

**INTERNATIONAL CONFERENCE
FOR THE PROTECTION
OF WAR VICTIMS**

(Geneva, 30 August - 1 September 1993)

**REPORT
ON THE PROTECTION
OF WAR VICTIMS**

Prepared by the
International Committee of the Red Cross

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The law of armed conflict is without doubt no substitute for peace. As the sparks of violence fly and passions flare it does, however, constitute one last bulwark of sanity and human values, one final statement of human fellowship.

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(English translation: ICRC)

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DEFINITIONS AND PRINCIPAL INTERNATIONAL HUMANITARIAN LAW TREATIES

Definition of international humanitarian law

“The expression **international humanitarian law applicable in armed conflict** means international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of Parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict. The expression is often abbreviated to **international humanitarian law or humanitarian law**”.

Commentary on the Additional Protocols of 8 June 1977, p. XXVII, ICRC, Geneva, 1987.

The Martens clause

In cases not covered by international agreements, “civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience”.

Formulation adopted in Article 1, paragraph 2, of Additional Protocol I of 1977.

Principal international humanitarian law treaties:

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Convention I), of 12 August 1949.
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Convention II), of 12 August 1949.
- Geneva Convention relative to the Treatment of Prisoners of War (Convention III), of 12 August 1949.
- Geneva Convention relative to the Protection of Civilian Persons in Time of War (Convention IV), of 12 August 1949.
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977.
- Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977.
- The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, of 14 May 1954.
- 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.

Preamble

This Report on the Protection of War Victims has been drawn up by the International Committee of the Red Cross (ICRC), which has been mandated to work for the faithful application of international humanitarian law, and for the dissemination and possible development of that law. The ICRC wishes to thank the International Federation of Red Cross and Red Crescent Societies for its useful comments.

Based on the experience of the ICRC in armed conflicts and on the action taken by governmental and non-governmental organizations in such situations, the report seeks to identify and clarify the sometimes

insurmountable problems encountered in the application of international humanitarian law. Such problems have led to large-scale violations of the law in question, to immeasurable suffering and to countless individual and collective tragedies.

No mention is made in the report of specific conflicts as the examination thereof does not fall within the terms of reference of the International Conference for the Protection of War Victims and would only give rise to polemics. It would seem that every State should first and foremost analyse what it is doing and what improvements it can make to adopt and to encourage the adoption of international humanitarian law before giving way to the temptation to criticize the shortcomings of others.

The purpose of the report is to provide governments with a basis for reflection in order to decide on their own commitment. It is upon this commitment, above all, that the possibility of caring for the innumerable victims and protecting others in future from the same fate will depend. The report also mentions various activities which the ICRC is willing to undertake or which could be undertaken by other institutions.

* * *

The document is divided into four parts.

It begins with a brief *description of the current situation* in order to underline the unacceptable state of affairs and the urgent need for a vigorous and determined response by the whole international community.

The document then goes on to stress *prevention*. It is a bitter fact that in many cases the unbearable suffering of the victims of armed conflicts have to be all too obvious before governments will react, at considerable expense, after having done little to support preventive measures that would have cost far less. Yet such preventive measures, if carried through with commitment and imagination, can be highly effective. We must recognize this and *take action* to restore humanitarian values rather than simply reacting with makeshift solutions to situations in which these values are blatantly disregarded. *The erosion of humanitarian values is not inevitable.*

The third section of the document deals with the *problems currently being encountered* when carrying out humanitarian activities in armed conflicts. While every effort must be made to avoid a recurrence of situations such as those now taking place, we have no choice

but to do whatever is humanly possible to care for the victims by seeking to resolve the specific problems that have arisen. Some of them are new and highly sensitive, such as the difficulty of access to victims, security problems, the role of armed escorts and the coordination of relief operations, and it has been necessary to improvise solutions. We must now stand back and give renewed consideration to them so that the experience gained can be turned to future account.

The fourth section is devoted to the *repression of violations* of international humanitarian law, which is indispensable if the law is to be respected. This whole question has been highlighted again by the establishment of an International Fact-Finding Commission and the efforts undertaken to create an international war crimes tribunal.

1. Rejecting the unacceptable

A vigorous reaction to the present events in the theatres of armed conflict is needed from the international community. The main aim of the International Conference for the Protection of War Victims is to bring about such a reaction.

It seemed justified to begin this section with some accounts taken from the reports of ICRC delegates over the past two or three years.

In part 1.2 below the main features of the present situation are outlined.

1.1 Extracts from reports by ICRC delegates

Massacre of civilians

We are visited by a refugee who once more, at the peril of his life, crossed the town to tell us about the massacre. He was there early in the morning and saw the heap of dead bodies and wounded. He talked to some of the survivors; the atmosphere can well be imagined. He is the first to have spoken of genocide and estimates the number of victims at between two and three hundred. We are all deeply shocked and stunned by the news.

* * *

Gradually, moving from bed to bed, examining the bruised bodies and listening to the teenagers (it is they who talk the most), a horrifying film of the events is pieced together frame by frame. When the soldiers opened fire, a dozen of them in a row, they were some 30 yards (30 m) from the entrance. The crowd, estimated at 1,000, had not yet entered; the people had their backs to the five-foot (1.5 m) surrounding wall. The door was narrow and the wall high — escape was impossible. Many must have died right there, shot down at almost point blank range. Others tried to flee; some of the soldiers pursued them, others climbed up on to the wall in order to take better aim at those escaping. Then they fixed their bayonets and took up their clubs. Using their rifle butts, feet, clubs and bayonets, they savagely struck, knocked down, overwhelmed and transfixed their victims. Some wounded were undoubtedly finished off in this fashion. Many eyewitness reports confirm this.

Then the firing ceased, but not the massacre. The soldiers rushed into the nearby houses; smashed, struck down and stole. Then the dead, the dying and the survivors were all loaded on to the same lorries. On the way to the hospital and in a bath of blood, the soldiers continued their savagery, using their bayonets to finish off those who were still moving. Some owed their lives solely to being loaded on first and enjoying the protection of the layer of bodies above them.

Summary execution of people protected by the red cross emblem

An ICRC truck carrying 45 passengers to the airport was diverted in front of the airport in the presence of the authorities and ICRC delegates. Eleven men subsequently disappeared and are presumed to have been executed.

Summary execution of detainees

After about two hours of waiting the policemen, who had accompanied the convoy, started to take the men from the buses, two by two, brought them to the edge of an escarpment above the river and killed them by shooting them in the head at close range. The bodies were thrown from the escarpment into the river valley.

After about 50 men had been killed in this way, the policemen took groups of 10 to 15 men from the buses, put them at the edge of the escarpment and shot them with bursts of fire. The bodies fell into the river valley.

Systematic torture of detainees

In three days I have been able to see a large number of detainees who allege severe maltreatment, many of them bearing evident and recent traces of it. It can only be assumed that the State services of repression (or the individuals in these services) feel authorized to seriously maltreat a certain number of detainees.

* * *

The torturing physician is only the tip of the iceberg of a generalized phenomenon, i.e. the capitulation of medical ethics to political power.

* * *

Detainees, sometimes concealed from the ICRC, undergo forms of torture of long unprecedented severity. Certain prisoners are beaten with iron bars, sticks or cables until they are bleeding; others are suspended from trees with handcuffs, leading in some cases to neurological problems in their hands. Kicks and blows are common currency, in particular blows to the genital organs. Other detainees are burnt by liquids which are thrown over them or which they are forced to swallow. We have recently seen an extensive third-degree burn on the back, due either to a welding torch or red-hot iron. The use of electricity is tending to become more widespread. Insults and humiliations are evidently a part of the whole set-up.

Inhuman conditions of detention

The general situation in the centre is almost unbelievably bad. The living conditions are beyond description. There is only one term for it: inhuman ...

In the past, and up to the previous visit, one could sense bitterness, rancour and sometimes revolt among the detainees, not solely concerning the conditions but at the lack of news from their families and anxiety about their close relations.

Now, it is open rebellion. The slender hope that the detainees had cherished up to the present no longer exists ...

The cold and the ice outside have also frozen their hopes; the detainees are at the end of their tether ...

Nothing can improve their conditions. Their sole hope lies in leaving here.

Hospitals lack essential supplies

At least one third of the wounded we could see were women and children. The most common injuries observed were shrapnel and gunshot wounds. In each shelter at least 100 wounded (with minor or major injuries) were found lying on the ground after having received very basic medical care.

There was a lack of everything, especially medical items and food. We witnessed an influx of patients in one of the shelters — an indescribable situation as blood was everywhere and people were dying. The effort made by the health workers and doctors was enormous, but so was their desperation because of the poor means and the lack of proper facilities and equipment.

No respect for medical work

Nobody knew the exact number of patients, and the hospital was run by “left-over” doctors with no strength, power or possibility of administrating the hospital. Every patient “moved in” with his — mostly armed — family, and not even the director could discharge patients.

Patients with open fractures and wounds to extremities were simply placed in the wards — nobody had the time to do debridements. Fractures were immobilized in plasters if at all. Dressings were done daily, but this was impossible to supervise. Penicillin was administered on arrival in doses sufficient for the whole week and was mostly injected by relatives, who did not like pills. With the power of their guns they got what they wanted ...

Starving population

Apart from a few watermelons, oranges and, as always, lots of munitions, the markets are emptier than ever. The expectation of food is so compulsive that people scan the sea day and night, and in the morning report having seen the lights of a boat off shore ...

Most of the displaced persons that I saw, and who are seen almost every day by our people, are doomed to die, because food aid will arrive too late.

* * *

Just outside the town is the camp for the displaced where 11,000 people are living. Most have been there for three months and have received only some maize. We saw many families boiling dry goat skin and trying to eat that. Most huts contained severely marasmic people just lying and waiting either for help or death.

Indiscriminate use of anti-personnel mines

A young boy of eight years and his six-year-old sister were admitted to the ICRC hospital. They were accompanied by their father. The family had been refugees for five years and had returned home. Shortly after entering their house the mother stepped on a mine; she was killed immediately and the son had a leg blown off by the explosion. The daughter received multiple abdomen and chest injuries. Twelve hours later they had made their way to the ICRC hospital. Both patients were seriously ill and required multiple operations and a prolonged stay in hospital.

* * *

A 15-year-old boy was admitted to the ICRC hospital. He was tending his goats when he caught sight of an object on the ground. Not knowing what it was he picked it up. The "object" was an anti-personnel mine; it detonated, causing severe injury to his right hand. On admission to the hospital, it was decided that his hand could not be saved and would have to be amputated. His father, who accompanied him, had to come into the operating theatre to give the necessary permission for amputation.

Violation of Red Cross premises

Some fifteen people had come to the office to write Red Cross messages. Three uniformed military policemen came into the office, one of them with a pistol in his hand. The local employee reminded him that it was forbidden to enter carrying arms, but he paid no heed. The policemen asked two men, who were writing Red Cross messages, for their identity cards. These were handed over and the policemen asked the men to follow them. The local employee protested, but to no purpose. The two men followed the police out of the office.

Emergency aid diverted

It is a crime systematically to plunder what little remains of the resources or infrastructure of the country (everything is scrapped so as to be re-exported for the profit of unscrupulous traders).

It is also a crime, particularly when the population is starving to death, systematically to divert humanitarian aid so as to store it and sell it (petty armed criminals who poison the atmosphere operate within organized networks).

Negative effects of disorganized aid

Multilateral and bilateral aid has flooded into this country and contributed to the general corruption and the disintegration of economic and social structures.

Tragic consequences of arms influx

It is a crime to continue the import of arms and ammunition, so as to hand them over to permanently drugged adolescents who will use them in a completely indiscriminate way.

1.2 Characteristics of the present situation in the theatres of armed conflict

- a) The end of the Cold War and the greater possibility of using the machinery to maintain and restore peace provided for in the United Nations Charter have not yet prevented the proliferation of armed conflicts.
- b) Most of the armed conflicts are of an internal nature and most of the victims of those conflicts are civilians.
- c) The principles and basic rules of international humanitarian law remain a hard core of values universally accepted by the international community, but peacetime efforts to implement them at the national level are nonetheless insufficient and the rules of that law are still imperfectly known by those who have to apply them, especially members of the armed forces or armed groups.
- d) Certain authorities act as if they despise international humanitarian law; systematic torture, racial, ethnic and religious discrimination, hostage taking, forced and unjustified population movements and

the deliberate hindering of all humanitarian action are very frequent.

- e) The way in which States should fulfil their obligation to ensure respect for international humanitarian law, notably in cases of grave and massive breaches of that law, still gives rise to doubts and hesitations.
- f) The collapse of governmental and military structures in a number of situations makes discussion with authorities, who are incapable of following through their commitments, very inconclusive. In certain armed conflicts, the purpose of using armed force appears to have been overtaken by lawlessness and banditry.
- g) Contempt for the humanitarian rules, the collapse of governmental structures and ignorance of the basic rules of international humanitarian law all raise serious problems for the safety of personnel engaged in emergency humanitarian work.
- h) Despite the praiseworthy efforts of the various institutions providing emergency humanitarian aid, the coordination of their activities and the concerted approach they have adopted, it has not yet been possible to respond adequately and fast enough to satisfy the immense human needs arising from armed conflicts.
- i) In some situations, the institutions providing emergency humanitarian aid have had to resort to armed escorts and other *ad hoc* procedures when they encountered particularly serious security problems in their work.
- j) The financial and human resources devoted to the protection of the victims of armed conflicts are still inadequate.
- k) The relationship between the task of maintaining or restoring peace, and that of providing protection and assistance for the victims of armed conflicts should be clarified.
- l) There is often a close connection between action to prevent armed conflicts and action intended to ensure respect for humanitarian rules in the event of conflict, particularly in the field of disarmament and in that of human rights.

2. Prevention

Armed conflicts cause unspeakable suffering, whatever is done to prevent it and however well international humanitarian law is

respected. It is therefore vital to encourage and intensify all efforts to tackle the *root causes* of conflicts, such as poverty, inequality, illiteracy, racism, the uncontrolled growth of huge cities, the collapse of governmental and social structures, corruption, crime organized on a world scale, drug trafficking and arms dealing ...

To encourage *compliance with international humanitarian law* is not enough. Such encouragement cannot serve as an excuse to ignore those fundamental problems, which are moreover not only the source of conflicts but often also stand in the way of respect for that law. How indeed should young people whose sole education has been that of the streets understand the underlying principles of humanitarian law and respect humanitarian work?

Neither the present document nor the International Conference for the Protection of War Victims have any ambition of addressing problems relating to the root causes of armed conflicts. It is nevertheless essential to stress that efforts to tackle those causes and efforts to protect the victims of war are mutually complementary.

The measures described below are therefore intended to be taken *in peacetime*, to ensure that international humanitarian law will be respected if an armed conflict breaks out. They may well seem unspectacular, but they stem from the conviction that the most wonderful statements have no effect unless they are accompanied by persistent, long-term work.

2.1 Promotion of international humanitarian law treaties

By 15 June 1993, the Geneva Conventions of 1949 were binding for 181 States, i.e. virtually the entire international community. Their Additional Protocols of 1977 had also been widely accepted, with 125 States party to Protocol I and 116 States party to Protocol II. In addition, 36 States were bound by the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, whilst 82 States had ratified the 1954 Convention for the Protection of Cultural Property.

Now that the Geneva Conventions enjoy almost universal recognition, it would be desirable if the same could be achieved for the whole range of international humanitarian law treaties and particularly the Additional Protocols of 1977. It is only through such recognition that the humanitarian rules to be applied in armed conflicts can be laid

down clearly and without ambiguity. Admittedly, many of the rules codified in the 1977 Protocols may be considered international customary law, but there are still grey areas. Since international humanitarian law, which applies in situations of armed conflict fraught with tension and distrust between the belligerents, suffers if there is any uncertainty as to the applicability of its rules, it is of paramount importance for its preservation and credibility that the rules taught during military training should be the same everywhere.

All States which have not yet adopted one or other of the international humanitarian law treaties are asked to examine or re-examine the possibility of doing so without delay.

Since the adoption of the two Protocols of 1977, the ICRC has actively promoted these two treaties. It has been supported in this policy by the Swiss government, as the depositary of the instruments. Such commitment is indispensable, if only to help administrations and draw their attention to the importance of the subject. Universal ratification of the two treaties is moreover in the interest of each and every State party to them, in particular to clarify its own commitments vis-à-vis the community of States and to prepare itself accordingly.

It is recommended that efforts be made to promote all international humanitarian law treaties and that all States party thereto should actively support such efforts.

Finally, note should be taken of the important task assigned to the International Fact-Finding Commission set up in accordance with Article 90 of 1977 Additional Protocol I.¹ As recognition of the general competence of this Commission requires a formal declaration of acceptance, it is essential that all the States should make such a declaration and communicate it to the depositary State, either on ratifying or acceding to the Protocol or at a later date. The Commission will not be able to play an active role unless it is widely recognized. However, only 34 States have hitherto made the aforesaid declaration.

States which ratify or accede to 1977 Additional Protocol I are invited to make the declaration provided for in Article 90 thereof, as are those States which did not make the said declaration when they became party to this instrument.

¹ Suggestions with regard to this Commission are made below (see under heading 4.1).

2.2 Adoption in peacetime of national implementation measures

The virtually universal acceptance of the Geneva Conventions of 1949 and the fact that a large number of States are party to their 1977 Additional Protocols are not enough to guarantee the effective application of these treaties, owing to the inadequacy of laws and other measures adopted by States at national level to implement them.

Certain crucial obligations undertaken by States may well remain a dead letter if the necessary legislative and practical measures are not adopted, for it is by adopting such measures, in particular, that States demonstrate their genuine intention to fulfil their commitments.

Concern for this situation has prompted the international community to encourage the ICRC on various occasions to promote the adoption of such laws and measures. The ICRC accordingly followed up previous steps to that effect by writing to the States party to the Geneva Conventions of 1949 to request information with regard to the measures they had taken or were planning to take, at national level, to ensure that international humanitarian law was effectively applied.² These written representations, some of which were made in conjunction with the National Red Cross or Red Crescent Societies, also request ideas as to mechanisms that could be used more effectively to help States fulfil their obligations.

On the basis of reactions to date — about one third of the States party to the Geneva Conventions have replied to the written enquiry — certain domains of international humanitarian law are considered to be of greatest importance, in particular the repression of grave breaches, the protection of the red cross or red crescent emblem, and dissemination of international humanitarian law. National measures have also been adopted in other areas such as the definition of protected persons, safeguards for humane treatment, the protection of medical units and staff, the disciplinary system within the armed forces ensuring respect for international humanitarian law, and the

² These written representations, the most recent of which were made in 1988, were based in particular on Resolution V of the 25th International Conference of the Red Cross (Geneva, 1986) entitled *National measures to implement international humanitarian law*, and on various initiatives taken in this field such as the work carried out by Professor Michael Bothe and the seminar organized by him, an account of which is published in *National Implementation of International Humanitarian Law. Proceedings of an International Colloquium held at Bad Homburg, 17-19 June 1988*, edited by Bothe, M., Nijhoff, 1990, 286 pp.

training of legal advisers in these forces. The replies also indicated that although most States generally welcomed assistance in this field, they were not in favour of more compulsory systems or systems that might imply monitoring of the measures adopted.³

The ICRC intends to continue collecting information in order to identify the most appropriate means of helping States to fulfil their obligations.

In addition to these written enquiries, the need to take national measures was emphasized to States during numerous contacts taken up both at national level and at regional meetings where an exchange of views on measures taken and current experience took place.⁴

Consequently much still remains to be done and the International Conference for the Protection of War Victims should serve as an opportunity for States to review this particular subject.

Signs of a desire for progress could be given, for example, by setting up or activating inter-ministerial commissions, or by designating an office or person responsible for keeping track of or coordinating measures to be taken at national level.

2.3 Spreading knowledge of international humanitarian law

The dissemination of knowledge of international humanitarian law must begin in peacetime, for there is no chance of it being applied unless it is known by those whose duty it is to comply and ensure compliance with it. The importance of such work was recognized at the outset of modern international humanitarian law.⁵ It was accord-

³ The information received was reproduced in an Annex entitled *Replies received from States to the ICRC's written representations concerning national measures to implement international humanitarian law* to the ICRC Report: *Implementation of international humanitarian law. National Measures* (document Doc.C.1/4.1/1). To supplement these replies, a list of legislative texts or regulations received by the ICRC has also been drawn up as a reference document for all those working on the subject, and can be obtained from ICRC headquarters.

⁴ The following regional meetings have been organized to date: Sofia, 20-22 September 1990, for Europe; San José, Costa Rica, 18-21 June 1991, for Latin America; and Yaounde, 23-27 November 1992, for French-speaking Africa.

⁵ As early as 1869 the final Resolution of the Second International Conference of the Red Cross, held in Berlin, stipulated that "knowledge of the articles of the Geneva Convention must be disseminated as widely as possible, particularly among soldiers".

ingly included as an obligation in the Geneva Conventions of 1949 and their Additional Protocols of 1977.⁶

The international community has furthermore mandated the ICRC to participate in this effort.⁷ It performs this task with the particular support of the National Red Cross and Red Crescent Societies and their Federation.

Activities to disseminate international humanitarian law have indisputably been considerably intensified over the past fifteen years.

Since 1976, over 1,000 senior officers from 118 countries have followed the Centralized International Military Courses on the Law of Armed Conflicts organized by the International Institute of Humanitarian Law in San Remo.

For its part, the ICRC has set up a structure specially for dissemination and has been able to raise the level of awareness of international humanitarian law in various parts of the world through its network of regional delegations and with the support of the National Red Cross or Red Crescent Societies and their Federation. Thousands of seminars, courses, and exhibitions have been organized at both national and regional level for such diverse audiences as soldiers and officers, and political and academic circles. The ICRC has also produced or helped to produce a significant range of teaching materials, adapted to various cultures. It has a list of over one thousand publications, many of them available in a large number of languages. Care has been taken to ensure that materials are suited to the level of education concerned: children are not approached in the same way as academics, or soldiers in the same way as senior officers.

Between 1988 and 1991 the International Red Cross and Red Crescent Movement as a whole led a World Campaign for the Protection of Victims of War which increased the awareness of the public and of governments throughout the world.

However, although a number of States have realized the importance of disseminating international humanitarian law and have begun to make the necessary arrangements, the results are still far from satisfactory.

⁶ See the article common to the four Geneva Conventions (Articles 47 - 48 - 127 - 144 respectively), Article 83 of Protocol I and Article 19 of Protocol II. See also Resolution 21 adopted at the fourth session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law (1974-1977).

⁷ See Article 5, paragraph 2 (c) and (g) of the Statutes of the International Red Cross and Red Crescent Movement.

The ignorance of humanitarian rules shown by members of the armed forces or armed groups in certain recent conflicts, or their disregard for those rules, should induce every State to consider what precautions it is taking to avoid such excesses. The International Conference for the Protection of War Victims should serve as an opportunity to examine this question seriously and without complacency.

Three subjects have been singled out here for closer consideration, namely the coordination of efforts to spread knowledge of international humanitarian law with other efforts of a similar nature, training for the armed forces, and the role of the media.

2.3.1 The coordination of efforts to spread knowledge of international humanitarian law with other educational activities aimed at preventing conflicts

It is imperative to begin spreading knowledge of the principles and basic rules of international humanitarian law in time of peace and, *at national level*, to have a well thought-out programme of instruction to do so. The work carried out among *young people* in particular should pave the way for specific courses in universities and for instruction within the armed forces.

It is only logical that the work undertaken to spread knowledge of international humanitarian law, with the aim of preventing excesses in armed conflicts, should go hand in hand with educational efforts to prevent the conflicts themselves.

In this context, dissemination of the *principles contained in the Charter of the United Nations* and education in *human rights* come particularly to mind. It is indispensable that greater attention be given to these domains, placing special emphasis on young people and on harmonization of such work with activities to spread knowledge of international humanitarian law. How can we talk about the eventuality of armed conflicts without simultaneously saying that the international community nowadays rejects this means of settling differences? Should we not point out that strict respect for human rights is the best way of avoiding armed conflicts? Should there not be a special effort to explain that human rights and international humanitarian law are complementary and not mutually contradictory?

In other aspects of prevention, the International Red Cross and Red Crescent Movement can play a role, though a more modest one.⁸

States should be helped in such work mainly by intergovernmental institutions, in particular UNESCO, or non-governmental organizations.

Encouragement should be given to exchanges of information on initiatives taken either by the States themselves or by governmental and non-governmental organizations to teach and otherwise spread knowledge of the principles of the United Nations Charter, human rights and international humanitarian law. Similarly, there should be a better harmonization of efforts made by schools, universities or elsewhere.

2.3.2 Training for the armed forces

In countries where the armed forces are taught the rules of international humanitarian law, this subject is often a marginal item in military training programmes. However, unless international humanitarian law becomes an integral part of regular combat training and a key constituent of training programmes at all levels in the chain of command, it can hardly be expected to have a favourable impact on the conduct of members of the armed forces in the field. International humanitarian law considerations have already been experimentally included, with success, in the military decision-making process during certain military manoeuvres.

It is essential that instruction in international humanitarian law be made an integral part of military training as a whole. It must be addressed to all levels in the military hierarchy, and senior officers must be directly involved in the planning and implementation of teaching programmes.

With the rapid development of different types of armed conflict, the armed forces are increasingly engaged in operations to maintain or restore law and order. This new role calls for particular attention to the training of the armed forces, in view of the basic differences between

⁸ Note should be taken in this connection of the report entitled *Contribution of the International Red Cross and Red Crescent Movement to respect for human rights (CD/6/1c)*, adopted by the Council of Delegates in 1989. A Commission set up by the Movement is currently giving further consideration to the subject. Also of interest is the study now being conducted by the Henry Dunant Institute on the role which the National Red Cross or Red Crescent Societies can play in minority issues, particularly to develop intercommunal activities and reduce tension between ethnic groups.

traditional combat missions and the tasks of maintaining law and order within their own country. In certain cases, special training should also be given to the police.

The ICRC recently organized a meeting of experts on the teaching of international humanitarian law to the armed forces, at which the majority of participants were senior officers from a variety of countries. The meeting concluded that it was important to increase the coordination of activities in this domain at the national, regional and international levels. In particular, regional experience in Asia, Africa and Latin America suggests that greater cooperation could be established between armed forces and, more especially, between people responsible for instruction in international humanitarian law.

The ICRC itself is prepared to organize one or more meetings to give in-depth consideration to the foregoing problems and topics; it is also willing to help mobilize the resources needed to disseminate international humanitarian law among the armed forces and to facilitate the coordination of efforts in this field.

2.3.3 The role of the media

The media have a key part to play during conflicts, as they are then the main means of communicating with the population. Their role consequently merits extensive consideration.

What can the media be expected to do to alert governments and the general public to tragic but forgotten situations? How can they help to spread knowledge of the humanitarian rules both in time of peace and in time of war? What is their duty as regards the denunciation of excesses? How should manipulation of the media for political purposes, and in particular to exacerbate hatred between diverse communities, be avoided? How can they avoid trivializing horror? Where exactly does the independence of the media with regard to the previous questions begin and end?

Although these various subjects have already been considered to some extent, they should be discussed in even greater detail with senior media management and with journalists.

2.4 Explanation and development of international humanitarian law

The Geneva Conventions of 1949 and their 1977 Additional Protocols now provide a sound basis for international humanitarian law and efforts at this stage must be concentrated first and foremost on their implementation.

Some further explanation is necessary, however, in view of the complexity of the texts. The *Commentaries* on the Geneva Conventions and the Additional Protocols have certainly done much to facilitate the interpretation of these instruments. But serious thought should still be given to the transposition of provisions concerning the conduct of hostilities into practical instructions for combatants, notably in the form of military manuals, and especially to the scope of the rules applicable in non-international armed conflicts. Such clarification is also needed for the rules concerning implementation, such as the obligation of States to “ensure respect” for international humanitarian law.⁹

The existing rules moreover constantly have to be updated to keep pace with the steady advance of military and other technologies, in particular the emergence of new weapons and means of identification.

Renewed consideration should likewise be given to subjects only superficially addressed when the Geneva Conventions and their Additional Protocols were drawn up, such as naval warfare or environmental protection.

Lastly, the impact on international humanitarian law of efforts in the fields of disarmament and human rights and their results should be examined.

2.4.1 The humanitarian rules applicable to the conduct of hostilities in non-international armed conflicts

International humanitarian law dealing with non-international armed conflicts is less comprehensive than that for international armed conflicts, particularly the rules applicable to the conduct of hostilities. The humanitarian law rules applicable to non-international armed conflicts are those contained in Article 3 common to the Geneva

⁹ The scope of the obligation to “ensure respect” for international humanitarian law is examined below, under heading 3.1.2.

Conventions of 1949 and in Additional Protocol II of 1977. Article 3 affords basic protection to any person who is not or is no longer participating in hostilities. Its provisions are recognized as having the value of customary norms. However, Article 3 does not contain any rule which specifically governs the conduct of hostilities.

This is not the case with Additional Protocol II, in which the whole of Part IV is devoted to rules on the conduct of hostilities. Expressly prohibited are attacks on the civilian population; starvation of the civilian population; attacks on objects indispensable to the survival of the civilian population; and orders to displace the civilian population, other than for the security of the persons displaced or for imperative military reasons.¹⁰

However, these humanitarian law rules do not formally apply unless the State in question is party to Protocol II and the threshold of intensity required for its application has been reached. Thus in other situations it is essentially international customary law which determines the rules of international humanitarian law that the belligerents must observe in military operations.

In 1989 and 1990, a Round Table organized by the International Institute of Humanitarian Law in San Remo examined the rules of international humanitarian law relating to the conduct of hostilities in non-international armed conflicts.¹¹ In the course of its discussions, five principles or humanitarian rules governing the conduct of hostilities in non-international armed conflict were identified. They are as follows:

- the obligation to distinguish between combatants and civilians, and the ensuing prohibition of indiscriminate attacks;
- the immunity of the civilian population, and the prohibition, in particular, of attacks on the civilian population as such or against civilians;
- the prohibition on causing superfluous injury or unnecessary suffering and, in particular, of the use of means of warfare which unnecessarily aggravate the suffering of the wounded or render their death inevitable;

¹⁰ See Protocol II, Articles 13(2), 14 (first clause), 14 (second clause) and 17 respectively.

¹¹ See *International Review of the Red Cross*, No. 278, September-October 1990, p. 383 ff.

- the prohibition of recourse to perfidy, which forbids killing, wounding or capturing an adversary by abusing his good faith;
- the obligation to respect and protect medical and religious personnel and medical units and means of transport.

The discussions organized by the International Institute of Humanitarian Law also confirmed that the customary rules prohibiting the use of chemical and biological weapons, dum-dum bullets and poison are applicable in non-international armed conflicts. The same applies to the protection of dwellings used only by the civilian population, the protection of objects indispensable for the survival of the civilian population, and the duty, in an attack, to take all feasible precautions to avoid causing injury, loss or damage to the civilian population. It was further pointed out that the general rules and principles applicable in non-international armed conflicts also govern any use of mines, booby-traps and similar devices, and incendiary weapons.

This clarification is important for military authorities who must be absolutely clear about the rules they are required to follow. Moreover, military training with regard to the application of these rules should not, in principle, depend on the legal nature of a conflict. Finally, it is untenable to allow the use against one's own population, in an internal conflict, of methods and means of warfare which are forbidden in international armed conflict.

Besides urging ratification of 1977 Additional Protocol II, the International Conference for the Protection of War Victims should:

- *encourage continued and intensified dialogue with the armed forces to bring about a consensus on the humanitarian rules applicable to the conduct of hostilities in non-international armed conflicts, a consensus given tangible form in military manuals and instruction;*
- *express its desire for future examination of the possibility of formally extending to non-international armed conflicts the applicability of international humanitarian law treaties, such as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, which at present apply only to international conflicts.*

2.4.2 International humanitarian law and the protection of the environment

The protection of the environment in times of armed conflict is an issue which became abruptly and tragically acute during recent conflicts.

Those events have prompted many people to look into the content of international humanitarian law with regard to environmental protection in times of armed conflict, as well as its limitations and possible shortcomings. Several conferences have been held to discuss the subject.

Such meetings have been timely, for the environment is indeed seriously threatened by the emergence of highly devastating forms of combat and the way in which certain hostilities have been conducted.

The subject of protection of the environment in times of conflict is not entirely new, but has on the contrary been addressed by the international community since the early 1970s. Several legal rules have accordingly been adopted with the aim of restricting environmental damage.¹²

These provisions, together with certain fundamental principles of international humanitarian law and a number of treaty-based or customary rules, undoubtedly constitute a sound basis for the protection of the environment in times of armed conflict. They must be taken into careful account in any re-evaluation of international law relating to such protection.

The ICRC is directly concerned by this question, which comes within the ambit of international humanitarian law. At the request of the United Nations General Assembly, it therefore organized three meetings of experts to study the content and the limits of the relevant legal rules in order to identify possible gaps in the existing legislation.

More than forty experts of governments, governmental and non-governmental organizations and military, scientific and academic circles accepted the ICRC's invitation.

During the meetings, a list of the main questions calling for study and discussion was drawn up. They include in particular the role and scope of customary rules for the protection of the environment, the interpretation to be given to the existing treaty rules, the applicability

¹² Those rules are contained for the most part in Additional Protocol I of 1977, Articles 35(3) and 55, and in the Convention on the Prohibition of Military or any Other Hostile Environmental Modification Techniques, which was adopted under the auspices of the United Nations in 1976.

in times of war of the provisions of international environmental law, the content of the law applicable in non-international armed conflict and the problems involved in ensuring that these rules are applied and respected.

These meetings led to various conclusions. In particular, it emerged that if the existing regulations were universally and scrupulously respected, damage to the environment in times of armed conflict could be considerably limited. Intensive efforts are required, therefore, to ensure that these rules are adopted by as many States as possible and are known by all concerned. In addition, certain measures specifically designed for the implementation of international humanitarian law could help to bring about greater respect for the existing rules. Finally, other new issues and suggestions, such as the creation of protected zones, should be set out in greater detail so that the possibility of putting them into effect can be seriously examined.

The ICRC will submit its conclusions on the outcome of this work to the 48th Session of the United Nations General Assembly.¹³

The participants in the International Conference for the Protection of War Victims are invited to pay all due attention to the ICRC report on the protection of the environment in times of armed conflict and to give careful consideration, within the framework of the General Assembly, to the appropriate follow-up.

2.4.3 International humanitarian law and modern weapons technology

In this era of rapidly advancing technology, the development of new weapons is an important issue that calls for international attention and careful scrutiny. International humanitarian law prohibits the use of excessively cruel and indiscriminate weapons, and it obliges the States to determine whether or not a new weapon or method of warfare would violate that rule.¹⁴

¹³ An account of the preliminary findings of the first of these meetings was given by the ICRC during the United Nations Conference on the Environment and Development (Rio de Janeiro, June 1992). They were subsequently the subject of an interim report examined at the 47th Session of the United Nations General Assembly. In Resolution 47/37 of 25 November 1992, the General Assembly invited the ICRC to continue this work and to draw up a final report for the 48th Session.

¹⁴ See Arts. 35 and 36 of Additional Protocol I of 1977.

Although some new developments in weaponry may be seen as constituting an improvement, in that they increase accuracy or provide protection, others may add to the suffering brought about by war. Concern about new weapons should not be limited to those of mass destruction; the States should also consider whether new weapons cause superfluous injury or excessively cruel suffering. One forgets all too often that soldiers have rights, too, and that there are restrictions to the means which can be employed against them. Allowing the development of some excessively cruel weapons to go unregulated will undermine the rule prohibiting superfluous injury and will make it increasingly difficult to ban the use of new weapons causing such injury.

Moreover, experience has shown that once the use of such weapons has become commonplace, the civilian toll is high. It is also easier to monitor the application of a rule banning the use of a weapon than of one limiting its use.

These points were all highlighted in the meetings of experts recently convened by the ICRC on *weapons that blind and on landmines*.¹⁵

Several States had expressed concern at the prospect of the development of blinding weapons at the 1986 International Conference of the Red Cross. The ICRC was made aware of the problem by the publication in specialized journals of reports that prototypes of such weapons already existed. This is not the place for a detailed discussion of a very complex issue; suffice it to say that the principal matter to be addressed is whether intentionally blinding someone is tantamount to inflicting an excessively cruel injury. The particularly tragic psychological and social implications of blindness prompted the majority of the experts to conclude that rules should be drafted with a view to preventing intentional blinding from being recognized as a permissible method of warfare; in fact, many of them thought that intentional blinding constituted a violation of the existing provisions of international humanitarian law.

The widespread use of anti-personnel mines has rendered vast areas of land unusable and resulted in the death and maiming of countless civilians, long after the guns have fallen silent. The sympo-

¹⁵ See the reports published by the ICRC, in particular *Reaffirmation and Development of International Humanitarian Law. Prohibitions or Restrictions on the Use of Certain Weapons and Methods in Armed Conflicts. Developments in relation to Certain Conventional Weapons and New Weapons Technologies* (C.I/6.3.2/1, Geneva 1991) and *Report on Landmines*, Montreux 21-23 April 1993, Media Natura, London.

sium convened on this topic recognized that the main problem is that landmines are used indiscriminately, a problem exacerbated by modern methods of laying them. Under present international humanitarian law, no one is responsible for clearing mines or caring for the innocent victims of mine-blast injuries. The majority of the experts felt that the most effective solution would be to ban the use of anti-personnel landmines. An in-depth study needs to be made, however, of the military importance of these weapons and of the effectiveness of less far-reaching solutions, such as a ban on mines without self-destruct or self-neutralizing mechanisms and those which are undetectable.

The first step for most States is to ratify or accede to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and its Protocol II. Now would be a particularly appropriate time to do so, given that the problem of mines will be discussed at the review Conference on the 1980 Convention which may be held as early as 1994.

It is essential that this Conference be properly prepared so that any amendments agreed to are truly effective. In this respect, the ICRC stands ready to undertake the necessary preparatory work, as it did for the 1980 Conference, in particular by organizing meetings of experts. It will make available to the Conference, and to any preparatory meeting, the material already put together, in particular by its surgical teams in the field and in the framework of expert meetings.

2.4.4 International humanitarian law applicable to war at sea

Apart from several minor points, international humanitarian law applicable to war at sea was not revised or developed at the 1974-1977 Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law. However, recent conflicts have shown that certain aspects of this law need to be reviewed.

Work to that effect has begun under the auspices of the International Institute of Humanitarian Law in San Remo and the problems involved have been examined from humanitarian, technical, legal and military angles.

This work is scheduled for completion in 1994 and the report summarizing its findings should then be given serious consideration by governments.

2.4.5 Marking and identification of persons and property protected under international humanitarian law

The marking of medical units and establishments has always been an essential feature of the system of protection first laid down in the original Geneva Convention of 1864.

It is therefore crucial, already in peacetime, to prevent and punish misuse of the red cross and red crescent emblem and to spread knowledge of its meaning as broadly as possible.

Today it is also necessary to use, in addition to the original emblems, modern visual, radio and electronic means of identification. In order to ensure that the means employed keep pace with technological progress, a provision was included in Protocol I of 1977 for the independent and regular review of its Annex I, in which the recognized signals are defined.

A review is currently nearing completion and the revised Annex is due to come into force on 21 January 1994.

All the States party to Protocol I, but also those which have not yet acceded to it, are invited to take the necessary steps to introduce, at the national level, the measures mentioned in the revised Annex.

The growing number of humanitarian organizations and the lack of a clear definition of their respective roles has further complicated the problem of marking and identification. As a result the protective emblems are not always used strictly as provided for under international humanitarian law, but are unlawfully displayed by persons not entitled to use them. In addition other emblems are used to protect the humanitarian activities of the United Nations agencies and various non-governmental organizations.

Although it is not necessary at this stage to enter into the details of this sensitive issue, it is important to stress that careful attention should be paid to all developments in this respect, and that these should follow, instead of precede, a global reflection on emergency humanitarian operations, coordination, the definition of tasks and security problems.

2.4.6 Relationship between international humanitarian law and disarmament

The recent efforts undertaken to develop international humanitarian law are quite distinct from those carried out in the field of disarma-

ment. This stands to reason since disarmament touches on political problems that extend far beyond the framework of international humanitarian law. Whereas the latter deals with the prohibition or restriction of the use in armed conflicts of certain indiscriminate or particularly cruel weapons, the debate on disarmament centres on the geo-strategic balance determined by the possession of certain weapons, especially those of mass destruction (nuclear, biological and chemical). Monitoring takes on considerable importance in the field of disarmament since the security of States depends on obtaining the guarantee that all parties will respect their commitments.

Nevertheless a measure of complementarity does exist, in at least two areas, between the efforts undertaken, respectively, in the field of disarmament and that of international humanitarian law.

The prohibition of the *use* in armed conflicts of a particular weapon is far more effective wherever it is accompanied by a prohibition to *manufacture* and *possess* it. The latter prohibition also removes the ambiguity which sometimes exists as to the possible legitimacy of the use in non-international armed conflicts of weapons that are prohibited in international armed conflicts.

In this sense the Chemical Weapons Convention which was recently adopted in the framework of disarmament efforts is an important addition to the prohibition of the use in warfare of such weapons already contained in the Geneva Protocol of 17 June 1925. Along the same lines, the above-mentioned symposium on mines noted that the effectiveness of measures prohibiting the use of such devices depends to a large extent on complementary measures taken in the field of disarmament with respect to the manufacture and sale of such weapons.

This brings us to the second area of complementarity between the fields of international humanitarian law and disarmament.

Many recent conflicts have served to demonstrate that respect for humanitarian norms as a whole is jeopardized by the large-scale supply of weapons to small groups of all political tendencies and even to mere bandits.

The uncontrolled inflow of weapons is undoubtedly first and foremost to be regarded as an additional cause of tension leading to armed conflicts. However, the efforts undertaken within the framework of disarmament to restrict the *arms trade* are also essential in order to maintain, wherever armed conflict is unavoidable, a measure of control over the use of armed force. This control is a basic concept of international humanitarian law.

In this respect the study currently being carried out by the Conference on Disarmament with a view to compiling a register of certain weapons could, even if it does not include mines at this stage, have a considerable bearing on the protection of war victims.

The International Conference for the Protection of War Victims is invited to encourage the Conference on Disarmament and all States to pursue and develop efforts undertaken to restrict the arms trade and to consider measures to be taken, in the framework of disarmament, with respect to weapons whose use is prohibited or restricted under international humanitarian law.

2.4.7 Relationship between international humanitarian law and human rights

As the XXIII Resolution adopted at the International Conference on Human Rights (Tehran, 1968) expressed it, “*peace is the underlying condition for the full observance of human rights and war is their negation*”.

This does not mean, however, that human rights cease to be applicable during armed conflicts. But major derogations from those rights are nevertheless allowed.

International humanitarian law, on the other hand, has been devised specifically for armed conflict. No derogation may be made from it on account of there being an armed conflict since such a situation is the very reason for its application in the first place.

However, there are several reasons why it would not be possible to substitute international humanitarian law for human rights law in wartime.

Firstly, the personal field of application of international humanitarian law is not exactly the same as that of human rights law. To be sure, humanitarian law has seen its field of application considerably enlarged as the effects of warfare have become more numerous. The civilian population, for example, is today protected under foreign military occupation as well as in the event of enemy attack. But humanitarian law does not protect all persons on the territory of a belligerent country against excesses committed by the authorities governing them. In particular, guarantees laid down for persons deprived of their freedom cover only those imprisoned for acts or reasons “*related to*

the armed conflict".¹⁶ Even in wartime, therefore, persons imprisoned for penal law offences are, generally speaking, protected only by human rights law.

The difference between the material fields of application of these two bodies of law is a second argument against substituting humanitarian law for human rights law during armed conflict.

It is true that the non-derogable rights cited in Article 4 of the International Covenant on Civil and Political Rights largely correspond to rights also guaranteed by international humanitarian law. However, they are not exactly the same.¹⁷ Moreover, the rights from which it is not prohibited to derogate are not abolished in wartime.

In the event of war or another emergency "*which threatens the life of the nation*", the States may take measures affecting these other rights (some of which have nothing to do with international humanitarian law) only "*to the extent strictly required by the exigencies of the situation*". In addition, the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights continue to be applicable in their totality during armed conflicts, though it is inevitable that they will be seriously affected by such a situation.

Finally, there is a third reason why the two distinct bodies of law must be maintained in the event of armed conflict: the means by which they are implemented are complementary.

Whereas humanitarian law emphasizes active verification on the spot, human rights law, while not excluding such verification in certain instruments, favours the periodic drawing up of reports which lead to discussion and recommendations being made.

In conclusion, it should be stressed that human rights law and international humanitarian law are complementary. It is important that those responsible for their implementation should coordinate their activities in order to ensure that rights are duly respected during armed conflict.

Useful work has been initiated to clarify the minimal humanitarian norms which must be observed in the event of internal disturbances and tensions, in situations not covered by international humanitarian

¹⁶ See Article 75 of Additional Protocol I (1977) and Article 4 and 5 of Additional Protocol II (1977).

¹⁷ The prohibition on imprisoning someone merely on the grounds of inability to fulfil a contractual obligation, as laid down in Article 11 of the International Covenant on Civil and Political Rights, is included in the list of non-derogable rights set out in Article 4. This is an example of a provision totally foreign to international humanitarian law.

law and in which it is permissible to derogate from certain human rights.¹⁸

The ICRC recommends that the International Conference for the Protection of War Victims encourage the work undertaken to clarify and strengthen the rules of international law applicable to internal disturbances and tensions.

3. Action taken despite all adversity

It has been pointed out that the proliferation of armed conflicts and the course they are taking are threatening humanitarian values, and that everything must be done to protect those values.

Means of controlling the present crisis will now be considered, bearing in mind that today's victims can on no account be abandoned.

Three interrelated issues call for particular attention here: the action to be taken to ensure respect for international humanitarian law; the coordination of humanitarian action; and the safety of those engaged in humanitarian work.

3.1 Action to be taken to ensure respect for international humanitarian law

In many recent armed conflicts, the difficulties encountered in applying international humanitarian law have been so great that even its underlying philosophy has been called into question.

International humanitarian law is based on the principle that parties who can find no other way of settling their differences other than by the use of force will agree to observe certain humanitarian principles during the conflict, irrespective of the merits of the cause being defended.

This approach is to the benefit of all the victims of armed conflict. It is therefore in the humanitarian interest of each of the parties to the

¹⁸ The results of the work undertaken by a group of experts which adopted a Declaration concerning this subject (meeting held at Turku/Abo, Finland, 30 November-2 December 1990) have been introduced into the Sub-Commission of the Commission on Human Rights as a working paper. Document E/CN.4/Sub 2/1992/55 of 12 August 1991. See also "New Draft Declaration of Minimum Humanitarian Standards", *International Review of the Red Cross*, No. 282, May-June 1991, pp. 328-336.

conflict and does not place them at a political or military disadvantage, since respect for international humanitarian law does not have a significant effect on the military outcome of the conflict.

For this system to work, a number of conditions must be fulfilled. Many of them have been cited in the "Prevention" section of the present document.

The crucial question arising from recent armed conflicts is how the international community should react when the parties to a conflict are unwilling to respect the principles and rules of international humanitarian law, or are incapable of ensuring respect for them.

The International Conference for the Protection of War Victims provides an opportunity to clarify this question.

3.1.1 Is there still a place for international humanitarian law within the international system?

In a long-term assessment it might seem that international humanitarian law will not retain its present importance. The end of the Cold War restored hope of a world at peace based on the universally recognized values laid down in international law and guaranteed by the United Nations, which would itself be backed by an international court whose mandatory authority in international disputes would be recognized by every State, and by armed forces capable of imposing the decisions of such a tribunal. National armed forces would be progressively reduced to the minimum necessary for ensuring internal order.

In the system established by the Charter, as originally conceived and briefly described above, there would no longer be a place for armed conflicts and consequently for international humanitarian law, or for the principle that emergency humanitarian aid should be neutral and independent. This was clear to the International Law Commission at the outset of its deliberations.¹⁹

Moreover, although the climate of the Cold War at first prevented all necessary arrangements from being made for the system to work well, it is now felt, as expressed recently by the United Nations Secre-

¹⁹ The International Law Commission remarked as follows: "war having been outlawed, the regulation of its conduct had ceased to be relevant ... if the Commission, at the very beginning of its work, were to undertake this study, public opinion might interpret its action as showing a lack of confidence in the efficiency of the means at the disposal of the United Nations for maintaining peace", *Yearbook of the International Law Commission*, 1949, p. 281.

tary-General, that "...an opportunity has been regained to achieve the great objectives of the Charter".²⁰

It cannot, however, be ignored that the aforesaid objectives are still far from being achieved: the mandatory authority of the International Court of Justice is not recognized by all States, the States themselves still possess powerful armed forces and the United Nations does not have the resources to maintain or, if necessary, restore, an international order devoid of armed conflict and based on international law.

The essential role of the United Nations nonetheless remains the maintenance of peace and the search for a solution to these conflicts. To end them, it must take measures tantamount to a political commitment. Such a commitment, however, carries the risk that one or other of the parties, or even all of them, may reject the United Nations.

International humanitarian law and the neutrality and independence of humanitarian emergency aid consequently retain all their present significance, and the real difficulties encountered in applying this law cannot possibly be resolved by questioning the principles on which it is based.

3.1.2 The obligation of the States to "ensure respect" for international humanitarian law

When large-scale violations of international humanitarian law occur, the first response must be a redoubling of efforts to make it operative, whatever the difficulties involved.

For this purpose, it is essential to speak with the parties to a conflict in order to obtain their commitment to respect their obligations under international humanitarian law, and to find practical solutions to urgent problems such as access to populations in need or to defenceless prisoners. It is here that the ICRC's role as a specifically neutral and independent intermediary assumes its full significance. The use of instruments provided by international humanitarian law for its own implementation, in particular, the designation of Protecting Powers or recourse to the International Fact-Finding Commission, must also be encouraged.

This indispensable dialogue is no longer sufficient, however, if grave breaches of international humanitarian law nonetheless persist.

²⁰ Report by the Secretary-General entitled: *Agenda for Peace*, Document A/47/277 S/24111, of 17 June 1992.

Belligerents are accountable for their acts to the entire international community, as the States party to the Geneva Conventions have undertaken to “*respect and to ensure respect*” for the present Conventions “*in all circumstances*”.²¹

According to the terms of this provision, all the States party to the Geneva Conventions are under the obligation to act, individually or collectively, to restore respect for international humanitarian law in situations where parties to a conflict deliberately violate certain of its provisions or are unable to ensure respect for it.

Lastly, there are situations in which total or partial failure must be admitted, despite all efforts to ensure application of international humanitarian law. While these must certainly be maintained, violations are of such magnitude that their very continuation would represent an additional threat to peace within the meaning of Article 39 of the United Nations Charter.

It is then the responsibility of the United Nations Security Council to make such an assessment and recommend or decide on what measures are to be taken in accordance with Articles 41 and 42 of the Charter.

These measures differ from those provided for by the Geneva Conventions in that the use of force as a last resort is not excluded, and their purpose is not essentially to ensure respect for international humanitarian law but to tackle a situation which is threatening peace.

3.1.3 Action taken to “ensure respect” for international humanitarian law

A large range of options are possible within the framework of *Article 1 common to the Geneva Conventions* and Article 1 of *Additional Protocol I*. Among these are: diplomatic approaches of a confidential, public, individual or collective nature; encouragement to use the means of implementation provided for in international humanitarian law, such as the designation of Protecting Powers and recourse to the International Fact-Finding Commission; and offers of good offices. It should be noted, moreover, that the limits imposed on such action are those of general international law, and that international

²¹ Laid down in Article 1 common to the Geneva Conventions, this obligation reads as follows: “*The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances*”. It is reiterated in similar terms in Article 1, paragraph 1, of *Additional Protocol I* of 1977.

humanitarian law could not possibly provide a State not involved in the conflict with a pretext for intervening militarily or for deploying forceful measures outside the framework provided for by the United Nations Charter.

Article 89 of Additional Protocol I moreover stipulates that the obligation to act in situations of serious violations of international humanitarian law, either jointly or individually, must be carried out in cooperation with the United Nations.²² The manner of this cooperation, however, has yet to be defined.

The steps taken to ensure respect for international humanitarian law have a direct effect on the work of organizations such as the ICRC. Their aim may even be to enable or facilitate the work of such organizations.

Conversely, the measures decided upon and recommendations made by the Security Council under Chapter VII of the Charter cannot be considered *neutral* within the meaning of international humanitarian law, even though their ultimate objective may in some cases include the aim of putting an end to violations of that law. The use of armed force is thereby not excluded. Should such force be used, it will itself be subject to the relevant provisions of international humanitarian law.

It follows that a humanitarian organization such as the ICRC cannot be involved in the execution of such measures. It is vital for the ICRC to retain its complete independence and with it the possibility to act as a neutral intermediary, between all the Parties to a conflict, including any armed forces deployed or authorized by the United Nations.

Independent humanitarian organizations must nonetheless take into account the new situations created by measures adopted by the Security Council and examine with those carrying them out and with all the parties concerned the way in which they can play their traditional role within this context such as care of the wounded, visits to and protection of detainees, transport and distribution of aid to vulnerable persons, transmission of family messages and the reuniting of families.

As for the implementation of humanitarian measures stemming from decisions taken by the Security Council within its mandate to maintain or restore peace, the role of the subsidiary bodies or specialized agencies of the United Nations, and even that of the peace-

²² This Article should also be read in the light of Articles 1 (3), 55 (c) and 56 of the United Nations Charter, which specify the UN commitment to human rights.

keeping forces themselves, give rise to questions which require further consideration first and foremost within the United Nations itself.

To sum up, it is important to mark a clear distinction between action taken to facilitate the application of international humanitarian law (which is primarily based on the consent of the Parties to conflict), and action (which does not exclude coercion) to maintain or restore peace. Recent practice should be analysed in this respect: apart from the undeniable merit of certain action, the stress placed in peace-keeping or peace-making operations upon activities with purely humanitarian objectives threatens to create a certain confusion which may ultimately prove harmful to humanitarian work and to the objective of restoring peace. It should be noted, moreover, that although attention has been drawn several times, in specific situations, to the obligation to ensure respect for international humanitarian law, the action taken on this basis has not been a conclusive indication of customary practice.

Consequently, consideration must be given to a suitable framework for holding a regular multilateral and structured dialogue to address problems encountered in the application of international humanitarian law, bearing in mind the role that the International Conferences of the Red Cross and Red Crescent can play in this respect.

Consultation is therefore still necessary to determine the most appropriate methods and framework for implementation of the States' obligation to ensure respect for international humanitarian law, as well as the type of cooperation to be established with the United Nations in the event of serious violations of that law. Further consideration should also be given to the most suitable framework in which a structured multilateral discussion of specific difficulties encountered in its application could take place at regular intervals. The ICRC intends to hold talks on these subjects with government and United Nations experts in 1994.

3.2 Coordination of humanitarian action

In its desire to contribute more effectively to the growing needs of the victims of armed conflicts and natural disasters, the United Nations has recently established coordinating mechanisms.

Adopted by consensus on 19 December 1991 after several work sessions, General Assembly resolution 46/182²³ envisages a series of measures for the improved coordination of humanitarian aid. The most important of these are:

- the appointment of a humanitarian coordinator directly responsible to the Secretary-General;
- the creation of a rotating and automatically renewable fund at the disposal of the specialized agencies during the first phase of an emergency;
- the creation of a permanent inter-agency consultative committee for the coordination of humanitarian aid.

Inter-agency coordination should help to avoid the overlapping or absence of action in particular situations or areas, thanks to a distribution of tasks according to the respective mandates of the different organizations. It should certainly be continued and further improved, for the magnitude of needs requires combined efforts to overcome them.

At this stage, however, it must be conceded that this dialogue aimed at a distribution of tasks has not yet enabled emergency action in the theatres of operations to be deployed on the scale and at the speed required. The ICRC itself stood alone for too long — despite the support it received from the National Red Cross or Red Crescent Societies and their Federation and the courageous work of certain non-governmental organizations — in a number of theatres of operation where additional assistance by other agencies would have been necessary. Apart from the quantitative aspect, such assistance would moreover have enabled the specific abilities of each organization to be turned to the best possible account to meet the victims' various needs.

The above-mentioned resolution 46/282 certainly provides for early-warning systems. In addition, programmes for *disaster preparedness*, such as those of the National Red Cross or Red Crescent Societies under the aegis of their Federation, deserve to be encouraged.

However, the needs are so great that the basic problem now resides in the inability of the international community to react to those needs when they are identified. Given that there is a primary duty to provide aid on the spot and in good time in the face of atrocities committed against whole populations, to do so is also more economical and effec-

²³ Entitled "*Strengthening of the coordination of humanitarian emergency assistance of the United Nations*".

tive than to render aid belatedly or to have to receive hundreds of thousands of refugees and displaced persons.

Besides the need for a coordination of tasks, a *concerted approach* is extremely important to improve the effectiveness and quality of emergency humanitarian action. The political, logistic and socio-cultural difficulties that had to be overcome before emergency aid could be completely effective have for too long been underestimated. Action taken without respect for certain ethical principles may well be ineffective, or do more harm than good. Moreover, it enables the authorities to deny the humanitarian organizations which respect those principles the guarantees which the latter are duty-bound to demand as regards the destination of aid and the monitoring of its distribution.

For this reason, it is important for the International Conference for the Protection of War Victims to encourage the work of the International Red Cross and Red Crescent Movement, in consultation with various non-governmental organizations, so as to draw up a code of conduct for organizations engaged in emergency aid.

It is also essential to ensure that the transition from the emergency phase to that of reconstruction and development takes place smoothly, for this decreases or minimizes the dependence of those receiving aid, as well as limiting the duration of relief undertaken by organizations set up specifically for emergency work.

3.3 The safety of those engaged in humanitarian action

It is particularly tragic when women and men who have come to the aid of victims of an armed conflict are killed or seriously injured. It is all the more intolerable when this is a result of deliberately perpetrated acts.

Humanitarian action is dangerous nowadays and the terrible dilemma facing humanitarian organizations is to decide how far their representatives can be put at risk in order to supply women, children, prisoners, sometimes entire populations with food and medicines or other goods essential for their survival; to provide them with some measure of protection; and to give them comfort and support.

The danger is ever-present and each incident must be analysed and evaluated. Was it an accident? Was it due to the general climate of insecurity? Was it perpetrated by the armed forces or armed groups?

Did it arise from the disobedience of a soldier? Did it reflect the unacknowledged desire of the authorities to hinder humanitarian action?

The measures that have to be taken will depend on the reply to these questions; and they might sometimes be more severe than those working in the field would wish.

Confronted by this problem, humanitarian organizations must be stringent and clear-sighted in setting limits to their operations, for there are degrees of risk beyond which they cannot and should not go.

The particular problem of armed escorts has arisen in this connection in certain recent situations. The use of such escorts is obviously regrettable in that, according to international humanitarian law, the emblem of the red cross or red crescent should be sufficient protection for those who have come to help.

However, international humanitarian law itself does not exclude the arming of medical personnel to protect the convoys for which they are responsible against acts of banditry. Regrettable though they may be, and irrespective of the multiple problems they entail, armed escorts are thus not a means of protection that can immediately be excluded.

An absolute condition for their use by independent humanitarian organizations must be the consent of the relevant party to a conflict or, in situations where the structures of the State are in such disarray that it is difficult to identify the authorities, the absence of formal opposition. It is one thing to protect oneself from banditry with the agreement of the party to a conflict on whose territory the humanitarian operation is taking place, but quite another thing to impose humanitarian convoys by force on a party to a conflict which refuses to grant permission for such convoys.

Obviously, humanitarian organizations have no other weapon than that of persuasion, and cannot themselves envisage imposing convoys by force.

But, as stressed above, an organization such as the ICRC would not be able to participate, not even marginally, in operations imposed by force upon parties to a conflict because they are after all of a military nature even though their aim is humanitarian. An organization which is called upon to act as a neutral intermediary in conflicts must of necessity retain the possibility to give protection and assistance to all the victims, including the potential victims of precisely such an operation.

Lastly, attention must be drawn to the particular problem of spreading knowledge of the humanitarian rules, which has an evident bearing on the safety of humanitarian activity.

It has been mentioned that thorough preparatory instruction in international humanitarian law should be provided in peacetime, but in many of the present conflict situations such prior instruction has not been given, or not sufficiently. The need to save the victims is so imperative that different approaches must be adopted, calling on the media to issue daily reports on how humanitarian work is conducted, its objectives and progress, and relying on the support of whatever political or military structure still exists.

The problems are even more serious in situations where government structures collapse.

In such extreme circumstances, to enable humanitarian action to take place it is indispensable to ensure that its nature and purpose are clearly understood. In view of recent experience, particular attention should now be given to means of getting this message across in such circumstances.

4. Repression and reparation

The States party to the 1949 Geneva Conventions are obliged to suppress all acts contrary to the provisions of those instruments and to repress any grave breaches. A number of these breaches are listed in the four Conventions²⁴ and more are found in 1977 Additional Protocol I.²⁵ All grave breaches are considered as *war crimes*.

Provision must be made in peacetime for the repression of breaches of rules of international humanitarian law; this has a dissuasive effect and therefore constitutes an important preventive measure.

However, the repression of breaches is also considered one of the emergency measures which must be taken in situations where international humanitarian law is violated on a massive scale.²⁶

This part of the report first discusses the role of the International Fact-Finding Commission. Although the Commission is not a court of law, its purpose is to facilitate the repression of breaches committed in situations of armed conflict.

²⁴ See C. I, Art. 50; C. II, Art. 51; C. III, Art. 130 and C. IV, Art. 147.

²⁵ See Protocol I, Arts. 11 and 85.

²⁶ The United Nations Security Council noted in particular, in its resolution 827 of 25 May 1993, that "in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law ... would contribute to the restoration and maintenance of peace".

The report goes on to examine the necessary penal measures at national and international levels.

4.1 The International Fact-Finding Commission

Additional Protocol I of 1977 introduced an important mechanism for implementing international humanitarian law. Article 90 of the Protocol provides for the establishment of an International Fact-Finding Commission when not less than 20 High Contracting Parties have agreed to accept its competence. This was the case as from 25 June 1991, when the 20 States elected the 15 members of the Commission.

The Commission is a permanent body whose mandate is to enquire into all allegations of grave breaches or other violations of the 1949 Geneva Conventions and of Protocol I, provided that the party alleging the violation and the party against whom the allegation was made have both accepted the Commission's competence. At its first meeting on 12 and 13 March 1992 the Commission expressed its readiness, subject to the agreement of all the parties to the conflict in question, to enquire into other breaches of international humanitarian law, including those committed during *non-international* armed conflicts.

Any party which has made the declaration accepting its competence may apply to the Commission by right and without special agreement concerning breaches alleged to have been committed by any other party having made the same declaration. Any party which has not made the declaration may apply to the Commission on an *ad hoc* basis with the agreement of the other party or parties concerned. The Commission will present a report on the result of its enquiry and, if need be, its recommendations to the parties concerned. It will not report its findings publicly unless requested to do so by all the parties to the conflict.

In its capacity as a permanent and completely independent body, the Commission represents a new and important mechanism for promoting respect for international humanitarian law. Fact-finding in a situation of armed conflict is a means of averting unnecessary dispute and violence. The Commission also affords the belligerents the opportunity to show their willingness to comply with international humanitarian law.

This machinery can prove its effectiveness, however, only if it can function and draw lessons from its experience. For this reason, it is

most important, as mentioned above, for the States which have not yet accepted the competence of the Commission to do so.

Apart from this important formal step, it devolves upon the States to avail themselves of the International Fact-Finding Commission in order to enquire, as soon as possible, into all breaches of international humanitarian law, including those committed in non-international armed conflicts. In this way they can show their commitment to this important mechanism of international humanitarian law, and their desire to shed light on alleged breaches of the law.

It should be pointed out that the role of the Commission is not to pass judgement on States, but to assist them in improving the application of the law.

4.2 Penal sanctions

An important part of international humanitarian law is concerned with the repression of breaches of its rules, given that sanctions are an integral part of every coherent legal system, and that the threat of punishment has a dissuasive effect.

4.2.1 National measures

The war crimes alleged by a party to a conflict almost always involve acts committed by the soldiers of the adverse party. It is therefore useful to point out that the obligation to suppress breaches of international humanitarian law and to repress grave breaches thereof requires the authorities to exercise great vigilance concerning acts committed by members of their own armed forces. As previously mentioned, this implies taking the necessary measures at the national level, especially by introducing these breaches into their penal codes.

In many countries, judges cannot base a judgement directly on international treaty law; the relevant provisions of that law should therefore be incorporated into the national legislation. The introduction of these provisions into the national penal system is indispensable, moreover, since the Geneva Conventions and Additional Protocol I contain no indication of the penalties to be applied to the various breaches.

To be effective during armed conflicts, moreover, repression must be carried out within a context of strict discipline in the conduct of hostilities and of determination throughout the whole military hierarchy. It is the laxity of commanders that turns soldiers into bandits.

The International Conference for the Protection of War Victims is invited to emphasize the duty of military commanders to inform their subordinates of their obligations under international humanitarian law, to do everything to avoid breaches of its rules and, if necessary, to repress or report any breaches committed to the authorities.

4.2.2 International measures

The parties to the Geneva Conventions are obliged to repress grave breaches of international humanitarian law or to hand over the presumed perpetrator of such breaches to a Contracting Party wishing to prosecute, as long as this party can prefer substantial charges in accordance with the principle *aut judicare aut dedere*.

A list of these grave breaches, defined as war crimes, is set forth in the Geneva Conventions and more are enumerated in Additional Protocol I of 1977.

In accordance with the principle of *universal jurisdiction*, the obligation to repress grave breaches is independent of the nationality of the perpetrators and the place where the acts were committed.

Nevertheless, the Geneva Conventions neither envisage nor exclude the establishment of an international tribunal in other instruments.

Any effort towards setting up an international tribunal to repress war crimes more effectively should therefore be welcome, especially as the system provided for under international humanitarian law has not in practice led to the repression of these crimes.

The decision of the United Nations Security Council to set up an international tribunal to try persons responsible for grave breaches of international humanitarian law committed on the territory of the former Yugoslavia since 1991²⁷ must, for this reason, be considered an important attempt at fulfilling the obligation to punish war criminals. As this new tribunal is the first of its kind to have been set up since those established shortly after the Second World War, it is of the utmost importance that everything should be done to ensure that it functions

²⁷ Resolution 827 of 25 May 1993.

effectively, with the independence essential for justice to be carried out, with respect for the basic guarantees — including those concerning judicial procedure — and in accordance with the provisions relative to applicable law and to the sanctions provided for in the Geneva Conventions and Additional Protocol I.

The establishment of an international tribunal competent to try the war crimes committed in the former Yugoslavia should be only the first step towards the setting-up of a *permanent international penal system*. The work of the United Nations International Law Commission is of current relevance in this respect, especially the preparation of a Code of Offences against the Peace and Security of Mankind. The wider scope of this Code and its envisaged applicability should permit the extension of international repression to crimes committed in *non-international conflicts*.

The International Conference for the Protection of War Victims provides the opportunity to encourage all current and future work aimed at strengthening, at the international level, mechanisms for the repression of war crimes.

4.3 Reparation for damages

Additional Protocol I of 1977 contains one short article entitled “*Responsibility*” (Article 91) which specifies that a party to a conflict which violates the provisions of the 1949 Geneva Conventions or of Protocol I shall, if the case demands, be liable to pay compensation, and that it shall also be responsible for all acts committed by persons forming part of its armed forces.

This article confirms a rule which is today accepted as being part of customary law and was already stated, in almost identical terms, in Article 3 of the Hague Convention No. IV of 1907. Moreover, an article common to the four Geneva Conventions²⁸ emphasizes that no High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred as a result of the commission of grave breaches of the Conventions. This provision entails first of all criminal responsibility, but it also implies that, irrespective of the outcome of an armed conflict, no decision or agreement can dispense a State from the responsibility to make reparation

²⁸ C. I, Art. 51; C. II, Art. 52; C. III, Art. 131; C. IV, Art. 148.

for damages caused to the victims of breaches of international humanitarian law or to pay compensation for those damages.

This responsibility applies first of all in the context of relations among States and has acquired a new dimension with the reaffirmation and development of the rules governing the conduct of hostilities. A State which has laid mines indiscriminately, or which has caused other unlawful damage to the environment, for example, is under the obligation to make reparation (in particular by carrying out mine-clearing operations)²⁹ or pay compensation.

The problems arising in connection with reparation for damages to persons and individual compensation are more complex for the following reasons:

- Application for reparation or compensation can be made only via the State; this often makes the process and its outcome uncertain.
- Although legally a clear distinction should be drawn between them, confusion may arise between damages attributed to violations of the right to engage in warfare (*jus ad bellum*) and those attributed to breaches of international humanitarian law (*jus in bello*), and thus dilute the responsibility to make reparation.
- The international obligation to provide reparation which exists under international humanitarian law does not apply to non-international armed conflicts. However, in the internal situations brought about by these conflicts the national legal mechanisms which should enable victims to obtain reparation or compensation often fail to function adequately.

In practice there are of course cases in which the victims of breaches of international humanitarian law have obtained compensation.³⁰

²⁹ The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and other Devices, annexed to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, contains an article on mine-clearing operations upon the cessation of hostilities which seems to be worded with caution (the Parties “*shall endeavour to reach agreement*”). It does not, however, in any way diminish the said obligation since this article is based on the assumption that the mines were used lawfully.

³⁰ Particular mention should be made here of the case of civilians who were interned during the Second World War. Although their situation was not formally covered by the then rules of international humanitarian law, they received and still continue to receive considerable compensation. It should also be noted that the United Nations set up a Compensation Commission, in conformity with Security Council resolution 687 (1991), after the Gulf War.

Nevertheless the vast majority of victims do not receive the compensation to which they are entitled. A shocking example is provided by the innumerable children who have lost a limb to an exploding mine and have not even been granted the modest compensation of an artificial limb.

Of particular interest in this connection is the study by the Sub-Commission of the Commission on Human Rights concerning the right of the victims of flagrant violations of human rights and fundamental freedoms to restitution, compensation and readaptation.³¹

The International Conference for the Protection of War Victims should make it clear that it wishes procedures to be set up to provide reparation for damage inflicted on the victims of violations of international humanitarian law and award compensation to them, so as to enable them to receive the benefits to which they are entitled.

5. Summary of suggested measures to strengthen protection for war victims and respect for international humanitarian law

Violations of international humanitarian law on a massive scale in situations of armed conflict have led to increased suffering and innumerable deaths. A vigorous response to these individual and collective tragedies is needed from the international community. Only through the determined commitment of States can these violations and tragedies be averted.

5.1 Peacetime measures

5.1.1 Promotion of international humanitarian law treaties

All States which have not yet adopted one or other of the international humanitarian law treaties are asked to examine the possibility of

³¹ See the reports and relevant study of the Special Rapporteur (in particular UN document E/CN.4/Sub.2/1992/8).

doing so without delay and to accept fully and without reservations the competence of the International Fact-Finding Commission which was set up in 1992.

The States party to these treaties are invited to participate actively in their promotion.

5.1.2 Adoption of national implementation measures

It is suggested that States undertake to adopt laws and take the necessary measures, at national level, to ensure the effective implementation of the 1949 Geneva Conventions, their Additional Protocols of 1977 and any other international humanitarian law treaties.

Consideration should be given to setting up or activating inter-ministerial commissions, or designating an office or person responsible for keeping track of and coordinating these measures.

5.1.3 Spreading knowledge of international humanitarian law

The ignorance of the humanitarian rules shown by members of the armed forces or armed groups in certain recent conflicts, or their disregard for those rules, should induce every State to consider what precautions it is taking to avoid such excesses. This reflection should focus on two main issues:

- the *coordination* of efforts to spread knowledge of *international humanitarian law* with those undertaken to disseminate the *principles contained in the Charter of the United Nations and human rights principles*, and greater harmonization of efforts in these two domains;
- the *integration of instruction* in international humanitarian law in military training as a whole.

The positive or negative role which the media can play in preventing violations of humanitarian rules or exacerbating tensions merits extensive analysis.

The ICRC is ready to organize one or several meetings to examine in detail the above-mentioned problems and issues.

5.1.4 Explanation and development of international humanitarian law

1) Non-international armed conflict

The dialogue between legal experts and members of the armed forces should be intensified to bring about a consensus on humanitarian rules applicable to the conduct of hostilities, in particular in non-international armed conflicts, a consensus given tangible form in military manuals and instruction.

Consideration should be given to the possibility of formally extending to non-international armed conflicts the applicability of humanitarian rules, such as those relative to the use of mines, which at present apply only to international conflicts.

2) Protection of the environment in time of armed conflict

The States are invited to pay all due attention to the protection of the environment in time of armed conflict, in particular to give careful consideration to the report prepared by the ICRC for the 48th session of the United Nations General Assembly.

3) New weapons technology

The States are under the obligation to ensure that all new weapons are in conformity with the rules of international humanitarian law. Besides working towards disarmament, it is important that they take the forthcoming Conference to review the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons as an opportunity to consider with all due attention the possibility of strengthening the existing restrictions or of introducing new ones.

The ICRC is ready to contribute actively to the preparation of this Conference so as to facilitate its success.

4) International humanitarian law applicable to war at sea

The States are invited to give careful consideration to the report summarizing the findings of the work undertaken under the auspices of the International Institute of Humanitarian Law in San Remo. This work is scheduled for completion in 1994.

5) *Marking and identification of persons and property protected under international humanitarian law*

All the States party to Additional Protocol I of 1977, but also those which have not yet acceded to it, are invited to take the necessary steps to introduce, at national level, the measures mentioned in Annex I of the Protocol — in which the recognized distinctive signs and signals are defined — as soon as the revised text of the Annex enters into force in January 1994.

6) *Relationship between international humanitarian law and disarmament*

The Conference on Disarmament and all States are encouraged to pursue and develop all efforts undertaken to restrict the arms trade and to consider measures to be taken, in the framework of disarmament, with respect to weapons, such as anti-personnel mines, whose use is prohibited or restricted under international humanitarian law.

7) *Relationship between international humanitarian law and human rights law*

An intensified dialogue between those in charge of implementing respectively human rights law and international humanitarian law should be encouraged to reinforce the protection of persons during armed conflicts.

Work undertaken to clarify and strengthen humanitarian norms applicable in internal disturbances and tensions should be supported.

5.2 Action during armed conflicts

The crucial question arising from recent armed conflicts is how the international community should react when the parties to a conflict are unwilling to respect the principles and rules of international humanitarian law, or are incapable of ensuring respect for them.

The International Conference for the Protection of War Victims provides an opportunity to clarify this question.

5.2.1 Action to be taken to ensure respect for international humanitarian law

Consultation is necessary to determine the most appropriate methods and framework for implementation of the States' obligation to *ensure respect* for international humanitarian law, as well as the type of cooperation to be established with the United Nations in the event of serious violations of that law. Further consideration should also be given to the most suitable framework in which a structured multilateral discussion of specific difficulties encountered in its application could take place at regular intervals.

Starting in 1994, the ICRC intends to organize consultations on these subjects with government and UN experts.

5.2.2 Coordination of humanitarian action

Inter-agency consultation for the coordination of humanitarian action should be continued and further improved, for the magnitude of needs requires combined efforts to overcome them.

Besides the need for a coordination of tasks, a *concerted approach* is extremely important to improve the effectiveness and quality of emergency humanitarian action; the work undertaken to draw up a code of conduct for organizations engaged in emergency aid should also be encouraged.

5.2.3 The safety of those engaged in humanitarian action

Any possible recourse to armed escorts in particularly dangerous situations must be based on stringent principles and merits in-depth study.

In countries disrupted by conflict where preparatory instruction in international humanitarian law was not sufficiently provided in peacetime or, even more importantly, in situations where government structures are collapsing, new methods must be found of ensuring that the meaning and purpose of humanitarian action are clearly understood so that such action can take place. Recent experience should be reviewed and new methods adapted to local cultural contexts should be developed.

5.3 Repression and reparation

5.3.1 The International Fact-Finding Commission

It is up to States to avail themselves of the International Fact-Finding Commission in order to enquire into all violations of international humanitarian law, including those committed in non-international armed conflicts, and thereby demonstrate their determination to clarify alleged violations of that law.

5.3.2 Penal sanctions

Most war crimes go unpunished. It is therefore important to take vigorous measures to repress breaches of international humanitarian law.

1) National measures

Measures to repress breaches of international humanitarian law should be incorporated into national penal codes.

Emphasis should be placed on the duty of military commanders to inform their subordinates of the principles and rules of international humanitarian law, to take all feasible measures to prevent breaches and, where necessary, to repress or report any breaches committed to the authorities.

2) International measures

All current and future work aimed at reinforcing means of repressing war crimes, while showing all due respect for the recognized judicial guarantees, should be encouraged and developed. Particular attention should be paid to the possibility of setting up an international war crimes tribunal.

5.3.3 Reparation for damages

The International Conference for the Protection of War Victims should make it clear that it wishes procedures to be set up to provide reparation for damage inflicted on the victims of violations of inter-

national humanitarian law and award compensation to them, so as to enable them to receive the benefits to which they are entitled.
