THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS: A QUEST FOR UNIVERSALITY

Ten years ago, on 8 June 1977, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts adopted two Protocols additional to the Geneva Conventions of 1949, one relating to the protection of victims of international armed conflicts and the other to the protection of victims of non-international armed conflicts.

Everyone believed at that time that these new legal instruments constituted a very important stage in the codification of international humanitarian law because they completed the provisions of the Geneva Conventions, while adapting the humanitarian standards then in force to present-day realities.

In spite of the high hopes prevailing at the time, the incidence of armed conflicts did not diminish—far from it! Some conflicts did come to an end, of course, but others continued, and new wars broke out in nearly every part of the world.

Now, ten years later, even if this codification did not reduce the number of conflicts, it is nevertheless reasonable for us to ask ourselves if it did not at least encourage the opposing parties to show greater respect for the rules of humanitarian law.

Perhaps not enough time has yet elapsed to warrant final conclusions, but the tenth anniversary of the adoption of the Protocols should certainly be the occasion for a serious analysis of the status of ratifications and an investigation of the attitude of the States towards humanitarian law and of those responsible for promoting respect for it, notably the ICRC.

These questions have always been matters of constant concern to the ICRC. They have given rise to some personal thoughts which I should like to share with readers of the Review *at this time, as I take over as President of the ICRC.*

The drafting of the Protocols, up to the moment of their adoption, was a more arduous undertaking than the negotiation of the 1949 Conventions. International legislators had to take into account several factors which, since the 1950s, had profoundly changed the whole international system. First, there was the massive participation of newly independent States in the activities of the world community, which transformed the process of creating international law. Next, there was a proliferation of localized and internal conflicts, circumventing the dissuasive fear of nuclear war. Finally, there was a polarization of ideological positions which favoured the development of antagonistic political blocs, while the gap widened between the rich industrialized countries, some of them overarmed, and the developing countries.

The States still prevail, of course, but we must now also reckon with national liberation movements, guerrilla organizations, peoples and individuals who are already recognized by some experts as legal entities.

Humanitarian action has been greatly affected by this situation. Earlier, when it was based on a certain conception of the conduct of warfare, with clear distinctions between combatants and non-combatants, such action could proceed normally with clear references to the laws of war. The situation became more confused, however, during the 1960s, when the spread of the myth of revolutionary war appeared to justify in the eyes of some the use of any and all means of combat, again calling humanitarian law into question. How can we really distinguish between different categories of victims? Who is entitled to protection? What is a prisoner of war?

The existence and continued development of weapons of mass destruction make it difficult and perhaps impossible to draw a clear distinction between civilians and soldiers and threaten the very foundations of humanitarian law. How can we maintain a human dimension in wars marked by total destruction? How can we regulate manifestations of violence which threaten the functioning of the international system? How can we resolve the fundamental contradiction between the illegitimacy of the principle of recourse to violence and the rules we nevertheless try to establish to govern such violence in armed conflicts?

These were the issues that largely dominated the proceedings of the Diplomatic Conference of 1974-1977.

*
* *

Despite the efforts of the ICRC and the Swiss Confederation as the host country, it was not possible to keep politics completely out of the Diplomatic Conference. We already knew, however, that "humanitarianism is not chemically pure," for although protection is humanitarian, putting it into effect raises political and military problems. History repeats itself, and the Protocols, like the Geneva Conventions, could not eliminate the tensions between matters of State policy and the demands of humanity.

Are the States then prepared to give more protection to human beings and submit to better control of hostilities? This is a fundamental question; but for some States it cannot be applied to nuclear war, while others wish to restrict to a minimum the protection given to dissident forces in the event of internal conflicts.

Third World countries, entering the scene in force, succeeded in having wars of national liberation considered as international conflicts and in extending the concepts of combatants and prisoners of war to include, subject to certain conditions, guerrilla fighters. Doubts were expressed, even at the time, as to whether these new provisions could be accepted without problems, especially by countries directly involved!

However, the spectre of "just war" was avoided; that is, the temptation to include in humanitarian law different rules depending on the cause for which a war is fought. It is obvious that such an approach would have dealt a fatal blow to humanitarian law. Consensus was reached on the essentials: protection of civilian populations against the dangers of indiscriminate warfare; the banning of mass or indiscriminate bombing and reprisal bombing. To these fundamental accomplishments, we would add the increased protection for medical and civil defence personnel, material and transports, for the natural environment, cultural objects, etc., and notably provisions limiting the right of belligerents to choose the methods and means of conducting military operations.

Is there any room left for doubt that the protection of the individual was one of the primordial objectives of the Protocols, when the States agreed to strengthen the rights accorded to the individual and the minimum fundamental guarantees of humane treatment for all individuals in times of armed conflict, both international and internal?

Finally, a praiseworthy effort was made to strengthen the mechanisms for control and sanctions.

I believe today that the Conference finally adopted—by consensus, we should remember—two sound texts. The fruits of wise

compromise, these two Protocols considerably enhance the protection afforded to the victims of armed conflict.

*
* *

Ten years after the adoption of the Protocols, 67 States are party to Protocol I and 61 to Protocol II, about one-third of the number which are party to the Geneva Conventions.

This is a total which might look encouraging, but it is really very small if we bear in mind that the instruments of international humanitarian law are meant to be universal. Universality has not been attained. Of the five permanent members of the United Nations Security Council, only China has ratified both Protocols; and France has only ratified Protocol II. The historic burden which weighed upon the Geneva Conventions, rightly or wrongly, because of their Eurocentric character, was removed by the adoption of the Protocols, but the universality of these new standards remains to be achieved.

We have to recognize that the obstacles to the universal acceptance of humanitarian law are closely related to the political and ideological motivations underlying the law, now more than ever. Generally, during the drafting of law, each State tries to impose rules which correspond most closely to what it regards as its own interests. Then, when the law must be applied, the unilateral interpretation by the State continues to prevail, in the name of national sovereignty. Unhappily, humanitarian law is no exception. In the confrontation between power and law, respect for humanitarian principles is too often subject to considerations of State sovereignty. With regard to implementation, the States continue to sin by omission—or knowingly. It is good to know that humanitarian law has been enriched, that it is adapted to every kind of armed conflict and has adequate provisions for implementation, but experience has shown that when implementation is most needed, "governments are tempted... to relegate humanitarian considerations to the background".

There is no doubt that obstacles to accession to the Protocols and difficulties in applying humanitarian law are both accentuated by the international situation, which is more disturbing than it was ten years ago. Violations of the law multiply in proportion to the proliferation, prolongation and violence of local wars. The strategy of "total war" is one that totally disregards humanity! It encourages an alarming decline of the rule of law. The ICRC, through the voice of my

predecessor Alexandre Hay, has unceasingly denounced the repeated violations of humanitarian principles: "Every pretext is put forward to justify these unjustifiable actions: military imperatives, State security and the last means resorted to by oppressed peoples".

The truth is, beyond all the legal quibbling, that the fundamental difficulty in promoting international humanitarian law—and hence in obtaining ratification of the Protocols—is too often the lack of genuine political desire on the part of the States to apply the law.

When they adopted the Geneva Conventions in 1949 and their Protocols in 1977, the States undertook not only to respect humanitarian law but to ensure respect for it. This means that they accepted responsibility not only for violations of which they might be guilty but also for violations committed by other parties to the Conventions and Protocols. If we stop to think of what this implies, it is breathtaking in its audacity! There is a strange paradox indeed between this acceptance by the States of extensive humanitarian obligations and their prudence—indeed their reticence—about putting them into effect; between their adhesion to humanitarian values and their lack of political will to defend them. These humanitarian values are the material basis for humanitarian law, which depends upon the will of States. We cannot refer too often to the words of another of my predecessors, Max Huber, when he said: "From a strictly legal point of view, a true law of Humanity came into being, under which the human person, his integrity and dignity, are defended in the name of a moral principle, which goes far beyond the bounds of national law and of politics".

*
* *

The challenge in the decades to come will be in the attempt to reconcile humanitarian values and the political will of States, in other words to establish the complementarity of these values and State sovereignty so that States will fully and willingly accept them as principles of reference in their policies and actions. What we must do is to mobilize the community of States in order to enhance the role of the humanitarian reflex in political decision-making.

This humanitarian mobilization has an impressive arsenal of rules at its disposal which cover the essential legal points. It must also appeal to traditional, religious and ethical principles and must gain the support of public opinion.

This is the conviction of the ICRC, repeated many times in recent months and especially during the Twenty-fifth International Conference of the Red Cross, which addressed a solemn appeal to States not yet party to the Protocols to ratify or accede to them "as rapidly as possible".

The ICRC will continue to encourage States to accede to the Protocols until they are universally accepted. It is desirable and indeed imperative, however, that its efforts obtain widespread support. We are already gratified by the awareness of this need displayed by the United Nations and a number of other international and regional institutions in recommending ratification of the Protocols and in supporting the ICRC in its efforts.

The ICRC will indeed be in a better position to urge States to ratify the Protocols and to insist publicly that they be applied if it is not the only organization to do so. States not involved in conflicts can serve as relays to other States. We may recall in particular the role played by Switzerland, as depositary of the Geneva Conventions, which has made its voice heard amidst such conflicts as the Iran-Iraq war and the strife in Lebanon to seek the universal application of humanitarian law, whatever the origin of the conflicts and the ideological motives of the parties. This had previously been the case during the Diplomatic Conference of 1974-1977, when the Swiss authorities provided the States with a setting propitious for the negotiation of the Protocols. Switzerland's permanent policy of armed neutrality, its experience as a Protecting Power during the Second World War (and on some unfortunately rare occasions since the 1950s), and its sense of proportion have given it a universally recognized authority. Faithful to this line of conduct, I trust that Switzerland will continue its special efforts to induce States to accept the Protocols. The ICRC takes the opportunity on this tenth anniversary of the adoption of the Protocols to express its gratitude to Switzerland.

Finally, the National Red Cross and Red Crescent Societies, whose role was strengthened by the Protocols, can continue their endeavours vis-à-vis their governments on behalf of ratification and accession to the Protocols, for example as part of their programmes for dissemination of humanitarian law. We are particularly pleased, on the occasion of this tenth anniversary of the adoption of the Protocols, to open the columns of the Review *to some of these Societies.*

Ratification of the Protocols and respect for international humanitarian law is of concern to all of us. It is vital that the States

party to the Geneva Conventions should respect and ensure respect for international humanitarian law; it is of primordial importance that the Protocols should be universally accepted. As Professor Pictet said: "The survival of humanity is at stake".

Even beyond the respect due to the fallen enemy and the innocent civilian, which is the very essence of humanitarian law, we should like to see the commitment of the International Red Cross and Red Crescent Movement on behalf of the Protocols as a concrete step towards the establishment of a world at peace.

Cornelio Sommaruga
President of the ICRC
