

this Conference, the ICRC, as stated in its report, intends to conduct consultations with a view to working out and defining means whereby States can fulfil more effectively the undertaking they have made, namely, not only to respect but also to ensure respect for humanitarian law in all circumstances.

Indeed, multilateral contacts on compliance with and development of humanitarian law must be pursued after this Conference. The form and procedures for this dialogue have yet to be decided. Given the commitment of the National Societies, I hope for my part that it will also take place in the autonomous framework of International Conferences of the Red Cross and Red Crescent. In the interval, intermediary procedures may usefully be adopted.

Allow me to express the hope that the Declaration you adopt at the end of your proceedings will go beyond mere statements of intent, which only too often remain a dead letter. I trust that the Declaration will be an assertion of your active solidarity with the victims, without any discrimination, and of your resolve to respond with fresh determination to their cries of distress. I trust also that it will offer a response to the urgent pleas of impartial humanitarian organizations for more effective security guarantees for their delegates.

One hundred and twenty-nine years ago States gathered for the first time, at the initiative of the founder of the Red Cross and of the Swiss Federal Council, to adopt the original Geneva Convention. Today, here in the same city, this Conference should feel that it has inherited a moral duty. A duty that, for the sake of the countless victims of conflict, States can no longer evade. On the contrary, they must place it at the centre of their long-term political concerns and at the very heart of their responsibilities.

Thank you for your attention and for your understanding.

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PROCEEDINGS OF THE CONFERENCE

Principles and rules

Some 120 delegates, including both full participants and observers, took part in the plenary discussions. They made numerous references to the Report on the Protection of War Victims which the ICRC had

prepared for the Conference. The full text of the Report appears on pp. 391-445.

The delegates first thanked the Swiss government for having convened the Conference at a crucial time when the fundamental rights of individuals were being severely violated on a massive scale and expressed their deep sympathy for the loss of three ICRC delegates, two of whom had recently been killed in a despicable ambush in Sierra Leone. In the light of that tragic incident, they stressed the urgency of the challenge to which the international community was being called.

As succinctly put by one delegate, the Conference had a threefold aim: first, to heighten awareness of the plight of the victims of international and internal armed conflicts, especially innocent civilians; secondly, to denounce repeated and excessive abuses and breaches of international humanitarian law; and lastly, to urge governments to undertake firm commitments, especially to respect and ensure respect for the existing law.

The speakers were unanimous in firmly condemning all violations of the fundamental rights of the individual, grave breaches of humanitarian law and repeated outrages against human dignity wherever and whenever they occurred.

The delegates viewed the need to respect the existing rules of humanitarian law as more important than new standard-setting. They thus reaffirmed the validity of the existing rules, while acknowledging that certain rules needed to be further specified or developed. That was the case, in the opinion of several speakers, of the rules protecting the victims of internal conflicts and those protecting the environment in times of armed conflict. A number of delegates spoke convincingly of the devastation wrought by the indiscriminate use of increasingly pernicious forms of anti-personnel mines and voiced support for restrictions or prohibitions on excessively cruel weapons. In particular, they hoped that the conference to review the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons would address what they considered to be serious shortcomings in the law. They also encouraged the ICRC to organize meetings of experts with a view to preparing thoroughly for that conference.

Several delegates condemned the widespread recourse to shelling and the increasing use of indiscriminate weapons in internal conflicts, whose victims are mainly civilians. They also underscored the inadequacy of the rules applicable to the conduct of hostilities in non-international conflicts and expressed the wish that the provisions of the

Geneva Conventions, their Additional Protocol I and the 1980 Convention be extended to apply to those conflicts. They stressed moreover that it was unacceptable for States to resort in internal conflicts to methods and means of warfare which were prohibited in international conflicts. A number of speakers, pointing to the "grey areas" existing between international humanitarian law and international human rights law, also highlighted the importance of a concerted approach by the authorities responsible for implementing the two bodies of law and encouraged all work undertaken to define the minimum humanitarian standards which must be observed in situations of internal violence and tension.

Means of action

Broad support was expressed for the adoption of an effective preventive strategy comprising the following measures:

- Implementation, at the national level and in peacetime, of legislation to ensure respect for international humanitarian law and to repress violations thereof.*
- Recommendations to States which had not yet done so to become party to the international humanitarian law treaties and to recognize the competence of the International Fact-Finding Commission set up under Article 90 of Additional Protocol I of 1977.*
- Further development of instruction in and dissemination of international humanitarian law. Specific examples were given in relation to that measure, which was considered essential, and mention was made of the relevant recommendations made by the ICRC in its Report. It was also stressed that international humanitarian law should be included in military instruction for all ranks. Moreover, in view of the many types of conflicts being waged, instruction in humanitarian law should also be given to paramilitary forces and the police. In addition many speakers underscored the need to teach the fundamental rules of humanitarian law to the civilian population, especially young people, and to draw the attention of the media to those rules.*

Problems related to humanitarian action

Where should the line be drawn between political and humanitarian considerations? This question was at the heart of various discussions on the nature of humanitarian action during armed conflicts, the obstacles faced by humanitarian personnel in the exercise of their duties and violations of humanitarian law which hindered relief efforts and jeopardized peace.

What solutions can be found to those problems? A number of participants, taking the view of the UN Secretary-General, advocated multilateral humanitarian diplomacy as a means of resolving the difficulties with which the international community was faced in relation to modern conflicts (see the summary of Dr. Boutros Boutros-Ghali's address in the box on p. 372).

Other participants made a point of strongly reaffirming the specific and independent nature of humanitarian action, emphasizing that it could not in any event be considered a substitute for political negotiation. Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, reiterated that basic principle in her address, a summary of which is published on p. 373.

In the light of existing conflicts some delegates deemed it necessary to define the nature of humanitarian action and draw a clear distinction between it and peace-keeping activities. One participant stressed that everything possible must be done to ensure that neither violence nor obstacles of a political or administrative nature prevented international aid from reaching those who were in dire need of it. The States, he said, were duty bound to reaffirm their commitment to cooperate fully so that relief operations could be undertaken safely, rapidly and effectively.

Several delegates underscored that the issues at hand were above all the will of States to fulfil their obligations, the need for better coordination among relief agencies, the appropriate distribution of tasks among those agencies in keeping with their respective mandates, and genuine consultation on the priorities to be set for humanitarian operations, particularly in countries where State structures were no longer able to ensure compliance with the law.

A number of representatives from developing countries challenged the validity of a right to humanitarian intervention which, in their opinion, both flouted the principle of national sovereignty and was a source of confusion and injustice since certain countries benefited from it while others did not. One participant exclaimed: "There

ADDRESS BY DR. BOUTROS BOUTROS-GHALI **Secretary-General of the United Nations**

(Summary)

The Secretary-General of the United Nations, Dr. Boutros Boutros-Ghali, considered that the International Conference for the Protection of War Victims showed, in a world where violence and uncertainty prevailed, that "it is always at these troubled moments in history that the conscience of the world revolts and, raising its voice above the conflicts and the hatreds, proclaims its faith in the individual".

He stressed that reflection should be focused on ways of heightening the effectiveness of and making improvements to humanitarian law, which was "essentially an avant-garde form of law" and one which had highlighted the importance of the individual even before the emergence of human rights law. It was up to the States, which had undertaken to be the guarantors of humanitarian law, regional organizations and non-governmental organizations to carry out this reflection, which was "essential and urgent, in view of (...) conflicts of which our conscience disapproves and which the law condemns, to keep finding new ways of better protecting civilian populations".

To that end, the United Nations had undertaken three forms of action: standard-setting, diplomatic and jurisdictional. Its standard-setting action consisted first and foremost of "assistance and support for and expansion of the action taken by States in implementation of major international instruments, particularly the 1949 Conventions and the 1977 Additional Protocols". Most of the main United Nations organs, including the General Assembly, the Security Council and the International Court of Justice, also contributed in their particular sphere of competence to the consolidation of humanitarian law.

Moreover the General Assembly and the Security Council had developed the outline of a true humanitarian diplomacy, first of all in the context of the humanitarian assistance provided by the United Nations since 1988, and also in its peace-keeping operations which had included since 1991 "a humanitarian assistance component, in addition to the restoration of democracy".

The jurisdictional efforts undertaken by the United Nations included the establishment of an International Tribunal to try persons presumed responsible for violations of human rights in the former Yugoslavia.

In conclusion Dr. Boutros-Ghali emphasized the importance of working both on an emergency footing and in the longer term. "On an emergency footing," he said, "the task is to protect civilians in times of armed conflicts. (...) But we also need to act in the longer term, in other words to protect peace and forestall possible conflicts".

**STATEMENT BY MRS. SADAKO OGATA
United Nations High Commissioner for Refugees**

(Summary)

Mrs. Ogata deplored that “we have passed the threshold of what is tolerable in modern warfare, especially as regards the treatment of civilian populations” and considered that “before we attempt to further develop international humanitarian law, we must demand the scrupulous respect of existing principles and instruments”, especially the Geneva Conventions and their Additional Protocols.

In her opinion, a major problem was “the politicization of humanitarianism”. She added: “On the one hand, humanitarian endeavours must not contribute to delaying, or indeed replacing, political negotiation. On the other, they must not be used as an instrument for the pursuit of political or military goals. Yet, humanitarian institutions are increasingly being manipulated and blackmailed, the aid they provide is being abused by parties to conflicts, for the furtherance of their non-humanitarian objectives. It is essential that the independent, non-political and impartial nature of humanitarian action be forcefully reaffirmed, preserved, perceived as such and respected by all”.

Mrs. Ogata also stressed that “States have primary and collective responsibility for redressing this wholly unacceptable situation. Their responsibility does not diminish as a result of their non-involvement in, or their remoteness from, a conflict. (...) No belligerent must be allowed to behave as if it were immune from the imperatives of humanity and exempt from national and international accountability”.

In conclusion, Mrs. Ogata, in her capacity as United Nations High Commissioner for Refugees, emphasized the importance of the right to seek and enjoy asylum, which certain States were tempted to curb, and the need to protect refugees and other victims of war.

cannot be one humanitarian law for the rich and another for the poor”.

The delegates praised the ICRC for its protection and assistance activities, underscoring in particular its crucial role as neutral intermediary in times of armed conflict.

It also emerged from the discussions that many delegates were deeply concerned about the safety of ICRC personnel and those of other humanitarian agencies. One participant wondered to what extent recourse to military protection was compatible with the impartiality of humanitarian action and whether such protection might not compromise the ICRC's neutrality. The delegate also wondered to what extent the ICRC should stay out of the decision-making process for the deployment of UN peace-keeping forces.

Those issues certainly call for clarification and thorough consideration of the joint strategy to be adopted by the humanitarian agencies and the States concerned, in particular with regard to military protection for humanitarian operations. However, respect for the red cross and red crescent emblems remains the sine qua non to ensure the safety of humanitarian workers. Many delegates therefore stressed the obligation of States to spread knowledge of the fundamental meaning of those emblems, which implied a special effort to enlist the help of the media in explaining the meaning of humanitarian action during armed conflicts.

Repression of breaches of international humanitarian law

The delegates gave considerable attention to the repression of serious breaches of international humanitarian law. They emphasized the duty of the States party to the Geneva Conventions to put an end to violations of the law and to repress serious breaches thereof and pointed out that it had become necessary to develop new measures to deal with the large-scale violations which were being perpetrated in current conflicts and were a source of deep concern to the international community.

Numerous speakers stressed the importance of the International Fact-Finding Commission set up in accordance with Article 90 of Protocol I. While pointing out that the Commission did not have jurisdictional powers, they emphasized that it was nevertheless a permanent and independent body which provided a useful means of promoting respect for international humanitarian law. Although the Commission was intended to help the States ensure better implementa-

tion of the law, it was unfortunately still too little known and its services too infrequently called upon. A number of delegates also urged the States which had not yet done so to recognize the Commission's competence.

The repression of grave breaches of international humanitarian law, together with dissemination, were the two most discussed items on the agenda. Most of the speakers strongly asserted that the perpetrators of war crimes must be prosecuted, and endorsed the establishment by the UN Security Council of a tribunal to try persons accused of grave breaches of international humanitarian law committed on the territory of the former Yugoslavia since 1991. They also strongly advocated the setting up of a permanent international penal system and hoped that the work of the UN International Law Commission would lead to the drafting of a Code of Offences against the Peace and Security of Mankind.

One delegate also suggested that a mechanism be set up under which the States would have to submit periodic reports on measures they had taken to comply with their humanitarian obligations under the Conventions. The consideration of those reports could be carried out by an international body set up for that purpose, similar to the UN Commission on Human Rights but dealing with military and humanitarian matters.

Ensuring effective follow-up

In conclusion the delegates agreed that better implementation of international humanitarian law was vital and that it was important for the States to study and adopt practical means of promoting full respect for the law and the application of its rules. In other words the delegates stressed the importance of ensuring a follow-up to the Conference. They also welcomed the Swiss government's initiative to convene a group of intergovernmental experts to study various means of ensuring the implementation of the conclusions of the Conference and to prepare a report for submission to the States and to the next International Conference of the Red Cross and Red Crescent.

The President of the International Federation of Red Cross and Red Crescent Societies, Mr. Mario Villarroel Lander, drew attention in his address to the key role which the International Red Cross and Red Crescent Movement would undoubtedly play in ensuring a follow-up to the Declaration adopted by the Conference. He shared "the concerns of those that see respect for international humanitarian law

as the most effective way to disrupt the spiral of violence that causes appalling suffering” and stressed that the purpose of the Conference was to send to the entire world the signal that human dignity was the overriding and absolute principle of the law. He said, in particular: “The National Red Cross and Red Crescent Societies, whose primary function it has always been to support the public authorities in their humanitarian tasks, have been engaged in disseminating international humanitarian law as well as the principles and ideals of the Movement with the primary objective of inculcating that respect for human dignity is the essence of the law. In a true spirit of solidarity, the Federation in cooperation with its National Societies gives assistance to those who are in need and by its neutral and impartial assistance to all victims it promotes lasting peace, which is not simply the absence of war, but is a dynamic process of cooperation among all Nations.

[...] I am recalling these essential principles regarding the relationship between States and the Red Cross and Red Crescent in order to emphasize that the Federation and its member Societies are doing their utmost to achieve the highest standards of performance with the aim to bring relief by all available means to all disaster victims. However, we could improve our performance if, in accordance with paragraph 3 of Article 81 of Protocol I additional to the Geneva Conventions, the States Parties and Parties in conflict facilitate in every possible way the assistance which Red Cross and Red Crescent organizations and the International Federation extend to victims”.

He also expressed the hope, on behalf of all the National Societies members of the Federation, that the International Conference of the Red Cross and Red Crescent would continue to bring together the States and the components of the Movement since it “has been a widely accepted and highly reputable forum for discussion of problems regarding the implementation of international humanitarian law”.