

Universal acceptance of international humanitarian law

PROMOTIONAL ACTIVITIES OF THE ICRC

by Hans-Peter Gasser

In its Final Declaration of 1 September 1993, the International Conference for the Protection of War Victims *inter alia* urged all States to make every effort to:

“Consider or reconsider, in order to enhance the universal character of international humanitarian law, becoming party or confirming their succession, where appropriate, to the relevant treaties concluded since the adoption of the 1949 Geneva Conventions, in particular:

- *the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (Protocol I);*
- *the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts of 8 June 1977 (Protocol II);*
- *the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and its three Protocols;*
- *The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict”*.¹

The present article describes what the ICRC is doing to encourage all States to become party to the principal treaties of international humanitarian law.

¹ Part II, para. 4, of the Final Declaration of the International Conference for the Protection of War Victims, published in the *International Review of the Red Cross*, No. 296, September-October 1993, pp. 377-381.

Promotion of the humanitarian conventions is already one of the tasks assigned to the ICRC by the Statutes of the International Red Cross and Red Crescent Movement.² The ICRC is therefore doubly concerned by the appeal for the universal acceptance of international humanitarian law launched by the Conference for the Protection of War Victims.

A survey of the status of acceptance of the humanitarian conventions

At the time of writing (30 September 1994), the status of acceptance of the major treaties of international humanitarian law was as follows:³

— 1949 Geneva Conventions for the protection of war victims	185 States
— 1977 Protocols additional to the Geneva Conventions	
— Protocol I (international armed conflicts)	135 States
— Protocol II (non-international armed conflicts)	125 States
— Declaration under Article 90 of Protocol I	41 States
— 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons	41 States
— 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict	84 States

Here are a few comments to illustrate this table:

a) The 1949 Geneva Conventions

With 185 States party to them, the 1949 Geneva Conventions have attained almost complete universality. Following the dissolution of the Soviet Union, the secessions from the former Yugoslavia and the creation of two States in the territory of the former Czech and Slovak Federal Republic, the States which thus gained or regained independence very quickly settled their position with regard to the four Geneva Conventions, either by declaration of succession or by accession. Only Lithuania has

² Statutes of the International Red Cross and Red Crescent Movement, Article 5, para. 2 g).

³ See the table in the *Annex*. New ratifications and accessions are reported regularly in the *Review*. See also the ICRC's *Annual Report*.

not yet taken this step, but the relevant procedure has been started at the national level. The Vilnius government had previously informed the Swiss Federal Council — the depositary of the Geneva Conventions — that Lithuania considered itself to be bound by the two Geneva Conventions of 1929, by virtue of their ratification on 27 February 1939.⁴

It is interesting to note the form in which the new republics of Central and Eastern Europe and Central Asia have chosen to express their desire to become party to the Geneva Conventions:

Declaration of succession: Bosnia-Herzegovina, Croatia, Czech Republic, Kazakhstan, Kyrgyzstan, the former Yugoslav Republic of Macedonia, Slovakia, Slovenia, Tajikistan, Turkmenistan.

Accession: Armenia, Azerbaijan, Estonia, Georgia, Latvia, Republic of Moldova, Uzbekistan.

Even before 1989 Belarus (under the name of Byelorussia) and the Ukraine were fully accredited parties to the 1949 Conventions and to the other treaties listed above. This situation was due to the fiction of their independent existence at the international level, a fiction also manifested by their signature of the United Nations Charter. Moreover, from the legal point of view the Russian Federation considers itself to be identical with the former Soviet Union, and in the opinion of the Russian authorities this makes it unnecessary to submit any formal notification with regard to international humanitarian law commitments.

In Africa, a new State has just emerged by way of secession, namely Eritrea, formerly a province of Ethiopia. The ICRC is in touch with the Eritrean government, which has announced its intention to accede to the 1949 Conventions in due course.

In addition to the States referred to above, three member States of the United Nations are not party to the Conventions — the Marshall Islands, the Federated States of Micronesia, and Nauru.

Possible withdrawal of reservations to the 1949 Conventions

Neither the Geneva Conventions nor their Additional Protocols contain specific provisions on the right to enter reservations when ratifying or acceding to these treaties. Accordingly, under the general rules on this

⁴ Note from the Minister of Foreign Affairs of Lithuania, dated 10 October 1990.

subject, a reservation to one of their provisions is permissible provided that it is not incompatible with the object and purpose of the treaty. A distinction must be made between a reservation and a declaration of interpretation, which is intended to clarify the meaning of a provision of the treaty without amending it.

Although a decision to become party to a particular treaty is sometimes possible in practice only when accompanied by a declaration of interpretation or a reservation, it seems reasonable today to question whether all the reservations made to the 1949 Conventions are still justifiable in the present circumstances. The ICRC intends to pursue its informal contacts with the States concerned, in an attempt to see that existing reservations to these Conventions are withdrawn wherever possible.

To sum up, it may be said that today the 1949 Conventions are binding on practically all States. The ICRC continues to follow closely the cases of States not yet bound by these treaties and will take the appropriate steps as soon as a new State emerges. It will also go on working for the withdrawal of reservations to these Conventions.

b) The Additional Protocols of 1977

At the present time, 135 States are party to Protocol I and 125 to Protocol II;⁵ two-thirds of the total number of States have thus accepted these treaties. This gives them a considerable degree of universality which is particularly gratifying in view of the innovations introduced by the Protocols in a number of areas and the fierce controversies to which some of the proposed solutions have given rise, even after their adoption. In this connection, it is interesting to note that the new States of Europe and Central Asia became party to the two Protocols at the same time as the Geneva Conventions (except for Azerbaijan, which acceded to the Conventions only).

Despite their present level of acceptance, the Additional Protocols have not yet attained the universality they deserve. However, several governments are currently considering becoming party to them in the near future. The Cabinet of the United Kingdom, for instance, decided on 22 October 1993 to ratify the two Protocols, and their ratification will take place as soon as the national laws and other regulations required for their implementation have been formulated and adopted by Parliament. The US authorities have likewise decided to reconsider their attitude towards Protocol I. The President of the United States had previously proposed

⁵ See *Annex* p. 458.

that the Senate approve ratification of Protocol II alone, and reject Protocol I.⁶ The Gulf War of 1991 has opened the way for such reconsideration.

On the strength of its experience in the various conflicts troubling the world, the ICRC is convinced of the realistic and valuable part played by the two Protocols in protecting the victims of war, be it international or non-international; it is therefore continuing its representations to States which are not yet party to them, concentrating its efforts first and foremost on the main States which have not yet taken a decision on either instrument, and will then approach States which have ratified only one Protocol, inviting them to reconsider their positions in relation to the instrument they have not yet ratified. In most cases, this is Protocol II on non-international armed conflicts.

In so doing, the ICRC continues to go through all the usual channels of communication with governments: oral or written approaches by the President of the ICRC or headquarters staff, similar approaches by operational or regional delegations, missions by the legal adviser specially appointed for this purpose, etc. As always, close contact is maintained with the National Red Cross and Red Crescent Societies, which are in a unique position to influence the authorities of their respective countries.

At the multilateral level the United Nations General Assembly, through its Sixth Committee, has already devoted various debates to the promotion of the Additional Protocols, most recently in 1992.⁷ The General Assembly will no doubt have a similar item on the agenda of its 49th session in the autumn of 1994, which will provide another opportunity to remind States which have not yet done so to ratify the two Protocols or to accede to them. Similarly, note should be taken of the programme of action approved by the General Assembly in connection with the United Nations Decade of International Law, which includes an appeal for the ratification of instruments of humanitarian law.⁸ Moreover, the main regional governmental organizations have invited their member

⁶ See: "Agora — The U.S. Decision not to Ratify Protocol I to the Geneva Conventions on the Protection of War Victims", *American Journal of International Law*, 81 (1987), pp. 910-925; also 82 (1988), pp. 784-786, and 83 (1989), pp. 345-347.

⁷ Resolution 47/30 of 25 November 1992: "Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts".

⁸ Resolution 48/30 of 9 December 1993: "United Nations Decade of International Law".

States, some of them repeatedly, to ratify the 1977 Protocols.⁹ Certain international non-governmental organizations¹⁰ have also pledged their support for these instruments, and should be encouraged to pursue their efforts in this direction, in view of the close relations that they maintain with governments.

Even though some States have not yet formally adopted the new law of 1977, the Additional Protocols and especially their international rules for the conduct of hostilities carry full authority, even beyond the circle of the States party to them. The 1977 Protocols form part of the public international law in force in the international community.

c) Declaration under Article 90 of Protocol I: International Fact-Finding Commission

The purpose of the International Fact-Finding Commission (IFFC), set up under Article 90 of Protocol I, is to monitor more closely the implementation of international humanitarian law applicable in international armed conflicts. It is competent to enquire into any facts alleged to be a grave breach of the Conventions or of Protocol I and to “facilitate, through its good offices, the restoration of an attitude of respect for [that law]”. Nevertheless, the procedure of verification by the IFFC can be set in motion only if the States concerned have recognized the Commission’s competence by an express declaration to that effect at the time of ratification or accession, or later by an *ad hoc* declaration.

At the present time, only 41 of the 135 States party to Protocol I have declared that they recognize the competence of the IFFC “*ipso facto* and without special agreement”.¹¹ This low acceptance rate is most unsatisfactory, since any measure liable to strengthen respect for commitments under international humanitarian law by the parties to an armed conflict represents a step forward and merits firm support. The ICRC will therefore intensify its promotional activities, first, by continuing to recommend to authorities which are considering ratification of Protocol I that they should also make the declaration provided for under Article 90, and second, by

⁹ See, for example, the resolution of the Council of Ministers of the Organization of African Unity (1994); resolution 991 (1992) on the activities of the International Committee of the Red Cross (1989-91), adopted by the Parliamentary Assembly of the Council of Europe; or the resolution of the General Assembly of the Organization of American States (1994).

¹⁰ See, for example, the resolution adopted by the 90th Interparliamentary Conference (1993), entitled “Respect for international humanitarian law and support for humanitarian action in armed conflicts”.

¹¹ See *Annex* p. 458.

inviting States which are already party to Protocol I to accept the competence of the IFFC as well. Resolution 47/30 of the United Nations General Assembly¹² likewise calls upon Member States to make the said declaration under Article 90; the General Assembly should be encouraged to maintain and even increase its interest in this means of monitoring observance of humanitarian commitments, and even to strengthen its own commitment.

d) The 1980 Weapons Convention

At the present time, 41 States are party to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, which was adopted by the United Nations General Assembly on 10 October 1980.¹³ Most of these States are also bound by the three Protocols annexed thereto.¹⁴

The number of States party to the 1980 Weapons Convention is indeed disappointing, but greater government commitment to it seems likely in view of the interest that public opinion in some parts of the world is taking in the fate of victims of the indiscriminate use of anti-personnel mines.¹⁵ The forthcoming Review Conference will certainly provide an opportunity to promote acceptance of the Convention.¹⁶ The ICRC for its part will continue to include the 1980 Convention in its efforts to promote the instruments of international humanitarian law.

e) The 1954 Convention on Cultural Property

The Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954¹⁷ is binding on 84 States¹⁸ throughout the world. The armed conflict being waged in the territory of the former Yugoslavia has unquestionably aroused renewed public interest with regard to the preservation of monuments and other cultural objects in the event of war.

¹² See footnote 7.

¹³ See *Annex*.

¹⁴ Protocol I: on non-detectable fragments; Protocol II: on prohibitions or restrictions on the use of mines, booby-traps and other devices; Protocol III: on prohibitions or restrictions on the use of incendiary weapons.

¹⁵ On 12 May 1994, the President of the United States proposed to the Senate that it ratify the Convention and Protocols I and II thereto.

¹⁶ In this connection, see the ICRC Report of February 1994, in *IRRC* No. 299, March-April 1994, pp. 123 ff., especially pp. 130 ff.

¹⁷ Together with its Protocol of the same date.

¹⁸ See *Annex*.

In the past, the ICRC took no part either in promoting the 1954 Convention or in strengthening respect for it, but in view of the obvious link between the protection of civilian property in general and that of cultural property against the effects of military operations,¹⁹ the ICRC is considering together with UNESCO what it could usefully do to help the 1954 Convention to achieve due universal acceptance.

The importance of sustained efforts

This brief article has once again underscored the importance of sustained efforts to bring about the acceptance by all States of the humanitarian conventions which, in one way or another, protect the human person in the event of armed conflict. The ICRC will continue its endeavours to ensure that all these conventions attain the universality they deserve.

It should be borne in mind, however, that side by side with the written rules of the international law of treaties, there exists a whole edifice of unwritten rules — the general principles of law, customary rules and what is known as State practice. The influence of this body of rules on the conduct of States must not be underestimated, especially in armed conflict situations. Treaty-based law and unwritten rules together form an impressive set of international obligations to protect the victims of war. Now we must see to it that they are respected.

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¹⁹ See also Article 53 of Protocol I, entitled "Protection of cultural objects and of places of worship".