

Adoption of the 1977 Additional Protocols

The adoption of the 1977 Protocols additional to the 1949 Geneva Conventions for the protection of war victims was an event of great historic significance. In 1977 the States were convinced that developments in weaponry had made it necessary to adopt new rules of conduct in armed conflicts: methods of using conventional weapons were being perfected and the resulting casualty rates were approaching those of weapons mass destruction, affecting everyone without exception and also damaging the environment, and thus threatening the survival of entire nations. This fact persuaded the States to agree upon new rules of conduct in armed conflict.

1. The adoption of Additional Protocol II concerning non-international armed conflicts was the great achievement of the 1974-1977 Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. Civil wars tend to be the most cruel and destructive wars, with both parties seeking to gain the upper hand at any cost. Virtually for the first time in the history of international relations, what would seem to be an internal matter became the object of an international agreement and, in principle, both parties to a conflict within the territory of a State were obliged to apply international law. It should be noted though that by that time issues such as respect for human rights and freedoms had ceased to be purely internal questions and had become matters of international concern and subjects of discussion at international forums.

Those engaged in civil war have since had to comply with international humanitarian law, i.e. apply international humanitarian law within the national territory. Depending on the local system of a government, this involves either an international treaty having direct force within the borders of a State that has ratified it, or the transformation of such a treaty by means of its adoption into national law. As regards the Russian Federation, Article 15, para. 4, of its Constitution explicitly states that both

the international treaties ratified by the Federation and the universally recognized principles and rules of international law are *ipso facto* elements of domestic law. Moreover, should the provisions of international treaties to which the Russian Federation is party differ from those of its own law, the international overrides the national. In particular, this means that in cases having an international element covered by an international treaty, Russian courts should apply international treaties. Accordingly, when Chechen civilians sue for damages suffered as a result of the hostilities in Chechnya, compensation must be paid, the court being guided by instruments such as Additional Protocol II on non-international armed conflicts.

2. The situation has naturally changed in many respects since 1977. Firstly, the ongoing technological advances in the field of conventional weapons led to the adoption, in 1980, of the Convention on particularly cruel weapons,¹ with its Protocol on mines² and, 15 years later, of a protocol on laser weapons³ which in itself was a great step forward. Secondly, the political situation has changed, and enormous military blocs no longer oppose one another. Though the character of NATO has not changed, the other bloc — the Warsaw Pact — has dissolved and this has an impact on the whole complex of issues related to development and application of the principles and rules of international humanitarian law.

The Additional Protocols of 1977 were adopted by consensus. This was due not only to the ICRC's high-quality preliminary draft, but also to the fact that the States judged these treaties necessary for the survival of our civilization.

3. In my view, the most burning issue of international humanitarian law today is the problem of effectiveness, i.e. of the law's implementation. This is the most complicated problem and one that concerns the entire body of international law, the effectiveness of which is measured primarily

¹ 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.

² Protocol on prohibitions or restrictions on the use of mines, booby-traps and other devices (Protocol II).

³ Protocol on blinding laser weapons (Protocol IV), adopted on 13 October 1995.

by the degree of voluntary implementation. The situation seems to have reached the point where it is also necessary to consider the questions of collective coercion and responsibility for compliance with international humanitarian law. Although this is already provided for in the law, the existing norms are apparently inadequate.

At the 1974-1977 Diplomatic Conference the question of strengthening implementation procedures was raised during the negotiations, but it was decided to leave it for the time being and to confine the negotiations to the existing general provisions of international law regarding the responsibility of the State and its agencies as well as the individual responsibility of the perpetrator of a crime. There are no statutory limitations for these crimes in international humanitarian law and when, for instance, the Russian Federation's State Duma adopts a law on amnesty, that amnesty does not apply to war criminals, all the more so as Russia, as one of the successors of the USSR, is party to the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity (1968).

Secondly, it should be noted that the drafters of the Additional Protocols implicitly proceeded from the assumption that weapons of mass destruction, above all nuclear weapons, did not fall within their scope. In my personal opinion, however, the use of nuclear weapons would violate all the provisions of the Additional Protocols and it can therefore be concluded by virtue of this fact that the use of nuclear weapons is prohibited. But this is only an interpretation of the provisions of the Additional Protocols, since the prohibition on the use of nuclear weapons as such was never raised during the Diplomatic Conference.

4. In 1989 the Supreme Soviet of the USSR ratified the Additional Protocols, an act preceded by a great deal of preparatory work. The fact that this took place at the beginning of the *perestroika* period no doubt facilitated the process. All the States, including Russia, which are former members of the USSR, have assumed by succession the obligation to apply the Additional Protocols in their territory in the event of an armed conflict. That is why, for example, regardless of the nature of the conflict in the Chechen republic, the provisions of Protocol II and Article 3 common to the 1949 Geneva Conventions are applicable to it. Likewise, the Geneva Conventions of 1949 and their Additional Protocols should also apply to the conflict between Azerbaijan and Armenia.

Finally, it should be recalled that customary rules of international humanitarian law as well as universally recognized principles and rules

of international law are directly applicable in the Russian Federation, on the basis of the Russian Constitution, which declares them part of federal law.

Igor P. Blishchenko

Igor P. Blishchenko is a professor of international law in Moscow. He was a member of the USSR delegation at the 1974-1977 Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

Original: Russian