

COMMISSION I

WAR VICTIMS AND RESPECT FOR INTERNATIONAL HUMANITARIAN LAW

Commission I, which was chaired by H.E. Ambassador Hisashi Owada, Permanent Representative of Japan to the United Nations in New York, had two main items on its agenda: discussion of the follow-up to the 1993 International Conference for the Protection of War Victims held in Geneva and action to be taken in that regard by the 26th International Conference, and examination of a number of humanitarian issues relating to the protection of the civilian population in times of armed conflict. The Commission also took note of the San Remo Manual on International Law Applicable to Armed Conflicts at Sea.

A. Report on the follow-up to the International Conference for the Protection of War Victims

At the invitation of the Swiss government, an International Conference for the Protection of War Victims was held in Geneva from 30 August to 1 September 1993. The States present at that Conference expressed their refusal to accept the inevitability of serious and large-scale violations of international humanitarian law which cause suffering, destruction, destitution and death, especially among the civilian population. A fervent appeal was made to all States to honour their humanitarian commitments.¹

At the request of the 1993 Conference, the Swiss government then convened an Intergovernmental Group of Experts in Geneva from 23 to 27 January 1995, which was open to all States. The group adopted by

¹ See the Final Declaration of the International Conference for the Protection of War Victims, *International Review of the Red Cross*, No. 296, September-October 1993, pp. 377-381, and *infra*, pp. 79-82.

consensus a series of practical recommendations aimed at promoting full respect for international humanitarian law.² The Chairman of the meeting, Ambassador Luzius Caflisch (Switzerland), presented those eight recommendations, which were essentially pragmatic in nature, to Commission I as follows.

He reminded the Commission that the first recommendation encouraged States to adhere to all instruments of international humanitarian law. The second recommendation suggested that the ICRC, with the assistance of experts, should take on the task of identifying the customary rules applicable to international as well as internal conflicts.

The third recommendation stressed the fact that the dissemination of international humanitarian law was a priority task for all. The ICRC was therefore invited to strengthen its capacity to provide advisory services to States in those areas, with the assistance of National Societies, the International Federation and academic institutions. The fourth recommendation also related to dissemination, proposing a series of measures to enhance awareness of international humanitarian law. For example, the ICRC agreed to prepare, in cooperation with experts from various regions of the world, a model manual on the law of international and non-international armed conflicts. The fifth recommendation too was concerned with the dissemination of international humanitarian law and suggested the creation of national committees, comprising representatives of governmental and other interested circles, which could be approached on all matters relating to international humanitarian law, its dissemination and implementation.

The sixth recommendation specified the duty of States to exchange information on implementation measures and invited the ICRC to facilitate the exchange of such information, to report to other States and to the present Conference.

The seventh recommendation listed a number of measures designed to enable States, in particular with the assistance of the United Nations, to respect and ensure respect for the rules of international humanitarian

² See Recommendations of the Intergovernmental Group of Experts for the Protection of War Victims, *International Review of the Red Cross*, No. 304, January-February 1995, pp. 33-38, and *infra*, pp. 83-88. See also Report 95/C.I/2/1 (Geneva 1995), and Document 95/C.I/2/3 issued by the Swiss authorities (Geneva 1995). The ICRC stated its position on the recommendations in a report entitled "International humanitarian law: from law to action", Document 95/C.I/2/2 (Geneva 1995).

law, especially with regard to the protection of the civilian population. Those measures included support for the ad hoc tribunals for the former Yugoslavia and Rwanda, as well as support for the establishment of a permanent international criminal court. Finally, it was proposed that the Depositary of the Geneva Conventions should organize periodical meetings of the States Parties to consider "general problems regarding the application of international humanitarian law".

The eighth and last recommendation suggested that the ICRC should examine several issues related to the protection of civilians, including that of women, children and refugees; situations in which State structures had disintegrated; and the relationship between the availability of weapons, the proliferation of conflicts and the deterioration in the situation of civilians.

Speaking on behalf of the ICRC, its Vice-President, Mr Pierre Keller, stressed the importance it placed on the recommendations formulated by the Intergovernmental Group of Experts. He informed the delegates of the measures already taken by the ICRC to follow up on the recommendations which directly concerned it, such as substantially strengthening its advisory services. Professor Mamoun Yousif Hamid, President of the Sudanese Red Crescent and Vice-President of the International Federation, pointed out the significant contribution National Societies could make in boosting respect for international humanitarian law, thereby ensuring better protection of the civilian population against the effects of war.

A considerable number of speakers in Commission I deplored the far too many cases in which international humanitarian law was seriously violated, to the detriment of the most vulnerable groups of society. To counteract this lack of respect for humanitarian commitments, the delegates in Commission I endorsed the proposals submitted to them, underscored the value of the recommendations made by the Intergovernmental Group of Experts and all advocated their approval *en bloc*. Only Recommendation VII was criticized: some delegates feared that the organization of periodical meetings to consider general problems regarding the application of international humanitarian law could jeopardize the role of the International Conferences of the Red Cross and Red Crescent. However, that was not the intention of this innovation and the resolution proposed by Commission I succeeded in dispelling their doubts.

Commission I approved by consensus a resolution, for consideration in plenary, entitled "International humanitarian law: from law to action. Report on the follow-up to the International Conference for the Protection

of War Victims". After adoption by consensus by the plenary meeting, it became Resolution I of the 26th International Conference. In this resolution, the International Conference of the Red Cross and Red Crescent strongly condemned violations of international humanitarian law and called on States to respect and ensure respect for that law in all circumstances. The Conference then endorsed the Final Declaration of the 1993 Conference for the Protection of War Victims and the recommendations of the Intergovernmental Group of Experts in January 1995, and requested States to implement those recommendations. With reference to the recommendation that the Depositary State should organize periodical meetings of the representatives of States party to the Geneva Conventions to examine the general problems caused by violations of international humanitarian law, the Conference requested that the outcome of such meetings be transmitted not only to the States, but also to the International Conference of the Red Cross and Red Crescent. The Swiss government delegation had moreover made a statement in that connection during the final plenary meeting. After accepting the mandate to convene such meetings, the Swiss government emphasized that it would do so after broad consultations had been carried out, and on the basis of a consensus both on the timeliness of such meetings and on the subjects to be discussed, pointing out that only general problems relating to the application of international humanitarian law would be addressed.

B. Protection of the civilian population in periods of armed conflict

This item on the agenda of Commission I gave delegates an opportunity to examine and discuss some of the most burning issues with regard to the plight of the civilian population caught in the grip of war. The report, prepared and presented by the ICRC (in consultation with the International Federation), laid the foundation for a broad exchange of views under the following headings: protection of the civilian population (general comments), protection of women, protection of children, family reunification, famine and war, water and war, and anti-personnel mines and blinding weapons.³

³ Protection of the civilian population in periods of armed conflict, Document 95/C.1/3/1 (Geneva 1995)

In addition, the ICRC had prepared a draft resolution in collaboration with the International Federation and after consulting with the National Societies and States, the latter mainly through their Permanent Missions in Geneva. It served as a framework for the negotiation of a very comprehensive resolution entitled "Protection of the civilian population in periods of armed conflict". The text established by the Drafting Committee was accepted by consensus, both in Commission I and in the final plenary meeting, and became Resolution II of the 26th International Conference.

In their introductory statements the representatives of the ICRC and the International Federation, Mr Pierre Keller and Professor Mamoun Yousif Hamid respectively, stressed the urgent need to act, both by working for greater compliance with international humanitarian law by the parties to the Geneva Conventions and their Additional Protocols, and by turning the National Societies' tremendous potential to fuller account. Together, more effective measures must be taken to alleviate the suffering of war victims.

The representatives of governments, National Societies and international organizations who took the floor were unanimous in condemning the all too frequent and sometimes extremely serious violations of international humanitarian law. They made specific reference to criminal acts committed against civilians in certain recent conflicts, such as torture, "ethnic cleansing", violation of the rights of women, refugees or displaced persons, and attacks against humanitarian convoys. A number of speakers underscored the substantial discrepancy between existing humanitarian obligations and the reality of atrocities committed primarily against civilians, and denounced the lack of political determination to fulfil commitments undertaken. The speakers therefore called for appropriate measures to put an end to those violations, of which civilians were too often the main victims, and urged support for the ICRC, the National Societies, their International Federation and other humanitarian organizations in their efforts to provide effective protection for the civilian population.

With regard to the situation of the most vulnerable groups in wartime, the delegates appealed for greater respect for the position and role of *women* in times of armed conflict. All speakers condemned rape, considering that it constituted a war crime which must be firmly repressed. Several speakers also suggested specific measures to provide assistance to women who had been the victims of sexual assault, and National Societies were called on to play a part in providing such support.

Discussions on the protection of *children* in times of armed conflict centred mainly on children's participation in hostilities. Several representatives of National Societies, in particular, questioned the minimum age of 15 years for the recruitment of children into the armed forces. They requested that it be raised to 18 years, because only adults had the capacity to discern what was allowed in the course of military operations, and what was not. At the same time, practical steps should be taken to avoid the involvement of children under 18 years of age in hostilities. A balanced text, taking into account the various opinions expressed, was incorporated in the draft resolution.

Some delegates highlighted the importance of measures to be taken to enable the *reunification of families* separated by war.

The topics "Famine and War" and "Water and War" provided an opportunity for several speakers to condemn the use of starvation as a method of warfare. Likewise, destruction of water distribution systems was deemed tantamount to an attack on the civilian population. Delegates called for strict respect for the concerns of civilians and their right to receive assistance as and when needed.

However, anti-personnel mines were the predominant subject for the majority of delegates. Referring to the unspeakable suffering and extensive harm inflicted by anti-personnel mines on civilians in several States, mainly in Africa and Asia, the representatives of National Societies called for a total ban on anti-personnel mines, i.e. to prohibit not only their use but also their production, stockpiling and export; they thereby endorsed an ICRC proposal. Many speakers regretted the failure of the Review Conference of the 1980 Convention on Conventional Weapons (Vienna 1995) to reach an agreement on stricter regulation. After arduous negotiations the Commission approved, by consensus, a text for inclusion in the resolution on the protection of the civilian population. The resolution stated, "that the Movement and a growing number of States, international, regional and non-governmental organizations do their utmost to achieve urgently the total elimination of anti-personnel landmines". The resolution also urged States to make every possible effort to strengthen the 1980 Weapons Convention and its Protocol II on landmines.

Turning to problems of humanitarian concern caused by another device of warfare, *blinding laser weapons*, Commission I welcomed the adoption, by the said Review Conference, of a new fourth protocol banning the use of laser weapons specifically designed to cause permanent blindness.

C. Any other business: international humanitarian law applicable to armed conflicts at sea

To follow up Resolution VII of the 25th International Conference of the Red Cross, the International Institute of Humanitarian Law of San Remo had convened a meeting of government and private experts, all of whom took part in a personal capacity, to re-examine the current state of international law applicable to armed conflicts at sea. The *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, the product of their work, was brought by the ICRC to the attention of the 26th International Conference.⁴ Many delegates hailed the completion of the study and pointed to the importance of the San Remo Manual, which fills a gap. In Resolution 3, the 26th Conference invited States to draft their own manuals and encouraged them to use the San Remo Manual as a model where appropriate.

⁴ See Report 95/C.I/4/1 and *International Review of the Red Cross*, No. 309, November-December 1995, pp. 595-637.