

*INTERNATIONAL CONFERENCE FOR THE PROTECTION
OF WAR VICTIMS*

WHAT IS TO FOLLOW UP THE “FOLLOW-UP”?

by Nikolay Khlestov

The International Conference for the Protection of War Victims, held from 30 August to 1 September 1993 in Geneva, the “cradle” of humanitarian law, was an important event in international life. It gave an opportunity to diplomats of practically every nation not only to consider general issues of international humanitarian law, but also to discuss what to do in order to react adequately to the challenges of today, above all the escalation of armed conflicts and violations of international humanitarian law.

The growing scale of violations of humanitarian law in the modern world constitutes a threat to international security. It undermines trust in humanitarian law as such. It is a most destructive weapon that might place humanitarian values in question. It is self-evident that without such values mankind will never be humane.

The participants at the Conference — in fact a world forum — expressed their intention to restore the full authority of international humanitarian law. They denounced breaches of the law, with specific emphasis on such phenomena as “ethnic cleansing”. In its Final Declaration the Conference also urged all States to bring about respect for humanitarian law and, in particular, to ensure that war crimes are duly prosecuted and do not go unpunished. The Conference appealed to all States to make every effort to disseminate that law.

The most crucial provision of the Declaration is the one concerned with the need to make the implementation of humanitarian law more effective. On this issue a special clause was elaborated. During the drafting exercise it was referred to as the “follow-up”.

The Geneva Conference followed the example of the World Conference on Human Rights, held in Vienna last June, that adopted a declaration containing a section entitled "Follow-up". The International Conference of the Red Cross (Geneva, October 1986) in its Resolution V likewise appealed to States and National Red Cross and Red Crescent Societies to enable the ICRC to *follow up* the progress achieved in legislative and other measures taken for the implementation of humanitarian law; it also emphasized the necessity to gather and assess the said information and to report regularly to International Conferences of the Red Cross and Red Crescent on *the follow-up* to this Resolution.

This background illustrates the fact that the idea of having a "follow-up" was not spontaneous. It is based on the increasing desire to ensure respect for the rules of humanitarian law.

After a long series of consultations among delegations it was decided to call upon the Swiss government to convene an "open-ended" inter-governmental group of experts, which means that any country, irrespective of whether it is a party to humanitarian instruments, could send its experts to share in its work. The said group is to study practical means of promoting full respect for and compliance with humanitarian law, to make it more effective in all conflicts. It is to consider any suggestions and proposals in this regard and prepare its conclusions and recommendations in the form of a report to the States, to be submitted to the next International Conference of the Red Cross and Red Crescent.

As a rule, international supervision of the implementation of international law has two main components. First the extent to which national legislation and practice comply with international obligations is analysed and assessed on the basis of reports. Secondly, an examination is made of complaints and representations with regard to alleged violations of obligations. These two elements have to be borne in mind while considering "practical means of promoting full respect for and compliance with humanitarian law".

In the field of human rights, procedures and mechanisms, including fact-finding missions, special rapporteurs, etc., are established by organizations of the UN family. Recently the UN Commission on Human Rights took steps to set up an emergency mechanism dealing with gross and acute violations of human rights. Thus a new mechanism has appeared, i.e. special or emergency sessions of the Commission to consider situations in a specific country, as was the case with regard to the situation in the former Yugoslavia.

It does not seem necessary, however, to emulate the experience of other bodies while considering possibilities of making the implementation

of humanitarian law more effective, but to keep that experience in mind so that it can serve as a guidance for the work of the intergovernmental group of experts.

Of course, many questions could be raised as to the work of such a group and its results. For that reason the group must first of all outline its terms of reference and working methods. It could also:

- develop the reporting mechanism;
- consider terms of application of special procedures in the event of grave breaches of humanitarian law, with particular emphasis on the mechanism of the International Fact-Finding Commission provided for by Protocol I (Art. 90) additional to the 1949 Geneva Conventions on the protection of victims of war;
- consider the issue of penal sanctions in the event of grave breaches of humanitarian law;
- examine obstacles hindering the implementation of humanitarian law;
- study ways of making the role and protection provided by the ICRC to victims of war more effective;
- clarify the relationship between international humanitarian law and the national legislation of States.

At a later stage the group might deem it necessary that special procedures and, perhaps, bodies be created with a view to promoting the effective implementation of humanitarian law.

There may be other subjects and suggestions which could be presented by government experts for the benefit of humanitarian law and its application. The *International Review of the Red Cross* could serve as a focal point for the presentation of new approaches and ideas.

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