

Mr. Veuthey presented a report on the difficulties of applying humanitarian law. Following a communication by Mrs. Kruck the delegates stressed the particular role of the International Red Cross and Red Crescent Movement in disseminating humanitarian law, the standards of which, embodied in the mottoes *Inter Arma Caritas* and *Per Humanitatem ad Pacem*, should, they said, be universally accepted, particularly by those who control weapons and other means of mass destruction.

Discussing respect for the fundamental human rights of refugees and displaced persons, participants noted the magnitude of the problem and the importance of international co-operation in resolving it. The role of Red Cross and Red Crescent Societies and non-governmental organizations in promoting such respect was emphasized.

The International Institute of Humanitarian Law will publish a record of the seminar's reports and discussions.

## ● IN GENEVA

### **International colloquium: The 1977 Protocols additional to the 1949 Geneva Conventions—Ten years later**

To mark the tenth anniversary of the adoption of the Protocols additional to the Geneva Conventions, the Geneva University Faculty of Law organized an international colloquium from 11 to 13 June entitled: "The 1977 Protocols additional to the 1949 Conventions—Ten years later".

Some 50 legal specialists from all over the world participated in this colloquium which was headed by Professor Luigi Condorelli, professor of public international law at the Geneva University Faculty of Law. The colloquium was also attended by several members of the ICRC: Mrs. D. Bindschedler, Mr. M. Aubert, Vice-Presidents, Mrs. A. Petitpierre, Mr. P. Bernasconi and Mr. D. Schindler; and by ICRC legal experts, Mrs. S. Junod, Mr. Y. Sandoz, Mr. H.-P. Gasser, Mr. R. Kosirnik, Mr. M. Veuthey and Mr. B. Zimmermann.

At the opening session at Geneva University on 11 June speeches were made by the Rector of the University, Mr. M. Guenin, the President of the ICRC, Mr. C. Sommaruga, the Director of Public International Law at the Swiss Confederation Department of Foreign Affairs, Mr. M. Krafft, and the Dean of the Faculty of Law, Mr. A. Dufour.

The President of the ICRC said that he was happy to note that international humanitarian law was now being taught as part of the curriculum at the Faculty of Law. While the merit was largely due to the former Vice-President of the ICRC, Mr. Jean Pictet, the ICRC President stressed Professor Condorelli's current commitment to the teaching of humanitarian law and the steps he had taken to encourage it.

Mr. Sommaruga mentioned that on the Protocols' tenth anniversary he had sent a personal message to each of the 165 Foreign Ministers of States party to the Geneva Conventions to encourage them to ratify the Protocols or to remind them of their responsibility to work towards this end with governments not yet party to the instruments. He then described the ICRC's efforts to make the Protocols a universally accepted body of law. Mr. Sommaruga concluded with the hope that the colloquium, the purpose of which was to promote understanding of the Protocols, would be instrumental in disseminating knowledge of humanitarian law.

Three major themes had been selected for the colloquium. Each was discussed by the participants on the basis of written reports briefly presented by their respective authors.

The first topic was "The degree of acceptance of the 1977 Protocols ten years later: ratifications, accessions, reservations, decisions not to become a party". Since 1977, ratifications and accessions had increased quite regularly, so that by 1987 the total number of parties to the two instruments could be considered significant. Nevertheless, the absence from the list of certain countries or groups of countries was a cause for concern; similarly disturbing was the discrepancy between the two Protocols with regard to ratification and accession.

In her introductory talk, *Mrs. Rosemary Abi-Saab* pointed out that the rate of ratification of and accession to the Protocols did not differ greatly from what had occurred in the case of other instruments, such as the 1925 Geneva Protocol or human rights legislation. Considering that the texts had been adopted by consensus, even the number of reservations could not be thought surprising. On the other hand, it was disturbing to note that certain States or groups of States had failed to ratify or had taken a negative stance vis-à-vis the Protocols. The speaker went on to outline possible reasons for non-ratification, in particular the reluctance already expressed during the Diplomatic Conference (1974-1977) with regard to certain fundamental provisions of the Protocols (wars of national liberation, the new definition of combatant status, methods and means of warfare and the prohibition of reprisals, with reference to Protocol I; and the field of application of Protocol II). But, as Mrs. Abi-Saab observed, changes in governments and political affiliations or delays affecting decision-making could also explain why accession to the Protocols was not universal.

To remedy such delays and especially to change the negative attitude of certain States—frequently stemming from an erroneous interpretation of the texts—approaches to governments, encouraging them to accede to the Protocols, had to be stepped up. In recent years the ICRC had been acting along those lines and from time to time its efforts had been supported by the United Nations and regional organizations. The Twenty-fifth International Conference of the Red Cross had laid particular emphasis on the importance of ratifying the Protocols. However, the speaker felt that equal priority should be given to highlighting the customary nature of humanitarian law, or at least of its most basic provisions.

On the same subject, *Professor Henry Meyrowitz* acknowledged that what was new in Protocol I, and at the same time what caused difficulty, was the fact that “to the traditional sphere of the Geneva Conventions are appended a body of regulations which do not confine themselves to reaffirming the regulations stemming from the Law of The Hague but which include certain new rules with very significant military implications”. He cited a few well-chosen examples of stumbling blocks to accession to the Protocols.

The speaker also emphasized that perhaps legislators had not made sufficiently clear in the texts the difference between “reaffirmation” of the law and “development” of the law. He added: “The authorities who are responsible for applying Protocol I and its commentators are left with the task of working out which of its provisions must be deemed as affirming pre-existing laws and which provisions embody new law.” This task was of decisive importance; at the same time it was a delicate task because “with regard to all the articles of the Protocol, it is not easy to determine the demarcation line between rules that reaffirm existing law and those that are new”. The speaker also gave examples of so-called “mixed” rules. Although his point of view was shared by other experts there was common agreement that, in the long term, such considerations would not really hinder accession to the Protocols. The customary nature of certain rules in Protocol I gave rise to a lively discussion: most of the participants did not favour the idea that efforts should be focused primarily on defining and explaining the customary part of Protocol I rather than on working for its ratification; moreover it was felt that the Protocols were well on their way to being accepted by the community of States.

The second topic dealt with by the colloquium was the application of the Additional Protocols and their impact on general international law relating to humanitarian matters. During the ten-year period from 1977 to 1987 many conflicts had taken place where one or other of the Protocols could or should have been applied. Were they in fact applied and, if so, to what extent? What were the obstacles? What could be done to improve

respect for humanitarian principles? To what extent were certain provisions in the Protocols likely to be considered as substantially codifying general international law? These vital questions were dealt with by *Professor Christopher Greenwood*. He considered whether Protocol II was applicable to the conflict in El Salvador and analysed cases where the Protocols had been referred to even if they were not formally applicable: the Gulf war, the conflict in the South Atlantic, the conflicts in South Africa, the conflict in the Middle East, etc.

Examining the Protocols' impact on general international law relating to humanitarian matters, the speaker believed that the reaffirmation of existing principles in humanitarian law had strengthened some of them by making them accessible in written form and enabling many newly emergent States to identify with them; examples were the distinction drawn between civilian objects and military objectives and the prohibition on attacking the civilian population. Such reaffirmation also proved that the value of those humanitarian principles as a basis for establishing rules had in no way been lessened by the excesses of the Second World War nor by subsequent conflicts over the previous forty years. The Protocols also made for clarifying and developing some basic humanitarian principles and, more especially, elucidated how traditional principles could be applied to modern forms of war, such as guerrilla warfare.

The speaker highlighted the elements in the Protocols which, in his opinion, were truly innovative and those which clarified or codified existing law. Codification and development were quite frequently intertwined, which made it difficult to determine what effect they had on customary law. That was the case as regards the provisions dealing with wars of national liberation (Protocol I, Article 1 (4), combatant status (Articles 43 to 47) and reprisals (Articles 51 to 56). After mentioning some difficulties encountered in the application of humanitarian law, the speaker concluded that the Protocols had had an evident impact on the reaffirmation and clarification of basic legal principles: several innovations had become an integral part of general international law or at least reflected a trend towards development of that law. Even if the most controversial provisions of Protocol I could not be looked upon as customary law, they did affect general international law.

The third part of the colloquium was devoted to an assessment of the Protocols ten years after their adoption and an examination of prospects for the future. It was proposed first of all to draw up a reliable list not only of the instruments' merits but also of their defects and lacunae; then to consider whether further codification of humanitarian law was desirable and feasible; and lastly to identify instruments which might be used for that purpose.

*Professor Konstantin Obradovic* believed that the 1987 Protocols came up against the fundamental problem of modern and general international law, i.e., the discrepancy between actual practice and legal theory, between international life and the system of law which is supposed to govern it. He pointed to the area where, in his opinion, the main weaknesses of the Protocols lay: the connection between humanitarian law and the law of human rights had not been established clearly in the texts and this had given rise to a degree of confusion in people's minds; in Protocol II the lack of rules governing the conduct of hostilities; the complex and at times obscure wording of the Protocols; and, finally, shortcomings in verification procedures and in the system for implementing their provisions. However, the speaker also brought out the positive aspects of the Protocols when he concluded that "they illustrate the spirit and general trends of contemporary international law and fulfil the fundamental aim of the law of armed conflicts: complete protection, in so far as legally possible, for the individual in relation to all the dangers of war". While their deficiencies were open to criticism, that did not prevent the Protocols from being generally appreciated simply because, in the speaker's view, such shortcomings were apparently not a decisive factor in the implementation of the new law. In actual fact, the true problem did not lie in the law itself but in the lack of the political will to put it into effect.

The great challenge in the years to come would be not to draw up new regulations but rather to bridge the gap between legal rules and actual practice; international public opinion must be made aware of violations via the mass media and dissemination programmes must be expanded to ensure a better knowledge of, and to promote respect for, humanitarian law.

The experts present agreed with that conclusion. They pointed to the effects already exerted by the adoption of the Protocols—not only in terms of legal commitments but also as regards teaching, dissemination, the preparation of military manuals, etc.