THE VIENNA CONVENTION OF 1969 ON THE LAW OF TREATIES AND HUMANITARIAN LAW[1]

By José Daniel

The Conference on the Law of Treaties held at Vienna in 1968 and 1969 [2], like the other important United Nations conferences on the codification of international law (Geneva Conferences on the Law of the Sea of 1958 and 1960 [3], Vienna Conference on Diplomatic Intercourse and Immunities of 1961 [4] and Vienna Conference on Consular Relations of 1963 [5]), formulated and adopted a Convention on the basis of a draft which was the collective

[1] Extract from a lecture given by the author on 12 October 1971, to the *Société genevoise de droit et de législation* on " La Conférence des Nations Unies sur le droit des traités (Vienne, 1968/1969): participation suisse ". The views expressed in this article (and in the lecture on which it is based) are exclusively the author's own and do not necessarily reflect those of the United Nations Secretariat, of which he is a member.

[2] The conference was held in two sessions, the first from 26 March to 24 May 1968 and the second from 9 April to 22 May 1969. Its proceedings have been recorded in three volumes published under the title " *United Nations Conference on the Law of Treaties. Official Records.* " The first (document A/CONF. 39/11, United Nations publication, Sales No.: E. 68.V.7) and second (document A/CONF. 39/11/Add. 1, Sales No.: E.70.V.6) contain the summary records of the plenary meetings and of the meetings of the Committee of the Whole held during the first and second sessions of the Conference respectively; the third volume (A/CONF. 39/11/Add.2, Sales No.: E.70.V.5) contains the documents of the Conference.

[3] *United Nations Conference on the Law of the Sea. Geneva, 24 February-27 April 1958. Official Records*, volumes I to VII (documents A/CONF. 13/37 to 43, United Nations publication, Sales No.: 58.V.4, Vol. I to VII). Volume II (Plenary meetings) (document A/CONF. 13/38) contains (pp. 132-143) the four 1958 Geneva Conventions on the Law of the Sea.

[4] *United Nations Conference on Diplomatic Intercourse and Immunities. Vienna, 2 March-14 April 1961. Official Records*, Vol. I (A/CONF. 20/14—United Nations publication, Sales No.: 61.X.21) and Vol. II (A/CONF. 20/14/Add.1, Sales No.: 62.X.1); the second volume contains (pp. 82-88) the Vienna Convention on Diplomatic Relations.

[5] *United Nations Conference on Consular Relations. Vienna, 4 March-22 April 1963. Official Records*, Vol. I (A/CONF. 25/16—United Nations publication, Sales No.: 63.X.2) and Vol. II (A/CONF; 25/16/Add.1, Sales No.: 64.X.1); the second volume contains (pp. 175-189) the Vienna Convention on Consular Relations.

work of the International Law Commission (ILC) of the United Nations, carried out under the guidance of a Special Rapporteur [6].

We have thus been witnessing since 1958 the interesting process of the reduction into treaty law of a substantial part of the customary international law of peace; if this period is compared with the centuries that went before, the transformation of unwritten rules into written law which has thus taken place appears remarkably fast. This codification of public international law has of course served to clarify pre-existing rules but it has at the same time made it possible to bring these rules up to date so as to meet better the new requirements of the community of States—the society which is governed by that law and which has undergone significant changes in the last few decades.

It should be noted that this remarkable work of codification carried out by the United Nations has related only to the international law of peace. As to the law of war, it is well to remember Switzerland's leading role in its codification. The four Geneva Conventions of 1949 for the protection of war victims constitute a genuine codification of the international law of war and an achievement of capital importance, initiated by the Swiss Federal Council; accordingly, the representative of Switzerland at the Vienna Conference did not fail to recall the part which his country had played in that respect.[7]

As our readers know, Switzerland is a member of most of the specialized agencies of the United Nations and is even a full member of certain organs of the United Nations itself, such as the Commission on Narcotic Drugs and the Economic Commission for Europe.[8]

---

[6] For the topic of the Law of Treaties, the Special Rapporteur was Sir Humphrey Waldock, Chichele Professor of Public International Law, Oxford University, member of the ILC since 1961. In accordance with a now well-established tradition, he assisted the Vienna Conference as Expert Consultant.

[7] The " Diplomatic Conference for the Establishment of International Conventions for the Protection of War Victims ", held in Geneva from 21 April to 12 August 1949, was, of course, convened by the Swiss Federal Council, depositary and custodian of the Geneva Conventions.

[8] The parts of the lecture which followed here and which have been omitted from the present extract, dealt with the remarkable achievements of the United Nations in the codification of international law, with the procedure followed in that connection and in particular the working methods of the ILC, and with the work of the Vienna Conference on the Law of Treaties.

As to the work of the United Nations on the codification of international law, Switzerland is always invited to take part in the conferences of plenipotentiaries on the subject, which are open not only to States Members of the United Nations but also to all States which, like Switzerland, are Parties to the Statute of the International Court of Justice as well as to all those which are members of one or more specialized agencies. Switzerland has thus taken a very active part in the Conferences of 1958, 1960, 1961 and 1963 [9].

The Vienna Convention on the Law of Treaties—its authority and significance.

The Convention on the Law of Treaties, which was the outcome of the Vienna Conference, has been called " the treaty on Treaties " [10]. Its importance rests on the fact that it will govern the conditions of validity (substantial and formal) of treaties, that is to say of the only written source of international law. The Convention will therefore occupy the highest place in the hierarchy of norms of international law and it has been possible to say that it will represent, as it were, " the constitutional law of the international community ". This formula, which was first used by Professor Paul Reuter in the course of the ILC debates, was taken up again at Vienna by the representative of Switzerland [11], speak-

[9] See, with respect to Switzerland's concern to participate in all the stages of the process of codification of international law by the United Nations, *United Nations Conference on the Law of Treaties. Official Records, First session*, third meeting of the Committee of the Whole, paragraph 45, p. 18, and fifty-sixth meeting of the Committee of the Whole, paragraph 25, p. 323. It is interesting to note that the ILC, when it adopted on first reading, in 1971, its draft on relations between States and international organizations, stated in its report for that year: " Bearing in mind the position of Switzerland as the host State in relation to the Office of the United Nations at Geneva and to a number of Specialized Agencies, as well as the wish expressed by the Government of that country ", the Commission deemed it useful to transmit the draft not only to Governments of States members of the United Nations, but also to the Government of Switzerland. (See paragraph 28 of the Report of the ILC on the work of its twenty-third session—document A/8410, to be reproduced in Volume II of the *Yearbook of the International Law Commission* for 1971).

[10] See in *American Journal of International Law* (AJIL), Vol. 64 (1970), pp. 495-561, the article " The Treaty on Treaties ", by Richard D. Kearney and Robert E. Dalton; Ambassador R. D. Kearney has been a member of the ILC since 1967.

[11] On this occasion, Mr. Rudolf L. Bindschedler, legal adviser, Swiss Federal Political Department, and deputy leader of the Swiss delegation at the Vienna Conference.

ing on the number of ratifications that would be required for the entry into force of the future convention [12].

The Conference ultimately agreed on the figure of 35 States. Thirty-five ratifications will therefore be necessary for the Vienna Convention to come into force. The fact that we are still somewhat far from that figure [13] should not give cause for concern since ratifications were equally slow in coming for the earlier codification Conventions; they have all, however, finally obtained the number of ratifications needed for their entry into force [14].

In any case, the provisions of this Convention, like those of the previous ones, are already of great significance because of the tendency of States to apply the rules contained in a codification convention which is not yet binding as a treaty, either because it has not yet entered into force or because the State concerned has not yet ratified it. This is quite common, for example, with regard to the rules contained in the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963.

It may be confidently asserted that rules which have been codified by almost unanimous votes at a conference of plenipotentiaries are the expression of existing law and in effect reduce to writing pre-existing rules of customary law, rather on the pattern of the " Rédaction des coutumes " carried out in France in 1510 and 1580. This is by no means a mere doctrinal opinion. In

---

[12] See *United Nations Conference on the Law of Treaties, Official Records*, 100th meeting of the Committee of the Whole, paragraph 26, p. 312.

[13] The Vienna Convention on the Law of Treaties of 1969 was signed by 47 States, a dozen of which have so far ratified it.

[14] By 31 December 1971, the ratifications and accessions to the Geneva Conventions on the Law of the Sea of 1948 numbered 42 for the Convention on the Territorial Sea and Contiguous Zone, 49 for the Convention on the High Seas, 33 for the Convention on Fishing and Conservation of the Living Resources of the High Seas and 49 for the Convention on the Continental Shelf. At that same date, the number was 102 for the 1961 Vienna Convention on Diplomatic Relations and 47 for the 1963 Vienna Convention on Consular Relations. As for the Convention on Special Missions, adopted by the General Assembly at its 1969 session, it has so far been signed by 14 countries. See, in this connection: United Nations, Multilateral Treaties in respect of which the Secretary-General performs Depositary Functions—List of Signatures, Ratifications, Accessions, etc., as at 31 December 1971 (document ST/LEG/SER. D/5—United Nations publication, Sales No.: E.70.V.7).

its recent ruling in the *Namibia (South West Africa)* case, the International Court of Justice held that:

" The rules laid down by the Vienna Convention on the Law of Treaties concerning termination of a treaty relationship on account of breach [15] (adopted without a dissenting vote) may in many respects be considered as a codification of existing customary law on the subject " [16].

The Convention: broad outline

The Vienna Convention of 1969, with its preamble, 85 articles and one annex, deals with the following subjects: (I) conclusion and entry into force of treaties and reservations to treaties; (II) observance, application and interpretation of treaties; (III) amendment and modification of treaties; (IV) invalidity, termination and suspension of treaties, and (V) miscellaneous provisions relating to treaties, such as the effect of a treaty with regard to third parties; it constitutes an outstanding international legal instrument, an analysis of which, however brief, could hardly be undertaken within the framework of a single article.

The present study will therefore deal with only a few of the provisions of the Convention, which have been chosen because they bear the mark of amendments proposed or supported by the Swiss delegation at the Conference and because they have a bearing on problems having some connection with the humanitarian conventions.

This method has the twofold advantage of making it possible to dwell at some length on a few selected provisions of the Convention and to examine their impact on humanitarian law. These provisions will be considered in the following paragraphs.

Preamble

The ILC draft did not not contain a preamble. As had been the case for the 1961 and 1963 Conventions, the preamble of the

[15] Contained in paragraph 3 of Article 60 of the Convention, mentioned below.

[16] See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 47.*

1969 Convention was the work of the Conference itself, which entrusted the Drafting Committee with the task of formulating a text on the basis of the various drafts submitted by a number of delegations. The Committee combined these texts and submitted to the Conference a formula which, however, did not contain the last paragraph of the Swiss draft, worded as follows: " Affirming that the rules of customary international law will continue to govern questions not expressly regulated by the provisions of the present Convention ".

The Swiss delegation rightly attached great importance to this paragraph, which constitutes a clause having a precise legal content and not a mere declaration of intent; it therefore proposed its reintroduction by an amendment which was adopted by the Conference [17].

Introducing his amendment, the representative of Switzerland stressed that it " reflected a tradition exemplified by the Conventions on the Law of the Sea and the Conventions on Diplomatic Relations and on Consular Relations . . . " and that it was desirable " that consideration should be given to precedents and practice on the subject ".

He added: " Admittedly, the Conference had succeeded in reducing a new and substantial part of customary law to writing, but gaps remained, so that occasionally it was still necessary . . . to fall back on custom " [18].

This provision on customary law has some analogy with the clause embodied in the concluding portion of the preamble to the Hague Convention No. IV of 1907 concerning the Laws and Customs of War, which specifies clearly that " in cases not included in the Regulations " annexed to the Convention, " the inhabitants and the belligerents remain under the protection and the rule of the prin-

---

[17] By 77 votes to 6, with 11 abstentions. The text of the paragraph was, however, amended by the deletion of the word " expressly " which appeared in the preamble of the 1961 Convention on Diplomatic Relations and in that of the 1963 Convention on Consular Relations. Mr. M. K. Yasseen (Iraq), Chairman of the Drafting Committee, pointed out that the questions which arose were settled by the articles of the Convention on the Law of Treaties either directly (i.e., expressly) or " indirectly, in other words implicitly ". See *op. cit.* (note 12), thirty-first plenary meeting, paragraph 68, p. 174.

[18] *Ibid.*, thirty-first plenary meeting, paragraphs 20 and 21, p. 170.

ciples of the law of nations, as they result from the usages established among civilized peoples " [19].

The aim pursued both in the Hague Convention and in the Vienna Convention is to avoid leaving any gaps in the application of international law and to stress that international relations *are always governed by international law*. Where a rule of treaty law exists, that rule will apply, and it will be found in a codification convention for any question of international law dealt with in such a convention. Questions on which no written law exists, however, will be governed by customary law, where the fall-back rules of public international law must be sought.

The Swiss delegation at Vienna rendered a real service to the international community by introducing this important clause, which effectively safeguards the application of customary law, as the *droit commun*, to all questions relating to the law of treaties which are not settled by the Vienna Convention.

Article 9, paragraph 2, of the Convention

Paragraph 1 of Article 9 states: " The adoption of the text of a treaty takes place by the consent of all the States participating in its drawing up except as provided in paragraph 2 " [20].

This text lays down, in the form of a general rule, the principle of unanimity which itself rests on that of the sovereignty of States;

---

[19] See the text of the Hague Convention of 1970 (Convention No. IV) in the *General Collection of the Laws and Customs of War, on land, on sea, under sea and in the air according to the Treaties elaborated by the International Conferences since 1856*. Brussels (1943), p. 251.

English version taken from *The Hague Conventions and Declarations of 1899 and 1907* (published by the Division of International Law of the Carnegie Endowment for International Peace), edited by James Brown Scott, New York, 1915, pp. 101-102.

The French original reads: " . . . restent sous la sauvegarde et sous l'empire des principes du Droit des gens, tels qu'ils résultent des usages établis entre nations civilisées (see *Recueil général des lois et coutumes de la guerre terrestre, maritime, sous-marine et aérienne, d'après les actes élaborés par les Conférences internationales depuis 1856*. Bruxelles (1943), p. 250). The meaning could perhaps be better rendered less literally as follows: " . . . shall continue to be protected, and to be governed, by the principles of international law, as reflected in the established custom of civilized nations . . . "

[20] For the text of the Convention, see *op. cit.* (note 2), *Documents of the Conference*, Vienna Convention on the Law of Treaties, pp. 289-301. For a full account of the various stages of the legislative history of each article, see the book by Mr. S. Rosenne (member of the ILC from 1962 to 1971), *The Law of Treaties—a guide to the legislative history of the Vienna Convention*, 1970.

that sovereignty must be respected even with regard to a decision which does not impose any significant legal obligation, for article 9 concerns merely the *adoption of the text.*

Nevertheless, even for this limited operation, unanimity is the rule, except (as provided in paragraph 2) for the adoption of the text of a treaty at an international conference, which takes place by a two-thirds majority unless " by the same majority " it is decided to apply a different rule.

This important rule enshrines the practice of United Nations codification conferences and constitutes an innovation with respect to traditional international law.

Actually, voting as such at diplomatic conferences is a comparatively recent phenomenon. Strict unanimity was the rule in all matters at such conferences as the Congress of Vienna in 1814 and the Congress of Paris in 1856. The idea of adopting texts by means of a vote at a diplomatic conference was apparently first put forward, albeit unsuccessfully, at the Conference held in 1864 at the Hôtel de Ville of Geneva, which adopted the Geneva Convention for the Amelioration of the Conditions of the Wounded in Armies in the Field [21]. It was, however, Bismarck who, presiding over the Congress of Berlin of 1878 and the Berlin Conference of 1884/85, had the merit of enforcing for the first time definite rules of procedure at " political " conferences; he even obtained that so-called " minor " or procedural questions should be settled by taking a vote [22]. It should be noted, however, that the Bern Conference of 1874, which set up the Universal Postal Union, took all its decisions by a simple majority of the delegations present.[23] And although it was a " technical " and not a " political " conference, the Bern meeting was nonetheless a diplomatic conference of representatives of States.

---

[21] The experts representing certain States even proposed that each delegation should have as many votes as delegates. But the diplomats present at the 1896 Conference objected to any form of vote, on the grounds that it would be contrary to the sovereignty of States.

[22] On all these questions, see F. S. Dunn, *The practice and procedure of international conferences* (1929), pp. 91-151, especially pp. 95-97, 105, 112-115, 129-130 and 148-151; see also N. L. Hill, *The public international conference* (1969), pp. 188-189.

[23] It was easier in this case to adopt parliamentary rules of procedure because the representatives at the Bern Conference of 1874 were senior officials of their countries' postal administrations and not diplomats or statesmen as at Berlin in 1878 and 1884-1885.

With the Peace Conferences held at The Hague in 1899 and 1907 [24] and the birth of the League of Nations, the method of *parliamentary diplomacy*, as practised today at the United Nations, gradually emerged. It therefore seemed reasonable to specify, in the rules of procedure of the 1958 Geneva Conference on the Law of the Sea, that the adoption of texts by the Conference would take place by a two-thirds majority.[25]

In the discussion on article 9, the President of the Vienna Conference [26] took the unusual step of expressing his personal view in favour of adopting " a more flexible rule " than the restrictive rule originally proposed that would oblige every conference " to take two steps. First, it must decide in advance whether or not it wished the text to be adopted by a majority of two-thirds of those present and voting; otherwise the rule requiring the majority of two-thirds of all the participants would apply. Secondly, in order to change the rule, it would be necessary to obtain at least once a two-thirds majority of the participating States " [27].

The representative of Switzerland supported this view, adding that " the question was one of the greatest importance for the practice of international conferences convened either under the auspices of the United Nations or by other authorities ", such as " that which had resulted in the adoption of the four Geneva Conventions of 12 August 1949 " [28]. He therefore pleaded in favour of a " more flexible . . . formula ", and added: " It should be possible to adopt certain articles dealing with problems which

---

[24] The proceedings of these Conferences record, for example, the adoption of a wish (*vœu*) " unanimously, saving two negative votes " by named States " and the abstention " of another, an ingenious device which paid lip-service to the unanimity rule just as it was about to be discarded.

The same idea is to be found even in the Final Act of the 1899 Conference: " . . . the last five wishes were voted unanimously, saving some abstentions " (see Ministère des Affaires étrangères, La Haye, 1899, *Conférence internationale de la Paix, La Haye, 18 mai-29 juillet 1899* (Acte final), Vol. I, p. 222).

[25] *Op. cit.* (note 3), Vol. II (A/CONF. 13/38), rules of procedure, pp. xxxi-xxxvi (see rule 35). A similar rule was included in the rules of procedure of the other United Nations conferences.

[26] Professor Roberto Ago, of Rome University, member of the International Law Commission since 1957 (President of the ILC in 1965), re-elected in 1971 by the General Assembly for a fourth five-year term (1972-1976).

[27] *Op. cit.* (note 12), eighth plenary meeting, para. 76, p. 18.

[28] *Ibid.*, paragraph 77, p. 18.

were less important from the point of view of State sovereignty by a simple majority . . . such a procedure often helped to contribute to the development of international law ".

He went on to say: " That had been the practice followed, for example in the case of the 1949 Geneva Conventions . . . for the Protection of War Victims. If those Conventions had had to be adopted by a two-thirds majority, a large number of their provisions, which had subsequently been adopted by the whole international community, would undoubtedly have had to be deleted " [29].

In the same context, the Conference adopted a separate amendment (proposed by Mexico and the United Kingdom) which endorsed the United Nations practice whereby the adoption of a text takes place by a majority of two-thirds of those present and voting, not counting those absent or abstaining. Despite the authority of this rule in United Nations usage and its practical utility, it must be admitted that it has the disadvantage of allowing sometimes decisions to be taken in effect by a minority of the participants in a conference [30].

The Conference thus finally adopted the two-thirds majority rule, but made it considerably more flexible by substituting for the unduly rigid notion of two-thirds of the " participating States " that of two-thirds " of the States present and voting " [31].

---

[29] *Ibid.*, ninth plenary meeting, paragraphs 27 and 28, p. 21.

[30] This occurred, in particular, at the 1963 Vienna Conference on Consular Relations, where in the Commission proceedings (in which decisions are taken by a simple majority) changes were introduced into the ILC text although they had the support of only a small minority of the 92 States represented at the Conference. Thus, an amendment to article 49 (article 50 in the final text of the Convention), on customs exemptions granted to consuls, was adopted by 25 votes to 19, with 21 abstentions, and an amendment to the article relating to the exemption from personal services and contributions was adopted by 26 votes to 11, with 25 abstentions. See *Official Records* of the Conference (*op. cit.*, note 5 above), Vol. II, Report of Commission II, paragraphs 179 and 186, at p. 137.

[31] The Sections concerning article 12 (Consent to be bound by a treaty expressed by signature), article 18 (Obligation not to defeat the object and purpose of a treaty prior to its entry into force) and article 20 (Acceptance of and objection to reservations) which followed in the original lecture (see note 8), and those dealing with article 1 (Scope of the present Convention) and article 66 (Procedures for judicial settlement, arbitration and conciliation) have not been included in this article because they are of minor interest to readers of the *International Review of the Red Cross.*

Article 53 (Treaties conflicting with a peremptory norm of general international law *(jus cogens)*)

The Swiss delegation was among those which had reservations regarding both this provision and *article 64* (Emergence of a new peremptory norm of general international law (*jus cogens*)). This attitude was not motivated by any opposition to the fundamental idea embodied in the two articles, which declare null every treaty " conflicting with a peremptory norm of general international law "; the explanation was rather the uncertainty as to which rules of international law constituted norms of *jus cogens*; the concept of such norms " unaccompanied by the necessary safeguards for States " could not therefore be accepted " in advance " [32].

At the first session of the Conference in 1968, the Swiss representative had already expressed some doubts on this point: " The expression ' international public order', the use of which had been advocated by the Lebanese representative, seemed preferable. It was close to the terms used by Lord McNair [33] . . . Despite the diversity of doctrines, the conclusions reached on the essential points were very similar or even identical. The examples of the best settled rules of *jus cogens* given by the International Law Commission . . . were striking. The rules set out in the Geneva Conventions . . . might be added to them . . . Obviously no arbitration body, or tribunal, could give its protection to a particular agreement that was immoral or in conflict with those principles, whether *jus cogens* was referred to or not . . . ".[34]

Although the Conference did not make any substantial changes in these two articles, it took this point of view very much into account when it introduced into the final text of article 66 the important new sub-paragraph (a) which provides for the compulsory jurisdiction of the International Court of Justice in any " dispute concerning the application or the interpretation of articles 53 or 64 ", thereby affording safeguards to those who had expressed misgivings on those two articles.

---

[32] *Op. cit.* (note 12), twentieth plenary meeting, paragraphs 30 and 31, p. 103.

[33] Lord McNair (then Sir Arnold McNair), author of one of the most important works on the subject (*The Law of Treaties*, Oxford, Clarendon Press, 1961).

[34] *Op. cit.* (note 9), fifty-sixth meeting of the Committee of the Whole, paragraph 26, pp. 323-324.

Article 60 (Termination or suspension of the operation of a treaty as a consequence of its breach)

Paragraph 2(b) of article 60 states that a " material breach of a multilateral treaty by one of the parties " entitles another party to invoke that breach " as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State ".

The Swiss delegation proposed an amendment (which was adopted by the Conference by 87 votes to none, with 9 abstentions), to insert in the article a new paragraph 5 reading as follows:

" Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties ".

At the first session of the Conference in 1968, the Swiss delegation had already put forward the idea of introducing a provision to that effect.[35] No objections were then formulated, but one delegation stated that " it seemed very difficult to find a satisfactory definition of the type of treaty concerned " [36]. It is therefore interesting to note the Swiss representative's statement at the second session in 1969, when he pointed out that the humanitarian treaties included:

(1) The Geneva Conventions of 1949, which, in his delegation's view, formed part of the general law of nations, and which prohibited reprisals against the " persons protected " by those Conventions (wounded and sick, prisoners, civilian internees).[37]

(2) *Ad hoc* bilateral agreements expressing the will of States not yet parties to the Geneva Conventions " to observe

[35] Ibid., sixty-first meeting of the Committee of the Whole, paragraph 12, page 354.

[36] *Ibid.*, paragraph 83.

[37] *Op. cit.* (note 12), twenty-first plenary meeting, paragraph 21, p. 112. The concept that the rules contained in the principal humanitarian Conventions on the laws of war (Hague Convention No. IV of 1907 and annexed Regulations, Geneva Conventions, etc.) form part of the general international law and are even of a peremptory character was already widely recognized at the time of the Second World War (see J. Daniel, *Le problème du châtiment des crimes de guerre d'après les enseignements de la deuxième guerre mondiale*, thèse, Paris, 1946, pp. 75-76, p. 111, etc.).

some of their basic principles, including the prohibition of reprisals against the persons protected ".

(3) " Conventions concerning the status of refugees, the prevention of slavery, the prohibition of genocide and the protection of human rights in general. " [38]

The provision that was thus adopted following the Swiss proposal is one of major importance, since it will ensure that the provisions of the humanitarian conventions are applied unconditionally to the innocent persons protected by those conventions, and will limit the harmful effects for those persons of the provisions of article 60, which allow the suspension of the operation of a treaty as a sanction for the breach of that same treaty.

The Swiss representative called it " a saving clause to protect human beings " [39]. This is in fact a case where the ultimate beneficiaries of certain rights are actually individuals and not States. As between States, the rules in paragraphs 1 to 3 of article 60 are perfectly normal; it is quite proper that one of the States parties to a treaty should be allowed to consider itself no longer bound by its treaty obligations *vis-à-vis* another party which does not fulfil those same obligations. The obligations set forth in treaties of a humanitarian character, however, have been laid down for the benefit of *protected persons*, i.e., of individuals who must not be allowed to suffer the consequences of a breach committed by the State to which they belong.

By securing the adoption of this important provision, Switzerland has once again acted as the faithful custodian of the humanitarian Geneva Conventions of 1949. This has been, perhaps, its most significant contribution to the United Nations work on the codification of the law of treaties. In the stately Festsaal of Vienna's former Imperial Palace, made available to the United Nations for the Conference, Mr. Paul Ruegger, head of the Swiss delegation, himself a former president and at present a member of the ICRC, had on this occasion the privilege of speaking for humanity.

---

[38] *Op. cit.* (note 12), twenty-first plenary meeting, paragraph 21, p. 112.

[39] *Ibid.*, paragraph 22, p. 112.

All the delegations went of course to the Conference to defend the legitimate interests of their own countries. For its part, the Swiss delegation, concerned to ensure the observance of the main principles of the law of nations while not losing sight of contemporary realities, strove to improve more particularly the rules of the law of treaties in which it had a major interest, namely those relating to the judicial settlement or arbitration of international disputes and, above all, those rules which can affect the protection of the human person.

José DANIEL
Doctor of Laws
Diploma-graduate of the Academy
of International Law, The Hague