Commission had to base its decision on a provision drawn up in the spirit of human rights in order to apply that provision to an armed conflict.⁶⁶

Outside official circles as well, the convergence of human rights law and humanitarian law is increasingly apparent in the form of private initiatives. Law specialists are concerning themselves more and more with situations involving widespread violence but which cannot be said to have reached the point where they could be described as armed conflicts and where humanitarian law could be applied. Such situations often induce the State concerned to declare a state of emergency and to suspend most of the human rights that it has undertaken to respect.⁶⁷ Though, as we have seen, such derogations must remain the exception and are in any case excluded for certain rights, there is a risk of a gap in the law appearing in that area. In order to fill it, a new approach is needed to protection of the individual. It is becoming apparent that legal instruments should be drawn up combining elements of both humanitarian and human rights law in order to provide rules that can be applied in peacetime as well as in wartime.

This objective was behind the adoption in 1990 of the Declaration of Minimum Humanitarian Standards, the so-called Turku Declaration.⁶⁸ This text makes it clear from the outset that its drafters are determined not to take a position on any dichotomy between humanitarian law and human rights law. It proclaims principles "which are applicable in all situations, including internal violence, disturbances, tensions and public emergency, and which cannot be derogated from under any circumstances".⁶⁹ That determination finds expression in a succession of provisions based alternately on the spirit of human rights law (for example

⁶⁶ For further details on the Grenada affair, see D. Weissbrodt and B. Andrus, "The Right to Life During Armed Conflict: Disabled Peoples' International v. United States" 29, *Harvard Int. L.J.*, 1988, p. 59.

⁶⁷ See Article 4(2) of the International Covenant on Civil and Political Rights, Article 15(2) of the European Convention on Human Rights and Article 27(2) of the American Convention on Human Rights.

⁶⁸ For the text of the Declaration of Minimum Humanitarian Standards, see E/CN.4/Sub.2/1991/55 or the *International Review of the Red Cross*, No. 282, May-June 1991, pp. 330-336.

⁶⁹ *Idem*, Article 1.

the prohibition of torture and the principle of *habeas corpus*) and on the spirit of humanitarian law (for example the prohibition on harming individuals not taking part in hostilities and the obligation to treat wounded and sick persons humanely).

The Turku Declaration is the work of a group of experts who met privately for the purpose. It therefore lacks the force in law that it would have if it had been adopted by an international body. But it is not meaningless; for one thing, some of its provisions have long been part of general international law. For another, it was drawn up by qualified specialists in order to meet a need acknowledged by the international community. It can thus not be ruled out that the Declaration will gradually gain recognition by a number of international legal institutions. A first step in this direction has already been taken by the Sub-Commission on Prevention of Discrimination and Protection of Minorities which referred to it in its Resolution 1192/106 on the human rights situation in Iraq.⁷⁰

Conclusion

It is very likely that the present trends will continue in future. The obvious advantage of human rights bodies using humanitarian law is that humanitarian law will become increasingly known to decision-makers and to the public who, it is hoped, will exert increasing pressure to obtain respect for it. On the other hand, one concern could be that the growing politicization of human rights by governmental bodies could affect humanitarian law. However, there are several reasons why this is unlikely. First, humanitarian law treaties are all universal and there are no regional systems which could encourage a perception that the law varies from one continent to another. Secondly, we have seen that humanitarian law does not present the kind of theoretical difficulties encountered by human rights law as regards "first", "second", and "third" generation rights. Thirdly, the most politically sensitive aspect of human rights law, namely, political rights and mode of government, is totally absent from humanitarian law. What will probably not be avoided, however, are the political influences that lead States to insist

⁷⁰ Other initiatives comparable to the Turku Declaration have been taken in recent years. Examples are:

Hans-Peter Gasser, "Code of Conduct in the event of internal disturbances and tensions", *International Review of the Red Cross*, No. 262, January-February 1988, pp. 51-53.

Theodor Meron, "Draft Model Declaration on Internal Strife", *International Review of the Red Cross*, No. 262, January-February 1988, pp. 59-76.

on the implementation of the law in some conflicts whilst ignoring others. This, however, is not new and it is to be hoped that a greater interest in humanitarian law will tend to bring about more demands for it to be respected in all conflicts.

There can be no doubt that the growing prominence of human rights law in recent decades is largely due to the activism of non-governmental human rights organizations. Several have now begun to use humanitarian law in their work⁷¹ and may well exert a considerable influence in the future. Such an interest could encourage both the implementation and the further development of the law. As one of the major factors in the development of humanitarian law, namely the perception of honour in combat, has lost influence in modern society, there is a need for a motivating force to fill this void. A perception of human rights has in effect done so, and will continue to be of importance in the future. Another area in which interest in human rights could help further develop humanitarian law is that of internal armed conflicts. Common Article 3 and 1977 Protocol II are much less far-reaching than the law applicable to international armed conflicts and yet internal conflicts are more numerous and are causing untold misery and destruction. Given that human rights law is primarily concerned with behaviour within a State, it is possible that resistance to further responsibility in internal armed conflicts will be eroded by human rights pressure. We have already seen how there are moves towards further regulation in states of emergency⁷² which have been influenced by humanitarian law although they are outside its sphere of action.

It may well be, however, that States will recognize their own interest in respecting humanitarian law and will not in future perceive themselves as being induced to show such respect solely because of human rights activism. The benefits of respecting humanitarian law are self-evident, in particular the prevention of extensive destruction and bitterness so that a lasting peace is more easily established.⁷³ If the chivalry of earlier times cannot be resurrected, it would be a positive development if the military could be encouraged to take a certain pride

⁷¹ In particular Human Rights Watch, which has used humanitarian law in a number of its reports, e.g. *Needless Deaths*, issued in 1992, on the Second Gulf War.

A large number of these organizations have recently begun a campaign to reduce the severe problems caused by the indiscriminate use of land mines, by calling for better respect for existing humanitarian law and for the eventual ban of the use of anti-personnel mines.

⁷² See pp. 116-117 above.

⁷³ The importance of humanitarian law for facilitating the return to peace was already indicated in nineteenth century instruments, including the Brussels Declaration of 1874.

in the professionalism shown when behaving in accordance with humanitarian law.⁷⁴ As this law is still largely rooted in its traditional origins, it is not alien to military thinking and has the advantage of being a realistic code for military behaviour as well as protecting human rights to the maximum degree possible in the circumstances. It is to be hoped that continued recognition of the specific nature of humanitarian law, together with the various energies devoted to implementation of human rights law, will have the effect of enhancing the protection of the person in situations of violence.

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⁷⁴ Modern teaching methods of humanitarian law stress the importance of inculcating correct behaviour during military exercises, rather than separate lessons that appear to have nothing to do with practicalities.

Implementation of human rights and humanitarian law in situations of armed conflict

by David Weissbrodt and Peggy L. Hicks

INTRODUCTION

Governments are principally responsible for the implementation of international human rights and humanitarian law during periods of armed conflict.¹ During non-international armed conflicts, governments and armed opposition groups each bear responsibility for their obedience to those norms.²

International organizations can encourage the participants in armed conflicts to respect human rights and humanitarian law. The International Committee of the Red Cross (ICRC) has long played a leading role in working for the application of humanitarian law during armed conflicts; it has also begun to refer to human rights law in situations of internal strife or tensions not covered by international humanitarian

¹ See *International Covenant on Civil and Political Rights*, Art. 2, entered into force March 23, 1976, GA res. 2200 A (XXI); 21 UN GAOR, Supp. (No. 16) 49, UN Doc. A/6316 (1967); common Art. 1 of the Geneva Conventions of 12 August 1949: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 6 UST 3114, TIAS No. 3362, 75 UNTS 31 (hereinafter cited as First Geneva Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 6 UST 3217, TIAS No. 3363, 75 UNTS 85 (Second Geneva Convention); Geneva Convention relative to the Treatment of Prisoners of War, 6 UST 3316, TIAS No. 3364, 75 UNTS 135 (Third Geneva Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War, 6 UST 3516, TIAS No. 3365, 75 UNTS 287 (Fourth Geneva Convention; hereinafter collectively cited as the Geneva Conventions).

² See, e.g., Geneva Conventions, common Article 3.

law.³ The United Nations General Assembly,⁴ the UN Commission on Human Rights,⁵ the International Court of Justice,⁶ and several other intergovernmental organizations have occasionally attempted to secure respect for human rights law during armed conflicts and have referred on an irregular basis to humanitarian law in such endeavors.⁷ The UN Security Council has almost exclusively used humanitarian law in its decisions.

International non-governmental organizations⁸ have recognized that human rights violations within their respective areas of concern may occur during armed conflicts. Indeed, serious human rights violations, including arbitrary killings, detention, and ill-treatment, are likely to increase in times of armed conflict.

In dealing with human rights violations the United Nations and non-governmental organizations have relied principally upon the Universal Declaration of Human Rights⁹ and the International Covenant on Civil and Political Rights,¹⁰ but have also begun to refer more frequently to principles of humanitarian law, for example, those

³ First, Second, and Third Geneva Conventions, common Art. 9; Fourth Geneva Convention, Art. 10; Geneva Conventions, common Art. 3; *The Red Cross and Human Rights*, ICRC, 38-39 (1983); Schindler, Dietrich, "The International Committee of the Red Cross and human rights", 208 *International Review of the Red Cross (IRRC)*, 3 (January-February 1979).

⁴ See General Assembly res. 2675 (XXV), 25 GAOR, Supp. (No. 28), at 77; UN Doc. A/8028 (1970); see also "United Nations action in the field of human rights", UN Doc. ST/HR/2, at 110-16 (1973).

⁵ See UN Doc. E/CN.4/1985/18, at 37-45 (1985); UN Doc. A/39/636, at 28-34 (1984) (Special Rapporteur, El Salvador); UN Doc. E/CN.4/1985/19 (1985) (Special Rapporteur, Guatemala); but UN Doc. E/CN.4/1985/21, at 28-32, 42-45, 47-48 (1985).

⁶ See "Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States)", (1986) *I.C.J.* 14, 113-15, 129-30; in 25 *Int'l Legal Materials* 1023, 1073-74, 1081 (1986).

⁷ See generally Ramcharan, B. G., "The role of international bodies in the implementation and enforcement of humanitarian law and human rights law in non-international armed conflicts", in 33 *American U. L. Rev.* 99 (1983); Wolf, Francis, "L'OIT et la Croix-Rouge — Convergences de leur action", in *Studies and essays on international humanitarian law and Red Cross principles in honor of Jean Pictet* 1011 (C. Swinarski ed., 1984). For a review of historical efforts to implement the Hague Regulations through international adjudication, see Gross, Leo, "New rules and institutions for the peaceful settlement of international disputes", 76 *Proc. Am. Soc. Int'l L.* 131 (1982).

⁸ See Weissbrodt, David, "The Contribution of international non-governmental organizations to the protection of human rights" in 2 *Human rights in international law* 403 (Meron, Ted, ed., 1984); *ibid* at 436-38 (for bibliography); Shestack, "Sisyphus endures; The international human rights NGO", 24 *N.Y.L.S.L. Rev.* 89 (1978).

⁹ GA res. 217A, UN Doc. A/810, at 71 (1948).

¹⁰ See note 1, *supra*.

found in the four Geneva Conventions of 12 August 1949 and the two Additional Protocols of 8 June 1977.¹¹

This article first reviews selected reports by several non-governmental human rights organizations which illustrate the potential for reliance on humanitarian law in armed conflict situations. The article next discusses United Nations practice regarding humanitarian law, using Security Council resolutions on the situation in Bosnia-Herzegovina as a case study. Third, the article studies reasons why the United Nations and international non-governmental organizations should refer to both human rights and humanitarian law in support of their work in armed conflict situations. Fourth, the article considers what means might improve the implementation of human rights law and humanitarian law in times of armed conflict.

I. APPLICATION OF HUMANITARIAN LAW AND HUMAN RIGHTS LAW BY INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS AND THE UNITED NATIONS IN ARMED CONFLICT SITUATIONS

There is considerable diversity in the way non-governmental organizations and the United Nations use human rights and humanitarian law in their human rights work and how they approach armed conflict situations.¹² An examination of recent reports by several non-governmental organizations and a study of the handling of the Bosnian situation by the United Nations illustrate some of the advantages of relying upon human rights and humanitarian law when analyzing human rights abuses in armed conflict situations.

¹¹ 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, UN Doc. A/32/144, Annex I, in 16 *Int'l Legal Materials* 1391 (1977); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977, UN Doc. A/32/144, Annex II, in 16 *Int'l Legal Materials* 1442 (1977).

¹² See Weissbrodt, David, "The Role of international organizations in the implementation of human rights and humanitarian law in situations of armed conflict", 21 *Vand. J. Transnat'l L.* 313 (1988).

A. Reliance on humanitarian law by non-governmental organizations

A comprehensive study of the practice of non-governmental organizations in applying humanitarian law and human rights law in armed conflict situations is beyond the scope of this brief article. Instead, by focusing on a small sample of reports and initiatives by several non-governmental organizations, this analysis will highlight some of the issues arising from the practice of non-governmental organizations in this area.

1. International Commission of Jurists: Report on the Philippines

The International Commission of Jurists (ICJ) has used human rights and humanitarian law in a sophisticated and careful fashion on some occasions and has almost ignored humanitarian law on others.¹³ The ICJ's study entitled *The failed promise: human rights in the Philippines since the revolution of 1986* is an illuminating example of the potential for use of human rights and humanitarian law in reporting on human rights abuse in armed conflict situations.

Initially, the report recommends that both Article 3 common to the four Geneva Conventions and Additional Protocol II should be declared applicable to the current conflict in the Philippines. Despite its ratification of the Geneva Conventions and Additional Protocol II, the Philippine government has not been willing to recognize their application to the non-international armed conflict going on in the country. Through a detailed analysis of criteria set forth in ICRC commentary, the report makes a convincing argument for the applicability of common Article 3 to the conflict. Application of Additional Protocol II is founded upon the more precise definition of "armed conflicts not of an international character" set forth in that document.

After concluding that conditions have been met for application to the conflict of common Article 3 and Additional Protocol II, the report demonstrates the import of that conclusion by enumerating the specific provisions of humanitarian law applicable to the situation. The standards of humanitarian law provide an additional template against which human rights abuses in the Philippines may be judged. For example, the report notes that forced displacements of civilians in the

¹³ *Ibid.*, at 323-25.

Philippines not only result in violations of human rights law but are themselves violations of Article 17 of Additional Protocol II.

2. Human Rights Watch: Report on violence against women in Peru

A recent report by Americas Watch and the Women's Rights Project, *Untold terror: Violence against women in Peru's armed conflict*, provides a second example of the role which humanitarian law can play in human rights reports on armed conflict situations. The report's chapter on international law begins with a discussion of common Article 3. Without addressing the basis for concluding that common Article 3 is applicable to the conflict in Peru, the report turns directly to an analysis of violations of common Article 3 by the Shining Path and the Peruvian government. The authors' findings are forthrightly presented:

"There can be no doubt that the Shining Path violates with remarkable cruelty and abandon the prohibition of common Article 3 against violence to life and person, murder and the passing of sentences and carrying out of executions without previous judgment by a regularly constituted court".

The report's conclusions concerning conduct by the Peruvian government are somewhat more tempered. While noting that research for the report had not revealed murder by security forces of women "with anywhere near the frequency or specific intent of the Shining Path", the report recognizes that "even when a state does not itself perpetrate the abuse" it is accountable under the International Covenant on Civil and Political Rights for failing to protect its citizens from arbitrary deprivation of life.

The most useful aspect of Human Rights Watch's report is its explicit recognition that rape constitutes a violation of common Article 3, despite the omission of rape from the list of abuses expressly prohibited by that article. The authors' conclusion that rape is "commonly understood to constitute both cruel treatment and an outrage on personal dignity" — violations which are explicitly included within the scope of common Article 3 — may seem obvious. Recent events in Bosnia, however, confirm the need to reiterate that rape is, and has been, a violation of the laws of war. Additionally, the report's discussion of rape as a method of torture which violates common Article 3 is equally compelling.

The report stops short of finding that Peru's internal conflict meets the conditions necessary for application of Additional Protocol II. In a

brief footnote discussion, the authors assert that “the objective conditions which must be satisfied to trigger Protocol II’s application contemplate a situation of classic civil war, essentially comparable to a state of belligerency under customary international law”. The conclusion that Protocol II is not applicable to the Peruvian situation is certainly arguable, but the report mitigates the impact of this finding by concluding that Protocol II is “a pertinent authority for interpreting common Article 3’s prohibition on outrages against personal dignity”. Given this conclusion, however, one wonders whether the report’s fleeting foray into the applicability of Protocol II to the Peruvian conflict was either necessary or advisable.

The report calls for both sides to observe the prohibition in common Article 3 against murder, torture, and ill-treatment of noncombatants without any adverse distinction founded on, among other criteria, sex. Accordingly, both parties are charged with “ensuring that all their members abide by the laws of internal armed conflict and that equal protection against abuse is guaranteed to all civilians and combatants who are *hors de combat*”.

3. Amnesty International: A policy concerning abuse by non-governmental entities

In 1991, the International Council of Amnesty International (AI) considered whether the mandate of the organization should be extended to questions concerning abuses by political non-governmental entities or armed opposition groups, such as the Shining Path in Peru. While recognizing that AI should continue to regard human rights as “the individual’s rights in relation to governmental authority”, the Council took its first step towards addressing abuses by armed opposition groups by including within the scope of AI’s concerns the taking of hostages and deliberate and arbitrary killings by non-governmental entities. The decision to include certain abuses by non-governmental entities within the scope of AI’s mandate was explicitly based upon recognition that the principles of international humanitarian law can support AI’s work in armed conflict situations.

AI’s recent resolution also addressed some of the difficult questions which non-governmental organizations face when confronting human rights abuse in armed conflict situations, including who can be considered responsible for human rights abuses, which abuses should be targeted, and what course of action is recommended for the non-governmental organization. Addressing each of these concerns in order, AI first acknowledged that there is “a continuum of political

non-governmental organizations which ranges from those which are very similar to governments to those organizations with little in common with governments". Given this fact, AI chose to focus its resources on "those entities having greater control over people, territory and the use of force". Additionally, the Council called for the development of criteria by which political non-governmental entities could be distinguished from groups falling outside AI's work, such as common criminal organizations. Second, recognizing that "there are many unclear areas in armed conflict situations", AI decided to concentrate its attention on "patterns of abuse by non-governmental entities" which are contrary to principles of international humanitarian law. Third, the organization expressly endorsed opposing the taking of hostages or deliberate and arbitrary killings by non-governmental entities whenever such opposition is practical "using any appropriate technique, including directly addressing the entity".

A sampling of AI's recent reports reflects concern over human rights abuses by both governmental and non-governmental entities in armed conflict situations. For example, in December 1992, Amnesty published a report on South Africa which specifically addressed torture, ill-treatment, and executions in African National Congress camps. In addition, AI updates on conditions in Angola, Sudan, and Liberia have addressed human rights abuses by armed opposition movements in those countries.

B. Use by the United Nations of humanitarian law: A case study

A review of UN Security Council resolutions concerning the situation in Bosnia-Herzegovina in 1992 provides a glimpse into UN practice regarding reliance on humanitarian law. Throughout the first half of the year, Security Council resolutions on the situation in Bosnia-Herzegovina (as well as Croatia) focused on cease-fire violations and the need for humanitarian assistance without emphasizing the role that humanitarian law might play in the ongoing conflict. Security Council resolution 764 (13 July 1992), however, broke this pattern by expressly recalling the obligations imposed by international humanitarian law and reaffirming that "all parties are bound to comply with the obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches".

Another Security Council resolution issued one month later, resolution 771, refined the broad declaration of principle contained in resolution 764 in a detailed statement concerning the application of humanitarian law to the Bosnian situation. Resolution 771 begins by “expressing grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia and especially in Bosnia and Herzegovina”. After reiterating resolution 764’s statement that the Geneva Conventions are applicable to the conflict and that they impose individual responsibility for violations, resolution 771 continues by condemning any violations of international humanitarian law, including those involved in the practice of “ethnic cleansing” and “demands that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, immediately cease and desist from all breaches of international humanitarian law”. The resolution also demands that international humanitarian organizations, particularly the ICRC, be given unimpeded access to camps, prisons, and detention centers in the former Yugoslavia. Humanitarian organizations and states are requested to compile information concerning breaches of humanitarian law, “including grave breaches of the Geneva Conventions”, for submission to the Security Council. The Security Council expressly finds that “the Council will need to take further measures under the Charter” should the parties fail to comply with resolution 771.

The Security Council adopted one such further measure on 6 October 1992 in resolution 780. It calls for the establishment of an impartial Commission of Experts to examine and analyze information submitted pursuant to resolution 771, “with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia”. Resolution 780 again expressed the Security Council’s “grave alarm at continuing reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia” and reaffirmed the demand made in resolution 771 for all parties to cease and desist from all breaches of international humanitarian law.

The Security Council noted in resolution 787 of 16 November 1992 that the Special Rapporteur’s report on the human rights situation in the former Yugoslavia had made clear that “massive and systematic violations of human rights and grave violations of international humanitarian law continue in the Republic of Bosnia and Herzegovina”. Resolution 787 also again condemns all violations of interna-

tional humanitarian law, including the practice of “ethnic cleansing” and “the deliberate impeding of the delivery of food and medical supplies to the civilian population”. Unfortunately, the Security Council has not regularly used human rights law as well as humanitarian law where both are applicable.

II. SHOULD NON-GOVERNMENTAL ORGANIZATIONS AND UNITED NATIONS BODIES CITE INTERNATIONAL HUMANITARIAN LAW IN SUPPORT OF THEIR HUMAN RIGHTS CONCERNS?

In addressing human rights violations in armed conflict situations, international human rights organizations and UN bodies (except the Security Council) have relied principally upon the Universal Declaration of Human Rights¹⁴ and the International Covenant on Civil and Political Rights.¹⁵ There are at least five reasons why non-governmental organizations and the United Nations should find that principles of humanitarian law provide a useful additional legal foundation for their concerns. First, the Geneva Conventions of 1949 have been ratified by 177 countries¹⁶ while the International Covenant on Civil and Political Rights has been ratified by 108 nations.¹⁷ Second, some of the principles of international humanitarian law are more specific and/or more exacting than the provisions of international human rights law. Third, humanitarian law applies specifically to emergency situations in which abuses are likely to occur; international human rights law permits significant derogations during those same periods.¹⁸ Fourth, military and law enforcement officials often do not take international human rights law seriously, but they consider humanitarian law to be worthy of respect.¹⁹ Fifth, humanitarian law specifically covers abuses by both

¹⁴ GA res. 217A, UN Doc. A/810, at 71 (1948).

¹⁵ GA res. 2200A; 21 UN GAOR, Supp. (No. 16) 49, UN Doc. A/6316 (1967).

¹⁶ As at 30 March 1993.

¹⁷ United Nations, *Multilateral treaties deposited with the Secretary-General* (1993).

¹⁸ See Hartman, W. G., “Derogations for human rights treaties in public emergencies”, 22 *Harv. Int’l L. J.* 1 (1981); Meron, Ted, “Towards a humanitarian declaration on internal strife”, 78 *AJIL* 859 (1984). Although war was the scenario which figured most prominently in the minds of the drafters of the derogation clauses, derogations have been invoked because of internal disturbances (Hartman at 13).

¹⁹ Amnesty International, *Memorandum presented to the Government of Guatemala following a mission to the country in April 1985*, at 34, 37 (1986) (AI Index: AMR 34/01/86).

governments and armed opposition groups, while international human rights law deals principally with the responsibilities of governments.

There are, however, several impediments to the use of international humanitarian law. First, international humanitarian law includes a relatively complex body of rules. Human rights organizations must communicate their concerns in a sufficiently simplistic fashion so as to attract media attention and to use the pressure of public opinion. Humanitarian law adds to the complexity of the legal principles which must be communicated to the media, to the public, and to human rights activists. Both staff and members of human rights organizations have only begun to understand humanitarian law norms sufficiently to use these norms in their reports and campaign work. At first glance international humanitarian law may appear dauntingly complex and therefore difficult for human rights organizations to use. Most of the articles of the Geneva Conventions are not directly relevant to the principal concerns of human rights organizations, although there are a few provisions, such as common Article 3 to the four Geneva Conventions, which are quite brief, straightforward, easily explained, and directly applicable to the concerns of most human rights organizations. Second, armed conflict situations often inhibit the gathering and assessment of information about human rights violations; application of humanitarian law may require even more difficult fact-finding tasks. For example, in order to apply humanitarian law one must ordinarily determine which sort of armed conflict is occurring and therefore which set of humanitarian rules are relevant.²⁰ This decision involves issues which are politically sensitive and facts which are outside the normal research competence of human rights organizations. It also offers the potential for conflicting with ICRC positions.

III. IMPROVING IMPLEMENTATION OF HUMAN RIGHTS AND HUMANITARIAN LAW IN ARMED CONFLICT SITUATIONS

A. The International Red Cross model

Since the Red Cross has long held the leading role in the protection of human rights in armed conflict situations, it is useful for other

²⁰ The Helsinki Watch report on Afghanistan cites various provisions of humanitarian law, but fails to analyze adequately the nature of the conflict and the consequent application of particular instruments of humanitarian law. Helsinki Watch, *Tears, blood and cries: Human rights in Afghanistan since the invasion, 1979-1984* (1984). Compare the far more careful approach of Americas Watch, *Violations of the laws of war by both sides in Nicaragua, 1981-1985*, at 11-34 (1985), and the somewhat less complete approach of Americas Watch, *The Miskitos in Nicaragua, 1981-1984*, at 49 (1984).

organizations to study its work so as to draw lessons from its experience and to learn how its activities can be supplemented by the efforts of other organizations.

1. Red Cross work in periods of armed conflict²¹

Article 5, paragraph 2(c) of the Statutes of the International Red Cross and Red Crescent Movement prescribes three categories of duties for the ICRC in armed conflicts:

(1) to undertake the tasks incumbent upon it under the Geneva Conventions, (2) to work for the faithful application of international humanitarian law applicable in armed conflicts and (3) to take cognizance of any complaints based on alleged breaches of that law.

a. Fulfilling the ICRC's duties under humanitarian law

The duties in the first category are related to the specific provisions of the Geneva Conventions and their Additional Protocols by virtue of which the ICRC visits prisoners of war and civilian internees; interviews them without witnesses; repeats such visits to assure that prisoners are not killed or ill-treated; provides assistance to prisoners in some cases, including blankets, medicines, soap, warm clothing, food, educational material, medical care, and recreational supplies; provides relief to the population of occupied territories; has established a Central Tracing Agency (CTA) which collects information on prisoners of war and civilians in occupied territories (particularly those who are interned) so that contact can be established and maintained with their families; searches for persons missing in the event of armed conflict; monitors the return of children to their families; helps to establish and clearly mark hospitals and safety zones protected from international armed conflict under Article 14 of the Fourth Convention; and, in the event of non-international armed conflict, may under common Article 3 of the four Geneva Conventions take humanitarian initiatives to offer its services to the parties in assisting victims and carrying out activities similar to those it performs in the event of international conflict.

²¹ Much of the material in this part of the study comes from *The Red Cross and human rights* (1983) (ICRC Doc. CD/7/1, prepared for the Red Cross Council of Delegates, 13-14 Oct. 1983).

b. Encouraging application of humanitarian law

The second category of duties identified by Article 5 of the Statutes derives from the stipulation that the ICRC should “work for the faithful application of international humanitarian law”. The ICRC thus assesses whether all the provisions of the four Geneva Conventions and two Protocols are implemented by the parties.

The ICRC’s three principal techniques for assessing the fulfillment of these humanitarian law norms are: visiting places of detention, making official or unofficial approaches to the authorities, and making use of its right to take humanitarian initiatives.

(i) Visiting places of detention

In connection with the visits to places of detention, ICRC delegates are able to check whether the detainees are being treated in accordance with the provisions of humanitarian law, to draw the attention of the authorities to any problems, and to ascertain through repeated visits whether appropriate remedial action has been taken.

(ii) Approaches to authorities

Regarding all matters in which the ICRC believes that a violation of humanitarian law may have occurred or may be prevented, the ICRC may make approaches to the relevant authorities. In principle, such representations are made without any publicity. The primary task of the ICRC is aiding the victims of armed conflicts. The ICRC communicates its concerns in confidence to the authorities because it does not wish to become engaged in public controversies which might jeopardize its assistance and protection work for victims.

While the ICRC’s efforts to put an end to violations of international humanitarian law or to prevent such violations are in principle confidential, the ICRC has reserved “the right to make public statements concerning violations of international humanitarian law”²² if the violations are major and repeated; the steps taken confidentially have not succeeded; publicity will help the persons affected or threatened; and the breaches were established by reliable and verifiable sources. In fact, the ICRC’s techniques are far more nuanced. While the ICRC’s approaches to governments are made in confidence, the mere fact that the ICRC has become aware of certain information presents the

²² “Action by the ICRC in the event of breaches of international humanitarian law”, 221 *IRRC* 76 (March-April 1981).

authorities with an implicit threat that the information will somehow become more broadly known — particularly if no remedial action is taken.

(iii) Humanitarian initiative

In order to work for the faithful application of international humanitarian law, the ICRC also reserves the right to take humanitarian initiatives (a) in all situations which come under Article 4(2) of its own Statutes; (b) in international armed conflicts which come under Article 9 of the first three Geneva Conventions, Article 10 of the Fourth Convention, and Articles 5 and 81 of Protocol I; and (c) in non-international armed conflicts which come under Article 3 common to all four Geneva Conventions. The ICRC's right to take humanitarian initiatives is intended to protect and assist persons protected by the Geneva Conventions and Additional Protocol I, as well as all others who may become the victims of armed conflict or internal strife, subject to the consent of the authority concerned. Under its right of humanitarian initiative, the ICRC may provide relief for persons not protected by the Geneva Conventions, organize the exchange of prisoners, reunite families, ask for truces to bring care to the wounded, help refugees, etc.

c. Receiving complaints concerning alleged breaches of international humanitarian law

The ICRC may receive complaints about alleged breaches of international humanitarian law and approach the authorities to prevail on them to correct any shortcomings notified on the spot and reported by its delegates. If the ICRC is unable to take direct action to help the victims, for example because it has no access to the scene of hostilities, the procedure it follows is “not to forward the protests, unless there is no other regular channel for doing so and a neutral intermediary is necessary and where such protests do not come from third parties”.²³

2. The ICRC and other organizations

Other organizations can learn from the ICRC's experience in developing techniques for persuading governments to protect human rights, for example by embarrassing them. The ICRC's skillful use of

²³ *The Red Cross and human rights, op. cit.*

the implicit threat of publicity might be helpful to other human rights organizations. Those organizations must at least consider whether to follow the ICRC's general policy of not relying upon international law in pursuing its humanitarian objectives.

If a human rights organization intends to comment upon the human rights violations committed by the government on one side of an armed conflict, the organization may be expected to include some statements in its reporting about the abuses perpetrated by the other party in the conflict whose misdeeds may be the cause or at least the excuse for the repression. In many cases failure to do so may leave the organization open to charges of prejudice in favor of one side of the conflict — both at the time of the report and possibly in the future. Nonetheless, such efforts to balance human rights reporting may help one party to the conflict to find justification for their previous human rights violations or for their future reprisals. This paradox demonstrates the difficulty of any effort to balance reporting and, indeed, the extremely hazardous character of any increased human rights activity in periods of armed conflict.

If a human rights organization were to publish information about only one side of a conflict alleging that it was responsible for torturing or killing prisoners of war, civilians, etc., the organization would probably be criticized for taking sides in the war or for having purveyed enemy propaganda. For the ICRC such an accusation would be very damaging, because the ICRC attempts in many respects to serve as an intermediary between belligerent parties (the ICRC helps to organize the exchange of prisoners, assist wounded soldiers, forward POW correspondence, etc.) Other human rights organizations do not attempt to play any such intermediary role. If human rights organizations wish impartially to pursue their concern for human rights by criticizing violations by governments even in times of armed conflict, these organizations must at least proceed with the awareness that governments will be particularly quarrelsome and sensitive at such times.

In considering those lessons, one must be aware of the important differences between the ICRC and other organizations in structure, principles, and techniques. Such a comparison between the ICRC and other organizations is, unfortunately, beyond the scope of the present article. The following formulation of the differences between the terms of reference of the ICRC and other human rights organizations would, however, provide a useful guide for further discussion: Most human rights organizations apply human rights law during periods of peace, internal crisis, and armed conflict; in addition, these organizations may refer occasionally to humanitarian law principles where relevant to

their work. In contrast, the ICRC applies humanitarian law during armed conflicts and may take humanitarian initiatives pursuant to its Statutes at any time; it has occasionally made reference to human rights law, but generally does not rely on these legal principles in its work.

Such a formulation leaves a considerable area of overlapping between the work of the ICRC and other organizations. There are, however, significant differences between the techniques ordinarily employed by the ICRC and those used by other human rights organizations. As discussed more fully above, the ICRC makes most of its approaches to governments in confidence. Most other human rights organizations use a range of approaches to governments, including direct contacts, membership appeals, publicity campaigns, etc. The ICRC has both a large central staff and regional offices whose staff regularly visit places of detention, provide relief, work with National Red Cross and Red Crescent Societies, and are generally available to assist the organization in fulfilling its mission. Few non-governmental organizations have either a large central staff or an effective membership or grass-roots campaigning capacity.

Bearing in mind the important differences between the ICRC and other human rights organizations, there remains a question as to how these organizations and the ICRC might continue to work without undue interference with each other. One possible approach would be to recognize the ICRC's long-standing and very successful efforts in periods of armed conflict and internal strife. It might be argued that other organizations should generally leave this field to the ICRC.

Other human rights organizations have, however, increasingly found that human rights violations occur in times of armed conflict. The fact-gathering capacity and diverse methods of action available to these organizations may complement the ICRC's work. Indeed, the ICRC has indicated its acceptance of and appreciation for the role of other human rights organizations in bringing human rights violations to the attention of the ICRC and the public, wherever the ICRC must remain quiet.

The discreet approach of the ICRC is complementary to the activity of other human rights organizations in that the ICRC generally avoids publicity and thus preserves its access to prisoners. Most other human rights organizations publicize violations but such publicity may prevent them from having much access to prisoners.

It is important, however, for all human rights organizations to protect their separate identities. The ICRC would not want to appear to collaborate with more outspoken human rights organizations, since it

would not want to be denied access to prisoners because of statements by unrelated organizations. Similarly, the International Commission of Jurists may have particularly easy access to the authorities of a particular country and may be able to influence those officials towards the protection of human rights, while Amnesty International has publicly criticized the same country and lacks access. For the effectiveness of each organization and for the overall effectiveness of human rights efforts, it is critical that each organization preserve its independence and separate identity.

B. Approaches used by human rights organizations to halt human rights abuses

Human rights organizations use several different approaches to stop abuses in a given situation. They may privately approach a particular government or entity with evidence of abuses and request action by the authorities to stop the violations. The organizations may also publish reports and issue press releases about human rights violations. Publication serves the dual purpose of informing the international community of human rights abuses in the hope of generating widespread pressure on a government which is violating human rights and possibly embarrassing the government into ending its violations. Finally, human rights organizations and their membership may place pressure on some violating governments to induce them to stop abusing human rights.

Those approaches may still be used in periods of armed conflict. They may be less effective, however, for a number of reasons. The private approach to the responsible government may be ignored or given less weight where the authorities are more concerned with fighting a war. This difficulty is particularly great in the case of an internal conflict or war of liberation, because human rights groups may be able to monitor abuses by only one side to the conflict, usually the government. Governments will be particularly sensitive to questions of a balanced approach and impartiality at such times and will be less receptive to private appeals.

Publication of information on human rights abuses may also backfire in times of armed conflict. Although publicity will often help mobilize pressure on a government to stop abuses of human rights, it can become a two-edged sword. Publicity about human rights abuses by one side to a conflict may be used by the other side to justify its own abuses. This difficulty does not arise in times of peace where

authorities are responsible for violations of human rights and are called upon to answer for them.

Finally, approaches by members of human rights groups to the authorities of their own country may also be less effective during times of armed conflict, since those authorities may be less willing to interfere with the decisions made by their government when the country is at war. Human rights groups that are not aware of these problems may have to alter their traditional approaches in order to prevent human rights abuses more effectively during armed conflicts.

C. Assisting victims in national and international tribunals

Human rights organizations have invoked the assistance of international and national adjudicative bodies in attempting to aid victims of human rights violations during periods of armed conflict.

For example, Disabled Peoples' International (DPI) filed a complaint with the Inter-American Commission on Human Rights of the Organization of American States (OAS) on behalf of residents of the Richmond Hill Insane Asylum in Grenada who were killed or injured by United States bombardment during the 1983 conflict in Grenada.²⁴ The complaint alleged violations of Articles 1 and 11 of the American Declaration of the Rights and Duties of Man²⁵ and the fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War.²⁶ DPI argued that the right to life was nonderogable in time of war and that, as there were no domestic remedies to exhaust, the Inter-American Commission had jurisdiction. The Commission accepted the petition as admissible and found at least a *prima facie* violation of the American Declaration's protection of the right to life.²⁷ The Commission has not heard the case on its merits, because the Commission has unsuccessfully sought to visit Grenada to view the site of the bombing. If the Commission proceeds with the

²⁴ Decision of the Commission as to the admissibility: Application No. 9213 by *Disabled Peoples' International et al. v. United States*, OEA/Ser.L./V/II.67 Doc. 6 (April 17, 1986). (Hereinafter cited as *DPI v. US*).

²⁵ "Every human being has the right to life, liberty and the security of his person", Art. 1; "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources", Art. 11.

²⁶ Geneva Conventions, *supra* note 1.

²⁷ *DPI v. US*, *supra* note 24, at 13.

case, it will need to consider whether the Declaration prohibits killings during periods of armed conflict — killings which might be either forbidden or permissible under humanitarian law.²⁸

In national courts, human rights groups have argued as *amicus curiae* in a number of areas. Human rights advocates have invoked human rights and humanitarian law in many cases,²⁹ for example, arguing that the United States has an obligation to ensure respect for the Geneva Conventions by granting temporary refuge to Salvadorians who fled the killing of civilians in El Salvador's armed conflict.³⁰

In February 1993 the UN Security Council authorized the establishment of a tribunal to try under humanitarian law criminal offenses committed in the former Yugoslavia. The tribunal should have the authority to try offenders for war crimes (including violations of humanitarian law), and crimes against humanity under both the precedents of the Nuremberg Tribunal and Control Council Law No. 10. Indeed, the tribunal should have the capacity to impose administrative and other civil sanctions as well as the ability to consider human rights law.

CONCLUSION

International organizations supplement the work of the International Committee of the Red Cross by playing an important role in assessing whether governments and armed opposition groups are respecting their human rights and humanitarian law obligations. Non-governmental organizations, including, for example, the International Commission of Jurists, Human Rights Watch, and Amnesty International, have effectively relied upon humanitarian law as well as human

²⁸ The Inter-American Commission on Human Rights generally relies upon the provisions of the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights for its operative human rights standards, but the Commission has found violations of common Article 3 of the Geneva Conventions. See, e.g., Inter-American Commission on Human Rights, *Report on the situation of human rights in the Republic of Guatemala*, OAS Doc. OEA/Ser.L/V/II.61, Doc. 47 rev. 1, at 69-70 (1983).

²⁹ See e.g. Letter from Sandra Coliver, Attorney for Human Rights Advocates and California Attorneys for Criminal Justice to the Superior Court of California, January 31, 1985, re *People v. Barbara Bannon, et al.*; *Greenham women against cruise missiles, et al. v. Reagan, et al.*, Brief for *Amicus Curiae*.

³⁰ See e.g. *In the matter of Jesus del Carnea Medina*, before the US Dept. of Justice, Board of Immigration Appeals (1985) and Paust, Jordan J., "After My Lai: The case for war crimes jurisdiction over civilians in federal district courts", 50 *Tex. L. Rev.* 6 (1971).

rights law in armed conflict situations. The United Nations Security Council has begun to use humanitarian law, but has been less willing to use human rights law. Both non-governmental organizations and UN bodies should continue to rely on humanitarian law in instances in which it can effectively complement human rights law. Given the challenges presented by humanitarian law, however, organizations should also look to the experience of the ICRC in seeking to be more effective in safeguarding human rights during periods of armed conflict.

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The role of the International Red Cross and Red Crescent Movement in promoting respect for human rights

by Peter Nobel

As violations of human rights are a growing concern all over the world, and as the perpetrators are not only governments and their agents but all sorts of parties on many levels, it is essential for a major humanitarian organization like the Red Cross and Red Crescent to focus its efforts on counteracting this evil. If it fails to do so it might dangerously weaken its profile and, what is much worse, it will be deserting many of the most vulnerable groups and communities.

1. The Movement's traditional role in regard to human rights

Policy documents and decisions taken at the Movement's international meetings

The International Red Cross and Red Crescent Movement has been active in the field of international law ever since it was founded. Two areas of international law are of primary concern to the Movement, namely, international humanitarian law and human rights law.

While activities in the field of international humanitarian law have always been part of the Movement's work, most of its tasks relating to human rights have been identified as such only during the last decade.

The Movement's terms of reference have developed over the years to include both peacetime and wartime activities, and from simply trying to alleviate human suffering to striving to prevent it.

Work in regard to human rights is based, as are all the Movement's activities, on the *Fundamental Principles of the Red Cross and Red Crescent*. The principles of humanity and impartiality give direction to activities in the field of human rights, that is working in a spirit

of humanity to prevent and alleviate human suffering, and striving towards acceptance of the equal value of all human beings, so that no individual is treated with discrimination.

The most explicit of all the Movement's policy documents on human rights is its definition of peace. This is a positive definition of peace, stating not only what peace is not, but what peace *is*. The Movement's ultimate purpose is the creation of this state of "positive" peace, based on international cooperation, equal distribution of resources and respect for human rights. "Peace is not only the absence of war but a dynamic process of cooperation among all States and peoples, founded on respect for freedom, independence, national sovereignty, equality and human rights, and on a fair and equitable distribution of resources to meet the needs of peoples."

This definition was included in the Programme of Action of the Red Cross as a factor of peace adopted by the First World Red Cross Conference on Peace (Belgrade, June 1975).¹ It had been preceded by an important resolution at the 21st International Conference of the Red Cross (Istanbul, 1969) declaring that "man has the right to enjoy lasting peace", which can be achieved only "if human rights, as set forth in the Universal Declaration of Human Rights and the humanitarian conventions are respected and observed".²

These documents have since been followed by several decisions taken at International Red Cross and Red Crescent meetings underlining the relevance of human rights to the Movement's work.

Thus a report on the *Red Cross and Human Rights* was presented by the ICRC, in cooperation with the Federation, to the Council of Delegates in 1983. The report concluded that human rights were of relevance to the Movement, particularly in areas that overlap with international humanitarian law, but that certain aspects of human rights law would have to be further developed in order to establish their relevance for the Movement.

To follow up the recommendations of the 1983 report, the Commission on the Red Cross, Red Crescent and Peace established a *group of experts on human rights*, to investigate the action already taken by the various components of the Movement. The report of the group of experts, based on a worldwide consultation, was adopted by the Council of Delegates in 1989; it showed a great variety of activi-

¹ *Report of the League of Red Cross Societies on the World Red Cross Conference on Peace (Belgrade, 11-13 June) and Programme of Action on the Red Cross as a factor of peace* (final edition), LSCR, Geneva, 1978, p. 23.

² Resolution XIX — Declaration of Istanbul.

ties in the field of human rights. Few, however, could be said to be directly related to the promotion of respect for human rights. For example, over 80% of the replies perceived the following activities to be connected with human rights: training in first aid and rescue, recreational activities and celebration of Red Cross day!

Considering this variety of activities, the group of experts recommended that the Movement pay special attention to four areas of human rights violations, namely, torture, forced or involuntary disappearances, racial discrimination and ill-treatment of children. However, the group did not discuss methods of implementation nor any plan of action for inclusion in the activities of National Societies.

The work of the various components of the Movement

The activities of the ICRC in relation to human rights are closely connected with international humanitarian law and the special mandate of the ICRC. Visits to political detainees in situations of armed conflict or internal disturbances and tensions are important in this respect. The purpose of such visits is to prevent torture, other kinds of ill-treatment and involuntary disappearances, to improve the detainees' material conditions, and to maintain contact between the detainee and his or her family.

The impact of the International Federation of Red Cross and Red Crescent Societies on human rights has been very modest over the years. Activities in this field have focused on refugees, but the emphasis has been on providing this group with humanitarian assistance rather than on upholding their rights. The Federation has also, on an *ad hoc* basis, supported initiatives of National Red Cross and Red Crescent Societies, especially in the field of teaching of human rights.

Such work varies depending on country and region, and has been reported mainly in the areas of teaching of human rights and help for refugees and asylum-seekers. Here again the emphasis is on humanitarian assistance to the victims of human rights violations and their families.

The decisions are there: why has more not been done?

Despite quite far-reaching decisions taken at international meetings of the Movement, relatively little has been achieved in terms of implementation of and actual improvement in respect for the human rights of every woman, child and man. It is not easy to perceive or define the reasons for this situation. Many different and concurrent reasons may be discerned, such as lack of resources in National Societies, and

lack of will and interest on the part of National Society leaders. The latter can be attributed to feelings of non-participation in international decisions of the Movement or to alternative priorities at the local level. Other reasons could be the lack of means of implementation, that is to say, an understanding of how the Movement should work with human rights.

2. New possibilities and responsibilities of the Movement in promoting respect for human rights

The importance of human rights in the changing international situation

Human rights law has emerged as an important branch of international law mainly since the Second World War. The world had become aware of the atrocities committed in Nazi Germany and elsewhere, and was less willing to overlook cruel treatment of a State's own citizens on the grounds that this was an entirely internal affair.

The adoption by the UN General Assembly of the Universal Declaration of Human Rights in 1948 marked the beginning of a rapid development of international human rights law. Universal rules have been developed within the UN system, while regional human rights instruments have been drawn up in Africa, Europe and the Americas. The original instruments included a broad spectrum of rights, while regional treaties have tended to concentrate either on specific themes, such as torture, genocide or discrimination, or on special groups, such as refugees, women and children.

The first human rights documents struggled with the disparities and similarities of political and civil rights (the so-called first generation of human rights), and economic, social and cultural rights (the second generation). Lately, this discussion has revolved around the question of individual rights versus collective rights, in areas such as the right to peace, the right to development, and even the right to a healthy environment (the third generation of human rights).

The changing international situation, especially since the end of the Cold War, has given rise to exceptional interest in respect for human rights among the governments of the world. Human rights and respect for human rights have become one of the top priorities on the international agenda. Most Third World governments seem to be seeking recognition as respecters of human rights, even governments known to violate human rights and basic freedoms.

The changing international situation also means that questions of human rights, which used to be perceived as politically highly sensitive, no longer play a part in the political game of East and West, North and South. Human rights have instead been given a major role in the effort to improve the standard of living of the peoples of the world, struggling against totalitarian and corrupt regimes. The new role is of course, as always, also being used by certain actors on the international scene for their own ends, a fact which needs to be recognized if we are to work in the opposite direction, that is, in favour of the most vulnerable populations of the world.

Activities to promote human rights are therefore of importance to the Movement, both in its traditional role and in the development of its activities, to meet new needs and possibilities. The 1989 report of the group of experts, and the recommendations included therein, were based on the world situation at that time. In today's rapidly changing international climate it is necessary to re-examine those recommendations and to consider drawing up new ones, since a number of other possibilities are now emerging.

A new emphasis on human rights in recent documents of the Movement

A new emphasis on human rights within the International Red Cross and Red Crescent Movement is reflected in the revised mandate of the Movement's Commission on the Red Cross, Red Crescent and Peace.³ The Peace Commission's mandate includes several tasks in the area of human rights, including the development of the Movement's role in promoting respect for the rights of minorities, refugees, women and children, and the prevention of discrimination, torture, summary executions and involuntary disappearances.

For the Federation and the National Societies, the Strategic Work Plan for the Nineties, as updated in spring of 1992,⁴ clearly sets out their respective responsibilities: not only to take action together with the most vulnerable groups, but also to advocate in their favour. The role of the National Societies and the Federation in advocacy has not been emphasized to such a degree before, and this gives an indication of a more long-term and preventive commitment.

³ Council of Delegates 1991, Resolution 3.

⁴ *Strategic Work Plan for the Nineties. Update 1992*, International Federation of Red Cross and Red Crescent Societies, Geneva, 1992, pp. 11-12.

3. Various types of activities to promote respect for human rights

The present, traditional role of the Movement with regard to human rights as revised in recent years still does not include any specific indication as to how the Movement should work with human rights. Before considering this aspect, we should examine various types of human rights activities and discuss the areas of human rights that might be of relevance to the Red Cross and Red Crescent.

What is human rights work?

Human rights work can be long-term or short-term in nature, and could include four types of activities: measures to prevent human rights violations; measures to put a stop to such violations; humanitarian assistance to the victims of human rights violations and their families; and sanctions against human rights violators. This list is by no means exhaustive.

Some overlapping between the various categories is inevitable, especially between activities to prevent and those intended to put a stop to violations.

Preventing violations of human rights

Measures to prevent violations of human rights have a long-term objective, that is, to change the situation so that the violations disappear over a long period thanks to activities directed at the root cause of the problem.

The teaching of human rights to a variety of target groups will have a long-term effect in that the rules will be known both to those responsible for their implementation and to those who benefit from them. Target groups will include government officials, military officers, schoolteachers, local officials, minority groups and other vulnerable groups. Paralegal workers, lawyers and judges will receive special training. Various types of information campaigns will be directed at the general public.

The effort to *change domestic laws* to promote human rights and to prevent violations is likewise a long-term task, and the same is true of work to *modify and develop international human rights law*.

In many cases structural change is needed to prevent violations of human rights, such as *revision of a country's legal system* or the re-allocation of government expenditure from arms and defence to the

health sector. Other examples are legal aid to guarantee access to a court or special information materials distributed to target groups.

Besides these efforts of an academic and legislative nature, mention must obviously also be made of the practical work on the spot, which is after all the main contribution our Movement can make. By opening homes for street-children, for example, a National Society helps to prevent human rights violations by shielding such children from the many abuses to which they are otherwise exposed.

Putting a stop to violations of human rights

To put a stop to ongoing violations of human rights, Amnesty International and other organizations *collect information on such practices* and *publish this information*. The information is also used to condemn the practices of certain governments or other authorities. These activities are primarily short-term in character.

The confidential activities of the ICRC for political detainees and other persons, though different in character, also aim at preventing, or as the case may be, stopping violations of human rights. Other methods such as reporting mechanisms and diplomatic measures must be considered.

Humanitarian assistance to victims and their families

Humanitarian assistance covers a wide range of activities, its purpose being to help persons who are or have been victims of human rights violations. In many cases assistance is also given to the victims' families.

Much of the Movement's current work in human rights falls into this category. It includes tracing and forwarding of Red Cross messages, financial support for families, distribution of relief supplies in prisons, and providing health facilities for rural populations.

Sanctions against human rights violators

Sanctions against human rights violators may be imposed by international or regional tribunals as well as by domestic or *ad hoc* courts.

Sanctions such as economic embargoes [and even military action] may be decided upon multilaterally in various intergovernmental organizations such as the United Nations. Lately, there has also been a highly controversial trend among major donor governments of the North to link development aid to the human rights record of the recipient government.

4. The role of the Red Cross and Red Crescent: to prevent human rights violations through advocacy in favour of the most vulnerable

Advocacy

As mentioned above, the various components of the Movement are active mainly in the field of humanitarian assistance to the victims of human rights violations. These activities are of great importance to the victims and should be further developed in the future, in accordance with the guidelines set out in the Strategic Workplan for the Nineties.

There is also a need, however, for the Movement to become actively involved in the prevention of violations, in conformity with the notion of "promoting respect for human rights"; that is part of the mandate of the Peace Commission. The Movement has a responsibility to work for long-term changes and not only short-term goals. National Societies and the Federation should advocate in favour of the most vulnerable, in order to bring about a lasting improvement in their situation.

This means that the National Society should take appropriate action to prompt the government to carry out its responsibilities in compliance with international law and humanitarian standards, in the interests of the most vulnerable members of society. A responsibility which, depending on the issue and the rights involved, would mean first putting an end to the violations, and secondly seeing that they are not repeated. The National Society also has an obligation to shape public opinion in favour of the most vulnerable. Again, the methods and means employed will depend on the cultural and political environment and the support provided by the Federation and other National Societies.

Advocacy should be based on the rights of the vulnerable group, thus emphasizing the respect due to the individual and avoiding overtones of charity. Respect for the vulnerable and their human rights will be further strengthened through the active work of the National Society together with the group concerned.

The role of the National Societies

The various components of the Movement would have different roles to play in the promotion of human rights. The main responsibility would invariably lie with each National Society, stemming from its activities conducted together with vulnerable groups. The Society should always take the human rights situation into consideration in

deciding which groups are the most vulnerable in its country and should actively advocate in their favour. The Federation and other National Societies have a responsibility to assist in this process.

The ICRC will continue to play an important role in sensitive and dangerous situations, but ought to find ways of cooperating more closely with the National Society in question.

The role of the Federation, the ICRC and the Henry Dunant Institute

Local human rights work would need to be supplemented and reinforced at the international level by the provision of information and know-how and by concerted action in various international fora. The National Societies will need back-up in the form of evaluation, ideas as to methods and means, collated information on the extent of certain problems, etc. Responsibility for this kind of support should probably lie with the Federation, working in cooperation with the ICRC and the Henry Dunant Institute.

The Federation and the ICRC should also be responsible for ensuring that the Movement plays a more active role in various international fora, with a view to influencing the decisions of the UN and other governmental organizations on matters related to Red Cross and Red Crescent activities. This international lobbying would thus prepare the ground for the local efforts of the National Societies.

A further dimension which should be taken into consideration when developing the role of the Movement in human rights is the possibility of regional cooperation between National Societies. New possibilities, methods and experiences might well be shared with Societies facing similar problems.

What areas of human rights should be a priority for the Movement?

The most vulnerable groups

Past decisions of the Movement, notably the recommendations of the 1989 group of experts and the mandate of the Peace Commission, point to certain areas of human rights and to the rights of certain groups. The target groups for National Societies and the Federation must, however, always be the most vulnerable groups in each society. These will obviously vary from country to country. Each Society has a responsibility to advocate in their favour, and it will thus inevitably

be the human rights most relevant to those groups that will be the concern and priority of each respective National Society.

The rights of certain groups

The area of human rights in general and the rights of certain groups should be taken into consideration when establishing and revising the priorities and activities of each National Society in accordance with the Strategic Work Plan for the Nineties.

Children should always, until proven otherwise, be considered as a potential “most vulnerable group”, and their inability to assess their rights is an important factor to be taken into consideration.

Refugees, asylum-seekers and displaced persons should likewise be seen as one of the most vulnerable groups, until proven otherwise by comparison with other groups.

Women and minorities are potentially vulnerable groups, but their situation will differ from country to country, and their vulnerability will also have to be assessed in relation to that of other groups.

In any case, the specific rights of each of these groups would need further elaboration and should therefore be taken separately by the Peace Commission in its subsequent work on the Movement’s role in promoting human rights.

Fundamental rights of the individual

Racism and racist tendencies should always be a primary concern for the Movement. Persons subjected to racism will inevitably be one of the most vulnerable groups of a society. Advocacy in their favour might be directed to the public at large and/or the government, depending on the manifestations of the racism.

In countries where torture, summary executions, involuntary disappearances and hostage-taking occur, persons subjected to such gross violations of human rights will obviously be labelled a “most vulnerable group”. The perpetrators might be government agents or other authorities. The extent to which a National Society can act in these situations will depend on local circumstances. The ICRC does, however, have a special mandate and thus certain possibilities for action in the event of gross violations of human rights. In these situations, the National Society should have a responsibility to alert the ICRC of violations of human rights, but might find it appropriate to leave contacts with the authorities to the ICRC, which can act on the basis of its very special mandate. The activities of the National Society

for this group of vulnerable persons might therefore be limited to contacts with and support of the activities of the ICRC.

Economic and social rights

The poorest sectors of the population have already been recognized as the most vulnerable group by most National Societies, and advocacy in favour of this group ought naturally to include calls for improvement in the implementation of the relevant economic and social rights.

Moreover, the traditional activities of the National Societies and the Federation centre around health, including aspects such as primary health care, hygiene and nutrition, and the general standard of living of the needy. Lately, activities linked to HIV seropositivity and AIDS have been undertaken by many National Societies. Of special relevance in this area of economic and social rights could be the right to health, the right to an adequate standard of living and the right to basic education.

Specific guidelines would however be needed in this area in which the National Societies and the Federation have special experience and skills, since it has not been touched upon in previous decisions of the Movement on human rights.

Today's rapidly changing world offers new challenges and new possibilities. Anyone who cannot take up the challenges will have to retire from the field of action, and those who cannot take advantage of the new possibilities will be missing a unique opportunity.

Peter Nobel

Peter Nobel, LL.D. h.c., has been Secretary General of the Swedish Red Cross since July 1991 and in 1992 also became Chairman of the Sub-Committee on Human Rights of the Commission on the Red Cross, Red Crescent and Peace. He previously held the office of Ombudsman against Ethnic Discrimination and worked for many years as a practising lawyer dealing with problems concerning refugees. He continues to serve from time to time as an expert in this field on an international level. He has published books and lectured on subjects such as human rights and refugee law.

Mr. Nobel is a consultant to the Scandinavian Institute of African Studies in Uppsala. He is a member of the Council of the International Institute of Humanitarian Law in San Remo and a member of the Board of the European Human Rights Foundation in Amsterdam/London.

International Committee of the Red Cross

CONCLUSION OF A HEADQUARTERS AGREEMENT BETWEEN THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND THE SWISS CONFEDERATION

On 19 March 1993 in Berne, Mr. René Felber, Head of the Federal Department of Foreign Affairs, and Mr. Cornelio Sommaruga, President of the ICRC, signed an agreement to determine the legal status of the ICRC in Switzerland.

The purpose of this agreement was threefold:

The Swiss Confederation wished to confirm, by a legal instrument, the independence of the ICRC, which the federal authorities have in any case consistently respected in the past. The objectives of such an agreement were clearly stated in the report by the study group set up by the Federal Council to consider future Swiss foreign policy:

*“The federal authorities should avoid mixing up Switzerland’s policy with the activities of the ICRC and the neutrality of the State with the Committee’s humanitarian neutrality. They should not attempt to influence the decisions of the ICRC and should respect its independence. This position would become clearer if Switzerland were to conclude a headquarters agreement with the Committee, granting it the international immunities and privileges usually accorded to international organizations in Geneva”.*¹

For the International Committee, the agreement served to confirm the international status of the institution, whose functions are laid down in the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, and in the Statutes of the International Red Cross and Red Crescent Movement; to place relations between the ICRC and the Confederation on the footing of public international law; and to guarantee the ICRC’s independence irrespective of any changes in Switzerland’s foreign policy.

Finally, a headquarters agreement would serve to clarify all legal relations between the International Committee and the Swiss Government.

¹ *Swiss Neutrality Put to the Test — Swiss Foreign Policy between Continuity and Change, Report by a Study Group on Questions of Swiss Neutrality*, Berne, Federal Chancellery, March 1992, page 25.

The agreement of 19 March 1993 fully meets the above objectives.

Under the agreement, the Federal Council recognizes the ICRC's international juridical personality and legal capacity in Switzerland, and guarantees its independence and freedom of action. The agreement confers on the ICRC the immunities granted to international organizations having their seat in Switzerland (inviolability of premises, archives, correspondence and means of communication, customs exemptions, immunity from legal process and execution, etc.); it also accords the members and staff of the ICRC, and experts consulted by it, immunity from legal process for all acts accomplished in the course of their duties. On the other hand, the agreement does not confer any fiscal immunities on the members and staff of the ICRC; the International Committee decided of its own accord not to request such an exemption because the members and the large majority of its staff are Swiss citizens, and also having regard to the magnitude of the Confederation's financial support for the ICRC's work, in particular its financing of a major part of the institution's headquarters budget. In this respect, the agreement of 19 March 1993 differs from those which have been concluded with countries where the ICRC has a delegation. The articles governing the settlement of disputes on the application or interpretation of the agreement are aligned on those contained in several of the 45 headquarters agreements which the ICRC has previously concluded with various countries, and those contained in the headquarters agreements concluded between the Swiss Confederation and intergovernmental organizations having their seat in Switzerland. Thus, although it is concluded between Switzerland and a legal person domiciled in Switzerland, the agreement of 19 March 1993 is unquestionably an international agreement under international law.

In signing the headquarters agreement with the Confederation, the ICRC in no way wishes to reject its Swiss origins, nor does it forget the generous support which it has always received from the Swiss Confederation and the people of Switzerland. It intends to maintain the friendly ties which have always existed between Berne and Geneva. Similarly, the ICRC trusts that the Confederation, which is the depositary State of the Geneva Conventions, will continue in future to grant it the same support as it has unfailingly provided in the past.

**AGREEMENT
BETWEEN
THE INTERNATIONAL COMMITTEE
OF THE RED CROSS
AND
THE SWISS FEDERAL COUNCIL
to determine the legal status of the Committee
in Switzerland**

The International Committee of the Red Cross,
on the one hand,

and

the Swiss Federal Council,
on the other,

wishing to determine the legal status of the Committee in Switzerland and, to that end, to regulate their relations in a headquarters agreement,

have agreed on the following provisions:

I. STATUS, PRIVILEGES AND IMMUNITIES OF THE ICRC

Article 1

Personality

The Federal Council recognizes the international juridical personality and the legal capacity in Switzerland of the International Committee of the Red Cross (hereinafter referred to as the Committee or the ICRC), whose functions are laid down in the Geneva Conventions of 1949 and the Additional Protocols of 1977 and in the Statutes of the International Red Cross and Red Crescent Movement.

Article 2

Freedom of action of the ICRC

The Swiss Federal Council guarantees the ICRC independence and freedom of action.

Article 3

Inviolability of premises

The buildings or parts of buildings and the adjoining ground used for the purposes of the ICRC, by whomsoever they may be owned, shall be inviolable. No agent of the Swiss public authority may enter them without the express consent of the Committee. Only the President or his duly authorized representative shall be competent to waive this right of inviolability.

Article 4

Inviolability of archives

The archives of the ICRC and, in general, all documents and data media belonging to it or in its possession shall be inviolable at all times, wherever they may be.

Article 5

Immunity from legal process and execution

1. In the conduct of its business, the ICRC shall enjoy immunity from legal process and execution, except:

- a) in so far as this immunity is formally waived, in a specific case, by the President of the ICRC or his duly authorized representative;
- b) in respect of civil liability proceedings brought against the ICRC for damage caused by any vehicle belonging to it or circulating on its behalf;
- c) in respect of a dispute, on relations of service, between the Committee and its staff, former staff or their rightful claimants;
- d) in respect of seizure, by court order, of salaries, wages and other emoluments owed by the ICRC to a member of its staff;

- e) in respect of a dispute between the ICRC and the pension fund or provident fund referred to in Article 10, paragraph 1, of the present agreement;
- f) in respect of a counter-claim directly related to principal proceedings brought by the ICRC; and
- g) in respect of execution of a settlement by arbitration pursuant to Article 22 of the present agreement.

2. The buildings or parts of buildings, the adjoining ground and the assets owned by the ICRC or used by it for its purposes, wherever they may be and by whomsoever they may be held, shall be immune from any measure of execution, expropriation or requisition.

Article 6

Fiscal position

1. The ICRC, its assets, income and other property shall be exempt from direct federal, cantonal and communal taxation. With regard to immovable property, however, such exemption shall apply only to that which is owned by the Committee and which is occupied by its services, and to income derived therefrom.

2. The ICRC shall be exempt from indirect federal, cantonal and communal taxation. Exemption from federal purchase tax shall be granted only for purchases intended for the official use of the Committee, and in so far as the amount invoiced for one same and single purchase exceeds five hundred Swiss francs.

3. The ICRC shall be exempt from all federal, cantonal and communal charges which do not represent charges for specific services rendered.

4. If necessary, the exemptions mentioned above may be applied by way of reimbursement at the request of the ICRC and in accordance with a procedure to be determined by the ICRC and the competent Swiss authorities.

Article 7

Customs position

The customs clearance of articles intended for the official use of the ICRC shall be governed by the Ordinance of 13 November 1985 on the customs privileges of international organizations, of the States

in their relations with such organizations and of special Missions of foreign States.²

Article 8

Free disposal of funds

The Committee may receive, hold, convert and transfer funds of any kind, gold, any currency, specie and other securities, and may dispose of them freely both within Switzerland and in its relations with other countries.

Article 9

Communications

1. The ICRC shall enjoy for its official communications treatment not less favourable than that accorded to the international organizations in Switzerland, to the extent compatible with the International Telecommunication Convention of 6 November 1982.³

2. The ICRC shall have the right to dispatch and receive its correspondence, including data media, by duly identified courier or bags which shall have the same privileges and immunities as diplomatic couriers and bags.

3. No censorship shall be applied to the duly authenticated official correspondence and other official communications of the ICRC.

4. Operation of telecommunication installations must be coordinated from the technical standpoint with the Swiss PTT⁴.

Article 10

Pension fund

1. Any pension fund or provident fund established by the ICRC and officially operating on behalf of the President, the members of the Committee or ICRC staff shall, with or without separate legal status, be accorded the same exemptions, privileges and immunities as the ICRC itself with regard to its movable property.

2. Funds and foundations, with or without separate legal status, administered under the auspices of the ICRC and devoted to its official

² RS 631.145.0

³ RS 0.784.16

⁴ PTT — Post, Telegraph and Telephones (ed.)

purposes, shall be given the benefit of the same exemptions, privileges and immunities as the ICRC itself with regard to their movable property. Funds set up after the entry into force of the present agreement shall enjoy the same privileges and immunities, subject to the agreement of the competent Federal authorities.

II. PRIVILEGES AND IMMUNITIES GRANTED TO PERSONS SERVING THE ICRC IN AN OFFICIAL CAPACITY

Article 11

*Privileges and immunities
granted to the President and the members of the Committee
and to ICRC staff
and experts*

The President and the members of the Committee, and ICRC staff and experts, irrespective of nationality, shall enjoy the following privileges and immunities:

- a) immunity from legal process, even when they are no longer in office, in respect of words spoken or written and acts performed in the exercise of their functions;
- b) inviolability for all papers and documents.

Article 12

Privileges and immunities granted to staff not of Swiss nationality

In addition to the privileges and immunities mentioned in Article 11, ICRC staff who are not of Swiss nationality shall:

- a) be exempt from national service obligations in Switzerland;
- b) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and aliens' registration;
- c) be accorded the same privileges in respect of exchange and transfer facilities for their assets in Switzerland and in other countries as are accorded to officials of the other international organizations;
- d) be given, together with their relatives dependent on them and their domestic staff, the same repatriation facilities as are accorded to officials of the international organizations;

- e) remain subject to the law on old-age and survivors' insurance and continue to pay AVS/AI/APG⁵ contributions and unemployment and accident insurance contributions.

Article 13

Exceptions to immunity from legal process and execution

The persons referred to in Article 11 of the present agreement shall not enjoy immunity from legal process in the event of civil liability proceedings brought against them for damage caused by any vehicle belonging to them or driven by them or in the event of offences under federal road traffic regulations punishable by fine.

Article 14

Military service of Swiss staff

1. In a limited number of cases, leave of absence from military service (leave for foreign countries) may be granted to Swiss staff holding executive office at ICRC headquarters; persons granted such leave shall be dispensed from compulsory training service, inspections and shooting practice.

2. For the other Swiss staff of the ICRC, applications for dispensation from or rescheduling of training service, providing all due reasons and counter-signed by the staff member concerned, may be submitted by the ICRC to the Federal Department of Foreign Affairs for transmission to the Federal Military Department, which will give them favourable consideration.

3. Finally, a limited number of dispensations from active service will be granted to ICRC staff in order to enable the institution to continue its work even during a period of mobilization.

Article 15

Object of immunities

1. The privileges and immunities provided for in the present agreement are not designed to confer any personal benefits on those concerned. They are established solely to ensure, at all times, the free functioning of the ICRC and the complete independence of the persons concerned in discharging their duties.

⁵ Old-age, survivors', disability and loss of earnings insurance (ed.).

2. The President of the ICRC must waive the immunity of any staff member or expert in any case where he considers that such immunity would impede the course of justice and could be waived without prejudice to the interests of the ICRC. The Assembly of the Committee shall have the power to waive the immunity of the President or of the Committee members.

Article 16

Entry, stay and departure

The Swiss authorities shall take all necessary measures to facilitate the entry into, the stay in, and the departure from Swiss territory of all persons, irrespective of their nationality, serving the ICRC in an official capacity.

Article 17

Identity cards

1. The Federal Department of Foreign Affairs shall give the ICRC, for the President, each member of the Committee and each staff member, an identity card bearing the photograph of the holder. This card, authenticated by the Federal Department of Foreign Affairs and the ICRC, shall serve to identify the holder vis-à-vis all federal, cantonal and communal authorities.

2. The ICRC shall transmit regularly to the Federal Department of Foreign Affairs a list of the members of the Committee and staff of the ICRC who are assigned to the organization's headquarters on a lasting basis, indicating for each person the date of birth, nationality, residence in Switzerland or in another country, and the post held.

Article 18

Prevention of abuses

The ICRC and the Swiss authorities shall cooperate at all times to facilitate the proper administration of justice, secure the observance of police regulations and prevent any abuse in connection with the privileges and immunities provided for in this agreement.

Article 19

Disputes of a private nature

The ICRC shall make provision for appropriate modes of settlement of:

- a) disputes arising out of contracts to which the ICRC is or becomes a party and other disputes of a private law character;
- b) disputes involving any ICRC staff member who by reason of his or her official position enjoys immunity, if such immunity has not been waived under the provisions of Article 15.

III. NON-RESPONSIBILITY OF SWITZERLAND

Article 20

Non-responsibility of Switzerland

Switzerland shall not incur, by reason of the activity of the ICRC on its territory, any international responsibility for acts or omissions of the ICRC or its staff.

IV. FINAL PROVISIONS

Article 21

Execution

The Federal Department of Foreign Affairs is the Swiss authority which is entrusted with the execution of this agreement.

Article 22

Settlement of disputes

1. Any divergence of opinion concerning the application or interpretation of this agreement which has not been settled by direct negotiations between the parties may be submitted by either party to an arbitral tribunal composed of three members, including the chairman thereof.

2. The Swiss Federal Council and the ICRC shall each appoint one member of the tribunal.

3. The members so appointed shall choose their chairman.
4. In the event of disagreement between the members on the choice of chairman, the chairman shall be chosen, at the request of the members of the tribunal, by the President of the International Court of Justice or, if the latter is unavailable, by the Vice-President, or if he in turn is unavailable, by the longest-serving member of the Court.
5. The tribunal shall be seized of a dispute by either party by petition.
6. The tribunal shall lay down its own procedure.
7. The arbitration award shall be binding on the parties to the dispute.

Article 23

Revision

1. The present agreement may be revised at the request of either party.
2. In this event, the two parties shall consult each other concerning the amendments to be made to its provisions.

Article 24

Denunciation

The present agreement may be denounced by either party, giving two years' notice in writing.

Article 25

Entry into force

The present agreement enters into force on the date of its signature.

Done at Berne, on 19 March 1993, in two copies in French.

For the International
Committee of the Red Cross:

The President:

Cornelio Sommaruga

For the Swiss Federal Council:

*The Head of the Federal
Department of Foreign Affairs:*

René Felber

In the Red Cross and Red Crescent World

100 YEARS OF THE THAI RED CROSS SOCIETY 1893-1993

Origin and development

The year 1893 is a milestone in Thai history, marking not only Thailand's success in resisting imperialist threats, but also the birth of the Thai Red Cross Society. Like the original Red Cross, founded 30 years earlier by Henry Dunant in war-torn Europe, the Thai Red Cross began as the Thai nation fought, on both diplomatic and military fronts, to defend its territorial rights against the might of France. The men who fought for King and country along the Mekong River received very special assistance, thanks to the humanitarian spirit of Thanpuying Plien Pasakornwong, a lady of the royal court.

On 13 April 1863, Thanpuying Plien wrote a letter to Queen Savang Wadhana, expressing her desire to be of assistance to His Majesty the King and her concern for the men at the front:

“We have learned that external forces have threatened to seize part of our land.... It is thus necessary for His Majesty to protect us and fight to keep Siam a free nation. I believe that we women should support and serve His Majesty in this effort through contributions that will enable us to create a *Red Unalom Society*. The Society will provide medical care and support for the men in both the Royal Navy and the Royal Army and will take care of them through the provision of nurses and medical supplies wherever needed. In the city, the Society will set up a hospital of whatever size our resources and efforts allow. Should this idea prove acceptable to Your Majesty, we would like to humbly request that your Majesty take the Society under Royal Patronage....”

Thanpuying Plien's idea was readily accepted by the Queen and approved by King Chulalongkorn. So it was that through her efforts the *Red Unalom Society*, the forerunner of the Thai Red Cross Society, was born. In 1910, during the reign of King Vajiravudh, the Red Unalom Society became the Thai Red Cross Society and the Chulalongkorn Hospital, built as a memorial to King Chulalongkorn, was placed under the Society's management. The Society was formally recognized by the Thai Government in Act B.E. 2461 (1918) and Act B.E. 2463 (1920), as being based on the Geneva Convention,

to which Thailand was a party, and on the Fundamental Principles of the Red Cross as formulated by the International Conference of the Red Cross. In 1920, the International Committee of the Red Cross conferred official recognition upon the Thai Red Cross Society, which was accepted as a member of the League of Red Cross Societies in 1921.

From the very beginning, when H.M. King Chulalongkorn graciously endorsed the initiative of Thanpuying Plien, the Thai Red Cross Society has enjoyed royal patronage over the years. It has a very special link with the present royal family, since H.M. Queen Sirikit is its President and H.R.H. Princess Maha Chakri Sirindhorn its Executive Vice-President.

The Thai Red Cross Society was born out of concern for men at war. However, it soon became involved in activities to promote health and prevent disease. Its main centre remains Chulalongkorn Hospital and the adjacent immunization services and blood bank. After World War II the Society had expanded to comprise 12 divisions, 12 regional stations, and provincial Red Cross chapters in all 72 provinces of the country.

Organization

The Thai Red Cross Society's activities are conducted by 12 separate divisions.

1. The *Central Bureau* exercises general supervision over all activities and is the Society's General Secretariat. It also supervises the activities of services such as Health in the Home Instruction, Refugee Relief Operations, the Tracing and Mailing Services Centre and the Rehabilitation Centre, which offers not only medical care but also job training programmes for the disabled. This 80-bed centre provides medical treatment for approximately 220 patients each year.

2. The *Chulalongkorn Hospital Division* is responsible for the treatment and care of the sick and wounded both in wartime and in time of peace. It has a capacity of 1,400 beds. The hospital also serves as a teaching facility for the Chulalongkorn University Faculty of Medicine. The hospital is well known worldwide for heart and liver transplant operations, *in vitro* fertilization techniques, and expertise on problems related to AIDS. Many of the nation's outstanding physicians and other medical personnel are on its staff.

3. The *Relief Division* is responsible for emergency disaster relief, medical services, health education, first-aid training, staff training for relief services, and stockpiling of supplies for emergencies. The Division also super-

vises eleven Red Cross health stations in different parts of the country. These carry out health promotion and disease prevention activities, provide prenatal, delivery and post-natal services, and conduct immunization programmes. They also take part in relief activities in the event of disaster. The Convalescent Home, which also comes under this division, provides care for convalescent patients and serves as a centre for public meetings and seminars.

4. The *Science Division* has its headquarters in the Queen Saovabha Memorial Institute, which was founded in 1922 by King Vajiravudh in memory of his mother. The main function of the Science Division is to manufacture biological products for use in normal as well as in emergency situations. These products include BCG vaccine, rabies vaccine and parenteral solutions. The Division also houses the WHO Collaborating Centre for Research on Rabies Pathogenesis and Prevention, which is run by the Division's Assistant Director. The Centre is the first in South-East Asia to work specifically on problems related to post-exposure rabies treatment and rabies pathogenesis. There is a snake farm in the Division's compound. Here poisonous snakes are bred for their venom, used for the production of anti-venom sera and also for scientific research.

5. The *Red Cross Youth Division* was established with the following objectives:

- (a) To inculcate the ideals of peace among young people;
- (b) To foster healthy habits;
- (c) To develop among young people an awareness and understanding of their civic and moral responsibilities and to encourage participation in humanitarian services;
- (d) To promote international friendship and understanding among young people.

These objectives are pursued through camps and various public service projects, including participation in activities abroad.

6. The *Red Cross Volunteers Division* supervises the men and women who volunteer their services in the event of emergency as well as in peacetime. Their main activities include giving advice to outpatients, making up packets of comfort items for patients, taking care of orphans, visiting wounded soldiers and policemen, and raising funds for the Thai Red Cross Society.

7. The *National Blood Centre*, established in 1969, provides blood and blood derivatives for the whole country. It meets needs for blood transfusion, carries out blood grouping and supplies plasma for the prevention of hepatitis B. It assists provincial Red Cross chapters in setting up National Blood Centre branches in all 73 of the country's provinces and some branches in hospitals in Bangkok. Such branches are managed under the supervision of the National Blood Centre. At present the blood supply is not sufficient and campaigns urging people to give their blood continue.

8. The *Somdetch Hospital* is located in Sriracha, a seaside resort on the east coast of the Gulf of Thailand, some 117 kilometres from Bangkok. It has a capacity of over 400 beds and provides medical services to more than 120,000 outpatients a year. The hospital is in the process of expanding to meet the rapidly growing demand for such services with the development of the eastern seaboard region.

9. The *Fund-Raising Division* is entrusted with the task of finding ways and means to increase the financial resources of the Thai Red Cross Society. Fund-raising activities take place all through the year with special emphasis on the Annual Red Cross Fair and the Diplomatic Wives' Bazaar, which raise substantial sums every year.

10. The *Finance Division* manages the Society's finances. It was previously under the authority of the Central Bureau but was recently upgraded to division status owing to the scope of its responsibilities.

11. The *College of Nursing* is a teaching institution offering a four-year course leading to a bachelor's degree in nursing and a one-year course in practical nursing. About 200 nurses and 70 practical nurses qualify every year, providing staff for Red Cross hospitals and stations.

12. The *Personnel Division* is responsible for the management of the Society's 7,000 staff members. The Thai Red Cross Society also supports the Eye Bank, which serves all hospitals and clinics where cornea transplants are performed.

Recent programmes and activities

Today the Thai Red Cross Society plays a major role in providing health care for the Thai people in general and stands ready in the event of crisis

to meet the needs of those affected. Some of the programmes and achievements of the past few years are briefly described below.

Modern medical technology

Chulalongkorn Hospital has kept abreast of new technologies in the medical field and is considered to be one of the leading medical institutions in Asia. In 1987, the first heart transplant was carried out on a young man who is still alive and well today. Since then, more than 20 heart transplants have been performed with a 100-per-cent success rate. The demand for heart transplants is high but there is a shortage of donors. To solve this problem, the Thai Red Cross Society is setting up a project to locate potential donors and match them with patients.

In vitro fertilization is another technique which has been used successfully with a number of patients finding difficulty in having children. In 1990, for instance, a woman gave birth to triplets, three healthy baby girls, thus ending the anxiety and frustration of herself and her husband who were rewarded three fold for their long wait.

Recently, a new technique using an artificial sac covering for gastroschisis was awarded a gold medal by the British Royal College of Surgeons. The method uses nylon fabric as a substitute for the more expensive silastic sheets or prolene mesh currently used for the surgical correction of gastroschisis in neonates, thus enabling doctors to rely on local materials at a much lower cost.

Blood Centre

The Society's Blood Centre is the main source of blood supplies in the country, having provided around 250,000 units in recent years. It also performs a number of procedures requiring advanced technology, such as the production of purified albumin and immunoglobins using the chromatography technique. In view of the AIDS epidemic, it is very concerned with blood safety and has established stricter screening procedures. Each unit of blood donated is tested for HIV antibody. The Blood Centre is now a leader among ASEAN countries in the provision of blood transfusion services, supplying neighbouring countries as well as local hospitals.

Eye Bank

The Thai Red Cross Eye Bank was set up to serve hospitals throughout the region. Public awareness campaigns are launched to encourage cornea pledges and donation, making cornea transplant surgery possible whenever

needed. Some 194,471 cornea pledges have been made to date, and 2,232 patients have received cornea transplant surgery.

Programme on AIDS

Since the first diagnosis of AIDS in Thailand, carried out by Dr. Praphan Phanuphak of the Thai Red Cross in 1985, HIV infection has become a major epidemic with the number of infected persons estimated at around 500,000 in 1993. The Thai Red Cross Society has remained a leader in the struggle to control this deadly disease. By the end of 1985 an AIDS Clinic had been set up in the Thai Red Cross hospital and more than 3,000 patients have been provided with services since. In January 1990 the Programme on AIDS was established within the Science Division of the Society. Its activities are both biomedical and psychosocial. Along with patient care, drug trials and development of the new diagnostic tests, it offers counselling, education and outreach support and conducts psychosocial and behavioural research. On 4 July 1991 the first anonymous testing centre in Thailand was established on the grounds of the Thai Red Cross Society in Bangkok, to cater for people who wanted to be tested without fear of having their identity revealed. The clinic receives an average of 50 persons per day. This has encouraged the Ministry of Public Health to establish similar services in all provinces of Thailand. One important feature of the testing centre is that all patients are required to attend pre- and post-test counselling sessions.

The Programme on AIDS has been at the forefront of efforts to eliminate discrimination against HIV-positive individuals through campaigns in the mass media, discussions, publications and educational programmes. Training activities, workshops and conferences are conducted on a regular basis both in Bangkok and in the provinces.

Disaster Relief

Thailand enjoys a temperate climate and experiences relatively few major disasters. However, it is subject to seasonal crises such as floods and droughts which seriously affect the lives of subsistence farmers. Through its eleven stations in various parts of the country, the Society provides disaster relief and emergency medical care as well as health education services. The relief division is always ready to carry out health promotion and disease prevention programmes.

In the event of large-scale disasters such as the severe floods of 1988 and typhoon Gay in 1989, both affecting areas in the south of the country and leaving ugly trails of devastation and human suffering, the Society enlists the support of various organizations at home and abroad. The Society even set up a new Red Cross Health Station in the south to cope with the consequences of

those disasters and to serve as a treatment centre for the 14 provinces of southern Thailand.

At times of internal political unrest leading to violence, as in recent years, the Society's volunteers go into the affected areas, braving all the dangers involved, to provide care for the wounded.

Assistance to refugees

For almost 50 years now, Thailand has faced the problem of refugees pouring in from neighbouring countries: first in 1945, Vietnamese fleeing their country ravaged by a war of independence; then in 1975, Laotians seeking freedom from the communist regime; and in 1979, Kampuchean running away from their war-torn country. In all, more than half a million people have crossed the borders into Thailand. While the United Nations has played a major part in assisting these refugees and seeking to resettle them in third countries, the Society has been involved in the supervision of various programmes to meet their basic needs. Such programmes include medical services, provision of medicines and relief supplies, and tracing and mailing services. During the period 1979-1986, a total of 1,856,501 outpatient consultations were given and 2,127 surgical operations performed. The Society has also assisted Thai people living along the borders of countries affected by war, as they have suffered in many ways from this influx of refugees. During the same period the Society has given these Thai villagers 967,146 outpatient consultations and performed 3,122 surgical operations.

Youth programme

Training programmes for youth members, leaders and instructors are organized all year round by the Red Cross Youth Division in cooperation with the Ministry of Education. There are about one million Red Cross Youth members, for whom various activities are organized to promote health and teach them the Red Cross principles and the basics of humanitarian law.

Young people out of school have also benefited from vocational training and income-generating programmes. For instance, a camp for illiterate youngsters was organized in the Thai-Khmer border area to give 80 young people an opportunity to learn about the humanitarian principles of the Red Cross and basic health and social matters such as drug addiction, AIDS, first-aid, health care, community services, agriculture and Thai culture.

Every four years, Asia and Pacific Red Cross Youth camps are organized for up to 3,000 participants to promote international relations. Each camp focuses on an issue of common concern, such as protection of the environment, and on humanitarian matters.

Thai Red Cross Children's Home

In 1987 the Society opened a home for abandoned or orphaned children. While providing a nurturing environment for these children, in many cases it also seeks to locate their natural parents and to reunite them with their families. Where this is not possible, attempts are made to place them in foster homes.

International activities

In a spirit of universal brotherhood and solidarity, the Thai Red Cross Society has contributed relief supplies to victims of major natural disasters or political strife in countries such as Jordan, Iran, the Philippines, Sri Lanka, Bangladesh, China and Cambodia.

Every year the Thai Red Cross Society receives a large number of distinguished visitors. At the same time, members of the Society, and especially the staff of Chulalongkorn Hospital, actively participate in international events, conventions and seminars.

Conclusion

The Thai Red Cross Society was born out of patriotic ideals in time of war. It has grown into a national movement to upgrade the quality of life of the Thai people and to provide assistance in times of crisis. It has installed highly sophisticated medical facilities in its main hospital in Bangkok and in many programmes such as the Blood Centre. In connection with the AIDS crisis it has developed a number of medical and psychosocial strategies. In times of political upheavals, whether internal or in neighbouring countries, the Society has provided relief services for the victims, especially the large number of refugees who have crossed the border into Thailand.

Possibly the best indicator of the success of the Red Cross movement in Thailand is the degree to which the Thai people themselves have become involved in its activities. Services are provided out of humanitarian concern by all sorts of people, such as Red Cross volunteers and Red Cross Youth. The public also gives the National Society financial support: donations are made all through the year and fund-raising efforts culminate with the Thai Red Cross Fair, which is attended by over a million visitors. Another example

of this active participation is the Blood Centre's roster of hundreds of thousands of blood donors. In each of Thailand's 73 provinces there is a Red Cross chapter which encourages this popular contribution to the realization of the goals and principles of the Red Cross.

Phan Wannamethee
Secretary General
The Thai Red Cross Society

Rules of the International Humanitarian Fact-Finding Commission*

(adopted on 8 July 1992)

The Commission,

Having regard to Protocol I additional to the Geneva Conventions of 1949 for the protection of the victims of armed conflicts, hereinafter referred to as “the Protocol”,

Bearing in mind its competence in respect of enquiry as well as of good offices, recognized for the purpose of obtaining the observation of the principles and rules of international law applicable in armed conflict,

Convinced of the need to take all appropriate initiatives as necessary in cooperation with other international bodies, in particular the United Nations, with the purpose of carrying out its functions in the interest of the victims of armed conflict,

Acting under Article 90 of the Protocol,

Adopts the present Rules:

PART I ORGANIZATION OF THE COMMISSION

Chapter I — Members of the Commission

Rule 1 — Independence and Solemn Declaration

1. In the performance of their functions, the Members of the Commission (hereinafter referred to as the “Members”) shall accept no instructions from any authority or person whatsoever and serve in their personal capacity.

2. Before taking up his duties, each Member shall make the following solemn declaration:

“I will exercise my functions as a Member of this Commission impartially, conscientiously and in accordance with the provisions of the Protocol and these Rules, including those concerning secrecy”.

* Title adopted by the Commission.

Rule 2 — Availability

Unless prevented by serious reasons duly justified to the President, Members shall at all times be able to respond to a call by the President or, as the case may be, by the Head of a Chamber in order to ensure the accomplishment of the Commission's functions under the Protocol.

Rule 3 — Incompatibilities

During their term of office, Members shall not engage in any occupation or make any public statement that may cast a legitimate doubt on their morality and impartiality required by the Protocol. In case of doubt, the Commission shall decide on the proper measures to take.

Rule 4 — Resignation

1. The resignation of a Member shall be addressed to the President, who shall communicate it without delay to the secretariat of the Commission (hereinafter referred to as the "Secretariat"). The Secretariat shall register the resignation under Rule 37(1).

2. The President shall address his resignation to the first Vice-President.

3. The resignation shall take effect on the day of its registration by the Secretariat who shall without delay inform the Member of the date.

Rule 5 — The filling of casual vacancies

1. The Commission shall ensure that each candidate possesses the qualifications required by Article 90 of the Protocol and that, in the Commission as a whole, equitable geographical representation is maintained.

2. In the absence of a consensus among the Members, the following provisions shall apply:

a. When no candidate obtains in the first ballot the majority required, a second ballot, restricted to the two candidates who obtained the highest number of votes, shall be taken.

b. If the second ballot is inconclusive and a majority vote of Members present is required, a third ballot shall be taken in which votes may be cast for any eligible candidate. If the third ballot is inconclusive, the next ballot shall be restricted to the two candidates who obtained the highest number of votes in the third ballot and so on, with unrestricted and restricted ballots alternating, until a Member is elected.

c. The elections referred to in this Rule shall be held by secret ballot. Election shall be by a majority of the Members present.

3. A Member elected under this Rule shall serve for the remainder of the term of his predecessor.

Chapter II — Presidency and precedence

Rule 6 — Election of the President and Vice-Presidents

1. The Commission shall elect from among its Members a President as well as a first and second Vice-President who together shall constitute the Bureau.

2. The President and the Vice-Presidents shall be elected for a term of two years. They may be re-elected. However, the term of office of the President or of a Vice-President shall end if he ceases to be a Member.

3. If the President or a Vice-President ceases to be a Member or resigns his office of President or Vice-President before its normal expiry, the Commission may elect a successor for the remainder of the term of that office.

4. The elections referred to in this Rule shall be held by secret ballot. Election shall be by a majority of the Members.

Rule 7 — Precedence

1. The Members shall take precedence after the President and Vice-Presidents according to the duration of their term of office.

2. Members having the same length of time in office shall take precedence according to age.

Rule 8 — Functions of the President

1. The President shall chair the meetings of the Commission and perform all other functions conferred upon him by the Protocol, these Rules and by the Commission.

2. In exercising his functions, the President shall remain under the authority of the Commission.

3. The President may delegate some of his functions to either Vice-President.

4. In co-operation with the Vice-Presidents and the Secretariat, the President shall take the necessary measures to ensure that the functions of the Commission can be exercised at all times and expeditiously.

Rule 9 — Temporary replacement of the President

The first Vice-President shall take the place of the President if the presidency is vacant or the President is prevented from carrying out his duties, especially if, in the case of an enquiry, he is a national of a party to the conflict. The second Vice-President shall replace the first Vice-President if the latter is prevented from carrying out his duties or if the office of first Vice-President is vacant.

Rule 10 — Replacement of the President and Vice-Presidents

If the President and Vice-Presidents are at the same time prevented from carrying out their duties or if their offices are vacant at the same time, the duties of President shall be carried out by another Member according to the order of precedence established by Rule 7.

PART II WORKING OF THE COMMISSION

Chapter I — Seat of the Commission, Secretariat and languages

Rule 11 — Seat of the Commission

The seat of the Commission shall be in Bern, Switzerland.

Rule 12 — Secretariat

The functions of the Secretariat of the Commission shall be assumed by the depositary State of the Geneva Conventions and the Protocol.

Rule 13 — Languages

The official and working languages of the Commission shall be English and French.

Chapter II — Meetings of the Commission

Rule 14 — Holding of meetings

1. The Commission shall hold such meetings as it considers necessary to perform its functions. It shall meet at least once a year. The Commission shall

also meet if at least one third of the Members so request or the Bureau so decides.

2. The Commission shall hold its meetings at its seat, unless the Commission or the Bureau decides otherwise.

3. Commission meetings shall be convened at dates set by the Commission or by the Bureau.

4. The Secretariat shall notify the Members of the date, time and place of each Commission meeting. Whenever possible, such notification shall be given at least six weeks in advance.

Rule 15 — Agenda

1. Following consultation with the President, the Secretariat shall transmit a draft agenda to the Members of the Commission, whenever possible at least six weeks before a meeting.

2. The agenda shall be adopted by the Commission at the beginning of the meeting.

Rule 16 — Documentation

The Secretariat shall transmit to the Members the working documents relating to the different agenda items, whenever possible at least four weeks in advance.

Rule 17 — Quorum

Eight Members shall constitute a quorum.

Rule 18 — Privacy of meetings

1. The Commission shall meet *in camera*. Its deliberations shall remain confidential.

2. Apart from the Members of the Commission, only members of the Secretariat, interpreters and persons assisting the Commission may attend its meetings, unless the Commission determines otherwise.

Rule 19 — Hearings

The Commission may hear any person whom it considers to be in a position to assist it in the performance of its functions.

PART III
ENQUIRIES

Chapter I — Enquiry request

Rule 20 — Lodging the request

1. The request for an enquiry shall be addressed to the Secretariat.
2. It shall state the facts that, in the opinion of the requesting party, constitute a grave breach or a serious violation, as well as the date and the place of their occurrence.
3. It shall list the evidence the requesting party wishes to present in support of its allegations.
4. It shall name the authority to which all communications concerning the enquiry shall be addressed, as well as the most expedient means of contacting that authority.
5. Where applicable and to the extent possible, it shall contain, in the enclosure, the original or a certified copy of any document cited in the list of evidence.
6. If the Commission receives a request for an enquiry under Article 90(2)(d), and the consent of the other party or parties concerned has not yet been indicated, the Commission shall refer the request to that party or those parties with a request that it or they indicate its or their consent.

Rule 21 — Examination of the request for an enquiry

1. On receiving a request for an enquiry, the President shall without delay advise the interested party or parties of it. He shall send them, as soon as possible, a copy of the request as well as its enclosures and, subject to Rule 20(6), advise them of their right to submit, within a fixed time period, their observations concerning the admissibility of the request. The setting of that time does not however prevent the Commission from opening the enquiry at once.
2. The Commission may ask the requesting party to supply additional information within a fixed time limit.
3. If the competence of the Commission is contested, the latter shall decide by means of speedy consultation.
4. The Commission shall inform the requesting party if the request does not meet the conditions described in Rule 20, or if an enquiry cannot be conducted for any other reason.
5. All parties to the conflict shall be informed of the Commission's decision to open an enquiry.

6. If, in the course of an enquiry, the requesting party communicates to the Commission the withdrawal of its request, the Chamber shall cease its enquiry only with the consent of the other parties to the conflict. The withdrawal does not affect the payment of the costs of the enquiry in accordance with Article 90(7) of the Protocol.

Rule 22 — Expenses of the enquiry

The President, in consultation with the Secretariat, shall determine the amount to be advanced by the requesting party to cover the expenses of the enquiry.

Chapter II — The Chamber

Rule 23 — Formation of the Chamber

Unless the interested parties agree otherwise, the following provisions apply:

a. The President shall appoint, after consultation with the Bureau and the parties to the conflict, and on the basis of equitable geographical representation, five members of the Chamber, not nationals of any party to the conflict.

b. The President shall invite the parties concerned to appoint, within a fixed time period, two additional persons, not nationals of any party to the conflict, as *ad hoc* members of the Chamber.

c. If one or both of the *ad hoc* members have not been appointed within the time limit set under Rule 23(b), the President shall immediately make the appointments necessary to fill the seats of the Chamber.

d. The President of the Commission shall appoint the Head of the Chamber.

e. If a member appointed as a member of a Chamber believes that there are reasons disqualifying him from participating in the enquiry, he shall immediately impart them to the President, who may appoint another member.

Rule 24 — Custody of documents

All documents relating to an enquiry shall, as soon as possible, be handed over to the Head of the Chamber who shall be responsible for their registration and custody until the conclusion of the enquiry. They shall then be put in the custody of the Secretariat where they may be viewed by authorized representatives of the interested parties.

Rule 25 — Assistants

1. The Chamber may decide that it shall be assisted by one or more experts or interpreters.
2. All persons assisting the Chamber shall act on the instructions and under the authority of the Head of the Chamber.

Chapter III — Enquiry procedure

Rule 26 — Instructions

The Commission may establish general or specific instructions or guidelines concerning the enquiry.

Rule 27 — Procedure

1. The Chamber shall invite the parties to the conflict to assist it and to present evidence within a fixed time period. It may also seek any other evidence it considers relevant and may carry out an enquiry *in loco*.
2. The Chamber shall determine the admissibility and the weight of the evidence presented by the parties to the conflict, and the conditions under which witnesses shall be heard.
3. The President shall remind the interested parties that, during an enquiry *in loco*, they must assure to the members of the Chamber and all persons accompanying them the privileges and immunities necessary for the discharge of their functions which shall not be less extensive than those accorded to the experts on mission under the 1946 Convention on Privileges and Immunities of the United Nations, as well as their adequate protection.
4. During an enquiry *in loco*, the members of the Chamber shall be issued a document stating their capacity, as well as a white badge displaying in clearly visible black letters the name of the Commission in the local language.
5. The members of the Chamber may separate in order to conduct simultaneous enquiries at different places. In particular, the Chamber may, at any time, detach two or more of its members for an urgent enquiry on the spot and, if necessary, to ensure the preservation of evidence.
6. Five members of the Chamber shall constitute a quorum.
7. The Chamber shall, as soon as possible, communicate the results of its enquiry to the Commission in accordance with the instructions given to it.
8. All the evidence shall be fully disclosed to the parties concerned who shall be informed of their right to comment on it to the Commission.
9. If necessary, the Commission may instruct the Chamber to undertake a complementary enquiry.

Chapter IV — Report and Obligation of Confidentiality

Rule 28 — Preparation of the Commission's report

1. After each enquiry the Commission shall draw up, in the light of the Chamber's findings, a report to be transmitted to the parties concerned. In particular, the Commission shall consider, as appropriate, whether it should take steps to facilitate, through its good offices, the restoration of an attitude of respect for the Geneva Conventions and the Protocol.

2. The President shall transmit the report together with any recommendations the Commission considers appropriate to the parties concerned.

3. The President shall have the date on which the Commission's report was sent to the interested parties duly registered. The Secretariat shall keep in its archives copies of the communications of the Chambers and the reports of the Commission in its custody. These records are accessible only to Members of the Commission while in office.

Rule 29 — Confidentiality

1. No personal data shall be published without the express consent of the person concerned.

2. Members of the Commission, *ad hoc* members of the Chambers, experts and other persons assisting the Commission or a Chamber are under an obligation, during and after their terms of office, to keep secret the facts or information of which they have become aware during the discharge of their functions.

3. The experts and other persons hired to assist the Commission or a Chamber shall, as a condition of their engagement, be required to agree, as a rule in writing, to comply with paragraph 2.

PART IV METHODS OF WORK

Chapter I — Conduct of business

Rule 30 — Powers of the President

The President shall declare the opening and closing of each meeting of the Commission, direct the discussion, ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions. The President, subject to these Rules, shall have control over the proceedings of the Commission and over the maintenance of order at its meetings. The Presi-

dent may, in the course of the discussion of an item, propose to the Commission the limitation of the time to be allowed to speakers, the limitation of the number of times each speaker may speak on any question and the closure of the list of speakers. He shall rule on points of order. He shall also have the power to propose adjournment or closure of the debate or adjournment or suspension of a meeting.

Rule 31 — Proposals

A proposal must be submitted in writing, if a Member so requests.

Rule 32 — Order of voting on proposals and amendments

1. Where a number of proposals relate to the same subject, they shall be put to the vote in the order in which they were submitted. In case of doubt about priority, the President shall decide.

2. Where a proposal is the subject of an amendment, the amendment shall be put to the vote first. Where two or more amendments to the same proposal are presented, the Commission shall vote first on whichever departs furthest in substance from the original proposal, and so on until all the amendments have been put to the vote. However, where the acceptance of one amendment necessarily entails rejection of another, the latter shall not be put to the vote. The final vote shall then be taken on the proposal as amended or not amended. In case of doubt as to the order of priority, the President shall decide.

3. A motion may be withdrawn by the Member who proposed it at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any Member.

Rule 33 — Order of procedural motions

Procedural motions shall take precedence over all proposals.

Rule 34 — Voting

As a rule, the Commission decides by consensus. In the absence of consensus, the following provisions apply:

a. Subject to the provisions of Rule 6(4), 39 and 40, the decisions of the Commission shall be taken by a majority of the Members present.

b. In matters other than elections, a proposal shall be regarded as rejected if the majority referred to under letter (a) heretofore is not obtained.

c. Subject to Rules 5(2)(c) and 6(4), the Commission shall vote by show of hands, unless a Member requests a roll call vote.

d. After a vote has commenced, there shall be no interruption of the voting except on a point of order by a Member in connection with the actual conduct of the voting.

Chapter II — Working modalities

Rule 35 — Reports of Meetings

1. The Secretariat shall prepare a draft report of the Commission's deliberations and decisions following each meeting. The draft report shall be circulated as soon as possible to the Members of the Commission, who will be given the opportunity to submit corrections within a prescribed time-limit.

2. If no corrections are submitted, the meeting report shall be deemed adopted. If corrections are submitted, they shall be consolidated in a single document and circulated to all Members. In this latter case, the adoption of a report of the meeting shall be taken up at the next meeting of the Commission.

Rule 36 — Working groups

The Commission may set up *ad hoc* working groups comprising a limited number of its Members. The terms of reference of such working groups shall be defined by the Commission.

Rule 37 — Communications

1. The Secretariat shall register and bring to the Commission's attention communications received containing information which may be of interest to the Members.

2. Such communications received by a Member shall be forwarded to the Secretariat.

3. The Secretariat shall acknowledge receipt of the communications to their authors.

Rule 38 — Report of activities

Subject to the obligation of confidentiality stated in Rule 29, the Commission shall issue, whenever it considers it useful, a general report on its activities to the governments of the High Contracting Parties to the Geneva Conventions. The Commission may also prepare such reports and make such public statements relating to its functions as it considers appropriate and in

conformity with the provisions of the Protocol and these Rules concerning confidentiality.

PART V AMENDMENTS AND SUSPENSION

Rule 39 — Amendments of the Rules

The present Rules may be amended by a decision taken by a majority of the Members, subject to the provisions of the Protocol.

Rule 40 — Suspension of a provision of the Rules

Upon the proposal of a Member, the application of a provision of these Rules may be suspended by a decision taken by a majority of the Members, subject to the provisions of the Protocol. The suspension of a provision shall be limited in its operation to the particular purpose for which such suspension has been sought.

**Declaration of succession
by the Republic of Bosnia-Herzegovina
to the Geneva Conventions
and their Additional Protocols**

On 31 December 1992, the Republic of Bosnia-Herzegovina deposited with the Swiss Government a declaration of succession, without reservations, to the Geneva Conventions of 12 August 1949 and the two Additional Protocols of 8 June 1977. These instruments were already applicable to the territory of Bosnia-Herzegovina by virtue of their ratification by the Socialist Federal Republic of Yugoslavia on 21 April 1950 and 11 June 1979 respectively.

In accordance with international practice, the four Conventions and the two Protocols came into force for Bosnia-Herzegovina retroactively on 6 March 1992, the date of the Republic's independence.

The Republic of Bosnia-Herzegovina is the **175th** State to become party to the Geneva Conventions. It is the **119th** State party to Protocol I and the **109th** to Protocol II.

The instrument of succession was accompanied by a declaration regarding the acceptance by Bosnia-Herzegovina of the competence of the International Fact-Finding Commission, under Article 90 of Protocol I. The Republic of Bosnia-Herzegovina is the 33rd State to make the declaration concerning the Commission.

**Declaration of succession
by the Republic of Tajikistan
to the Geneva Conventions
and their Additional Protocols**

On 12 January 1993, the Republic of Tajikistan deposited with the Swiss Government a declaration of succession to the four Geneva

Conventions of 12 August 1949 and the two Additional Protocols of 8 June 1977. These instruments were already applicable for the territory of Tajikistan by virtue of their ratification by the Union of Soviet Socialist Republics on 10 May 1954 and 29 September 1989 respectively. The declaration contained no reference to the reservations and declaration previously made by the Soviet Union, nor was it accompanied by any further reservations or declarations.

This declaration of succession took effect as from 21 December 1991, the date on which the Alma Ata Declaration creating the Commonwealth of Independent States was signed.

Tajikistan is the **175th** State to become party to the Geneva Conventions. It is the **119th** State party to Protocol I and the **109th** to Protocol II.*

Accession of the Republic of Estonia to the Geneva Conventions and their Additional Protocols

On 18 January 1993, the Republic of Estonia acceded to the four Geneva Conventions of 12 August 1949 and to their Additional Protocols of 8 June 1977.

These instruments will come into force for the Republic of Estonia on 18 July 1993.

The Republic of Estonia is the **176th** State party to the Geneva Conventions. It is the **120th** State party to Protocol I and the **110th** to Protocol II.

* Following the dissolution of the Czech and Slovak Federative Republic and the creation on 1 January 1993 of the Czech Republic and of Slovakia, the numbering of States party to the Conventions and Protocols has been modified accordingly.

Declaration of succession by the Czech Republic to the Geneva Conventions and their Additional Protocols

On 5 February 1993, the Czech Republic deposited with the Swiss Government a declaration of succession to the four Geneva Conventions of 12 August 1949 and to their Additional Protocols of 8 June 1977. The declaration contained the reservations previously made by Czechoslovakia concerning the Conventions.

This declaration of succession took effect on 1 January 1993, the date of independence of the Czech Republic.

The Czech Republic is the **177th** State party to the Geneva Conventions, the **121st** State party to Protocol I and the **111th** to Protocol II.

Accession of the Hellenic Republic to Additional Protocol II

On 15 February 1993, the Hellenic Republic acceded to Protocol II additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, which was adopted in Geneva on 8 June 1977.

In accordance with its provisions, Protocol II will come into force for the Hellenic Republic on 15 August 1993.

The Hellenic Republic is the **112th** State party to Protocol II.

Books and reviews

HUMANITARIAN LAW OF ARMED CONFLICT: CHALLENGES AHEAD

This work,* published in honour of *Frits Kalshoven* and edited by Astrid J.M. Delissen and Gerard J. Tanja, came into being on the initiative of the Netherlands Red Cross and the Department of Public International Law of Leiden University. The 668-page volume contains twenty-four essays on international humanitarian law by different authors. As Jean Pictet points out in the first preface, Frits Kalshoven is one of a long line of Dutch legal scholars who, since Grotius, have greatly added to the fame of their country throughout the world. In this tribute paid to a legal scholar by another legal scholar, the decisive role played by Frits Kalshoven as rapporteur of the Ad Hoc Committee on Conventional Weapons at the Diplomatic Conference on the Reaffirmation and Development of International Law Applicable in Armed Conflicts (1974-1977) is duly mentioned.

In a second preface, Mr. Jan J. van der Weel, President of the Netherlands Red Cross, reviews the activities of this eminent expert on international humanitarian law within the National Society. A biographical note follows the two prefaces, and this introductory section ends with a list of Professor Kalshoven's many publications.

The contributions that make up the body of the book are divided into seven parts, dealing respectively with humanitarian law in general, the 1977 Additional Protocols, internal conflicts and internal strife, arms and armaments, neutrality and naval warfare, humanitarian law in practice and, lastly, related issues.

The chapter devoted to humanitarian law starts with Geoffrey Best's contribution, entitled "*The restraint of war in historical and philosophical perspective*". It traces the development of humanitarian law, linking the history of facts with the history of ideas. The author states among other things that if nations do not respect certain limits in their military operations, "*they must put up with the kind of war they themselves invent*" (p. 26). Yves Sandoz writes on the "*Pertinence et permanence du droit international humanitaire*" (Pertinence and permanence of international humanitarian law). In his conclusion on the nature of emergency aid, the author declares that it should never serve as an excuse for

* *Humanitarian law of armed conflict: Challenges ahead, Essays in honour of Frits Kalshoven*, Astrid J.M. Delissen and Gerard J. Tanja, eds., T.M.C. Asser Instituut, The Hague, Martinus Nijhoff Publishers, Dordrecht, Boston, London, 1991, 668 pp.

failing to address the root causes of underdevelopment and overpopulation (p. 38). René-Jean Wilhelm offers "*Quelques considérations générales sur l'évolution du droit international humanitaire*" (Some general considerations on the evolution of international humanitarian law). The article outlines the principal stages in the history of this area of law and shows the decisive role played by certain conflicts, such as the two world wars and the Vietnam war, in the development of humanitarian rules. In a paper entitled "*L'action humanitaire*" (Humanitarian action), René J. Dupuy notes that it took long years of experience to establish ICRC practice as a legal norm. As for assistance in the event of natural disasters, the author feels that local authorities should have the lead role in organizing relief operations, but that they should take care not to abuse their power (p. 75).

The second part of the book, devoted to the Additional Protocols, starts with Hans-Peter Gasser's article "*Negotiating the 1977 Additional Protocols: was it a waste of time?*". Among the effects that the adoption of these treaties has had on State practice, the author mentions clarifying customary law and contributing to its formation. Moreover, Mr. Gasser feels that the adoption of the Additional Protocols has heightened awareness of the relevance of humanitarian law, and points out that decision-makers can no longer plead ignorance of its precepts (p. 91). Christopher Greenwood analyses the "*Customary law status of the 1977 Geneva Protocols*". With particular reference to the positions taken by the parties to the Iran-Iraq war, the author gives his opinion as to the customary status or otherwise of Articles 35 to 60 of Additional Protocol I. In his conclusion, he states that provisions which do not yet have the status of customary international law may nevertheless be considered as an indication of the political expectations of parties to the conflict or the international community as a whole (p. 114). Georges Abi-Saab, in his article entitled "*The 1977 Additional Protocols and general international law: some preliminary reflexions*", deals with custom and the criteria that enable us to establish its existence, while warning against the dangers of excessive voluntarism, whereby States pick and choose the treaty rules that suit their purposes (p. 125). George H. Aldrich, in his article entitled "*Why the United States of America should ratify Additional Protocol I*", concludes that Protocol I is a document which represents, for the most part, an international consensus — a consensus that the United States played a major role in creating. He therefore expresses the hope that the United States will reconsider its position in this respect (p. 144).

Yoram Dinstein writes on siege and famine as methods of warfare ("*Siege warfare and the starvation of civilians*"). In the author's opinion, "the absolute prohibition of starvation of civilians in siege warfare in Article 54 of Protocol I is unjustifiable as well as utopian" (p. 152). This is in contrast to C. Greenwood's opinion, stated earlier in the same book, that most of Article 54 "is likely to become part of customary law with little difficulty if it does not already have that status" (p. 110). Astrid J.M. Delissen, after reviewing the preparatory work on Article 38 of the Convention on the Rights of the Child ("*Legal protection of child-combatants after the Protocols: Reaffirmation, development or a step backwards?*"), concludes that this provision

constitutes neither a step forward nor a step backwards in relation to humanitarian law. Stanislaw E. Nahlik's contribution, entitled "*From reprisals to individual penal responsibility*", first recalls the discussions on the subject of reprisals that took place during the Diplomatic Conference, and then goes on to examine the difficulties involved in penal repression in wartime. "*The system of repression of breaches of Additional Protocol I*" is also the subject of Julian J.E. Schutte's article, which gives an in-depth analysis of Article 85 of Protocol I and thus defines the scope of this provision. However, we are not sure that we agree with his interpretation of Article 85, para. 3 (a), i.e. that making civilian objects the object of attacks, even in cases where this causes death or serious injury to body or health of civilians, does not constitute a grave breach, unless such attacks are covered by the terms of subparagraphs (b), (c) or (d) (p. 190). Indeed, a grave breach occurs as soon as an attack against the civilian population or individual civilians meets the general conditions laid down in paragraph 3. The subject of war crimes is also dealt with by Christine van den Wyngaert, in her article "*The suppression of war crimes under Additional Protocol I*". The author rightly points out that Protocol I does not contain any clause ruling out the excuse of orders received from a superior, or the excuse of necessity (p. 202). However, it must be borne in mind that Article 86, para. 2, of Protocol I establishes the responsibility of superior officers for acts committed by their subordinates. Moreover, in regard to necessity, it is admitted in principle that this excuse cannot justify failure to comply with humanitarian law.¹

Part three, which focuses on internal armed conflicts and internal strife, begins with an article by Rosemary Abi-Saab on "*Humanitarian law and internal conflicts: the evolution of legal concern*". The author points out that there is room for improvement in the rules of international law pertaining to the protection of the civilian population against the effects of hostilities and to the treatment of captured combatants. Peter H. Kooijmans, who addresses the problem of the grey area between civil war and internal strife in a paper entitled "*In the shadowland between civil war and civil strife: some reflections on the standard-setting process*", notes that a clear distinction must be drawn between humanitarian law and human rights law if the respective effectiveness of these two branches of international law is to be preserved (p. 247). Lastly Theodor Meron, writing on "*Internal strife: applicable norms and a proposed instrument*", outlines a declaration applicable to all situations, including internal strife, which would deal in particular with summary executions, capital punishment, the excessive use of force, massive and prolonged administrative detention and collective punishments. The author concludes that such a declaration would constitute an "irreducible core of human rights law that must be applied as a minimum at all times" (p. 266).

¹ See *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Y. Sandoz, C. Swinarski, B. Zimmermann, eds., ICRC, Martinus Nijhoff Publishers, Geneva, 1987, p. 391, para. 1387 ff.

Arms and armaments is the subject of part four, which begins with an article by Leslie C. Green on the rules relating to the conduct of hostilities, entitled "*What one may do in combat — then and now*". The author deals first with the classic humanitarian restrictions on the use of weapons, the principle of distinguishing between civilians and combatants, and the protection afforded women and children, then goes on to examine the restrictions on methods and means of combat imposed by existing treaty law. In the second piece, entitled "*Les armes nucléaires et le droit de la guerre*" (Nuclear weapons and the law of war), Henri Meyrowitz provides a lucid analysis of the relationship between humanitarian law and the use of nuclear weapons. He concludes that "under existing international law nuclear weapons, far from enjoying a privileged status, are subject to strict rules severely limiting their potential use" (p. 323). Hisakazu Fujita discusses the denuclearization of the Pacific Ocean in an article on "*The changing role of international law in the nuclear age: from freedom of the high seas to nuclear-free zones*", concluding that the Pacific region "still remains the arena of an old-fashioned cold war situation" (p. 350). This part of the book ends with a paper by Bernhard Graefrath on "*Implementation measures and international law of arms control*", in which the author points out that effective arms control systems strengthen the relationship between disarmament and humanitarian law.

Part five centres on neutrality and naval warfare. In the first article, entitled "*Transformations in the law of neutrality since 1945*", Dietrich Schindler examines the implications of the United Nations Charter with respect to the concept of neutrality. Michael Bothe, writing about "*Neutrality in naval warfare*", wonders whether the existing rules concerning neutrality in naval warfare are still appropriate today and concludes that the matter "*deserves much thought de lege ferenda*" (p. 405). Dieter Fleck, in an article on "*Topical approaches towards developing the laws of armed conflict at sea*", puts forward several proposals concerning the development of the law of naval warfare, with particular reference to the situation of merchant vessels, the use of mines and submarine warfare. In the last article, entitled "*The merchant vessel as legitimate target in the law of naval warfare*", William J. Fenrick provides an in-depth analysis of the law governing the status of merchant vessels.

The subject of part six is humanitarian law in practice. In the first contribution, "*The treatment of rebels in conflicts of a disputed character: the Anglo-Boer war and the 'ANC-Boer war' compared*" John Dugard takes a look at case law deriving from trials of ANC members in South Africa. Paul J.I.M. De Waart, in an article entitled "*Subscribing to the 'law of Geneva' as manifestation of self-determination: the case of Palestine*", discusses the issue of Palestine's accession to the humanitarian law instruments and suggests that the United Nations request an advisory opinion from the International Court of Justice on the possibility of Palestine becoming a Member State of the UN (p. 492). Theo C. van Boven, discussing "*Reliance on norms of humanitarian law by United Nations' organs*", cites four situations in which the UN has referred to humanitarian law (in connection with the territories occupied by

Israel, Afghanistan, El Salvador and Sri Lanka). He is in favour of complementary roles for the UN and the ICRC, while at the same time stressing the differences between the two institutions and their working methods (pp. 511-512). Writing about "*International humanitarian law and the Security Council resolutions on the 1990-1991 Gulf conflict*", Erik Suy examines the way in which the UN Security Council took humanitarian law into account in its resolutions on the Gulf conflict and concludes that the Council must ensure that humanitarian standards are respected in that context (p. 526). The Gulf conflict is also the subject of an article by Michel Veuthey entitled "*De la guerre d'octobre 1973 au conflit du Golfe 1992: les appels du CICR pour la protection de la population civile*" (From the October 1973 war to the 1991 Gulf conflict: ICRC appeals for protection of the civilian population). The examples given by the author will be of great value to all those interested in how the practice of international organizations contributes to the formation of customary law. In a paper on "*Reporting mechanism for supervision of national legislation implementing international humanitarian law*", Krzysztof Drzewicki recommends that a group of experts be set up to examine, on the basis of reports submitted by governments, measures taken at the national level for the implementation of international humanitarian law. Unfortunately, the author does not appear to give due credit to the efforts made by the ICRC to focus the attention of States on the importance of adopting such measures.

Part seven, which centres on issues related to humanitarian law, begins with Torsten Stein's paper "*How much humanity do terrorists deserve?*". The author concludes that democratic States should guarantee the human rights of every individual without exception (p. 581). Henry G. Schermers, in an article on "*The obligation to intervene in the domestic affairs of States*", considers that "effective intervention, in particular in urgent cases, may well mean military intervention" (p. 591). He notes in conclusion that "the necessary legal rules on intervention are underdeveloped" (p. 592). Writing on "*Jus ad bellum and jus cogens: is immorality illegal?*", Alfred P. Rubin shows that the current international order hinges on the internal organization of States. He concludes that it would be preferable to "build legal institutions capable of achieving virtue-moral goals" rather than to try to change the traditional national structures on which the international order is based (p. 611). Manfred Lachs, addressing the subject of "*Slavery: the past and the present*", observes that forms of slavery evolve and that children, in particular, are its new victims. He recommends serious revision of the Conventions prohibiting the practice of slavery (p. 625).

This work compiled as a tribute to Frits Kalshoven provides specialized readers with an excellent source of information on a wide range of issues relating to the interpretation, implementation and development of humanitarian law. It will undoubtedly contribute to the advancement of knowledge of this crucial area of international law.

Denise Plattner

“OBJETS DU SILENCE”

Creative expression in captivity

What can prisoners of war or political detainees do in their cells to kill time or prove to themselves that they are still alive, in spite of everything, or simply to express themselves? They can take a piece of wood, or fabric, or tin can, indeed anything they can find and with their imagination and determination, in the silence and passage of time, they can transform the object into a small statue or bag or cap or even a kerosene lamp. It may become a masterpiece in its own right; it always makes a statement.

These objects made by prisoners, and which are displayed at the International Red Cross and Red Crescent Museum until 27 September, have great sentimental value. Perhaps more eloquently than words ever can, they tell us about life in prison. They show how a seemingly insignificant object, when fashioned with loving care, can save the prisoner from despair and how these objects come to be identified with their creator. An expression of suffering, they are at the same time an antidote to suffering.

No matter how modest, the object may also serve as a sign of recognition and friendship for the person who has brought the detainee out of his or her isolated existence, if only for a moment, and offered a humanitarian breath of respite. The persons particularly in mind here are the ICRC delegates or Red Cross workers who, by bringing news or much-needed relief items, but especially by their presence and involvement, by speaking personally and individually with the prisoners, guarantee that they will not fall into oblivion, that their protection is assured and their dignity defended. “The collection thus reflects both humanity and inhumanity — that is its double message”, write Marie-Agnès Gainon and Jean-Pierre Gaume in the introduction to the book¹ which illustrates the exhibition.

This is not a mere catalogue but a well-prepared and clearly structured publication designed to inform the general public about the activities carried out by ICRC delegates in places of detention throughout the world, and also to provide answers to the questions often asked by visitors and readers alike: How are prison visits conducted? What is the legal basis for this work? Under

¹ “*Objets du silence*”, an exceptional exhibition of articles made by prison and camp inmates, 1900-1992. Preface by Jean-Pierre Hocké, foreword by Laurent Marti, International Red Cross and Red Crescent Museum, Geneva, 1992, 192 p. (The English edition is currently being prepared).

what conditions are these visits made? What is the relationship between prisoners and delegates?

The first part of the book offers a description, accompanied by comments from prisoners and delegates, of articles that were made in camps between 1900 and 1992 and have been collected by the Museum. Utensils, decorative objects, drawings and paintings, fabric and woven creations, and jewellery file before the spectator's eyes, like modest markers in the humanitarian memory.

The second part, of a legal nature, is devoted to excerpts taken from the basic instruments of international law on the protection of prisoners of war, internees and civilian detainees, persons deprived of their freedom, political detainees and prisoners of conscience.

The third and final part of the book provides valuable theoretical and practical information on a wide variety of aspects of the work to protect prisoners which is carried out by the ICRC, but also by other governmental and non-governmental organizations. We are familiarized in turn with the role of the ICRC's Central Tracing Agency (CTA), the role of ICRC doctors during their visits to prisoners, the activities of the Committee against Torture of the United Nations Economic and Social Council and also those of Amnesty International.

With its attractively spaced out presentation, its illustrations and statistical tables, the book is not only an indispensable guide to the exhibition but also a very handy reference work for researchers and all those wishing to know more about the world of detention and the problems involved.

Jacques Meurant

BOOK REVIEWS

- Walter Zürcher, *Die Schweizer Handelsschiffe, 1939-1945*, Koehlers Verlagsgesellschaft mbH, Herford, 1992, 170 pp.

This work, which describes the development of the Swiss Navy during the Second World War, tells how the ships used by the ICRC to carry Red Cross parcels for prisoners of war and relief supplies to civilians in countries occupied by the Axis powers managed to get through to their destination and the dangers they faced in doing so.

The book, which is illustrated with numerous photographs, also contains accounts by officers who served on board those vessels; for example, it retraces the epic voyage of an ICRC ship, the S/S *Henry Dunant*, which lifted anchor in Lisbon to ferry relief supplies to the Netherlands. It was forced by

the warring parties to sail as far north as Iceland and thence to Bergen, Göteborg and Malmö before finally being able to set course for Cuxhaven and its final destination Delfzijl. Thus a voyage which initially should have been routed through the English Channel and have lasted only a few days took more than two months from January to March 1945, in the depths of winter.

Françoise Perret

- *Médecin-général Inspecteur* Raoul Favre † (joint author), *L'Homme et les catastrophes* (Man and disasters), France-Sélection, Aubervilliers Cédex, 1992, 800 pp.

This book, which won the *Prix de la Protection Civile* (Civil Defence Prize), had been out of print for several years and has just been updated and republished.

By a disaster, writes General Favre, is meant a sudden, brutal disruption of the pre-established order between man and nature which has three kinds of destructive effects:

- extensive damage;
- a very high number of victims (dead, injured, homeless, etc.);
- the more or less complete disappearance of a local infrastructure to control outbreaks of lawlessness, to help the victims and to take care of the casualties.

Some disasters are due to the natural elements, i.e. water and fire:

- burst dams and dykes, flooding of various kinds;
- forest fires, urban conflagrations, ships ablaze.

In addition there are mining disasters, earthquakes, volcanic eruptions, cyclones and hurricanes.

Others are man-made, resulting from the use of various technologies:

- transport accidents: air disasters (in flight or on the ground), and rail, road and sea disasters;
- the effects of conflicts which cause huge numbers of civilian and military casualties through the use of conventional, chemical, nuclear or biological weapons.

Technological progress has greatly increased the number and variety of disasters. At the same time the previous statistics have been modified by a spate of natural disasters throughout the world, whose effects are now given wider media coverage and are thus better known than in the past.

Each chapter ends with tables giving details of every type of disaster, dating back to the earliest known sources. They are supplemented with general worldwide statistics going back to the turn of the century.

The book is an invaluable reference work, especially for those who are directly or indirectly involved in relief work or responsible for protecting people from the effects of all kinds of disasters.

The *International Review of the Red Cross* is the official publication of the International Committee of the Red Cross. It was first published in 1869 under the title "Bulletin international des Sociétés de secours aux militaires blessés", and then "Bulletin international des Sociétés de la Croix-Rouge".

The *International Review of the Red Cross* is a forum for reflection and comment and serves as a reference work on the mission and guiding principles of the International Red Cross and Red Crescent Movement. It is also a specialized journal in the field of international humanitarian law and other aspects of humanitarian endeavour.

As a chronicle of the international activities of the Movement and a record of events, the *International Review of the Red Cross* is a constant source of information and maintains a link between the components of the International Red Cross and Red Crescent Movement.

The *International Review of the Red Cross* is published every two months, in four main editions:

French: REVUE INTERNATIONALE DE LA CROIX-ROUGE (since October 1869)

English: INTERNATIONAL REVIEW OF THE RED CROSS (since April 1961)

Spanish: REVISTA INTERNACIONAL DE LA CRUZ ROJA (since January 1976)

Arabic: *Al-Mawqaf*
(since May-June 1988)

Selected articles from the main editions have also been published in German under the title *Auszüge* since January 1950.

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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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