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**REVIEW**  
OF THE RED CROSS



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

of 10 October 1980,

the November-December 1990 issue of the *International Review of the Red Cross* will be devoted to the question of prohibitions or restrictions on the use of certain conventional weapons.

**RULES OF INTERNATIONAL  
HUMANITARIAN LAW  
GOVERNING THE CONDUCT  
OF HOSTILITIES  
IN NON-INTERNATIONAL  
ARMED CONFLICTS**

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## 1. INTRODUCTION

The 14th Round Table on international humanitarian law was held on 13 and 14 September 1989 at the International Institute of Humanitarian Law in San Remo. Its theme was "Rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts".

In view of the large number of participants (about 150), it was decided to form two working groups and divide the Round Table topic into two sub-topics. The Round Table was to study first the general rules governing the conduct of hostilities in non-international armed conflicts (sub-topic A) and then the prohibitions and restrictions on the use of certain weapons in non-international armed conflicts (sub-topic B).

It was agreed that each group would examine, in turn, some questions dealing with sub-topic A and questions dealing with sub-topic B.

The discussions were based on two reports, one written by Professor Konstantin Obradovic (for sub-topic A) and the other by Professor Horst Fischer (for sub-topic B). The reports were presented orally in plenary session. The subsequent discussions of the two working groups were chaired by Professor L. R. Penna and Professor Dietrich Schindler, and there was a panel consisting of two experts and the rapporteurs for sub-topics A and B. One of the experts in each group commented on the relevant report before opening the discussions.

Discussions were conducted and conclusions drawn up on all the rules studied by the working groups, with the exception – for lack of time – of the rule relating to the protection of medical zones and other places of refuge set up by agreement of parties to an armed conflict.

A summary of each group's conclusions was presented in plenary session by the general rapporteur, Mr. René Kosirnik. In the course of a brief discussion which followed, it was suggested and accepted that the conclusions of the Round Table and their commentary be submitted for approval to the Council of the International Institute of Humanitarian Law.

On 7 April 1990, the Council of the International Institute of Humanitarian Law approved the present conclusions as well as their commentary and adopted the Declaration annexed hereto.

## 2. CONCLUSIONS AND COMMENTARY

### I. Preliminary remarks

The 14th Round Table dealt with the general rules governing the conduct of hostilities in non-international armed conflicts independently of the existence of treaty provisions adopted expressly for this type of conflict, as well as with the prohibitions and restrictions on the use of certain weapons in such conflicts.

The Judgment of the International Court of Justice of 27 June 1986 on the case concerning military and paramilitary activities in and against Nicaragua states that the rules defined in Article 3 common to the 1949 Geneva Conventions "in the event of international armed conflicts, also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and that they are rules which (...) reflect what the Court in 1949 called "elementary considerations of humanity".<sup>1</sup> The general rule of international humanitarian law is therefore seen as a standard of behaviour expressing a general, basic principle of conduct which underlies all international humanitarian law.

The first attempts to codify humanitarian rules governing the conduct of hostilities were made towards the end of the nineteenth century and resulted in particular in the Regulations Concerning the Laws and Customs of War on Land annexed to the Hague Convention No. II of 1899 and later to the Hague Convention No. IV of 1907 (hereinafter: The Hague Regulations); these give important indications on the content of general rules governing the conduct of hostilities since they laid down the rules which are the foundation of the whole body of international humanitarian law and gave a normative content to the principle of humanity.

The resolutions of the United Nations General Assembly, especially Resolution 2444 (XXIII) relative to the Respect for Human Rights in Armed Conflicts, adopted on 19 December 1968 (hereinafter: Resolution 2444 (XXIII), of 19 December 1968), and Resolution 2675 (XXV) which summarizes the Basic Principles for the Protection of Civilian Populations in Armed Conflicts, adopted on 9 December 1970 (hereinafter: Resolution 2675 (XXV), of

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<sup>1</sup> International Court of Justice, *Reports of Judgments, Advisory Opinions and Orders*. Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986, p. 114, para. 218.

9 December 1970), confirm the general character of certain rules governing the conduct of hostilities.

When seeking evidence of legal instruments dealing with such rules, international human rights law should also be taken into consideration. The development of this branch of law is particularly interesting as regards non-international armed conflicts: by moving towards greater international competence in the field of the relations of a State with its own nationals, it facilitates the acceptance of restrictions on the choice of methods and means of warfare in such conflicts. In addition, defending the same fundamental values as international humanitarian law, it further helps to establish the general character of some of the rules of international humanitarian law.

As regards the relation between customary and treaty law applicable to non-international armed conflicts, it should be remembered that about half the States making up the international community have ratified or acceded to Protocol II additional to the 1949 Geneva Conventions. As for Article 3 common to the 1949 Geneva Conventions, that binds 166 States, if at the outset it aimed to protect persons in enemy hands, it is today interpreted as applying also to the protection of individuals against the effects of hostilities.

The legal instruments under consideration here are thus taken as expressions of the States' shared conviction with respect to rules governing the conduct of hostilities in non-international armed conflicts.

## **II. General rules governing the conduct of hostilities and prohibitions and restrictions on the use of certain weapons in non-international conflicts**

### **A. GENERAL RULES GOVERNING THE CONDUCT OF HOSTILITIES APPLICABLE IN NON-INTERNATIONAL ARMED CONFLICTS**

#### ***1. Distinction between combatants and civilians***

*The obligation to distinguish between combatants and civilians is a general rule applicable in non-international armed conflicts. It prohibits indiscriminate attacks.*

COMMENTARY:

The rule obliging actors to an armed conflict to distinguish between combatants and civilians in the conduct of military operations is one of the fundamental principles of international humanitarian law on the conduct of hostilities.

This rule, an indispensable corollary to the principle of immunity of the civilian population, can be found in the earliest texts of international humanitarian law. The 1868 St. Petersburg Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 grammes Weight (hereinafter: the St. Petersburg Declaration) lays down the principle that “the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy”. Article 25 of the Hague Regulations stipulates that “the attack or bombardment, by whatever means, of towns, villages, dwellings or buildings which are undefended is prohibited” (1907 version). The rule imposing the distinction between combatants and civilians was also reaffirmed in Resolutions 2444 (XXIII), of 19 December 1968 and 2675 (XXV), of 9 December 1970, and is implied in the terms of Article 13, paragraph 2, relative to the protection of the civilian population, of the 1977 Protocol II. The protection of the life and person of those taking no active part in the hostilities, stipulated in paragraph 1(a) of Article 3 common to the Geneva Conventions, also implies respect for the rule on the distinction between combatants and civilians.

Acts violating this rule include, in particular, indiscriminate military attacks – in other words, attacks launched at or affecting the civilian population without discrimination.

## ***2. Immunity of the civilian population***

*The prohibition of attacks against the civilian population as such or against individual civilians is a general rule applicable in non-international armed conflicts. Acts of violence intended primarily to spread terror among the civilian population are also prohibited.*

COMMENTARY:

The protection of the civilian population against the effects of hostilities implies the prohibition of attacks against that population as such or against individual civilians, and is part of the rule on the distinction between combatants and civilians.

This rule, too, appears in the earliest texts of international humanitarian law, such as The Hague Regulations (Article 25). Of the more recent texts, Resolution 2444 (XXIII), of 19 December 1968, states expressly in its paragraph 1(b) that “it is prohibited to launch attacks against the civilian population as such”, while Resolution 2675 (XXV), of 9 December 1970, reaffirms the rule, stipulating in its paragraph 4 that “civilian populations as such should not be the object of military operations”. Protocol II, for its part, states that the “civilian population as such, as well as individual civilians, shall not be the object of attack” (Article 13, paragraph 2, first sentence). Lastly, such attacks are incompatible with the rule on the protection of the life and person of those taking no active part in the hostilities, as set out in paragraph 1(a) of Article 3 common to the 1949 Geneva Conventions.

The rule prohibiting attacks designed primarily to spread terror among the civilian population is set forth in Article 13, paragraph 2, second sentence of the 1977 Protocol II, though the underlying principle goes as far back as the Draft Rules of Air Warfare prepared in The Hague in 1923 (Article 22). Such attacks are contrary to the concept that the purpose of military attacks should be to weaken the enemy’s military forces. The rule aims to protect the morale of the civilian population which, like its physical integrity, should not become the object of military operations.

It appears, however, that not all forms of conduct proscribed by Article 13, paragraph 2, second sentence of Protocol II fall within the scope of the general rule as specified above; indeed, it has not been established that the rule covers also the *threat* of violence.

### ***3. Prohibition of superfluous injury or unnecessary suffering***

*The prohibition of superfluous injury or unnecessary suffering is a general rule applicable in non-international armed conflicts, it prohibits, in particular, the use of means of warfare which uselessly aggravate the sufferings of disabled men or render their death inevitable.*

#### COMMENTARY:

The prohibition of superfluous injury or unnecessary suffering is set forth explicitly in the first legal instruments governing the conduct of hostilities: the St. Petersburg Declaration contains a provision stating that “the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable” would be

“contrary to the laws of humanity”, revealing the direct link between this rule and the principle of humanity.

The prohibition of unnecessary suffering is also to be found in Article 23(e) of The Hague Regulations. It is compounded by the rule providing that the right of the actors of a conflict to adopt means of warfare is not unlimited, laid down, *inter alia*, in Resolution 2444 (XXIII), of 19 December 1968. The prohibition is, consequently, at the origin of all the prohibitions or restrictions on the use of certain weapons.

In the more recent legal texts, such as Article 35, paragraph 2 of the 1977 Protocol I, and Article 6, paragraph 2, of the Second Protocol of the Convention on the use of certain conventional weapons of 10 October 1980, the French term “*maux superflus*” covers both notions of “unnecessary suffering” and “superfluous injury”.

The legal effect of the prohibition of superfluous injury or unnecessary suffering primarily covers the means of warfare, though it also applies to certain methods of warfare (cf., for example, Articles 40 to 42 of the 1977 Protocol I). In the former instance the prohibition of superfluous injury or unnecessary suffering protects all persons who are affected by an attack, whereas in the latter only combatants are covered.

The prohibition of superfluous injury or unnecessary suffering is closely related to the principle of proportionality. However, the protection of civilians against attacks which violate this principle is not within the scope of the prohibition since, as mentioned above, in such cases only combatants are covered. The rules applicable in such situations would be those prohibiting indiscriminate attacks (see Section 1 above).

Since the general rule prohibiting superfluous injury or unnecessary suffering protects persons taking no active part in the hostilities (with respect to means of warfare) or no longer taking an active part in them (with respect to methods of warfare), it sets out more explicitly the provisions of Article 3 common to the Geneva Conventions which prohibits violence to life and person.

#### **4. Prohibition of perfidy**

*The prohibition to kill, injure or capture an adversary by resort to perfidy is a general rule applicable in non-international armed conflicts; in a non-international armed conflict, acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or*

*is obliged to accord, protection under the rules of international law applicable in non-international armed conflicts, with intent to betray that confidence shall constitute perfidy.*

COMMENTARY:

Article 23(b) of The Hague Regulations already contained the prohibition on “treacherously” killing or wounding enemy soldiers. The prohibition of such conduct is at the junction of several principles: good faith, chivalry, as well as the principle restricting the parties’ choice of methods of warfare. In legal writings, the prohibition of perfidy is seen as a rule of customary law applicable in non-international armed conflicts.

The elements making up the general rule include inviting a person’s confidence, the intent to betray that confidence, and the existence of protection accorded by international law applicable in armed conflicts, the betrayal consisting in leading the adversary to believe that the perpetrator of the perfidious act is entitled to such protection.

In non-international armed conflicts, the prohibition of perfidy consists essentially in forbidding conduct which, combining the above elements, destroys the protection granted under international humanitarian law applicable in non-international conflicts. In the context of such conflicts, perfidy is defined as consisting in acts inviting the confidence of an adversary to lead him, with intent to betray him, to believe that the perpetrator of the perfidious act is entitled to receive protection under the rules of international humanitarian law applicable in non-international armed conflicts, similarly, to lead the adversary to believe that he is obliged to grant such protection to the perpetrator of the perfidious act.

In non-international armed conflicts the prohibition of perfidy is of particular interest as regards respect for the emblem since it includes the prohibition of its perfidious use.

***5. Respect for and protection of medical and religious personnel and of medical units and transports***

*The obligation to respect and protect medical and religious personnel and medical units and transports in the conduct of military operations is a general rule applicable in non-international armed conflicts.*

## COMMENTARY:

Article 3 common to the Geneva Conventions lays down the general principle on the protection of persons not taking an active part in the hostilities or placed *hors de combat* as a result of illness or injury, as well as the specific obligation to collect and care for the sick and wounded. Moreover, Articles 9 and 11 of Additional Protocol II set forth the obligation for the actors of a non-international armed conflict to respect and protect medical and religious personnel and medical units and transports in the conduct of military operations.

In this context, “to protect” means “to spare”, not “to attack”, whereas “respect” means “to come to someone’s defence, to lend help and support”.

According to the Commentary on Additional Protocol II, Article 9 covers the following categories of medical personnel:

1. medical personnel of a party to the conflict, whether military or civilian (including those assigned to medical tasks of civil defence);
2. medical personnel of Red Cross and Red Crescent organizations recognized and authorized by a party to the conflict;
3. medical personnel of other aid societies recognized and authorized by a party to the conflict and located within the territory of the Contracting Party where the conflict is taking place.<sup>2</sup>

According to the same source, religious personnel includes military or civilian persons, such as chaplains, who are exclusively engaged in the work of their ministry and attached either:

1. to the armed forces of a party to the conflict;
2. to medical units or medical transports of a party to the conflict;
3. to medical units or medical transports of relief societies authorized by a party to the conflicts; or
4. to civil defence organizations of a party to the conflict.<sup>3</sup>

The general – even peremptory – nature of the rules is not contested and requires no special comment.

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<sup>2</sup> *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Yves Sandoz, Christophe Swinarski, Bruno Zimmermann, eds., ICRC, Martinus Nijhoff Publishers, Geneva, 1989, pp. 1419-1420, paras. 4665 *et seq.*, especially para. 4665.

<sup>3</sup> *Ibid.*, pp. 1420-1421, paras. 4670-4671.

## **6. Prohibition of attacks on dwellings and other installations used only by the civilian population**

*The general rule prohibiting attacks against the civilian population implies, as a corollary, the prohibition of attacks on dwellings and other installations which are used only by the civilian population.*

### COMMENTARY:

Resolution 2675 (XXV), of 9 December 1970, states in its paragraph 5 that "Dwellings or other installations that are used only by civilian populations should not be the object of military operations". Similar rules can be found in the first legal instruments containing provisions on the conduct of hostilities: the 1880 Oxford Manual (Article 32(c)) and The Hague Regulations (Article 25) prohibit attacks on undefended places, while the Draft Rules of Air Warfare, prepared in The Hague in 1923, prohibit "the bombardment of cities, towns, villages dwellings or buildings not in the immediate neighbourhood of the operations of land forces" (Article 24, paragraph 3).<sup>4</sup>

Independently of the origin of the rule set out in Resolution 2675 (XXV), of 9 December 1970, the prohibition of attacks on dwellings and other installations used by the civilian population stems from the principle of immunity of the civilian population.<sup>5</sup>

Indeed, attacks on dwellings and other installations used only by the civilian population run counter to the principle according to which the sole purpose of military operations should be to weaken the enemy's military strength.

## **7. Protection of objects indispensable to the survival of the civilian population**

*The general rule prohibiting attacks against the civilian population implies, as a corollary, the prohibition to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population.*

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<sup>4</sup> *The Laws of Armed Conflicts*, Dietrich Schindler and Jiri Toman (Ed.), Martinus Nijhoff Publishers, Henry Dunant Institute, Geneva, 1988, No. 24, p. 207.

<sup>5</sup> Bothe, Michael, Partsch, Karl Josef and Solf, Waldemar A., *New Rules for Victims of Armed Conflicts: Commentary on the two 1977 Protocols additional to the Geneva Conventions of 1949*, Martinus Nijhoff Publishers, The Hague, 1982, p. 657.

COMMENTARY:

Article 14 of Additional Protocol II lays down specific rules regarding the protection of objects indispensable to the survival of the civilian population.

This issue often features prominently among the concerns of the International Committee of the Red Cross; it was mentioned, for example, in the context of the armed conflict in El Salvador<sup>6</sup> and on several occasions with respect to the conflict in Rhodesia/Zimbabwe, one of them being the appeal for the respect of international humanitarian law, launched on 20 March 1979.<sup>7</sup>

As stated in the Commentary on the Additional Protocols of 1977, the prohibition on attacking, destroying, removing or rendering useless any objects indispensable to the survival of the civilian population “is really only a specific application of common Article 3, which imposes on parties to the conflict the obligation to guarantee humane treatment for all persons not participating in hostilities, and in particular prohibits violence to life”.<sup>8</sup> This rule develops the principle under which the civilian population must be protected against the effects of hostilities and must not become the object of military operations.

The objects identified as being indispensable to the survival of the civilian population and listed as such in Article 14 of Protocol II are foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works. The list serves as an illustration only, and is not exhaustive.

Acts prohibited by the above rule also fall within the scope of the prohibition of starvation as a method of warfare if they are carried out with that object in mind or result in it.

### ***8. Precautionary measures in attack***

*The general rule to distinguish between combatants and civilians and the prohibition of attacks against the civilian population as such or against individual civilians implies, in order to be effective, that all feasible precautions have to be taken to avoid injury, loss or damage to the civilian population.*

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<sup>6</sup> International Committee of the Red Cross, *Annual Report 1985*, p. 36.

<sup>7</sup> *International Review of the Red Cross*, No. 209, March-April 1979, p. 88.

<sup>8</sup> *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, *op. cit.*, p. 1456, para. 4794.

COMMENTARY:

The rule imposing the obligation to distinguish between combatants and civilians, as well as that prohibiting attacks against the civilian population as such or against individual civilians, require that during various phases of the attack all feasible precautions be taken to avoid affecting the civilian population.<sup>9</sup>

This rule is also set out in paragraph 3 of Resolution 2675 (XXV), of 9 December 1970: "In the conduct of military operations during armed conflicts, every effort should be made to spare civilian populations from the ravages of war, and all precautions should be taken to avoid injury, loss or damage to civilian populations".

Compliance with the rule on the protection of life and person, set out in Article 3 common to the Geneva Conventions, likewise requires, by inference, that necessary measures be taken to avoid harming the civilian population in the event of military attacks.

As regards the actual measures that should be taken, Article 57 of Additional Protocol I contains some very useful information.

***B. PROHIBITIONS AND RESTRICTIONS ON THE USE OF CERTAIN WEAPONS IN NON-INTERNATIONAL ARMED CONFLICTS***

***1. Chemical and bacteriological weapons (1925 Protocol)***

*The customary rule prohibiting the use of chemical weapons, such as those containing asphyxiating or vesicant agents, and the use of bacteriological (biological) weapons is applicable in non-international armed conflicts.*

COMMENTARY:

The prohibition of chemical weapons dates back to the first codified rules on the conduct of hostilities prohibiting the use of poison, such as the Lieber Code of 1863 (Article 70) and The Hague Regulations (Article 23(a)). In 1899 chemical weapons were expressly

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<sup>9</sup> *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, op. cit.*, p. 1449, para. 4772. Cf. also Cassese, Antonio, "The Spanish Civil War and the Development of Customary Law concerning Internal Armed Conflicts", in: *Current Problems of International Law: Essays on U.N. Law and on the Law of Armed Conflict*, Milano, Dott. A. Guiffrè Editore, 1975, pp. 287-318, at p. 310.

prohibited by The Hague Declaration banning “the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases” (first paragraph of the Declaration).

With regard to international armed conflicts, the 1925 Geneva Protocol for the prohibition of the use in war of asphyxiating, poisonous or other gases and of bacteriological methods of combat is still in force. Since the prohibition of chemical weapons is generally considered to be a customary rule, it should be determined whether it applies also to non-international armed conflict and, if so, what is its scope of application.

The resolutions on the protection of persons against the effects of hostilities, applicable in all armed conflicts, expressly mention the prohibition of the use of toxic gases. Resolution XXVIII adopted by the Twentieth International Conference of the Red Cross (Vienna, 1965) calls on all Governments to accede to the 1925 Geneva Protocol; this appeal was also included by the United Nations General Assembly in Resolution 2444 (XXIII), of 19 December 1968.

In Resolution 3318 (XXIX) of 14 December 1974 on the protection of women and children in emergency and armed conflict, the General Assembly stated that “The use of chemical and bacteriological weapons in the course of military operations constitutes one of the most flagrant violations of the Geneva Protocol of 1925, the Geneva Conventions of 1949 and the principles of international humanitarian law”.

In a declaration adopted at the close of the 1989 Paris Conference on chemical weapons, the participating States undertook not to use chemical weapons and to condemn their use by others,<sup>10</sup> without any reference being made to international armed conflicts. The work of the Ad Hoc Committee on chemical weapons, created within the framework of the Conference on Disarmament, is based on the premise of a total ban on chemical weapons, regardless of the type of conflict. Paragraph 3 of the general provisions on the scope of application of the future convention reads as follows: “Each State Party undertakes not to use chemical weapons”.<sup>11</sup>

Following the use of chemical weapons by Iraq in the region of Halabja in Iraqi Kurdistan, the ICRC reaffirmed in a press release of 23 March 1988 that “The use of chemical weapons, whether against

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<sup>10</sup> Letter addressed to the Secretary-General by the Permanent Representative of France to the United Nations, A/44/88.

<sup>11</sup> See the *Report of the Ad Hoc Committee on Chemical Weapons to the Conference on Disarmament on its Work during the period 17 January to 3 February 1989*, CD/881, 3 February 1989, Appendix I, p. 11.

military personnel or civilians, is absolutely forbidden by international law and is to be condemned at all times".<sup>12</sup>

Every analysis of the customary rules prohibiting chemical weapons invariably raises the question of their scope of application. It seems that these rules cannot as yet be extended to include riot control agents – mainly tear gas – even though such an extension appears advisable in view of the grave considerations which led to the prohibition of chemical weapons and furthermore the demands for respect for fundamental human rights.

The prohibition of the use of bacteriological (biological) weapons is laid down in the 1925 Protocol, while the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction of 10 April 1972 confirmed the customary – as well as general – character of the ban on the use of any biological agents for military purposes. The prohibition of the use of bacteriological weapons in non-international armed conflicts stems also from the ban on the use of poison (see Section 3 below).

Biological agents are "living organisms, whatever their nature, or infective material derived from them, which are intended to cause disease or death in man, animals or plants, and which depend for their effects on their ability to multiply in the person, animal or plant attacked".<sup>13</sup> Toxins, also listed in the 1972 Convention on bacteriological weapons, are composed of biologically produced chemical substances which act when ingested or inhaled.

The prohibition of the use of chemical and bacteriological weapons in non-international armed conflicts thus constitutes an application of the general rule prohibiting superfluous injury and unnecessary suffering.

## ***2. Bullets which expand in the human body (such as dum-dum bullets)***

*The customary rule prohibiting the use of bullets which expand or flatten easily in the human body, such as dum-dum bullets, is applicable in non-international armed conflicts.*

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<sup>12</sup> International Committee of the Red Cross, *Press release No. 1567* of 23 March 1988.

<sup>13</sup> See International Committee of the Red Cross, *Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects*, Report on the work of a group of experts, Geneva, 1973, p. 21.

#### COMMENTARY:

Bullets which expand in the human body belong to the category of penetrating weapons. Their use was prohibited as early as 1899 by the International Peace Conference held in The Hague: in a declaration annexed to the Final Act of the Conference (Declaration III), the participants agreed “to abstain from the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions”. The declaration was aimed at dum-dum bullets in particular, as evidenced by the second part of the passage quoted, though its first part seems to indicate that the prohibition is a general one and applies to all bullets which expand on impact because, inter alia, of an insufficiently hard nose.

This prohibition was reaffirmed in Article 16, paragraph 2, of the Oxford Manual on the rules of naval warfare, prepared in 1913 by the Institute of International Law.

The customary and general nature of the prohibition laid down in Declaration III of The Hague is not currently contested.

The prohibition of the use of expanding bullets in non-international armed conflicts is thus an application of the general rule prohibiting superfluous injury and unnecessary suffering.

### **3. *Poison***

*The customary rule prohibiting the use of poison as a means or method of warfare is applicable in non-international armed conflicts.*

#### COMMENTARY:

The use of poison was formally prohibited in 1899 already, by The Hague Regulations (Article 23(a)). As mentioned in Section 1 above, this prohibition is at the origin of the ban on the use of chemical or bacteriological agents for military purposes.

The prohibition covers the use of poison both as a means and a method of warfare. Besides, even if the use of chemical or bacteriological agents is covered by specific customary prohibitions, the prohibition of poison remains appropriate because of the possible use of non-bacteriological natural substances. In fact, any substance which interferes with vital body functions constitutes poison.

The customary and general nature of the prohibition of poison is not contested at present.

The prohibition of poison as a means or method of warfare in non-international armed conflicts thus constitutes an application of the general rule prohibiting superfluous injury and unnecessary suffering.

#### **4. Mines, booby-traps and other devices**

*In application of the general rules listed in section A above, especially those on the distinction between combatants and civilians and on the immunity of the civilian population, mines, booby-traps and other devices within the meaning of Protocol II to the 1980 Convention on conventional weapons may not be directed against the civilian population as such or against individual civilians, nor used indiscriminately.*

*The prohibition of booby-traps listed in Article 6 of that Protocol extends to their use in non-international armed conflicts, in application of the general rules on the distinction between combatants and civilians, the immunity of the civilian population, the prohibition of superfluous injury or unnecessary suffering, and the prohibition of perfidy.*

*To ensure the protection of the civilian population referred to in the previous paragraphs, precautions must be taken to protect them from attacks in the form of mines, booby-traps and other devices.*

#### **COMMENTARY:**

The rules governing the use of mines, booby-traps and other devices are laid down in the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, adopted on 10 October 1980.

In addition to delayed-action explosives such as mines and booby-traps, Protocol II deals with weapons covered by the term "other devices", which are "manually-emplaced munitions and devices designed to kill, injure or damage and which are actuated by remote control or automatically after a lapse of time" (Article 2, paragraph 3).

The Protocol does not prohibit the use of mines, booby-traps and other devices. Only the use of certain booby-traps likely to attract civilians or children, or designed to cause superfluous injury or unnecessary suffering is prohibited (Article 6, paragraphs 1 and 2). Outside this prohibition all other uses of mines, booby-traps and other devices are subject to general and specific restrictions.

The general restrictions, set out in Article 3, prohibit directing these weapons against the civilian population as such or against individual civilians, or using such weapons indiscriminately. These provisions thus implement the rules on the immunity of the civilian population and the distinction between combatants and civilians.

The specific restrictions vary depending on the placement of the mines.

The use of remotely delivered mines, i.e. "by artillery, rocket, mortar or similar means or dropped from an aircraft" (Article 2, paragraph 1 *in fine*) is thus prohibited except in strictly regulated circumstances, namely within an area which constitutes a military objective or which contains such objectives (Article 5, paragraph 1, first sentence). The exceptions to this prohibition are subject to extremely strict conditions: remotely delivered mines may be used only within an area which is itself a military objective or which contains military objectives (Article 5, paragraph 1, first sentence), and precautionary measures must be taken to protect the civilian population (Article 5, paragraph 1(a) and (b), and paragraph 2).

The use of mines, booby-traps and other devices is furthermore prohibited in any city, town, village or other area containing a similar concentration of civilians, unless precautionary measures have been taken to protect the civilian population (Article 4, paragraph 2(b)).

The specific restrictions therefore have a wider scope than the prohibition of indiscriminate attacks or attacks directed against the civilian population.

The 1980 Convention and its Protocols are applicable only in international armed conflicts. In practice, however, limitations on mine-laying in favour of the civilian population are frequently invoked in non-international armed conflicts.

In 1937, for instance, during the Spanish Civil War, the 27 Governments which were parties to the International Committee for the Application of the Agreement regarding Non-Intervention in Spain

dispatched an appeal to both sides to abstain immediately from destroying non-military objectives by laying mines.<sup>14</sup>

The United Nations has also denounced the use of anti-personnel mines in Afghanistan. The Special Rapporteur on the human rights situation in Afghanistan, Mr. Felix Ermacora, stated on a number of occasions that this practice, attributed to the armed forces in general – without their being defined more specifically – was causing heavy losses among the civilian population.<sup>15</sup>

In his 1988 report to the Secretary-General, on the situation of human rights in El Salvador, Professor Antonio Pastor Ridruejo, Special Representative of the Commission on Human Rights, likewise recommends “especially (...) to the FMLN and the guerrilla organizations (...) that they refrain from planting contact mines in a manner incompatible with the norms of international humanitarian law applicable to the civil war in El Salvador”.<sup>16</sup>

The representations made in this connection by the ICRC in El Salvador are in line with the considerations expressed by the human rights experts. Since 1985 it has regularly informed the Salvadorean authorities of its concern about the consequences of mine-laying for the civilian population.<sup>17</sup>

The general rules on the immunity of the civilian population, the distinction between combatants and civilians, the prohibition of superfluous injury and unnecessary suffering and the prohibition of perfidy provide for no exception on the use of mines, booby-traps or other devices in non-international armed conflicts. Moreover, it is important to take also into account the obligation to take precautionary measures in order to protect the civilian population from the effects of attacks using these weapons.

The above rules constitute the minimum norms which must be respected with regard to the use of mines, booby-traps and other devices in non-international armed conflicts.

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<sup>14</sup> Cassese, *op. cit.*, p. 307.

<sup>15</sup> Report by the Secretary-General to the United Nations General Assembly on 31 October 1986, A/41/788, para. 42, and Report to the Commission on Human Rights of 16 February 1989, A/43/736, para. 102.

<sup>16</sup> A/43/736.

<sup>17</sup> ICRC *Annual Report* 1985, p. 36; ICRC *Annual Report* 1986, p. 37; ICRC *Annual Report* 1987, p. 40; ICRC *Annual Report* 1988, p. 43.

## 5. Incendiary weapons

*In application of the general rules listed in section A above, especially those on the distinction between combatants and civilians and on the immunity of the civilian population, incendiary weapons may not be directed against the civilian population as such, against individual civilians or civilian objects, nor used indiscriminately.*

### COMMENTARY:

Incendiary weapons are covered by Protocol III annexed to the aforesaid 1980 Convention; they are defined as “any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat, or a combination thereof, produced by a chemical reaction of a substance delivered on the target” (Article 1, paragraph 1).

Like the rules relating to the use of mines, the provisions of the Protocol do not ban the use of incendiary weapons completely: they repeat the rule stipulating that civilians may not be made the object of attacks by incendiary weapons (Article 2, paragraph 1), and totally prohibit attacks by air-delivered incendiary weapons on military objectives located within a concentration of civilians (Article 2, paragraph 2), and severely restrict attacks on such objectives by means of other types of incendiary weapons (Article 2, paragraph 3). The aim of the rule is to reduce as much as possible the effects of incendiary weapons on the civilian population. As regards attacks on concentrations of civilians, the scope of the restriction is wider than that of the prohibition of indiscriminate attacks and of attacks against the civilian population.

In its Resolution XXII of 12 May 1968 covering all types of armed conflict, the International Conference on Human Rights, held in Tehran under the auspices of the United Nations, declared the use of napalm to be contrary to international norms, in the same way as the use of chemical and biological weapons.

Protocol III contains no provision according protection to combatants, but this cannot be taken to mean that incendiary weapons may be used against them. In fact, the British military manual, for instance, imposes a ban on the use of such weapons against personnel.

The general rules on the immunity of the civilian population and the distinction between combatants and civilians make no exceptions for the use of incendiary weapons in non-international armed conflicts.

As in the case of mines, booby-traps and other devices discussed in the preceding section, the above rules are the minimum standards which must be observed with regard to the use of incendiary weapons in non-international armed conflicts.

### **III. Final remarks**

It has long been established that in order to be respected, the rules of international humanitarian law must be known. As regards non-international armed conflicts, Article 19 of the 1977 Additional Protocol II imposes on States Parties to the obligation to disseminate the Protocol. Even if that provision did not exist, however, States would still be obliged to make the instrument known, by virtue of their general obligation to ensure observance of international humanitarian law by their agents.

The question remains whether the dissemination of international humanitarian law should take into account the specific characteristics of non-international armed conflicts to ensure that in such conflict the applicable rules are respected. As regards teaching the rules on the conduct of hostilities to soldiers as part of their military training, separate courses on international and non-international armed conflicts seem unnecessary since the content of rules applicable to both types of conflict is essentially the same. The distinction is more important, however, when it comes to the categories of persons to whom the rules are disseminated: since the civilian population is often much closer to the scene of hostilities in non-international than in international armed conflicts, it seems all the more advisable that civilians should be familiar with the rules of international humanitarian law and of their significance, especially those requiring that a distinction be made between combatants and civilians. Similarly, the teaching of international humanitarian law should stress the fact that the rules applicable in non-international armed conflicts must be respected by government forces and insurgents alike.

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# DECLARATION

on the

## Rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts

The Council of the International Institute of Humanitarian Law, meeting in Taormina on 7 April 1990,

*basing* itself on the work and the conclusions of the 14th Round Table on humanitarian law, organized by the International Institute of Humanitarian Law and held under its auspices at San Remo on 13 and 14 September 1989,

*recalling* that the topic of the 14th Round Table was “rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts”,

*noting* that the 14th Round Table examined the application of certain rules to non-international armed conflicts independently of the existence of treaty rules expressly adopted for such conflicts,

*noting* that these rules comprise general rules governing the conduct of hostilities as well as those prohibiting or restricting the use of certain weapons,

*bearing* constantly in mind the principle of humanity which is at the foundation of all international humanitarian law as well as the Martens clause which provides that in cases not covered by the law in force human beings remain under the protection of the principle of humanity and the dictates of the public conscience,

*taking into account* the rules which inspired the first codification rules of international humanitarian law relating to the conduct of hostilities,

*taking also into account* the resolutions relative to the respect for human rights in armed conflicts adopted by the United Nations General Assembly,

*considering* that Article 3 common to the 1949 Geneva Conventions must be interpreted as affording protection to human beings against the effects of hostilities,

*noting* that international instruments on human rights also grant fundamental protection in armed conflicts,

*basing* itself on the shared conviction of States as set forth in legal instruments which have been taken into consideration,

*identifies* the following principles and norms as crystallized or as emergent rules of international law:

## A. GENERAL RULES GOVERNING THE CONDUCT OF HOSTILITIES APPLICABLE IN NON-INTERNATIONAL ARMED CONFLICTS

### 1. *Distinction between combatants and civilians*

*The obligation to distinguish between combatants and civilians is a general rule applicable in non-international armed conflicts. It prohibits indiscriminate attacks.*

### 2. *Immunity of the civilian population*

*The prohibition of attacks against the civilian population as such or against individual civilians is a general rule applicable in non-international armed conflicts. Acts of violence intended primarily to spread terror among the civilian population are also prohibited.*

### 3. *Prohibition of superfluous injury or unnecessary suffering*

*The prohibition of superfluous injury or unnecessary suffering is a general rule applicable in non-international armed conflicts. It prohibits, in particular, the use of means of warfare which uselessly aggravate the sufferings of disabled men or render their death inevitable.*

### 4. *Prohibition of perfidy*

*The prohibition to kill, injure or capture an adversary by resort to perfidy is a general rule applicable in non-international armed conflicts; in a non-international conflict, acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in*

*non-international armed conflicts, with intent to betray that confidence, shall constitute perfidy.*

**5. *Respect for and protection of medical and religious personnel and of medical units and transports***

*The obligation to respect and protect medical and religious personnel and medical units and transports in the conduct of military operations is a general rule applicable in non-international armed conflicts.*

**6. *Prohibition of attacks on dwellings and other installations used only by the civilian population***

*The general rule prohibiting attacks against the civilian population implies, as a corollary, the prohibition of attacks on dwellings and other installations which are used only by the civilian population.*

**7. *Protection of objects indispensable to the survival of the civilian population***

*The general rule prohibiting attacks against the civilian population implies, as a corollary, the prohibition to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population.*

**8. *Precautionary measures in attack***

*The general rule to distinguish between combatants and civilians and the prohibition of attacks against the civilian population as such or against individual civilians implies, in order to be effective, that all feasible precautions have to be taken to avoid injury, loss or damage to the civilian population.*

**B. PROHIBITIONS AND RESTRICTIONS ON THE USE OF CERTAIN WEAPONS IN NON-INTERNATIONAL ARMED CONFLICTS**

**1. *Chemical and bacteriological weapons (1925 Protocol)***

*The customary rule prohibiting the use of chemical weapons, such as those containing asphyxiating or vesicant agents, and the use of*

*bacteriological (biological) weapons is applicable in non-international armed conflicts.*

## **2. Bullets which expand in the human body (such as dum-dum bullets)**

*The customary rule prohibiting the use of bullets which expand or flatten easily in the human body, such as dum-dum bullets, is applicable in non-international armed conflicts.*

## **3. Poison**

*The customary rule prohibiting the use of poison as a means or method of warfare is applicable in non-international armed conflicts.*

## **4. Mines, booby-traps and other devices**

*In application of the general rules listed in section A above, especially those on the distinction between combatants and civilians and on the immunity of the civilian population, mines, booby-traps and other devices within the meaning of Protocol II to the 1980 Convention on conventional weapons may not be directed against the civilian population as such or against individual civilians, nor used indiscriminately.*

*The prohibition of booby-traps listed in Article 6 of that Protocol extends to their use in non-international armed conflicts, in application of the general rules on the distinction between combatants and civilians, the immunity of the civilian population, the prohibition of superfluous injury or unnecessary suffering, and the prohibition of perfidy.*

*To ensure the protection of the civilian population referred to in the previous paragraphs, precaution must be taken to protect it from attacks in the form of mines, booby-traps and other devices.*

## **5. Incendiary weapons**

*In application of the general rules listed in section A above, especially those on the distinction between combatants and civilians and on the immunity of the civilian population, incendiary weapons may not be directed against the civilian population as such, against individual civilians or civilian objects, nor used indiscriminately.*

Furthermore, in the interest of promoting respect for international humanitarian law applicable in non-international armed conflicts, the Council of the International Institute of Humanitarian Law,

*recalling* the need to implement programmes aimed at disseminating and teaching international humanitarian law applicable in such circumstances,

*taking note* of the wishes expressed in this regard at the 14th Round Table,

*makes* the following recommendations:

1. The teaching of the rules of international humanitarian law on the conduct of hostilities given as part of military training should make no distinction based on the qualification (international or non-international) of the conflict.
  2. The teaching of these rules of international humanitarian law should stress that they must be respected by all the parties involved in a non-international armed conflict.
  3. The rules of international humanitarian law governing the conduct of hostilities should be disseminated not only in military circles but also among the civilian population, as in non-international armed conflicts the civilian population is often closely involved in hostilities.
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# The penal repression of violations of international humanitarian law applicable in non-international armed conflicts

by Denise Plattner

## 1. Introduction

At a time when non-international armed conflicts are increasing in number, it may be interesting to examine the implementation of international humanitarian law (IHL) applicable in these conflicts. To ensure its respect in international armed conflict, this law provides for the penal repression of certain violations. Used with discernment, especially for preventive purposes, this is undoubtedly an effective measure. There is good reason, therefore, also in view of the work of the International Law Commission (ILC) on a draft code of crimes against the peace and security of mankind,<sup>1</sup> to see whether penal repression of the violations of international humanitarian law applicable in non-international armed conflicts should be promoted.

An appropriate answer cannot be given without first reviewing the mechanisms for repression of violations of IHL applicable in international armed conflicts so as to grasp their legal, theoretical and practical implications.

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<sup>1</sup> Cf. *Report of the International Law Commission at the forty-fourth session of the United Nations General Assembly*, document A/44/10. It must be noted that the first draft of the provision relating to war crimes contained in this document deals only with international armed conflicts; assimilated to them are conflicts in terms of Art. 1, para. 4, of Additional Protocol I.

## **2. The penal repression of violations of international humanitarian law applicable in international armed conflicts**

In the traditional sense, international law is the law between States. Sanctions are effected only within the sphere of international relations and in accordance with the rules governing those relations.

In this respect IHL is an exception, as it provides for individual penal responsibility of the State agent guilty of certain violations. Hence, in a situation of international armed conflict, failure to comply with the rules of conduct laid down by IHL entails a series of legal consequences prescribed by international law and designed to bring the guilty party to judgment. These legal consequences constitute an almost foolproof system for the penal repression of certain violations of IHL.

Firstly, it must be pointed out that not all violations of IHL involve international penal liability. The Geneva Conventions of 1949 and Additional Protocol I of 1977 list the acts which according to them incur penal sanctions. Qualified as “*grave breaches*”, they come within the category of war crimes.<sup>2</sup>

In listing these grave breaches the IHL instruments specify the forms of conduct involving international penal responsibility. They thereby follow the lines of penal law, making a veritable indictment of acts that constitute war crimes. According to the First, Second, Third and Fourth Geneva Conventions (Articles 50, 51, 130 and 147 respectively), the following acts constitute grave breaches of IHL:

### ***a) Breaches specified in all four Geneva Conventions:***

- wilful killing,
- torture,
- inhuman treatment,
- biological experiments,
- wilfully causing great suffering,
- causing serious injury to body or health,
- destruction and appropriation of property not justified by military necessity (with the exception of Art. 130 of the Third Convention).

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<sup>2</sup> Cf. Art. 85, para. 1, of Additional Protocol I, which assimilates grave breaches to war crimes.

***b) Breaches specified in both the Third and Fourth Geneva Conventions:***

- compelling a prisoner of war or a civilian protected by the Fourth Geneva Convention to serve in the armed forces of the hostile Power,
- wilfully depriving a prisoner of war or a civilian protected by the Fourth Geneva Convention of the right to fair and regular trial, prescribed in the Third and Fourth Geneva Conventions.

***c) Breaches specified in the Fourth Geneva Convention:***

- unlawful deportation or transfer,
- unlawful confinement,
- taking of hostages.

The acts listed above constitute grave breaches only if they are committed against persons to whom the legal definition of protected persons in the terms of any one of the Geneva Conventions applies. To qualify as a protected person requires having the nationality at least of a foreign State, if not of an enemy State. This point must be borne in mind by anyone wishing to transpose to non-international armed conflicts the IHL system applicable in international armed conflicts.

Under Article 85 of Additional Protocol I, to which 97 States are party,<sup>3</sup> grave breaches are:

***a) The following acts, when committed wilfully and causing death or serious injury to body or health:***

- making the civilian population the object of attack,
- launching an indiscriminate attack, or an attack against works or installations containing dangerous forces in the knowledge that such an attack will cause excessive damage to civilian objects in relation to the military advantage anticipated,
- making non-defended localities and demilitarized zones the object of attack,
- making a person the object of attack in the knowledge that he is *hors de combat*,
- making perfidious use of the protective emblem of the red cross or red crescent.

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<sup>3</sup> Status on 31 August 1990.

***b) The following acts, when they are committed wilfully and in violation of the Conventions or the Protocol:***

- the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory,
- any unjustifiable delay in the repatriation of prisoners of war or civilians,
- practices of *apartheid* and other inhuman and degrading practices based on racial discrimination,
- attacking and causing large-scale destruction of clearly recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and which are under special protection.

***c) Acts constituting grave breaches of the Geneva Conventions, when committed against:***

- persons in the power of an adverse Party, protected under Articles 44, 45 and 73 of the Protocol,
- the wounded, sick or aliens belonging to the adverse Party who are protected by the Protocol,
- medical or religious personnel, medical units or medical transports which are under the control of the adverse Party and are protected by the Protocol.

The war crimes listed in the Geneva Conventions and Additional Protocol I include almost all the acts qualified as such in previous legal instruments, particularly in the one which served as the basis for the London Agreement of 8 August 1945 on the trial of leading Nazi war criminals.<sup>4</sup>

International penal responsibility is inconceivable without an obligation for the States party to the said IHL treaties to bring the authors of acts constituting grave breaches before their own courts.

For this purpose the Geneva Conventions make it mandatory to enact national legislation providing for “*effective penal sanctions*” (Articles 49, 50, 129 and 146 of the First, Second, Third and Fourth Geneva Conventions respectively). Thus, whereas the legal norm is established by specifying offences comprehensively enough to satisfy

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<sup>4</sup> Yves Sandoz, “Penal Aspects of International Humanitarian Law”, in *International Criminal Law*, vol. I, *Crimes*, Chérif Bassiouni, ed., New York, 1986, pp. 209-232, at p. 225 ff.

the principle *nullum crimen sine lege*, the choice of sanctions is left to the States, which can set up a penal system in line with their own national legislation. They must, however, duly act on their competence in this respect so that the mechanism of international penal responsibility can be fully brought into play.

Whilst the obligation to provide for penal sanctions must be fulfilled by States on becoming party to the said instruments, they are under an obligation to repress a war crime from the time that it is committed. Furthermore, the States must supply each other with all information needed for the prosecution of grave breaches, give mutual legal assistance, respond favourably to requests for extradition, or, if their national legislation does not allow extradition, they must bring the perpetrator before their own courts.

On this subject, international humanitarian law has two notable characteristics. Firstly, it creates universal legal competence in that States are entitled by IHL to prosecute an alien national on their territory who has committed a war crime against alien nationals in other countries. Secondly, it renders mandatory the exercise of this competence to prosecute and bring to trial, since the Conventions stipulate that "each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts" (Articles 49, 50, 129 and 146 of the First, Second, Third and Fourth Geneva Conventions respectively; the underlinings are the author's).

This universal competence must not, however, be confused with repression, which remains a national competence; the international element is essentially normative.

Under the Geneva Conventions, persons accused of grave breaches "*shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949*" (Article 146 of the Fourth Geneva Convention; see also Articles 50, 51 and 130 of the First, Second and Third Geneva Conventions respectively). This protection applies to all accused persons, regardless of their status or the time of their trial.<sup>5</sup> It shows, if need be, the scope and autonomy of the procedure laid down by IHL for the punishment of war criminals.

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<sup>5</sup> *Commentary published under the general editorship of Jean S. Pictet, IV, Geneva Convention relative to the Protection of Civilian Persons in Time of War, ICRC, Geneva, 1958, p. 595.*

### 3. The penal repression of violations of international humanitarian law applicable in non-international armed conflicts

The international humanitarian law applicable in non-international armed conflicts can be found under Article 3 common to all four Geneva Conventions of 1949 and in Additional Protocol II of 1977, to which 87 States are party.<sup>6</sup>

Since Additional Protocol II comprises only twenty-eight provisions, ten of which are final provisions, the body of rules concerning this category of conflicts is relatively slight. However, these rules reflect the essential provisions of IHL applicable in international armed conflicts. The differences, for example the absence of any prisoner-of-war status which would confer immunity on those fighting against the established government, sometimes stem from *de facto*, but also from *de jure* characteristics of non-international armed conflicts.

The provisions applying specifically to non-international armed conflicts contain no other obligation relative to the implementation of IHL other than that of dissemination, which is laid down in Article 19 of Protocol II.

Consequently, IHL applicable to non-international armed conflicts does not provide for international penal responsibility of persons guilty of violations. Thus to examine the advantages and difficulties involved in organizing the international penal repression of violations of IHL applicable in non-international armed conflicts is to enter the realm of *lex ferenda*.

Our projection is limited, however, by the body of law currently in force, i.e. IHL applicable in international armed conflicts.

Certain aspects of the plan to set up an international court of justice, a plan linked to the draft code of crimes against the peace and security of mankind, do in fact go beyond the scope of international humanitarian law alone. This holds true for IHL as a whole, though we have chosen to concentrate here on IHL applicable in non-international conflicts.

This part of IHL is still at times considered a poor relation of the law of armed conflicts. Respect for it would doubtless be enhanced by making violations of the rules of IHL applicable in non-international armed conflicts subject to penal sanctions under international law. The attribution of international penal responsibility to persons guilty of

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<sup>6</sup> Status on 31 August 1990.

violating the rules applicable to internal armed conflicts would thus not only have a dissuasive effect, but would also stimulate all other measures conducive to respect for IHL.

It would serve no purpose, however, to ignore the objections that would be raised against the institution of such a responsibility.

The IHL treaties comprise two categories of rules which can be distinguished according to a time factor. The first kind apply as soon as the IHL treaty comes into force in the State concerned (under Article 23, para. 2, of Additional Protocol II, six months after the deposit of its instruments of ratification or accession). These rules require the State to take a certain number of preparatory measures in peacetime to ensure that IHL is respected in the event of an armed conflict. The other rules lay down a code of conduct to be observed when an armed conflict actually breaks out. Unlike the former, these are substantive rules.

As we saw in the previous chapter, the international penal repression of war crimes takes the form of a series of obligations vis-à-vis the States party. Those obligations relating to the adoption of appropriate penal legislation must be implemented as soon as the treaty enters into force. Those concerning repression must be fulfilled by every State from the moment a war crime is committed, whether or not it is a party to the conflict.

In the case of IHL applicable in non-international armed conflicts, the responsibility for taking preventive measures rests with the State party to the relevant treaties and, in practice, its organs. Problems arise when a non-international armed conflict breaks out and concern the repression of IHL violations. It is difficult to conceive of IHL giving insurgents the authority to prosecute and try the authors of violations. However, to attribute legal competence solely to the government in power could open the way to abuse. One solution would be to authorize the repression of violations only after the end of hostilities. This would have obvious advantages as regards respect for the basic legal guarantees and compliance with the IHL stipulation that trials be conducted by an independent and impartial court. The trial of war criminals *after* the hostilities was moreover proposed by the ICRC quite some time ago, when the Geneva Conventions of 1949 were being drawn up.<sup>7</sup>

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<sup>7</sup> *Commentary published under the general editorship of Jean S. Pictet, III, Geneva Convention relative to the Treatment of Prisoners of War, ICRC, Geneva, 1960, pp. 625-626.*

To suspend the effects of individual international responsibility until the end of hostilities would also help to dispel fears that such responsibility implies recognition of the insurgents as having international personality. This fear is certainly unjustified. Firstly, international penal responsibility entails sanctions not only for acts committed by organs of the State, but also for criminal offences by individuals. Secondly, according to legal doctrine insurgents are bound by IHL applicable in non-international armed conflicts not as a "party", but as individuals.<sup>8</sup> Hence, individual international responsibility for violations of IHL applicable in non-international armed conflicts does not necessarily imply that the rebel "party" is also responsible. It has, however, been said that the responsibility of the State could be involved even though the rebel government does not become the new government, if, either before or after, the State was negligent in preventing or repressing illegal activities.<sup>9</sup> From this point of view the State could be held responsible for a violation of IHL applicable in non-international armed conflicts on grounds of having failed to prevent or repress the said violation. This would be in perfect agreement with our proposed construction.

Another difficulty lies in the fact that persons who take up arms against the established government are subjects of common law. If the obligation to try authors of IHL violations takes effect only at the end of the conflict, the insurgent who has not respected IHL is in a better position than the one prosecuted for simply fighting against the established government. This disparity is so shocking that one wonders, whether the introduction of a system of international penal repression in non-international armed conflicts is compatible with the legal situation of captured insurgents as it stands today. This objection could possibly be seen in a different light by taking into account the way governments proceed when faced with a situation of internal armed conflict. Most of the time it seems that instead of condemning the insurgents they intern them,<sup>10</sup> and the internal armed conflict usually

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<sup>8</sup> Cf. *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of August 12, 1949*, ed. by Yves Sandoz, Christophe Swinarski and Bruno Zimmermann, ICRC, Geneva, 1987, p. 1345, para. 4444; Georges Abi-Saab, "Non-international armed conflicts", in *The International Dimensions of Humanitarian Law*, UNESCO, Paris, 1988, pp. 217-239, at p. 231.

<sup>9</sup> On this subject see the opinion of Mr. Roberto Ago, special rapporteur, in his report on the responsibility of States, *Yearbook of the International Law Commission*, 1972, vol. II, p. 130, para. 156.

<sup>10</sup> Cf. Michel Veuthey, *Guérilla et droit humanitaire*, Geneva, 1983, p. 217.

ends with a national reconciliation which includes an amnesty in favour of those who have fought.

By requiring that non-international conflicts must have ended before penal repression is implemented, IHL could avoid it being confined to persons belonging to the enemy camp. The risk would nonetheless remain of only those who fought for the lost cause being prosecuted, and seems to be inherent in any mechanism creating an international penal responsibility for acts committed in situations of armed conflict, as long as repressive measures are applied by national organs. This risk has prompted the main criticisms of the system set up by the Geneva Conventions to govern international armed conflicts, which is accused at times of favouring the justice shown by the victor to the vanquished. Although this objection cannot be overlooked, attention must be drawn to the fact that the only other alternative, as the problem stands, would be to eliminate international penal responsibility for violations of IHL.

As mentioned above, IHL applicable in international armed conflicts creates universal legal competence for the repression of war crimes. In the event of a non-international armed conflict, States not party to it would most probably be little inclined to exercise this competence for fear of being accused of interfering in the internal affairs of the State in which the conflict has broken out, even though compliance with IHL can never constitute an unfriendly act towards another State. In actual fact, States not party to the conflict should, too, repress violations of IHL and prosecute both insurgents and members of government armed forces accordingly.

In the light of these considerations, a universal competence which comes into play only at the end of an internal armed conflict would seem more acceptable and more likely to be put into actual effect. Some third States might, it is true, be tempted to prosecute only former insurgents, or, conversely, only members of the government armed forces. This danger nevertheless also exists in the event of an international armed conflict, when States may be more assiduous in prosecuting the war criminals of one belligerent only, most probably the one defeated.

The question arises in this connection whether international penal responsibility must necessarily go hand in hand with universal competence to punish violations. The answer would seem to be affirmative,<sup>11</sup> for both political and legal reasons. In the absence of an obligation to

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<sup>11</sup> Chérif Bassiouni, "Characteristics of International Law Conventions", in *International Criminal Law*, vol. I, *Crimes*, op. cit., pp. 1-3, at p. 7.

prosecute or extradite (*aut dedere aut judicare*)<sup>12</sup> to give effect to this universal competence, the fact that the person suspected of a violation is outside the State authorized to prosecute him by virtue of the principle of territoriality would prevent that State from implementing its international penal responsibility. Moreover, the fact that such universal competence exists is evidence that the State's interest in repressing violations stems from international and not domestic law.<sup>13</sup>

We have seen that the Geneva Conventions give procedural guarantees to persons charged with grave breaches of IHL applicable in international armed conflicts. A similar type of protection should also be provided for persons wanted for violations committed during an internal armed conflict. For the sake of consistency, such guarantees should be those provided in non-international armed conflicts rather than those of the Third Geneva Convention. The legal protection of a person prosecuted for violations committed during a non-international armed conflict should not, however, differ from the protection granted by IHL to a person wanted for acts perpetrated during an international armed conflict.

IHL applicable in international armed conflicts distinguishes between breaches qualified as grave and entailing international penal responsibility, and other violations of IHL. The same system could exist for the international penal repression of violations of IHL applicable in non-international armed conflicts.

Violations entailing international penal repression should then be specified on the basis of the list of grave breaches of IHL applicable in international armed conflicts. Only those breaches which are tantamount to a violation of the code of conduct laid down by IHL for non-international armed conflicts should be taken over. It is evident, however, that almost all the breaches common to the four Geneva Conventions can be included. Naturally, when defining the said violations, only the relevant material elements of grave breaches of IHL applicable to international armed conflicts should be taken into account; the element conferring the status of protected person under the four Geneva Conventions should be disregarded.

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<sup>12</sup> On this subject, see Kamen Sachariew, "States' entitlement to take action to enforce international humanitarian law", in *International Review of the Red Cross*, No. 270, May-June 1989, pp. 177-195, at pp. 179-180.

<sup>13</sup> The International Court of Justice, in its judgment of 27 June 1986 concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America), considered that the observance of rules of conduct laid down by Art. 1 was likewise mandatory in non-international armed conflicts (cf. *Reports of Judgments, Advisory Opinions and Orders*, 1986, p. 129, para. 255).

## 4. Prospects and conclusions

The rules establishing international individual responsibility for violations of IHL applicable in non-international armed conflicts are yet to be made. At present, failure to punish a person guilty of violating this law does not directly contravene a norm of international law. The various duties which stem from the obligation to respect and ensure respect for IHL laid down in Article 1 common to all the Geneva Conventions.<sup>14</sup> can, however, help to establish such a norm. These duties consist in a general obligation to take steps at national level to promote respect for IHL during armed conflicts and performance of the duties specifically listed by IHL applicable in international armed conflicts.<sup>15</sup>

The only obligation explicitly stipulated in IHL applicable in non-international armed conflicts is that the law must be disseminated (Article 19 of Protocol II). However, this is no reason for States not to be obliged to include in their legislation the “laws and customs of war”, as the hallowed phrase goes, along with the sanctions applicable if the latter are violated.

Moreover, it is difficult to conceive of having different sanctions for substantially identical offences, according to whether the armed conflict is international or not. The States’ international obligations to repress the most serious violations of international human rights law<sup>16</sup> can also help to repress violations of IHL, insofar as the rules arising from these two branches of international law condemn the same behaviour.

Whilst the mechanism of international penal repression does create individual responsibility stemming not from national but from international law, the ultimate purpose of repression must be borne in mind. Its main interest as regards respect for IHL lies in its dissuasive and hence preventive capacity.

In this respect the action taken by the national authorities, legislative or administrative, is of prime importance.

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<sup>14</sup> Yves Sandoz, “Implementing international humanitarian law”, in *The International Dimensions of Humanitarian Law*, UNESCO, 1988. pp. 259-282, at pp. 261-262.

<sup>15</sup> For a description of these duties, see in particular Sandoz, *op. cit.*

<sup>16</sup> In this respect the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, of 10 December 1984, is of particular interest.

The creation of international individual responsibility for violations of IHL applicable in non-international armed conflicts must, if that responsibility is not to remain a dead letter or lead to abuse, be teamed with national measures to implement IHL. International law and domestic legislation will then, by bringing their mutual influence to bear, be able to improve the mechanisms designed to ensure respect for IHL in times of armed conflict, as well as the effectiveness of its rules.

**Denise Plattner**

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**Denise Plattner**, born in 1952 in Geneva, has a postgraduate degree in law (specializing in public law) from the University of Geneva (1977). After obtaining her law degree in 1974, she was an assistance in the Department of Constitutional Law at the Faculty of Law in Geneva. She joined the International Committee of the Red Cross in Geneva in 1978 as a legal delegate in the Operations Department, and carried out several missions with ICRC delegations. Since 1987, she has been a member of the ICRC Legal Division.

## Captured child combatants

by María Teresa Dutli

The forms of violence which are all too frequently encountered in armed conflicts today have given rise to an increase in the numbers of civilian victims, and particularly of children, who, an account of their special vulnerability, are the most seriously affected. The active participation of children in hostilities, too, is a disturbing factor – serious enough to justify the increasing attention the subject is receiving within the international community.

Until the Second World War the active participants were primarily regular troops. Children certainly did play a role in resistance movements in Europe and were arrested, deported and sent to concentration camps. But particularly since the emergence of new types of conflicts – in which there are regular troops on one side and guerrillas on the other – we have been seeing all too frequently boys who are little more than children in combat theatres, brandishing weapons and ready to use them indiscriminately. Children participating in hostilities are a deadly threat, not only to themselves, but also to the persons whom their impassioned and immature nature may lead them to shoot at.

For several decades the ICRC has been concerned about the particularly tragic plight of children during armed conflicts. As early as 1924 it made a major contribution to the Geneva Declaration of the Rights of the Child.

In 1939, in co-operation with the Save the Children Fund International Union, the ICRC prepared a draft convention for the protection of children in cases of armed conflict.<sup>1</sup> Unfortunately the outbreak of war prevented its adoption. Notwithstanding this setback, the ICRC took a number of initiatives during the Second World War to improve the lot of children, directed in particular to the reuniting of families.

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<sup>1</sup> André Durand: *From Sarajevo to Hiroshima: History of the International Committee of the Red Cross*, Vol. 2, Henry Dunant Institute, International Committee of the Red Cross, Geneva, 1984, pp. 162-166.

Immediately following the end of the war the ICRC resumed its efforts to secure the adoption of special provisions concerning the protection of children. These provisions were included in the Fourth Geneva Convention of 1949, which not only affords general protection to children as civilians not taking part in hostilities but also, in no less than seventeen of its provisions, provides special protection for them.

The 1977 Protocols additional to the Geneva Conventions of 1949 marked a substantial step forward in the provision of protection for children in times of armed conflict. Not only did they afford children greater protection against the effects of hostilities, but they also regulated for the first time the actual participation of children in hostilities – a development which has become an alarming reality in conflicts today.<sup>2</sup>

The protection granted to children in international law was reaffirmed in the Convention on the Rights of the Child, adopted by the United Nations on 20 November 1989. This Convention, which is the outcome of a long process of negotiation initiated by the Government of Poland in 1978, protects the dignity, the equality and the fundamental rights of children. It contains fifty-four articles, covering all the human rights – civil, political, economic, social and cultural – of children. It also contains a provision (Article 38) specifically relating to children in armed conflicts, which in its essentials refers back to the rules of international humanitarian law protecting children in such situations.<sup>3</sup>

## I. AGE BELOW WHICH CHILDREN MAY NOT PARTICIPATE IN HOSTILITIES

There is no precise definition of a child in international humanitarian law.<sup>4</sup> However, the latter does in a number of places give the

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<sup>2</sup> On the subject of the protection of children during armed conflicts see Denise Plattner: "The protection of children in international humanitarian law", in *International Review of the Red Cross*, No. 240, May-June 1984, pp. 140-152; and Sandra Singer: "The protection of children during armed conflict situations", in *International Review of the Red Cross*, No. 252, May-June 1986, pp. 133-168.

<sup>3</sup> For further details see Françoise Krill: "United Nations Convention on the rights of the child: a controversial article on children in armed conflicts", in *Dissemination*, No. 12, August 1989, pp. 11-12, and, by the same author: "The United Nations Convention on the Rights of the Child and his protection in armed conflicts", in *Mennesker og Rettigheter* (Oslo), Vol. 4, No. 3, 1986.

<sup>4</sup> The United Nations Convention, in Article 1, defines a child as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier".

age of fifteen years as that below which children should be afforded special protection. It is generally accepted that from the age of 15 the development of a child's faculties is such that there is no longer the same need for special, systematic measures.<sup>5</sup> However, the age of fifteen years is considered to be a minimum beyond which, according to the nature of the actions or interests to be protected, some provisions nonetheless require or recommend that a higher age be taken into consideration.

The age below which the participation of children in hostilities is prohibited is as follows:

## 1. In situations of international armed conflict

Article 77, paragraph 2, of Additional Protocol I sets the minimum age at fifteen, at the same time encouraging States, where persons between ages fifteen and eighteen are recruited, to begin with the oldest.

The paragraph reads as follows:

*"The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest".*

The wording "*The Parties to the conflict shall take all feasible measures*" is less mandatory than that proposed by the ICRC, which had suggested that the Parties should "*take all necessary measures*". The governments which negotiated this Article adopted the wording finally used to avoid entering into absolute obligations with regard to the voluntary participation of children in hostilities.

Conversely, Article 77, paragraph 2, of Protocol I contains an extremely important obligation, requiring States party not to recruit children under fifteen years of age into their armed forces. The English text – "*they shall refrain from recruiting them into their*

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<sup>5</sup> See also Yves Sandoz, Christophe Swinarski, Bruno Zimmermann (editors): *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva, ICRC, 1987) (hereinafter referred to as *Commentary on the Additional Protocols*), p. 899, paragraph 3179.

*armed forces...*” is more explicit than the French (which says “... in particular by refraining...”). The word “recruitment” covers both compulsory and voluntary enrolment, which means that the Parties must also refrain from enrolling children under fifteen years of age who volunteer to join the armed forces.

The wording of this paragraph has the additional advantage of encouraging the raising of the minimum age at which children may be recruited. During the negotiation of this provision one delegation had proposed that the limit on non-recruitment should be raised from fifteen to eighteen years. The majority of the delegates were opposed to extending the prohibition of recruitment beyond fifteen years, but in order to take this proposal into account it was provided that in the case of recruitment of persons between fifteen and eighteen, priority should be given to the oldest.<sup>6</sup> This compromise is an extremely important one, as it clearly reflects the desire of certain governments to extend the protection to which children are entitled.

It is this recommendation that enables the ICRC to impress upon Parties to a conflict the importance, on humanitarian grounds, of not allowing adolescents under eighteen to participate in hostilities, thus increasing the protection afforded to them. Naturally, the ICRC is also continually reminding belligerents that international humanitarian law prohibits both the recruitment of children under 15 years of age and the acceptance of their voluntary enrolment and calls on States to take all feasible measures to ensure that children do not take a direct part in hostilities.

## **2. In situations of non-international armed conflict**

The age under which children do not have the right to participate in hostilities is laid down in Article 4, paragraph 3(c), of Protocol II, which reads as follows:

*“Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities”* .

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<sup>6</sup> *Commentary on the Additional Protocols, op. cit.*, p. 901, paragraph 3188; *Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts* (Geneva, 1974-1977), Berne, Federal Political Department, 1978, Vol. III, p. 301 (CDDH/III/325, 30 April 1976).

This prohibition is an absolute one covering direct or indirect participation in hostilities, i.e. by gathering information, transmitting orders, transporting munitions or foodstuffs or committing acts of sabotage.<sup>7</sup> The obligation imposed on States party here is stricter than that applicable in situations of international armed conflict.

There is no formal recommendation to refrain from recruiting children under eighteen years of age in situations of non-international armed conflict. However, in pursuance of its mandate as a humanitarian institution, the ICRC can in such situations, too, approach Parties which have children fighting for them to draw their attention to the importance of ensuring that those adolescents do not participate in hostilities. It also reminds such Parties that the recruitment of children under fifteen years of age or the acceptance of their voluntary enlistment is prohibited by international humanitarian law and that this absolute prohibition applies both to their direct and to their indirect participation in hostilities.

### **3. Article 38 of the Convention on the Rights of the Child**

Despite the efforts of a number of States to have the age below which children should not participate in hostilities raised from fifteen to eighteen years, Article 38 of the Convention on the Rights of the Child does not constitute an advance, since it merely repeats the wording of Article 77, paragraph 2, of Protocol I.<sup>8</sup> It thus prohibits

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<sup>7</sup> *Commentary on the Additional Protocols, op. cit.*, pp. 1379-1380, paragraphs 4555-4558. See also F. Krill: "The United Nations Convention on the Rights of the Child and its protection in armed conflicts", *op. cit.*, p. 42.

<sup>8</sup> Article 38 of the Convention on the Rights of the Child reads as follows:  
"1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.  
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.  
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but have not attained the age of eighteen years, the States Parties shall endeavour to give priority to those who are oldest.  
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict".

It should be mentioned that, during the negotiations on the Convention on the Rights of

the direct participation in hostilities of children under fifteen years of age. It is even weaker than the existing law in that international humanitarian law applicable to non-international armed conflicts, as explained above, prohibits both the direct and the indirect participation of children in hostilities.<sup>9</sup>

However, paragraph 1 of Article 38 contains a reference to the rules of international humanitarian law relevant to the protection of the child. As a result of this clause and of the *lex specialis* character of international humanitarian law, Article 4, paragraph 3(c), of Protocol II will apply in doubtful cases. As was seen earlier, the latter provision offers children greater protection.

## II. STATUS AND TREATMENT OF CHILD COMBATANTS CAPTURED IN INTERNATIONAL ARMED CONFLICTS

### 1. Child combatants who become prisoners of war

#### A. Status

- *Children between ages fifteen and eighteen.* Notwithstanding the recommendation that priority be given in enrolment to the oldest – an indication that humanitarian law deems their participation in hostilities abnormal – children between ages fifteen and eighteen, enrolled in the armed forces or taking part in a mass uprising of the population (*levée en masse*), do in fact have combatant status<sup>10</sup> and are *ipso facto* entitled to prisoner-of-war status if captured.<sup>11</sup>
- *Children under fifteen years of age* who, notwithstanding the injunctions in Article 77, paragraph 2, of Protocol I, are recruited or are enrolled as volunteers in the armed forces, also have combatant status and will if captured have prisoner-of-war status. Although the

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the Child, the States invoked the same arguments as regards age and the “feasible” (rather than “necessary”) measures to be taken in the case of participation in hostilities as they did during the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law.

<sup>9</sup> See F. Krill, *op. cit.*, *supra*, Note 3.

<sup>10</sup> Under the terms of Article 43 (paragraph 2) of Protocol I, concerning members of the armed forces, and of Article 2 of the Regulations respecting the Laws and Customs of War on Land, Annex to the Hague Convention of 18 October 1907, concerning the spontaneous uprising of the population (*levée en masse*).

<sup>11</sup> They acquire this status under the terms of Article 4A, paragraph 1, of the Third Geneva Convention.

participation of children in hostilities is prohibited, it was nonetheless necessary to ensure that they are protected if captured. There is for that matter no age limit for entitlement to prisoner-of-war status;<sup>12</sup> age may simply be a factor justifying privileged treatment. However, a child combatant under age fifteen who is captured cannot be sentenced for having borne arms. Since the prohibition contained in Article 77, paragraph 2, of Protocol I is addressed to the Parties to the conflict and not to the children, the participation of the latter in hostilities does not constitute a breach of the law by them. Responsibility for such a breach lies with the Party to the conflict which recruited and enrolled the children.

## **B. Treatment**

All child combatants, on account of their age, must be given privileged treatment. Such treatment – to which reference is made in Article 77, paragraph 1, of Protocol I – is specifically provided for in the provisions of international humanitarian law which afford special protection to children.<sup>13</sup>

## **C. Responsibility**

As with other prisoners of war, this special status does not exclude penal proceedings in respect of serious breaches of international humanitarian law committed by children, in particular war crimes or offences against the legislation of the detaining Power. In such circumstances, however, their responsibility should always be evaluated according to their age, and as a general rule educational measures, rather than penalties, will be decided on. Although penal sanctions may be applied against them, no person can be condemned to death if at the time of committing the offence that person was under eighteen years of age; and even if so sentenced, the sentence can in no case be carried out.<sup>14</sup>

During visits to prisoner-of-war camps under the mandate conferred on it by the States party to the humanitarian law treaties (and in particular Article 126 of the Third Geneva Convention), the ICRC monitors compliance with the rules which grant special protec-

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<sup>12</sup> *Commentary on the Additional Protocols*, *op. cit.*, p. 902, paragraph 3194.

<sup>13</sup> Article 16 of the Third Convention, Article 49 (paragraph 1) of the Third Convention and Article 77 (paragraphs 4 and 5) of Protocol I. See also D. Plattner, *op. cit.*

<sup>14</sup> Article 68 (paragraph 4) of the Fourth Convention and Article 77 (paragraph 59) of Protocol I.

tion to children. It also insists that their age and resultant limited capacity be taken into account by according them the requisite more favourable treatment. This special protection stems from the provisions of the Fourth Geneva Convention of 1949 (which ought also to be included in the Third Convention); it relates primarily to the physical and psychological conditions of their internment.<sup>15</sup>

## **2. Child combatants who become civilian internees**

Children who participate in hostilities but are not combatants within the meaning of international humanitarian law remain subject to the domestic legislation of the countries of which they are nationals.

If they are captured by the enemy Power and come within the category of persons protected by the Fourth Geneva Convention,<sup>16</sup> such children are “civilian internees” and as such have the right to be reunited with their parents in the same place of internment, to be given physical conditions of internment appropriate to their age and additional food in proportion to their physiological needs, to receive education and be able to have physical exercise, etc.<sup>17</sup>

Any disciplinary punishments must also take account of their age.<sup>18</sup> They may not be punished for having taken a direct part in hostilities unless, at the time of that participation, their level of discernment was such as to enable them to understand the implications and the consequences of their actions. No sentence of death may be pronounced against them or carried out.

## **3. Minimum protection**

Even if children who have taken part in hostilities are not entitled to any special status, they must in all cases, under Article 45, paragraph 3, of Protocol I, be granted the general protection afforded by Article 75 thereof. The latter provision covers all persons in the power of a Party to a conflict who do not enjoy more favourable treatment

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<sup>15</sup> Articles 82, 85 (paragraph 2), 89 (paragraph 5), 94 and 119 of the Fourth Convention. If they are in occupied territory, Articles 50, 51, 68 and 76 of the same Convention are also applicable.

<sup>16</sup> Subject to the provisions of Article 5.

<sup>17</sup> Respectively Articles 82, 85 (paragraph 2), 89 (paragraph 5) and 94 of the Fourth Convention.

<sup>18</sup> Fourth Convention, Article 119.

under the Conventions and the Protocol, and lays down a minimum of recognized humanitarian rules for the protection of all persons – including children – affected by an armed conflict.

### III. REPATRIATION OR INTERNMENT IN A NEUTRAL COUNTRY

#### 1. Repatriation

The 1949 Geneva Conventions and Additional Protocol I of 1977 do not contain any specific provisions on the subject of the repatriation of children captured during armed conflicts. Consequently they are subject to the general rules concerning repatriation.

##### A. Child combatants who become prisoners of war

- *Repatriation during hostilities*

There is no express provision concerning the repatriation of child combatants, whether between ages fifteen and eighteen or below age fifteen, while hostilities continue. However, in view of their age, attempts might be made to secure agreements between the parties to the conflict providing for their early repatriation, applying by analogy the rules applicable to seriously wounded and sick persons and to prisoners of war whose intellectual and physical capacities are seriously endangered by continued detention.

Where early repatriation takes place it may be necessary, depending on the child's age and degree of discernment, to obtain his or her consent, since Article 109, paragraph 3, of the Third Geneva Convention stipulates that prisoners may not be repatriated against their will during hostilities.

The limited degree of discernment of children may lead the detaining authorities systematically to circumvent the obligation to take into account the wishes of each person concerned. This would certainly be an injustice in the case of children fifteen and eighteen years old, particularly if under their national legislation they are deemed to be of age. In contrast, the need to obtain the consent is easier to circumvent in the case of children under fifteen years of age, in whose interest it is – except where there is incontrovertible evidence to the contrary – that they be returned to their families.

However, it would be reasonable to grant such favourable treatment only in so far as assurances are given by the Power of Origin that the children concerned will not be sent back to the front. The Detaining Power can also ask the Power of Origin for guarantees that the children will not be sent back into combat. Such a request could be based on Article 117 of the Third Convention, which states that “*no repatriated person may be employed on active military service*”, and is justifiable by the interests of the Detaining Power, since the reenrolment of the children, once repatriated, would constitute a threat to its own security.

When the ICRC seeks to obtain the repatriation of child combatants during hostilities, it stresses the desirability for the children themselves of being repatriated and thus reunited with their families. However, it cannot disregard the security of the Detaining Power, which can legitimately demand guarantees from the Power of Origin; these guarantees are in turn an additional safeguard for the interests of the children themselves.

- *Repatriation at the close of hostilities*

Child combatants who are prisoners of war must, like all other prisoners of war, be repatriated as soon as active hostilities cease<sup>19</sup> except when they form the subject of criminal proceedings.<sup>20</sup> When the ICRC helps with repatriation at the close of hostilities, it makes every effort to ensure that children are given priority on account of their vulnerability. In ascertaining children’s wishes with regard to repatriation, consideration must be given to their age at the time of repatriation.

## **B. Child combatants who become civilian internees**

Internment is an exceptional measure and can be justified only by the most imperative of security considerations. Consequently the Fourth Convention stipulates that all interned persons (including children) must be released as soon as the reasons which necessitated their internment cease to exist.

Children must be able to rejoin their families at the latest and “as soon as possible after the close of hostilities”.<sup>21</sup> The only exceptions

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<sup>19</sup> Third Convention, Article 118.

<sup>20</sup> Third Convention, Article 119 (paragraph 5).

<sup>21</sup> Fourth Convention, Article 133.

are children who must serve sentences for having taken part in hostilities (and who may consequently be further detained).

The Fourth Geneva Convention also stipulates that the Parties to the conflict shall endeavour, even while hostilities are continuing, to conclude agreements for the release and repatriation of certain categories of persons, one such category being children.<sup>22</sup> This provision does not create an obligation to reach such agreements; nevertheless, it is an urgent recommendation addressed to belligerent States on account of the particularly vulnerable nature of children. The ICRC can play an important part in proposing agreements of this kind and has done so on many occasions since the Second World War.

## 2. Internment in a neutral country

There is one possible alternative to the traditional system, as laid down in the Third Geneva Convention, for the detention of prisoners of war, namely their internment in a neutral country.

The internment of prisoners of war in a neutral country is possible only under a tripartite agreement concluded between the Detaining Power, the Power of Origin and the neutral Power. Article 111 of the Third Convention, which provides for the internment of prisoners of war in a neutral country, not only authorizes Powers to opt for this solution, but also encourages them to conclude agreements making it possible.

The Fourth Convention contains no specific provision for such agreements, as regards civilian internees, but does not exclude them either. They might well be concluded where they would be in the interests of the children – provided, of course, that they do not infringe the guarantees afforded to children by humanitarian law.

However, the Fourth Geneva Convention does contain a provision, Article 24, which might be assimilated with Article 111 of the Third Convention. It reads as follows:

*“The Parties to the conflict shall facilitate the reception of such children [i.e., children under fifteen years of age who have become orphaned or separated from their families as a result of war] in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for observance of the principles stated in the first paragraph [i.e., the children’s*

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<sup>22</sup> Fourth Convention, Article 132 (paragraph 2).

*maintenance, the exercise of their religion, and their education, as far as possible, by persons of a similar cultural tradition].”*

However, this rule must be understood as relating solely to the protection of children; it speaks not of internment but of “reception”. There is no mention here of the “security of the Detaining Power”, a notion directly associated with the combatant concept.

These two provisions are reconciled in Article 78 of Protocol I. The desirability of evacuation at all costs was challenged during the Diplomatic Conference on the Reaffirmation of Development of International Humanitarian Law applicable in Armed Conflicts. Article 78 therefore provides that:

*“No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children or, except in occupied territory, their safety, so require.”*

Thus internment in a neutral country may take place only for reasons relating to the safety or the health of the child, and then only with the agreement of all the Parties, including the legal representative of the child (except in the cases of children who have become orphaned or separated from their families because of the conflict).

For this purpose the conclusion of an *ad hoc* agreement between the Parties concerned is essential. Within the context of agreements of this kind the ICRC can serve as a neutral intermediary and must ensure that the interests of the children concerned are safeguarded. In particular, the psycho-social elements necessary for their development must be taken into account by ascertaining that the neutral Power which agrees to receive the children is able to ensure that their maintenance and education are provided, to the greatest possible extent, by persons of a similar cultural tradition.

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The Geneva Conventions also provide for the hospitalization of sick children in a neutral country for the duration of hostilities.<sup>23</sup> In this field, too, although the relevant texts do not impose an obligation, they constitute an urgent recommendation to the Parties to the conflict, and specific tripartite agreements should be concluded on the subject.

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<sup>23</sup> Fourth Convention, Article 132 (paragraph 2).

#### IV. CHILD COMBATANTS DETAINED DURING NON-INTERNATIONAL ARMED CONFLICTS

It should be remembered that in non-international armed conflicts the status of combatant does not exist, and consequently that of prisoner of war, which derives from it, does not exist either. Equally, there are no categories of protected civilians or of civilian internees.

In this situation child combatants, regardless of whether they are members of the armed forces or not, may be punished under the internal legislation of the country concerned for the simple fact of having taken part in the hostilities. However, the assessment of their level of responsibility must take into account their limited capacity of discernment, which is inherent in their youth. Consequently educational measures, rather than penal sanctions, should be imposed.

A child combatant captured during a non-international armed conflict is nevertheless still protected by Article 3 common to all four Geneva Conventions of 1949, which is applicable to all persons who are not taking part in hostilities or have ceased to do so.

In addition, these children are specifically protected by Article 4, paragraph 3, of Protocol II, which contains detailed provisions on the care and assistance to be given to all children during conflicts of this kind, namely education, reunion with their families and temporary evacuation. The list is illustrative only and does not in any way prejudice other measures which may be taken on their behalf.<sup>24</sup>

In addition, Article 6, paragraph 4, of Protocol II prohibits the pronouncement of the death penalty on any person under eighteen years of age at the time the offence was committed. Here again – as with the age limit below which children may not take part in hostilities – the obligation is more extensive than that applicable to international armed conflicts, which prohibits only the execution of the death penalty on such persons.

As a general principle, when approaching the problem of child combatants in internal conflicts the ICRC lays primary emphasis on the interests of the children. If children are detained, the ICRC endeavours to secure their release wherever guarantees that they will not return to the field of battle can be given. In practice, the ICRC also requests the Parties to bear in mind the limited capacity of discernment of children under 15 years of age and endeavours to ensure that children in captivity receive special treatment appropriate to their age. It also moni-

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<sup>24</sup> *Commentary on the Additional Protocols, op. cit.*, p. 1377, paragraph 4545.

tors compliance with the special rules concerning the protection of children contained in Protocol II.

## CONCLUSION

Children are entitled to extensive protection under international humanitarian law. First and foremost, they are protected as civilians not taking part in hostilities and with regard to their particularly vulnerable character as children. This special protection is enshrined in no less than twenty-five of the provisions of the Geneva Conventions of 1949 and their Additional Protocols of 1977. International humanitarian law also regulates, through the Additional Protocols of 1977, the participation of children in hostilities. The participation of children under fifteen years of age in actual fighting is prohibited. In addition, Protocol I encourages the Parties to the conflict, if they enrol persons over fifteen years of age but under eighteen, to take only the oldest.

However, it is all too evident that, notwithstanding the prohibitions contained in the law, children are still taking part in hostilities and continue to be the innocent victims of armed conflicts. To end their suffering, it is essential that the provisions already in force be observed and upheld by the international community. The responsibility to respect and ensure respect for these norms rests first and foremost with the States party to the humanitarian law treaties. The ICRC, through its various activities – and in particular by its visits to children in captivity and its assistance programmes – helps to render more effective the protection which children so sorely need. But it is above all by taking preventive action – by making the rules of international humanitarian law as widely known as possible – that genuine respect for the rights of children can be secured.

**María Teresa Dutli**

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**María Teresa Dutli** was born in 1955. In 1979 she took her bar finals at the Faculty of Law of the National University of Buenos Aires. From 1979 to 1982 she worked as a lawyer in chambers in Buenos Aires. In 1989, she obtained a doctorate in political science at the Graduate Institute of International Studies, Geneva University. Since 1988 Mrs. Dutli has been a member of the ICRC's Legal Division.

**Emanuel Christen and Elio Erriquez  
released**

Emanuel Christen and Elio Erriquez, the two ICRC orthopaedic technicians abducted while on their way to work in Sidon, Lebanon, on 6 October 1989, were released on 8 and 13 August 1990 respectively after 307 and 312 days of captivity.

Both delegates followed the same path to freedom. They were handed over to Syrian forces in Lebanon and then transferred to Damascus where, in the presence of the head of the ICRC's delegation in the Syrian capital, they were entrusted to the care of the Swiss embassy. From Damascus a special aircraft chartered by the ICRC brought them back to Switzerland, where they were welcomed by their families, by Mr. René Felber, head of the Swiss Federal Department of Foreign Affairs, and by ICRC President Mr. Cornelio Sommaruga.

Before each delegate was released, a message signed by a previously unknown organization, the Revolutionary Palestinian Factions, was sent together with a photo of the hostage concerned to the international media in Beirut.

In a statement to the press on 14 August, President Sommaruga first of all expressed the "intense joy" which everyone at the ICRC shared with the families of Elio and Emanuel. He said: "This happy outcome has been made possible thanks to the active support and the good offices of governments from whom we sought assistance. I should like to express the ICRC's gratitude to the Libyan leader, Colonel Muḥammad Khaddāfi, who gave us constant backing through his humanitarian appeals for the release of our two colleagues. I should also like to convey our thanks to the President of Syria, Hafez al-Assad, and the Algerian President, Chadli Benjedid, who, as we know, were active throughout this crisis in seeking a solution. Finally, I wish to thank the government of the Islamic Republic of Iran, the Palestine Liberation Organization, the Lebanese authorities and all the parties in Lebanon whose support bore witness to their solidarity".

Mr. Sommaruga also thanked the Swiss public, the federal, cantonal and municipal authorities in Switzerland, the National Red Cross and Red Crescent Societies around the world and the media in

general, which had helped to sustain public awareness and concern about the plight of Elio Erriquez and Emanuel Christen. He paid tribute to the delegates and other ICRC staff who had continued their mission in Lebanon throughout the ten months their colleagues were held captive and expressed his gratitude to the ICRC task force which, in co-operation with that of the Swiss Department of Foreign Affairs, had worked tirelessly to bring about the two delegates' release.

Mr. Sommaruga stressed that the ICRC did not know the identity or motives of their captors. "On the basis of the information we have, we do not wish to speculate on who was behind this kidnapping. The ICRC therefore dissociates itself from any theories put forward".

The ICRC President also announced that the institution would be assessing the situation in the next few days and would take whatever steps it considered necessary. (See *External activities* below, p. 446).

He went on to say that, in view of the grave problems facing the world today, particularly in the Gulf, the ICRC's mission to protect and assist the victims of conflict could be fulfilled only if respect were shown for its delegates. President Sommaruga concluded by making a fervent appeal on behalf of the International Committee for the release of all the other hostages still held in captivity.

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## **The President of the People's Republic of Mozambique at the ICRC**

On 13 September 1990, the President of the People's Republic of Mozambique, His Excellency Mr. **Joaquim Alberto Chissano**, visited the headquarters of the International Committee of the Red Cross (ICRC), where he was received by the institution's President, Mr. Cornelio Sommaruga, and several members of the Committee. Mr. Chissano was accompanied by Dr. P. Mocumbi, Minister of Foreign Affairs, and by Mozambique's Ambassador in Paris and Geneva.

In his welcoming address the ICRC President thanked Mr. Chissano for supporting the whole range of ICRC activities in Mozambique (visits to detainees and assistance to displaced persons), and for granting the institution all the facilities it needs to discharge its mandate.

In his reply President Chissano pointed out the importance of the ICRC's impartiality in its work on behalf of victims of conflicts. He also emphasized the excellent co-operation that existed between the ICRC and the Mozambique Red Cross Society.

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## ICRC President in the Middle East

ICRC President Cornelio Sommaruga, accompanied by Mr. Angelo Gnaedinger, the Delegate General for the Middle East, was in the Middle East from 3 to 7 September 1990 for high-level talks with the Jordanian, Iraqi and Iranian authorities concerning the Gulf crisis. To quote President Sommaruga, the purpose of this mission was to achieve a "comprehensive humanitarian mobilization". The mission itself was in keeping with the ICRC's mandate to act in the event of international armed conflict on the basis of the 1949 Geneva Conventions and the institution's statutory right of initiative. It had four main objectives:

- to provide protection and assistance, in both Iraq and Kuwait, to the various categories of civilians affected by the events;
- to improve co-ordination and step up the ICRC's operation in Jordan in behalf of foreigners transiting through the country;
- to examine possibilities of assisting foreign nationals crossing other borders (particularly into Iran);
- to review the current situation with regard to the repatriation of Iraqi and Iranian prisoners of war.

In Baghdad, President Sommaruga had three meetings with the Iraqi Minister for Foreign Affairs, Mr. Tariq Aziz, during which they discussed the terms of a possible agreement defining the ICRC's operating procedures.

However, the ICRC did not succeed in obtaining the Iraqi Government's authorization to launch an operation in Iraq and Kuwait for the victims of the crisis.

It had requested permission to visit foreign civilians who had the financial means to leave Kuwait or Iraq but who had not been authorized to do so, and to help them stay in touch with their families by means of Red Cross messages. As for foreign nationals — especially

Asians — authorized to return to their home countries but who did not have the means to do so, the ICRC had offered to provide them with any emergency assistance they needed and to facilitate their departure by issuing them with travel documents, since they had no contacts with their embassies.

The ICRC had moreover proposed its services as a neutral intermediary in arranging the shipment of food and essential medical supplies to particularly vulnerable groups of civilians in both Iraq and Kuwait.

The ICRC is therefore unable at present to discharge its humanitarian mandate in either Iraq or Kuwait, but it remains determined to find appropriate solutions. President Sommaruga reiterated the appeal he had launched on 2 August 1990 for all the parties involved and all the States party to the Geneva Conventions to respect the rules of international humanitarian law. Following his discussions in Baghdad the ICRC President expressed deep regret that the negotiations with the Iraqi authorities had not led to the signature of an agreement providing for a comprehensive humanitarian operation.

The ICRC President also spent two days in Tehran, where he met the Vice-President of the Islamic Republic of Iran, Dr. Hassan Habibi, and the Minister for Foreign Affairs, Dr. Ali Akbar Velayati. Satisfaction was expressed on both sides at the repatriation of the prisoners of war from the Iran/Iraq conflict. The talks then focused on the problems caused by tens of thousands of foreigners arriving in the Shatt-el-Arab border area from Kuwait and Iraq. The Iranian Government had requested the ICRC's help in the matter and consultations began in Tehran to work out the details of a joint effort to assist these people.

President Sommaruga spent the last day of his mission in Jordan, where in King Hussein's absence he had talks with Crown Prince Hassan bin Talal. Their discussions centred on the tragic plight of the hundreds of thousands of people transiting through Jordan, to whom the ICRC is providing emergency relief in co-operation with the Jordanian Red Crescent.

In Amman the ICRC President also met the United Nations Secretary-General, Mr. Javier Pérez de Cuéllar.

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*EXTERNAL ACTIVITIES**(July-August 1990)***Africa****Sudan**

Several surveys carried out by delegates during the period under review showed that the next crops were being disastrously affected by the lack of rainfall. Certain vulnerable groups of the population (children, elderly and newly displaced persons, etc.) are already suffering from the drought. Since it is impossible for other agencies to get food to Malakal (by barge along the Nile) and Aweil (by train), the ICRC organized an airlift to supply these two points. Relief was also flown by large cargo aircraft to the town of Leer, in the area controlled by the SPLA, pending an ICRC barge service there.

Meanwhile, the other programmes set up by the ICRC (health care, hygiene and tracing activities) were continued.

**Ethiopia**

Following an agreement reached in mid-June by the ICRC, the Ethiopian government and the National Society on the terms and conditions of an ICRC operation in Ethiopia to build up the existing medical facilities there, three ICRC surgical teams were dispatched to Dessie, Bahr Dar and Asmara, where they began work on 25 June. Along with their specific medical role, these teams are also responsible for training programmes to upgrade local medical staff and for improving hospital services.

**Somalia**

During the period under review, the ICRC continued to provide food for the displaced persons sheltering in the hills near Boroma. In July and August, several road convoys took over 300 tonnes of food from Berbera to Boroma and neighbouring areas.

Moreover, in co-ordination with UNHCR, the governments and National Societies of Ethiopia and Somalia and the Addis Ababa delegation, the Mogadishu delegation organized the repatriation, in several stages, of an initial group of 2,362 Ethiopian refugees living in camps in north-eastern Somalia.

Both at its headquarters in Geneva and on the spot, the ICRC showed keen concern for the repercussions that the ending of the United Nations aid programme for Ethiopian refugees in Somalia may initially have on their living conditions and safety in the places where they have found refuge.

Finally, the ICRC sub-delegation in Berbera continued its medical activities. The ICRC hospital in Berbera admitted war-wounded evacuated by air from five towns in the north-west. In addition, the delegates regularly distributed food aid to district hospitals and other institutions providing care for particularly vulnerable groups of the population (children, the elderly, etc.).

## **Uganda**

On 9 July, after an agreement was reached by the Ugandan government, WFP and the ICRC, the institution began distributing food aid on a massive scale to nearly 85,000 displaced persons living in half a score of camps in the Kumi area, in eastern Uganda. Beginning in early August, tens of thousands of people started leaving the camps to resettle in their native villages. The ICRC handed out seed grain to enable them to regain self-sufficiency in food.

## **Liberia**

At the beginning of August, the activities conducted by the ICRC in Monrovia to protect vulnerable civilians and people in danger owing to their ethnic background were seriously hampered. During the night of 31 July to 1 August, one of the five centres opened at the end of June and placed under the protection of the Red Cross emblem was attacked by armed men. Carried out in utter disregard for the rules of humanity, the attack left hundreds of dead and wounded among the civilians who had sought refuge at the centre. Conditions were so precarious that the five ICRC delegates posted in Monrovia were no longer able to perform their tasks and left the city on 5 August.

In the areas held by armed opposition groups, the delegates twice distributed medical supplies and non-food relief after a survey to identify needs. Finally, the ICRC also set up tracing facilities to meet

the needs of the many Liberian families who have found refuge in adjacent countries and been cut off by subsequent developments.

## **Rwanda**

From 18 June to 16 July, an ICRC team comprising one doctor and two delegates visited 16,165 detainees, in accordance with ICRC criteria, in 16 places of detention throughout the country. Following these visits, aid including medical supplies was distributed to all places of detention to which the ICRC had had access.

## **Latin America**

### **Nicaragua**

With the terms of the Toncontin accord being gradually implemented, ending a war more than ten years old, and the Contras being demobilized and resettled, the Managua delegation was able to begin scaling down its activities. However, the delegates kept track of the needs of several groups of demobilized combatants and gave *ad hoc* assistance to facilitate their resettlement. More than 2,000 displaced civilians received similar aid in the Rio Coco Arriba area.

### **Panama**

From 2 to 7 July, an ICRC team went to three places of detention where, in accordance with ICRC criteria, they visited 55 persons detained for security reasons.

## **Asia**

### **Sri Lanka**

In view of the continued fighting between government forces and members of the LTTE (Liberation Tigers of Tamil Eelam), the ICRC stepped up its operations on behalf of the civilian population in the north.

Throughout the period under review, and with the consent of the opposition, the delegates assigned temporary neutral status to government convoys of food and medicine and escorted them to their destination in order to enable the Sri Lanka authorities to provide relief for the inhabitants of the Jaffna Peninsula. This represented a monthly contribution of 8,000 tonnes of food. Convoys of lorries, loaded in Colombo, were able to carry a portion of these supplies. At the end of

July, however, the overland route was abandoned and replaced by the sea lanes for safety reasons.

Sailing from Colombo, vessels laden with food and medicines now round the southern coast of the island and call at Trincomalee, where they take barges in tow which are required to offload the goods at Point Pedro, situated in the far north-eastern corner of the island. From there, lorries belonging to the district authorities distribute the supplies throughout the peninsula.

The main hospital on the peninsula, right next to the fort at Jaffna, was closed when fighting became concentrated around the fort. However, the ICRC managed to declare the only hospital in the area still dispensing surgery, in Manipay, to be a neutral zone and provide medical supplies to the local staff. Meanwhile, the National Society is transporting medicines to various dispensaries (some of which it runs) and to private clinics on the peninsula.

At the end of July, the delegates also proceeded to evacuate 135 foreign civilians from the Jaffna Peninsula to Colombo, where they were taken in charge by their respective embassies.

In addition, the Colombo delegation continued to visit prisons in the south during July and August. Over 17,000 persons held there in connection with the inter-Sinhalese conflict have been registered since October 1989, in 280 places of detention scattered throughout seven provinces.

At the end of August, the ICRC delegation in Sri Lanka included more than 45 delegates and a hundred or so employees recruited locally, working from the Colombo delegation, the Jaffna sub-delegation or any of the seven local offices throughout the country.

### **Afghan conflict**

In the wake of renewed fighting around Kabul and the shelling directly affecting the city, July and August hummed with intense medical activity. The ICRC orthopaedic centre in the capital was the scene of a tragic accident when, on 16 August, a rocket landed between the centre's two main buildings, killing two patients and one locally recruited ICRC employee. The people injured by the explosion were immediately treated at the ICRC hospital in Kabul. Despite the incident, the centre managed to resume its activities soon after.

The number of patients at the ICRC hospital in Kabul grew steadily from an average of 200 at the beginning of the period under review to 250 at the end of August. The influx of wounded was handled by renting a house near the hospital. Used as an annex, the

building houses patients who do not require intensive care, but who nevertheless cannot be treated as out-patients.

Moreover, the Kabul and Peshawar delegations alike continued to expand and adapt their casualty-evacuation facilities. Several new first-aid posts, designed to prepare the injured for transport to ICRC hospital, are about to be opened in areas of fighting and along the main roads leading to Kabul, Quetta and Peshawar.

In July, the Afghan Red Crescent officially handed over a plot of land to the ICRC to be used for its new orthopaedic centre. An agreement concerning the planned construction of five buildings was reached with the Swiss Disaster Relief Corps, which was consented to finance the project. Construction is now under way.

The ICRC's detention-related activities have expanded significantly. On 15 August, after years of negotiation and constant efforts, the institution finally received the Afghan government's preliminary authorization to visit detainees who are under the jurisdiction of the Ministry of State Security. An initial team of delegates left for Kabul at the end of August to reinforce the delegation and enable the visits to begin.

### **Cambodian conflict**

In October 1989, the authorities in Phnom Penh agreed in principle to the expansion of ICRC operations in the strife-ridden north-west. Various surveys of medical need carried out since January this year had determined the extent of these requirements. For safety reasons, however, the Cambodian authorities had not allowed the ICRC to establish itself permanently in the area.

On 17 August 1990, the ICRC submitted a new programme to the authorities, which gave their approval. It provides for a new logistics base to be set up in Battambang and a medical team to work at the Mongkol Borei hospital, some 10 kilometres north of Battambang near the town of Sisophon. A team comprising one delegate and two doctors left for the site from Phnom Penh on 27 August. By 30 August, the ICRC surgeon was already performing his first operation at the Mongkol Borei hospital.

### **Indonesia**

As part of its programme to visit detainees in the aftermath of the attempted coup on 30 September 1965, the ICRC began a new series of visits on 9 July which it completed at the end of August. In all, 39 detainees were seen. In addition, the delegates interviewed persons

arrested more recently in connection with security matters, mainly in Irian Jaya.

The Jakarta regional delegation also organized the transfer of 21 Timorese to Portugal.

## **Middle East**

### **Gulf crisis**

Following the outbreak of the conflict in the Arabian-Persian Gulf between Iraq and Kuwait on 2 August 1990, the ICRC immediately reminded all parties of their obligations under the 1949 Geneva Conventions, of which they are signatories.

The ICRC was already present in Iraq at the beginning of August with 21 delegates, mainly responsible for visiting Iranian prisoners of war. The regional delegate for the Arabian Peninsula was moreover himself in Saudi Arabia.

Ever since the crisis began, the ICRC has made repeated approaches to the Iraqi authorities so as to be able to fulfil its mandate vis-à-vis the various categories of victims. At the same time, many governments have expressed concern to the ICRC over the plight of their citizens in Kuwait and Iraq. The ICRC's Central Tracing Agency in Geneva and ICRC delegations elsewhere have also received innumerable individual requests for news of relatives. By the end of the period under review, however, the ICRC was still not in a position to respond either to these requests or to other humanitarian needs arising from the crisis, and was continuing its negotiations with all the parties concerned.

Conversely, the ICRC was soon able to provide assistance for the tens of thousands of civilians leaving Iraq and flocking to the Jordanian border. Following the appeal made by the Jordanian government on 23 August, the ICRC, which had already assumed an active role since mid-August, promptly set up a relief programme for these refugees in conjunction with the Jordanian Red Crescent. Based on an on-the-spot survey conducted largely by an ICRC sanitary engineer, a first reception and first-aid centre was opened at Ruweished, some 90 kilometres from the Iraqi border, followed by a second one about 50 kilometres from the border. The centres were placed under the responsibility of the Jordanian Red Crescent; the ICRC concentrated on sanitation and water distribution, while providing support for the National Society's medical activities. The ICRC also undertook to distribute food to the refugees, should the need arise.

However these centres, set up in a desert environment, soon proved inadequate to cope with the continual flood of refugees throughout August. In the face of this predicament, the ICRC conducted a survey in late August which led to the construction of a third reception centre, near the Azraq oasis some 100 kilometres from Amman.

To transport the equipment needed for its operation in Jordan, the ICRC chartered two special aircraft which left Geneva on 25 and 31 August, each carrying 40 tonnes of supplies plus additional personnel for the delegation there.

### **Iran/Iraq**

At the beginning of the period under review, the ICRC was continuing intense negotiations on a plan of humanitarian action which it had submitted to Iran and Iraq in May; this plan was part of steps taken over nearly two years to bring about the repatriation of prisoners of war captured during the conflict between these two States. The month of August brought a sudden turn for the better: on the 15th, the Iraqi government initiated the repatriation of all prisoners of war held by both sides.

The ICRC, which has delegations in Iran and Iraq, was asked by both States to carry out and monitor the repatriation involving tens of thousands of prisoners of war, some of whom have spent ten years in captivity. The ICRC reiterated its criteria for such an intervention: it must be able to verify the prisoners' identity, ascertain – prior to repatriation – that each one is returning to his country of his own free will, and secure the guarantee that there will be no reprisals against prisoners not wishing to return to their native country, nor against their families. While the first repatriation was taking place at the Qasr-e-Shirin border post on 17 August, in the presence of delegates on either side, the ICRC was settling the practical arrangements of the remainder of the operation with Iranian and Iraqi officials.

It was also agreed that, alongside the overall repatriation, that of the wounded and sick prisoners of war would be promptly carried out by air. For this purpose, a medical team comprising one doctor as medical coordinator, two other doctors and two nurses left Geneva on 20 August for Tehran. Two doctors were already stationed in Iraq.

The ICRC also immediately dispatched additional staff to its two delegations. Between 18 and 20 August, 41 delegates were sent out, mainly from the institution's headquarters. Of these, 16 were assigned to Baghdad and the remaining 25 to Tehran (since the ICRC del-

egation in Iran was no longer visiting prisoners of war, it had been cut back to four persons, compared with 23 in Baghdad).

Beginning on 17 August, the overland repatriation proceeded at the rate of 1,000 and 3,000 prisoners per day from either side, in accordance with the arrangements agreed to by both parties. In addition, a total of approximately 2,000 prisoners of war were repatriated by air in three flights organized by the two countries' authorities. All the prisoners were seen individually, prior to their repatriation, by ICRC delegates who ascertained their desire to return home and verified their identity.

At the same time, an aeroplane specially chartered by the ICRC repatriated the wounded and sick prisoners of war. On the four return flights made by this aircraft, 327 Iraqi prisoners and 271 Iranian prisoners were repatriated between 24 and 29 August.

The repatriation programme was continuing at the end of August, by which time it had enabled a total of 21,550 Iraqi prisoners of war and 21,150 Iranian prisoners of war to be reunited with their families under the auspices of the ICRC, at the end of their captivity.

## **Lebanon**

For the ICRC, the period under review was highlighted by the fortunate outcome of a drama which had seriously undermined operations in Lebanon: Emanuel Christen and Elio Erriquez, the two ICRC orthopaedists held hostage since 6 October 1989, were released on 8 and 13 August respectively (*see below, p. 435*).

After taking stock of the harrowing experience endured by two of its delegates for over ten months and making an in-depth analysis of the future of its humanitarian activities in Lebanon, the ICRC decided to carry on with its work in the country, which has been ravaged by 15 years of conflict. Despite this, the delegation was initially reduced in size from 18 to 6, and will be readapted on an ongoing basis as local conditions permit.

The ICRC issued a press release emphasizing that the context of its work is generally fraught with danger and explaining that its decision to stay in Lebanon is based on its assessment of the victims' needs and the help that the ICRC can and must provide, since no other organization is in a position to do so. This decision also takes into account the grave question of the security of everyone working for the ICRC in Lebanon and the safety limits that cannot be overstepped in reaching victims.

The ICRC's commitment in Lebanon calls for full recognition by all the parties involved in the conflict of the indispensable nature of its humanitarian activities, and of the need to facilitate this work and to respect and ensure respect for those conducting it.

The ICRC counts on such recognition and respect wherever it discharges the mandate to act as a neutral intermediary that has been conferred on it by the international community.

Prior to the release of its two members and the reduction of its numbers, the ICRC delegation had assumed a particularly active role in connection with the conflict which, after resuming in mid-July, continued to rage in the Iklm-el-Touffah area in southern Lebanon. At the parties' request, the ICRC appealed on 18 July for a humanitarian ceasefire, and the following day evacuated the mortal remains of 11 combatants in collaboration with the Lebanese Red Cross. As fighting went on, the ICRC was compelled to appeal once again on 29 July, so that the dead and wounded could be evacuated. It was not until 3 August, however, that Lebanese Red Cross relief workers and ICRC delegates managed to reach the scene of the fighting and begin operations. In all, 86 bodies and six wounded or ill civilians were evacuated between 3 and 5 August. In addition, Red Cross messages were delivered on this occasion.

At the same time ICRC delegates and doctors made regular rounds of the hospitals and dispensaries in South Beirut and near the Iklm-el-Touffah area, providing medical assistance where required as a result of the conflict. Food and material aid was also supplied in both Beirut and southern Lebanon to people displaced in connection with the fighting.

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**Twenty-sixth International Conference  
of the Red Cross and Red Crescent  
Budapest, 1991**

The Standing Commission of the Red Cross and Red Crescent, meeting on 30 July 1990 under the Chairmanship of Dr. Ahmed Abu-Goura, accepted the offer of the *Hungarian Red Cross* to organize the Twenty-sixth International Conference of the Red Cross and Red Crescent in Budapest in *November 1991*.

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**Yemeni Red Crescent**

Following the reunification of the Yemen Arab Republic and the People's Democratic Republic of Yemen, the two National Societies have merged to form the Yemeni Red Crescent, with its main headquarters at Sana'a. Pursuant to previous instruments binding the two former countries, the new State is party to the Geneva Conventions of 1949 and the Protocols additional thereto.

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### **Meeting of technical experts for the possible revision of Annex I to Protocol I Additional to the Geneva Conventions of 12 August 1949**

Article 98, paragraph 1, of Protocol I provides for a periodic review by technical experts of the *Regulations concerning identification* (Annex I to Protocol I), to ascertain whether the Annex should be amended. After consulting the States party to the Protocol, the International Committee of the Red Cross must convene such a meeting not later than four years after the entry into force of the Protocol and then at intervals of not less than four years.

Protocol I came into force on 7 December 1978 and, in accordance with Article 98, the ICRC consulted the States party to the Protocol in December 1982 as to whether such a meeting of experts should be held. The ICRC concluded from the replies that the time was not yet ripe for such a meeting as there were still too few States party to the instrument.

By August 1988 there were 76 States party to the Protocol (there are today 97), and the ICRC decided to consult the States once again. At the end of that month, the ICRC sent a memorandum to the States party to Protocol I and to the States party only to the Geneva Conventions outlining the questions currently raised by the content of Annex I. It was mainly a matter of including new provisions that the International Civil Aviation Organization, the International Maritime Organization and the International Telecommunication Union had adopted since 1977 further to resolutions addressed to them by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.

The ICRC asked the States party to Protocol I to study these questions and indicate whether they felt it necessary to amend Annex I. This survey of the States was completed in July 1989. The results showed that there was a majority in favour of amending Annex I; none of the States actually opposed such amendment. In accordance with its mandate, therefore, the ICRC convened the meeting of technical experts provided for in Protocol I, Article 98, to review Annex I and propose appropriate changes.

From 20 to 24 August 1990, almost 120 government experts representing some 60 States party to Protocol I or to the Geneva Conventions alone gathered in Geneva. The former conferred on what changes should be made to the

rules governing the identification of and communications with hospital ships and medical aircraft in wartime, while the latter attended as observers.

The meeting was opened by Mr. Cornelio Sommaruga, President of the ICRC, and chaired by Mr. Yves Sandoz, an ICRC Director. During their five days of deliberations, the experts made a detailed study of the provisions of Annex I and prepared the amendments they considered necessary to adapt them to modern means of warfare. In order to become law, the amendments will have to be adopted by a diplomatic conference.

Discussions focused on rules governing the use of the flashing blue light, the content of radio messages for the identification of medical ships and aircraft and the use of electronic means of identification such as radar transponders and underwater acoustic devices. The meeting took place in a most constructive atmosphere and was marked throughout by a desire for co-operation.

A final report will be drawn up by the ICRC and sent to the meeting's participants as well as to the other States party to Protocol I and those party only to the Geneva Conventions.

Following the meeting, the ICRC contacted the Swiss Federal Council, the depositary of the Geneva Conventions and their Additional Protocols. The Swiss Government has already indicated that it is prepared to convene a conference of the States party to Protocol I as provided for in Article 98, paragraph 2.

The ICRC has always done its utmost to update and develop international humanitarian law to keep pace with the realities of modern warfare. The recent meeting of technical experts is a further step in that direction.

*Gérald C. Cauderay*

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*WORKING FOR A HUMANITARIAN DIALOGUE*

## **The International Institute of Humanitarian Law celebrates its twentieth anniversary**

On 26 September 1990, the International Institute of Humanitarian Law celebrated the twentieth anniversary of its founding. This is therefore a good time both to review the activities of what is commonly called the "San Remo Institute" and, in the light of what is thus revealed, to look to the future.

From 24 to 27 September 1970, a conference was held in San Remo, Italy, on the theme of “Human Rights as the Basis of International Humanitarian Law”. It was attended by some 200 people, among them leading experts who had made major contributions to that body of law. One of the results of the conference was the San Remo Declaration, which created the San Remo Institute with the following objectives:

- (a) to disseminate, reaffirm and develop humanitarian law at the national and international level;
- (b) to encourage and develop all initiatives in order to implement an effective humanitarian law.\*

It was decided to locate the Institute in the Villa Nobel, where Alfred Nobel spent his last years and where he made the will by which he set up the foundation and prize bearing his name.

The Institute’s founders were motivated by the many situations of humanitarian concern caused not only by armed conflicts — both international and internal — and by natural and industrial disasters, but also by ignorance, poverty, underdevelopment and intolerance. Though they realized that there were many organizations throughout the world engaged in all manner of humanitarian work, they knew that there were numerous problems which had not been dealt with judiciously by international law or were not covered by it at all. Such problems were so complex and far-reaching that a new approach with fresh initiatives was felt to be necessary. From the very first session of the 1970 conference, it became clear that one of the Institute’s major roles would be to bring together individuals and organizations with very different backgrounds, objectives and areas of specialization but which were to varying degrees involved in humanitarian endeavours.

Once in operation, the Institute went straight to work, tackling the problems one after the other. It uses a variety of means and methods, organizing conferences, round-table discussions, meetings of experts, and courses and seminars, arranging for professional training and instruction, and for the publication of research work and studies.

Over the years, the Institute has carried out a series of specific programmes. It has become a forum for dialogue between diverse entities: States, intergovernmental and non-governmental international organizations, scientific, academic and specialized research institutions, and individuals interested in matters of humanitarian concern. The fostering of discussion is certainly the Institute’s main function; it has acted as a catalyst for discourse between the components of the International Red Cross and Red Crescent

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\* Article 2 of the Institute’s Statutes

Movement, different organizations in the United Nations system—in particular the High Commissioner for Refugees and the Human Rights Centre—the Council of Europe, the International Organization for Migration, Amnesty International, the International Commission of Jurists, the International Institute of Human Rights in Strasbourg, to name but a few.

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In its first 20 years of existence, the Institute has dealt with international humanitarian law, human rights law, refugee law, disaster-relief law, problems arising from population movements, and large-scale migration, the reuniting of divided families and all related subjects.

- The Institute has given constant close attention to *international humanitarian law* in the broadest sense of the term. This body of law is too often unknown or misunderstood by those whose duty it is to implement it, and it requires continual development to ensure its effectiveness in meeting ever-changing needs. The ICRC, the League and the National Societies have, it is true, conducted dissemination programmes over the years, but their efforts require support, and the Institute has worked impartially to promote knowledge of humanitarian law among all the world's armed forces, with particular attention to countries with inadequate dissemination programmes.

Thus far, the Institute has organized 32 courses on the law of armed conflicts for military officers from all regions of the world. These programmes are adapted to the needs of unit commanders and their troops and are designed to be reproduced within the individual armed forces. Promoting knowledge of humanitarian law among military personnel is one of the most acute needs in the area of dissemination and the Geneva Conventions and their Additional Protocol I attach particular importance to this. These courses are conducted with the close co-operation and constant support of the ICRC.

- The Institute has also worked to promote knowledge of *refugee law*. Although the 1951 Convention relating to the Status of Refugees does not oblige the participating States to ensure that its provisions are widely known, it is obvious that the national authorities responsible for refugees must have a good understanding of the law in force if it is to be properly implemented in specific cases.

Working closely with the UN High Commissioner for Refugees, the Institute has organized courses on refugee law both for government officials in charge of its implementation in their country and for lawyers involved in refugee cases.

● To be effective, *human rights law* must also be widely known. Much is done by the United Nations and other organizations to achieve this, but the task is so great that contributions from other quarters are welcome. Thus, in conjunction with the UN Human Rights Center, the Institute has organized courses for government officials responsible for implementing human rights instruments.

The three examples above show how the Institute helps to meet the need for more widespread knowledge. Demand for its courses has grown constantly as governments and international organizations have come to see how the Institute can help them to meet their obligations to promote better understanding of these branches of law.

● The Institute also promotes knowledge in these areas through its *conferences, publications and research*, looking more deeply into certain aspects of law and seeking ways of overcoming obstacles to dissemination. The Institute organizes round tables, seminars and commissions of experts to study methods and means of warfare, limitations on the use of certain weapons, the implementation of basic rules in the event of internal conflict and of international humanitarian law in UN peace-keeping operations, protected zones, guerrilla warfare, population movements, protection for children, the definition of a refugee, large-scale influxes of refugees, etc.

Special attention has been given to the implementation of humanitarian law, in particular the role of legal advisers, national measures of implementation, the International Fact-Finding Commission and States' obligation to ensure respect for humanitarian treaties.

The Institute has always striven to have humanitarian law and humanitarian action considered together at the international, regional and local levels. It has particularly endeavoured to have dissemination adapted to regional conditions and to have the principles and rules of international humanitarian law incorporated into national legislation. To this end, it has organized annual regional meetings for east European, Arab and Asian countries. These meetings have done much to spread knowledge of humanitarian and human rights law.

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The Institute has also endeavoured to promote *development*, i.e. the process of reviewing, bringing up to date and otherwise adapting the law to meet new needs. This has proved particularly necessary for the implementation of international humanitarian law, an area where existing mechanisms have needed improvement or replacement. During the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law

applicable in Armed Conflicts (1974 to 1977), the Institute organized annual round tables, between sessions of the Conference, at which those taking part in the Conference and others informally discussed the main issues and the means of resolving them. The ICRC gave its full support to this forum.

Another example of developing the law is the adoption of rules governing the reuniting of families. No such rules had existed but they are now widely applied. Likewise, the 1989 declaration protecting refugees in cases to which existing instruments do not apply constitutes a sort of “Martens clause” for refugees.

The Institute also took the initiative to study issues of humanitarian law in war at sea.

The Institute has sponsored publications dealing with all these aspects of the law’s interpretation, implementation and development.

From its very inception, the Institute has given great attention to the relationship between international humanitarian law, human rights law, refugee law and other related areas. It has carried out studies on the way codified law relates to customary law, for example certain provisions of Additional Protocol I which may be considered as customary law and by which all States—not only those party to the Protocol—are consequently bound.

To mark the International Year of Peace in 1976, the Institute organized a conference on Peace and Humanitarian Actions. For the first time, law and practice in this area received close scrutiny. The conference showed that many different organizations and governments were deeply involved in humanitarian work though their efforts were not always properly co-ordinated.

Another conference in 1980 dealt with the problem of international solidarity. The participants related their experiences and concluded that it was necessary to ensure more complete implementation of humanitarian rules.

For all its activities, which are undertaken with strict impartiality, the Institute maintains very close relations with the Movement, all of whose components are active in their support and participation. This is only natural as the Movement, which is oriented towards humanitarian action, and the Institute, an independent body, work for the same cause. Support from the ICRC and the rest of the Movement has been vital to the Institute for its achievements in its first 20 years.

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Although it works closely with many States and organizations, the Institute has always maintained its independence as a body promoting scholarly work and its outside relations have always been marked by open-minded and frank discussion. Those who take part in the Institute’s activities have always

recognized and appreciated the need for a place where ideas can be freely expressed in a humanitarian dialogue.

One of the Institute's guiding principles has always been the voluntary nature of participation in its activities. But it has never had any real difficulty in attracting people whose goal it is to serve mankind and the cause of humanity. Their keen sense of service, their knowledge and experience, their background and mandate, have all contributed to the Institute's success.

It is not always easy to assess the results of the Institute's work. Some are immediately apparent, others indirect, and others still manifest themselves only over time as they are connected with the results of efforts made by other organizations.

Over the past two decades, many matters of humanitarian concern which had been neglected or even forgotten have been brought to the attention of those who can do something about them. A number of different approaches to problems have been used and new principles and rules have been developed. By maintaining constant contact between the institutions and persons concerned by humanitarian endeavour, the Institute has been a moving force in bringing about new developments in the sphere of humanitarian law and action. It is this unique *humanitarian dialogue* which has made these developments possible and thus contributed to human progress. The dialogue must continue, especially in view of the ever-mounting problems throughout the world.

The reputation which the Institute has acquired over the years, the principles on which it has always based its work and the positive response to so many of its initiatives constitute the best guarantee for its future.

The San Remo Institute has fully met the expectations of those who created it and it hopes to carry on as long as there are problems requiring concerted action by all those in a position to solve them.

*Professor Jovića Patrnogic*  
*President*  
*International Institute*  
*of Humanitarian Law*

## Declaration by the Eastern Republic of Uruguay

On 2 May 1990 the Eastern Republic of Uruguay made the following declaration regarding its recognition of the competence of the International Fact-Finding Commission:

“In accordance with Article 90, paragraph 2(a), of Protocol I additional to the Geneva Conventions of 12 August 1949, the Republic of Uruguay declares that it recognizes *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the International Fact-Finding Commission to enquire into allegations by such other Party”.

Uruguay is the **nineteenth** State to make the declaration regarding the International Fact-Finding Commission, which will be set up once 20 States have made such declarations.

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## BOOKS AND REVIEWS

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### DAUGHTER OF DESTINY

*The strange and fascinating story of  
the founder of the American Red Cross*

Clara Barton's tenacity, courage and efficiency in caring for the wounded and dying on the battlefields of the American Civil War remains a source of inspiration. The strange and fascinating story of her life is told in Neuring B. Foster's "Daughter of Destiny"<sup>1</sup>, which pays glowing tribute to this exceptional woman who founded the American Red Cross.

The biography's first volume provides a vivid account of Clara Barton's childhood, her career as a primary school teacher (which she began at the age of 15), her years of public service in Washington, her humanitarian work for the victims of the Civil War and her stay in Europe, where she came into contact with the Red Cross.

In the chapters dealing with her childhood years, the reader is most struck by little Clara's adoration of her father. His tales of warriors, patriots and adventurers were, she said later, what prepared her for long periods spent with the army in the field. Her mother is described as a practical, level-headed woman whose interest focused on her home. It was she who instilled in Clara the common sense that never let her down when it came to finding pragmatic solutions to the unforeseeable problems that arise in the midst of war when even the most vital necessities are lacking. Another formative experience in Clara's childhood was the two years of devoted care she gave to her brother David, who had a serious accident when she was eleven years old.

The author describes the adolescent Clara as nervous and shy, extremely imaginative and sensitive. What was it that enabled such a diffident girl to become a decisive young person who shrank from nothing, neither the challenge of teaching, embarking on a career in Washington—in a world where being a woman was an immense handicap, as it was subsequently on the battlefield—nor even her travels throughout the country after the war to tell the American people what its soldiers had endured? It was probably the clarity with which she perceived her goals, her independence of mind and her conviction that she bore a responsibility towards humanity that enabled Clara to overcome her shyness and adolescent fears. To tell the truth, some of the many excerpts from her writings quoted by Foster leave the reader troubled

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<sup>1</sup> Neuring B. Foster, *Daughter of Destiny*, The Biography of Clara Barton, Volume I, a Hearststone Book, New York, Carlton Press, Inc., 1989, 138 pp.

by the self-satisfaction with which she describes her work. Like Henry Dunant, Clara Barton seems to have been a very sensitive individual but not without a certain vanity, pardonable no doubt in someone who did so much for humanity.

In the part dealing with the Civil War, Foster himself is often silent, leaving contemporary accounts to set the scene. Like "A Memory of Solferino", the biography of Clara Barton portrays in great detail the agony of wounded men left uncared for to await death alone, of those who did receive treatment but in such overcrowded conditions that they were sometimes trampled underfoot, and of starving prisoners dying in large numbers of scurvy. These are harrowing narratives, especially as they correspond all too closely to present-day reality. Except, perhaps, that the sense of honour so often mentioned in the last century seems somehow quaintly old-fashioned in relation to many modern conflicts, where the civilian population is a prime target and terror is used as a means of combat.

After the Civil War, from 1865 to 1869, Clara Barton was assigned by President Lincoln himself the task of tracing the 80,000 people reported missing in connection with the conflict. Following Lincoln's assassination Barton was, says Foster, faced with sluggishness and indifference on the part of the U.S. administration, which provided her with only a tent, some equipment and a small supply of postage stamps. She initially drew on her personal fortune to set up an office, hire 12 assistants and draw up a plan to trace the missing. She was helped by information from unexpected sources, such as a list containing the names of 13,000 soldiers who had died in Andersonville prison. The list had been secretly copied by the soldier responsible for drawing up the original; he had feared that the document would be deliberately destroyed as soon as the conflict was over.

The book ends with Clara Barton's trip to Europe, where she was sent by her doctor for health reasons. According to her, she was contacted in Geneva by members of the International Committee for Relief to Wounded Soldiers<sup>2</sup>, who were concerned about the United States' refusal to sign the Geneva Convention of 1864. This was the first time she had heard of either the Convention or the Red Cross. In 1870, still in Europe, she was apparently asked once more to help, this time in assisting victims of the Franco-Prussian War. This gave her a chance to see the Red Cross in action as an effective neutral organization and she decided to return to the United States to found a national society there. A previous attempt to do so, made by the Reverend Henry W. Bellows, appears to have foundered on the failure of an ill-informed American public to understand the purpose of the Red Cross.

Let us hope that this volume will be followed by a second so that the reader, whose interest has been whetted when the book comes to a rather abrupt end, can follow Clara Barton's activities back in the United States. Neuring B. Foster's account of this first period of her life is a captivating and

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<sup>2</sup> (which was to become the International Committee of the Red Cross in 1876).

obviously admiring portrait of a woman of action. More precision in the citing of sources and a rather more critical approach to Clara Barton, to whom the author tends to ascribe only good qualities, would make for a more satisfying second volume.

At a time of growing awareness within the ICRC, the League and a number of National Societies that women must take part not only, as has always been the case, in the actual work of the Movement but also in the planning and supervision of that work, books like this are an opportune reminder to the public of the qualities of women who have dedicated their lives to the Red Cross and Red Crescent Movement in the past.

*Marion Harroff-Tavel*

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## GOSES DE GUERRE

*Children for whom war is not a game  
but a daily reality\**

Alain Louyot, foreign correspondent for the French magazine *L'Express*, has reported for the past twenty years from most of the hot spots of the world. In the course of his career he has been deeply affected by the faces of child combatants – in Beirut, Belfast and Gaza, in Mozambique and Angola, in the mountains of Eritrea and the ghettos of South Africa.

According to a UN study quoted by the author, there are today over 200,000 combatants under the age of fifteen, often forcibly enlisted and indoctrinated, who kill, torture and fight side by side with adults.

Family and social pressure, the author points out, are enough to convince children to enrol as combatants. This is because they can easily be manipulated and often view bearing arms as a rite of passage on the road to adulthood. Drawing on interviews with psychologists, soldiers, nurses and parents, the author explains how children become combatants and how this experience affects them permanently.

*Gosses de guerre* consists mainly of personal stories, such as that of Ali, a child taken prisoner when he was 13 years old. Ali's memories of his childhood, a time adults brought up in normal circumstances usually recall as care-

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\* Alain Louyot, *Gosses de guerre (Youngsters in War)*, Robert Laffont, Paris, 1989, 245 pp.

free, are coloured by fear and shame. Some of his fellow combatants were as young as nine when they were thrust into the heat of battle or taken prisoner. The author gives numerous such examples, pointing out that children so young, because they are unaware of danger, can be entrusted with far more hazardous assignments than adults and thus be used as a particularly lethal weapon.

Yet children can be spared such first-hand experience of combat, the author points out, if only the rules of international humanitarian law (IHL) intended to protect them in time of armed conflict are respected. These rules are contained in the 1949 Geneva Conventions and also in their Additional Protocols, which are, as the author rightly notes, a major step forward in that they urge States to refrain from recruiting children under 15 into their armed forces and to ensure that they do not take a direct part in hostilities. He goes on to say that this is “a kind of pious wish since, unlike the ICRC’s original draft, the Protocols... require the States to do so only to the extent that it is ‘feasible’... moreover, the recruitment of children under the age of 15 years is tolerated provided it is voluntary”. However, in his chapter on the rules of IHL relating to child combatants, the author does not take into account the fact that IHL does go even further since it prohibits any participation whatsoever of children under 15 years of age, whether direct or indirect, in internal conflicts.

The author also mentions the new Convention on the Rights of the Child, adopted on 20 November 1989, which was still being discussed at the United Nations when *Gosses de guerre* went to press. He notes that the Convention, which is based on international human rights instruments, was the outcome of ten years of negotiations and that the provisions it contains on child combatants are not as forceful as certain countries, European ones in particular, would have liked. By signing the Convention States agree only to “take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities” (Art. 38, para. 2). However, it should be added that the Convention also points out the obligations of States under IHL, which contains no less than 25 provisions affording special protection to children in armed conflict, not to mention those that protect them as civilians not taking an active part in hostilities.

*Gosses de guerre*, a collection of heart-rending stories about children for whom war is not a game but a daily reality, leaves a lasting impression. The publication of this moving work was especially timely since 1989 witnessed the adoption of the United Nations Convention on the Rights of the Child, the thirtieth anniversary of the Declaration of the Rights of the Child and the tenth anniversary of the International Year of the Child.

*María Teresa Dutli*

## LA PAIX DES GRANDS — L'ESPOIR DES PAUVRES

### *Peace among the great powers — Hope for poorer nations*

This publication<sup>3</sup>, which has a preface by Claude Julien, consists of a collection of articles that appeared in the *Monde diplomatique* monthly in the course of 1989.

The views and opinions of authors on different continents build up a picture of a contemporary world undergoing profound changes. The book is both a study and a diagnosis of the complex global crisis now facing us. Finding comprehensive solutions will be quite a challenge in today's increasingly interdependent world.

Among the endemic problems highlighted in the book is the ever-widening gap between the rich countries and their poor neighbours, whose capital vanishes abroad and whose external debt, together with the restrictions imposed by the International Monetary Fund, has assumed crippling proportions.

The situation is compounded by new factors such as the damage being done to the environment, which calls for concerted ecological action, and the phenomenon of mass migration caused by war and famine, with its far-reaching economic and social consequences.

The transformation in relations between the great powers, the beginnings of disarmament, the growing danger represented by low-level regional conflicts, US support for anticommunist rebel movements, economic difficulties and nationalist pressures in the USSR—all these changes on the international scene call for an urgent review of strategic concepts.

In the light of the plentiful details supplied by the book, security no longer appears as a strictly military matter; it also has its economic, social and ecological aspects.

Some hope emerges, for example, from the renaissance of the United Nations, where a true dialogue between North and South may at last be beginning, from further progress in disarmament and from the development of international environmental law.

This mass of information, ideas and naturally subjective opinions reveals an immense need for co-ordination in many areas affecting the "global village", and makes one think primarily in terms of solidarity. Perhaps this is the essential message the authors wish to convey.

*Sylvie Junod*

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<sup>3</sup> *La paix des grands — l'espoir des pauvres*, (Peace among the great powers — Hope for poorer nations), La Découverte — Le Monde, Paris, 1989, 252 pp.

## ADDRESSES OF NATIONAL RED CROSS AND RED CRESCENT SOCIETIES

- AFGHANISTAN (Democratic Republic of) — Afghan Red Crescent Society, Puli Hartan, *Kabul*.
- ALBANIA (Socialist People's Republic of) — Albanian Red Cross, Boulevard Marsel Kasheu, *Tirana*.
- ALGERIA (People's Democratic Republic of) — Algerian Red Crescent, 15 bis, boulevard Mohamed V, *Algiers*.
- ANGOLA — Cruz Vermelha de Angola, Av. Hoji Ya Henda 107, 2. andar, *Luanda*.
- ARGENTINA — The Argentine Red Cross, H. Yrigoyen 2068, 1089 *Buenos Aires*.
- AUSTRALIA — Australian Red Cross Society, 206, Clarendon Street, *East Melbourne 3002*.
- AUSTRIA — Austrian Red Cross, 3, Gusshausstrasse, Postfach 39, A-1041, *Vienne 4*.
- BAHAMAS — The Bahamas Red Cross Society, P.O. Box N-8331, *Nassau*.
- BAHRAIN — Bahrain Red Crescent Society, P.O. Box 882, *Manama*.
- BANGLADESH — Bangladesh Red Crescent Society, 684-686, Bara Magh Bazar, Dhaka-1217, G.P.O. Box No. 579, *Dhaka*.
- BARBADOS — The Barbados Red Cross Society, Red Cross House, Jemmotts Lane, *Bridgetown*.
- BELGIUM — Belgian Red Cross, 98, chaussée de Vleurgat, 1050 *Brussels*.
- BELIZE — Belize Red Cross Society, P.O. Box 413, *Belize City*.
- BENIN (Republic of) — Red Cross of Benin, B.P. No. 1, *Porto-Novo*.
- BOLIVIA — Bolivian Red Cross, Avenida Simón Bolívar, 1515, *La Paz*.
- BOTSWANA — Botswana Red Cross Society, 135 Independence Avenue, P.O. Box 485, *Gaborone*.
- BRASIL — Brazilian Red Cross, Praça Cruz Vermelha No. 10-12, *Rio de Janeiro*.
- BULGARIA — Bulgarian Red Cross, 1, Boul. Biruzov, 1527 *Sofia*.
- BURKINA FASO — Burkina Be Red Cross Society, B.P. 340, *Ouagadougou*.
- BURUNDI — Burundi Red Cross, rue du Marché 3, P.O. Box 324, *Bujumbura*.
- CAMEROON — Cameroon Red Cross Society, rue Henri-Dunant, P.O.B 631, *Yaoundé*.
- CANADA — The Canadian Red Cross Society, 1800 Alta Vista Drive, *Ottawa*, Ontario K1G 4J5.
- CAPE-VERDE (Republic of) — Cruz Vermelha de Cabo Verde, Rua Unidade-Guiné-Cabo Verde, P.O. Box 119, *Praia*.
- CENTRAL AFRICAN REPUBLIC — Central African Red Cross Society, B.P. 1428, *Bangui*.
- CHAD — Red Cross of Chad, B.P. 449, *N'Djamena*.
- CHILE — Chilean Red Cross, Avenida Santa María No. 0150, Correo 21, Casilla 246-V., *Santiago de Chile*.
- CHINA (People's Republic of) — Red Cross Society of China, 53, Ganmian Hutong, *Beijing*.
- COLOMBIA — Colombian Red Cross Society, Avenida 68, N.º 66-31, Apartado Aéreo 11-10, *Bogotá D. E.*
- CONGO (People's Republic of the) — Croix-Rouge congolaise, place de la Paix, B.P. 4145, *Brazzaville*.
- COSTA RICA — Costa Rica Red Cross, Calle 14, Avenida 8, Apartado 1025, *San José*.
- CÔTE D'IVOIRE — Croix-Rouge de Côte d'Ivoire, B.P. 1244, *Abidjan*.
- CUBA — Cuban Red Cross, Calle Calzada 51 Vedado, Ciudad Habana, *Habana 4*.
- THE CZECH AND SLOVAK FEDERAL REPUBLIC — Czechoslovak Red Cross, Thunovská 18, 118 04 *Prague 1*.
- DENMARK — Danish Red Cross, Dag Hammarskjølds Allé 28, Postboks 2600, 2100 *København Ø*.
- DJIBOUTI — Société du Croissant-Rouge de Djibouti, B.P. 8, *Djibouti*.
- DOMINICA — Dominica Red Cross Society, P.O. Box 59, *Roseau*.
- DOMINICAN REPUBLIC — Dominican Red Cross, Apartado postal 1293, *Santo Domingo*.
- ECUADOR — Ecuadorean Red Cross, calle de la Cruz Roja y Avenida Colombia, *Quito*.
- EGYPT (Arab Republic of) — Egyptian Red Crescent Society, 29, El Galaa Street, *Cairo*.
- EL SALVADOR — Salvadorean Red Cross Society, 17C. Pte y Av. Henri Dunant, *San Salvador*, Apartado Postal 2672.
- ETHIOPIA — Ethiopian Red Cross Society, Ras Desta Damtew Avenue, *Addis-Ababa*.
- FIJI — Fiji Red Cross Society, 22 Gorrie Street, P.O. Box 569, *Suva*.
- FINLAND — Finnish Red Cross, Tehtaankatu, 1 A. Box 168, 00141 *Helsinki 14/15*.
- FRANCE — French Red Cross, 1, place Henry-Dunant, F-75384 *Paris*, CEDEX 08.
- GAMBIA — The Gambia Red Cross Society, P.O. Box 472, *Banjul*.
- GERMAN DEMOCRATIC REPUBLIC — German Red Cross of the German Democratic Republic, Kaitzer Strasse 2, DDR, 8010 *Dresden*.
- GERMANY, FEDERAL REPUBLIC OF — German Red Cross in the Federal Republic of Germany, Friedrich-Erbert-Allee 71, 5300, *Bonn 1*, Postfach 1460 (D.B.R.).
- GHANA — Ghana Red Cross Society, National Headquarters, Ministries Annex A3, P.O. Box 835, *Accra*.
- GREECE — Hellenic Red Cross, rue Lycavittou, 1, *Athens 10672*.
- GRENADA — Grenada Red Cross Society, P.O. Box 221, *St George's*.
- GUATEMALA — Guatemalan Red Cross, 3.ª Calle 8-40, Zona 1, *Ciudad de Guatemala*.
- GUINEA — The Guinean Red Cross Society, P.O. Box 376, *Conakry*.
- GUINEA-BISSAU — Sociedad Nacional da Cruz Vermelha de Guiné-Bissau, rua Justino Lopes N.º 22-B, *Bissau*.
- GUYANA — The Guyana Red Cross Society, P.O. Box 10524, Eve Leary, *Georgetown*.
- HAITI — Haitian National Red Cross Society, place des Nations Unies, (Bicentenaire), B.P. 1337, *Port-au-Prince*.

- HONDURAS — Honduran Red Cross, 7.<sup>a</sup> Calle, 1.<sup>a</sup> y 2.<sup>a</sup> Avenidas, *Comayagüela D.M.*
- HUNGARY (The Republic of) — Hungarian Red Cross, V. Arany János utca, 31, *Budapest 1367*. Mail Add.: *1367 Budapest 51. Pf. 121.*
- ICELAND — Icelandic Red Cross, Raudararstigur 18, 105 *Reykjavik*.
- INDIA — Indian Red Cross Society, 1, Red Cross Road, *New-Dehli 110001*.
- INDONESIA — Indonesian Red Cross Society, Il Jend Gatot subroto Kar. 96, Jakarta Selatan 12790, P.O. Box 2009, *Jakarta*.
- IRAN — The Red Crescent Society of the Islamic Republic of Iran, Avenue Ostad Nejatollahi, *Tehran*.
- IRAQ — Iraqi Red Crescent Society, Mu'ari Street, *Mansour, Bagdad*.
- IRELAND — Irish Red Cross Society, 16, Merrion Square, *Dublin 2*.
- ITALY — Italian Red Cross, 12, via Toscana, 00187 *Rome*.
- JAMAICA — The Jamaica Red Cross Society, 76, Arnold Road, *Kingston 5*.
- JAPAN — The Japanese Red Cross Society, 1-3, Shiba-Daimon, I-chome, Minato-Ku, *Tokyo 105*.
- JORDAN — Jordan National Red Crescent Society, P.O. Box 10001, *Ammán*.
- KENYA — Kenya Red Cross Society, P.O. Box 40712, *Nairobi*.
- KOREA (Democratic People's Republic of) — Red Cross Society of the Democratic People's Republic of Korea, Ryonhwa 1, Central District, *Pyeongyang*.
- KOREA (Republic of) — The Republic of Korea National Red Cross, 32-3Ka, Nam San Dong, Choong-Ku, *Seoul 100-043*.
- KUWAIT — Kuwait Red Crescent Society, P.O. Box 1359 Safat, *Kuwait*.
- LAO PEOPLE'S DEMOCRATIC REPUBLIC — Lao Red Cross, B.P. 650, *Vientiane*.
- LEBANON — Lebanese Red Cross, rue Spears, *Beirut*.
- LESOTHO — Lesotho Red Cross Society, P.O. Box 366, *Maseru 100*.
- LIBERIA — Liberian Red Cross Society, National Headquarters, 107 Lynch Street, 1000 *Monrovia 20*, West Africa.
- LIBYAN ARAB JAMAHIRIYA — Libyan Red Crescent, P.O. Box 541, *Benghazi*.
- LIECHTENSTEIN — Liechtenstein Red Cross, Heiligkreuz, 9490 *Vaduz*.
- LUXEMBOURG — Luxembourg Red Cross, Parc de la Ville, B.P. 404, *Luxembourg 2*.
- MADAGASCAR — Malagasy Red Cross Society, 1, rue Patrice Lumumba, *Antananarivo*.
- MALAWI — Malawi Red Cross Society, Conforzi Road, P.O. Box 983, *Lilongwe*.
- MALAYSIA — Malaysian Red Crescent Society, JKR 32 Jalan Nipah, off Jalan Ampang, *Kuala Lumpur 55000*.
- MALI — Mali Red Cross, B.P. 280, *Bamako*.
- MAURITANIA — Mauritanian Red Crescent, B.P. 344, aneue Gamal Abdel Nasser, *Nouakchott*.
- MAURITIUS — Mauritius Red Cross Society, Ste Thérèse Street, *Curepipe*.
- MEXICO — Mexican Red Cross, Calle Luis Vives 200, Col. Polanco, *México 10*, Z.P. 11510.
- MONACO — Red Cross of Monaco, 27 boul. de Suisse, *Monte Carlo*.
- MONGOLIA — Red Cross Society of Mongolia, Central Post Office, Post Box 537, *Ulan Bator*.
- MOROCCO — Moroccan Red Crescent, B.P. 189, *Rabat*.
- MOZAMBIQUE — Cruz Vermehla de Moçambique, Caixa Postal 2986, *Maputo*.
- MYANMAR (The Union of) — Myanmar Red Cross Society, 42, Strand Road, *Yangon*.
- NEPAL — Nepal Red Cross Society, Tahachal Kalimati, P.B. 217 *Katmandu*.
- NETHERLANDS — The Netherlands Red Cross, P.O.B. 28120, 2502 *KC The Hague*.
- NEW ZEALAND — The New Zealand Red Cross Society, Red Cross House, 14 Hill Street, *Wellington 1*. (P.O. Box 12-140, *Wellington Thorndon*.)
- NICARAGUA — Nicaráguan Red Cross, Apartado 3279, *Managua D.N.*
- NIGER — Red Cross Society of Niger, B.P. 11386, *Niamey*.
- NIGERIA — Nigerian Red Cross Society, 11 Eko Akete Close, off St. Gregory's Rd., P.O. Box 764, *Lagos*.
- NORWAY — Norwegian Red Cross, P.O. Box 6875, St. Olavspl. N-0130 *Oslo 1*.
- PAKISTAN — Pakistan Red Crescent Society, National Headquarters, Sector H-8, *Islamabad*.
- PANAMA — Red Cross Society of Panama, Apartado Postal 668, *Panamá 1*.
- PAPUA NEW GUINEA — Papua New Guinea Red Cross Society, P.O. Box 6545, *Boroko*.
- PARAGUAY — Paraguayan Red Cross, Brasil 216, esq. José Berges, *Asunción*.
- PERU — Peruvian Red Cross, Av. Camino del Inca y Nazarenas, Urb. Las Gardenias — Surco — Apartado 1534, *Lima*.
- PHILIPPINES — The Philippine National Red Cross, Bonifacio Drive, Port Area, P.O. Box 280, *Manila 2803*.
- POLAND (The Republic of) — Polish Red Cross, Mokotowska 14, 00-950 *Warsaw*.
- PORTUGAL — Portuguese Red Cross, Jardim 9 Abril, 1 a 5, 1293 *Lisbon*.
- QATAR — Qatar Red Crescent Society, P.O. Box 5449, *Doha*.
- ROMANIA — Red Cross of Romania, Strada Biserica Amzei, 29, *Bucarest*.
- RWANDA — Rwandese Red Cross, B.P. 425, *Kigali*.
- SAINT LUCIA — Saint Lucia Red Cross, P.O. Box 271, *Castries St. Lucia, W. I.*
- SAINT VINCENT AND THE GRENADINES — Saint Vincent and the Grenadines Red Cross Society, P.O. Box 431, *Kingstown*.
- SAN MARINO — Red Cross of San Marino, Comité central, *San Marino*.
- SÃO TOMÉ AND PRINCIPE — Sociedade Nacional da Cruz Vermehla de São Tomé e Príncipe, C.P. 96, *São Tomé*.
- SAUDI ARABIA — Saudi Arabian Red Crescent Society, *Riyadh 11129*.
- SENEGAL — Senegalese Red Cross Society, Bd Franklin-Roosevelt, P.O.B. 299, *Dakar*.
- SIERRA LEONE — Sierra Leone Red Cross Society, 6, Liverpool Street, P.O.B. 427, *Freetown*.
- SINGAPORE — Singapore Red Cross Society, Red Cross House 15, Penang Lane, *Singapore 0923*.
- SOMALIA (Democratic Republic) — Somali Red Crescent Society, P.O. Box 937, *Mogadishu*.

- SOUTH AFRICA — The South African Red Cross Society, Essanby House 6th Floor, 175 Jeppe Street, P.O.B. 8726, *Johannesburg 2000*.
- SPAIN — Spanish Red Cross, Eduardo Dato, 16, *Madrid 28010*.
- SRI LANKA (Dem. Soc. Rep. of) — The Sri Lanka Red Cross Society, 106, Dharmapala Mawatha, *Colombo 7*.
- SUDAN (The Republic of the) — The Sudanese Red Crescent, P.O. Box 235, *Khartoum*.
- SURINAME — Suriname Red Cross, Gravenberchstraat 2, Postbus 2919, *Paramaribo*.
- SWAZILAND — Baphalali Swaziland Red Cross Society, P.O. Box 377, *Mbabane*.
- SWEDEN — Swedish Red Cross, Box 27 316, 102-54 *Stockholm*.
- SWITZERLAND — Swiss Red Cross, Rainmattstrasse 10, B.P. 2699, 3001 *Berne*.
- SYRIAN ARAB REPUBLIC — Syrian Arab Red Crescent, Bd Mahdi Ben Barake, *Damascus*.
- TANZANIA — Tanzania Red Cross National Society, Upanga Road, P.O.B. 1133, *Dar es Salaam*.
- THAILAND — The Thai Red Cross Society, Paribatra Building, Central Bureau, Rama IV Road, *Bangkok 10330*.
- TOGO — Togolese Red Cross, 51, rue Boko Soga, P.O. Box 655, *Lomé*.
- TONGA — Tonga Red Cross Society, P.O. Box 456, *Nuku'Alofa, South West Pacific*.
- TRINIDAD AND TOBAGO — The Trinidad and Tobago Red Cross Society, P.O. Box 357, *Port of Spain, Trinidad, West Indies*.
- TUNISIA — Tunisian Red Crescent, 19, rue d'Angleterre, *Tunis 1000*.
- TURKEY — The Turkish Red Crescent Society, Genel Başkanlığı, Karanfil Sokak No. 7, 06650 *Kızılay-Ankara*.
- UGANDA — The Uganda Red Cross Society, Plot 97, Buganda Road, P.O. Box 494, *Kampala*.
- UNITED ARAB EMIRATES — The Red Crescent Society of the United Arab Emirates, P.O. Box No. 3324, *Abu Dhabi*.
- UNITED KINGDOM — The British Red Cross Society, 9, Grosvenor Crescent, *London, S.W.1X. 7EJ*.
- USA — American Red Cross, 17th and D. Streets, N.W., *Washington, D.C. 20006*.
- URUGUAY — Uruguayan Red Cross, Avenida 8 de Octubre 2990, *Montevideo*.
- U.R.S.S — The Alliance of Red Cross and Red Crescent Societies of the U.S.S.R., 1, Tcheremushkinskii proezd 5, *Moscow, 117036*.
- VENEZUELA — Venezuelan Red Cross, Avenida Andrés Bello, N.º 4, Apartado, 3185, *Caracas 1010*.
- VIET NAM (Socialist Republic of) — Red Cross of Viet Nam, 68, rue Ba-Triêu, *Hanoi*.
- WESTERN SAMOA — Western Samoa Red Cross Society, P.O. Box 1616, *Apia*.
- YEMEN (Republic of) — Yemeni Red Crescent Society, P.O. Box 1257, *Sana'a*.
- YUGOSLAVIA — Red Cross of Yugoslavia, Simina ulica broj 19, 11000 *Belgrade*.
- ZAIRE — Red Cross Society of the Republic of Zaïre, 41, av. de la Justice, Zone de la Gombe, B.P. 1712, *Kinshasa*.
- ZAMBIA — Zambia Red Cross Society, P.O. Box 50 001, 2837 Saddam Hussein Boulevard, Longacres, *Lusaka*.
- ZIMBABWE — The Zimbabwe Red Cross Society, P.O. Box 1406, *Harare*.

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REVIEW**

**International humanitarian law  
and non-international armed conflicts**

**Rules of international  
humanitarian law  
governing the conduct of hostilities  
in non-international armed conflicts**

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**International humanitarian law  
and the protection of children**

**Captured child combatants**