Respect for international humanitarian law: ICRC review of five years of activity (1987-1991)

One of the main objectives of International Conferences of the Red Cross and Red Crescent, which bring together Red Cross and Red Crescent institutions and the States party to the Geneva Conventions, is to promote respect for international humanitarian law during armed conflicts.

The 26th International Conference of the Red Cross and Red Crescent, which was to be held in Budapest between 28 November and 6 December 1991, was postponed indefinitely because of political differences. The ICRC deplores this regrettable state of affairs; it nevertheless wishes to make known and share its thoughts and concerns with regard to respect for humanitarian law. It is therefore today sending, to all States party to the Geneva Conventions and National Red Cross and Red Crescent Societies, the text of the report it had intended to present on the subject at the Conference.

In view of the serious humanitarian issues to which it refers and the urgent attention they require, I am convinced that the publication of this report will help us pursue a dialogue which is more necessary than ever with all States and National Societies.

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President
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Geneva, 10 December 1991

Only a few years ago, the climate that prevailed in international relations could certainly justify the scepticism of those who regarded international meetings as no more than a ritual exercise, too often lacking any real purpose. The division of the world into blocks entrenched in antagonistic and seemingly irreconcilable ideological positions nearly always defeated attempts, however praiseworthy, to go beyond mere declarations of intent and get to grips with the major problems of our time, in a spirit of dialogue and conciliation. This state of affairs was particularly evident in the United Nations, where the great powers vetoed each other's proposals while continuing to engage in an arms race both economically ruinous and morally indefensible in a world suffering from hunger. Those same powers were thus reduced to coexistence in a weird kind of peace based on nuclear deterrence, or on the prospect of mutual annihilation. Their struggles for influence over distant parts of the world led to the revival of old antagonisms or even to the outbreak of war in certain countries, some of which had only recently won their independence. The arms race thus spread to regional conflicts, feeding on local quarrels, ideological confrontations, blind fanaticism and sectarianism, and individual ambition for power.

With support from outside, these interminable conflicts embroiled and weakened Third World populations which were already prey to deteriorating economies and natural disasters entailing famine and epidemics. The upheavals caused by struggles between rival factions contributed to the disintegration of political, economic and social structures.

Such is the political context in which the ICRC has been obliged to work in recent decades. This situation of contagious violence has led to a slow but inexorable erosion of humanitarian law, which is rejected by some belligerents in the name of ideology, immediate military advantage or political and strategic considerations, with no regard for humanitarian requirements.

My late lamented predecessor, Alexandre Hay, referred to these disquieting facts when he drew the attention of the 25th Conference in Geneva in 1986 to the fact that not only had there been an increase in the

number of conflicts in which the ICRC had been called upon to intervene, but also that conflicts were lasting longer as resort to force supplanted negotiation. This in turn led to greater radicalization, reflected in the attitude of belligerents towards the victims.

In the face of the consequences of so many conflicts, two facts became self-evident to the ICRC: first, that if violations of humanitarian law were allowed to multiply, there would be a tendency to forget that the situation was then bound to deteriorate, and secondly, that despite the accuracy of the ICRC's diagnoses of the causes of so much suffering, belligerents and the international community alike were still incapable of either prescribing appropriate remedies or applying them without delay. In recognition of these facts, the ICRC launched an appeal for humanitarian mobilization addressed to all the States party to the Geneva Conventions, all National Red Cross and Red Crescent Societies and, through the media, to the public at large.

The aim of this appeal was to raise awareness of humanitarian issues among political leaders by showing them that in any conflict, international or internal, there are humanitarian requirements which people disregard at their peril. States were called upon not only to respect but also to ensure respect for international humanitarian law. The response to this appeal fell short of what had been hoped for.

At this perhaps more propitious time, I should like to call upon States and National Societies to work together more closely than in the past for a renewed humanitarian mobilization.

Developments in international relations: hopes and fears

The reason why I thought it necessary to take a brief look back at the past before recapitulating the activities of the ICRC was that the climate of international relations has been profoundly changed by the momentous events of recent years. This should also affect the political context in which the ICRC has to work. The political trends in Eastern Europe and developments in the relations among the great powers have relegated the Cold War to the past and have paved the way towards ending several ongoing conflicts. States which only yesterday were on implacably hostile terms are today working together with the great powers with a view to ending the confrontation in which they were trapped. Against the background of this prodigious acceleration of history, the nations of Europe, first divided and then cruelly separated in the aftermath of the Second World War, have been the first to seek a new political order, the most striking symbol of which is the fall of the Berlin Wall in November 1989; but these changes reach far beyond the confines of Europe to find an echo

in the heartland of every continent. New political, economic and security relationships are being formed, and new projects are emerging which are full of potential, but they will have to match the aspirations they arouse if we are to avoid any backlash leading once again to violence. A resurgence of the nationalism that was believed to be buried in the past, and events occurring in various parts of the world, such as those in Yugoslavia, call for renewed vigilance. Other obstacles stand in the way of establishing a more equitable and peaceful world — North-South social and economic imbalances, discrimination against minorities within national entities, runaway population growth, endemic poverty, mass migrations, increasing damage to the environment, intolerance and racism.

It would be presumptuous of me to comment further on history which is being made day by day. As we all know, events only seldom reveal their full significance at the time of their occurrence. Yet it seems to me that at this stage in the evolution of international relations, three favourable developments should be emphasized — first, the new importance attached by many political leaders to respect for the rules of international law and for human rights as essential factors for the maintenance of peace and security; secondly, the progress made in disarmament negotiations; and, lastly, the peaceful settlement of certain conflicts and the diplomatic measures being taken to seek settlement for those which are still outstanding.

In this connection I should like to pay a tribute to the untiring and successful efforts made by the Secretary-General of the United Nations to restore peace to Namibia, Angola and Cambodia and to his continuing endeavours to put an end to the conflicts in El Salvador, the Western Sahara and Afghanistan. The negotiations on the Arab-Israeli conflict undertaken at the initiative of the United States and the Soviet Union may be added to the list of long-awaited prospects of peace.

Although these trends which are emerging in international relations are so many signs of progress and reasons for hope, it should not be forgotten that for many long years the ICRC, which has witnessed an increasing number of violations of the Geneva Conventions and their Additional Protocols, has repeatedly sought the support of States to enable it to carry out fully the mandate entrusted to it by the international community. It is no easy matter to persuade States in conflict to maintain the fragile balance between humanitarian requirements and military demands. During all these years, the ICRC's right to discharge its mandate has all too often been denied or at least restricted by those very States which had undertaken to respect minimum humanitarian rules in time of conflict.

The international community of today is imbued with a different spirit. It now has to influence events in order to turn back the tide of practices contrary to international humanitarian law; such practices can

easily be measured against the extent of ICRC activities since 1987, particularly those in favour of prisoners and civilian populations.

Prisoners of war

With regard to international conflicts, the Third Geneva Convention relative to the treatment of prisoners of war lays down some simple and practical rules which define the obligations incumbent on a Detaining Power. This Convention establishes the material living conditions and treatment to which prisoners are entitled.

But special emphasis must be laid on three provisions of the Convention which are essential for the protection of prisoners of war. The first is the obligation on the Detaining Power, immediately upon the capture of the prisoner, to notify the ICRC of his identity, in order to inform his power of origin, and above all his family, of his capture. By such notification, the Detaining Power acknowledges its responsibilities under the Convention towards enemy soldiers who have fallen into its hands. Failure to fulfil this obligation deprives the prisoner of legal existence, leaves him open to arbitrary treatment by those who hold him, and condemns his family to the anguish of uncertainty and waiting.

Another provision essential for observance of the Convention is the one set out in Article 126, which entitles ICRC delegates to visit, at any time and without any limit on frequency or duration, all places where prisoners of war are held and to interview them freely and without witnesses. Such visits constitute an important monitoring mechanism, and refusal by any party to authorize them will undermine observance of the Convention as a whole. In such circumstances, the opposing party might be inclined, in violation of the Convention, to adopt the same attitude by way of retaliation.

My third and last consideration concerns the general repatriation of prisoners of war. In this connection, Article 118 provides that, and I quote: "*Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities*".

This clause has been the subject of many temporizing political interpretations which we have resolutely contested because they have the effect of keeping prisoners in captivity for many years after a cease-fire has been declared, either under agreements between the parties or through Security Council resolutions. Prisoners of war thus become hostages in the political negotiations entered into after hostilities have ceased: this is what happened to prisoners in the conflicts between Iran and Iraq, between Chad and Libya, and between Ethiopia and Somalia, all conflicts

where ICRC activities were hampered by serious and persistent violations of the Third Convention.

Throughout the war that broke out between Iraq and Iran in 1980, neither party notified the ICRC of the identity of prisoners it held. The ICRC was reduced to registering itself the prisoners to whom it had access. In Iran, visits by ICRC delegates were constantly subject to restrictions and to incidents which led to a suspension of all activities between October 1984 and December 1986. In 1987, the ICRC was authorized by the Iranian government to resume its activities, but within a very restrictive interpretation of Article 126, which in particular limited the frequency and duration of visits to camps and the right of delegates to interview the Iraqi prisoners of their choice without witnesses. At the end of 1987 these restrictions were still in force and the ICRC was once again compelled to suspend activities, at the same time noting that the Iranian authorities were not allowing it access to all prisoners. In Iraq, the delegates were permitted to make regular visits to several camps without hindrance, but were refused access to other places of detention. The annual reports on our activities have described these difficulties in detail, and I therefore do not propose to give an exhaustive account of this long and arduous conflict, with all its lingering humanitarian problems that remain to be resolved, particularly with regard to prisoners. On completion of the repatriation operations which started on 15 August 1990, or two years after the effective entry into force of the cease-fire established under Security Council resolution 598, more than 79,000 prisoners of war had returned to their country, but each party nevertheless accuses the other of still holding prisoners in captivity. Without any notifications, the ICRC is not in a position to give an accurate estimate of their numbers, and the relatives of these prisoners are in despair, as are tens of thousands of families with no news of soldiers missing in action.

In the conflict between Chad and Libya, the picture is equally bleak. Despite intensive ICRC initiatives after the cease-fire of 11 September 1987, the government of President Hissène Habré, in violation of the Third Convention, refused to authorize any ICRC visits to Libyan prisoners of war held in Chad. No notifications were sent. In December 1990, during the hours following the overthrow of that government, some of the prisoners were able to make contact with Libyan diplomatic representatives in the capital of Chad and to return to their country. Some 600 others, with no ICRC protection or supervision, were moved in planes chartered by the government of the United States first to Nigeria, then to Zaire and finally to Kenya. When at last authorized to visit them, the ICRC found in the course of interviews without witnesses that 250 of them wanted to return to their country. In Libya, the ICRC was authorized, in January 1988, to visit 89 prisoners who were repatriated to Chad on 22 September

of that year as part of an operation under OAU auspices which enabled a total of 214 Chadian prisoners to return home.

Another example: after the conflict in 1977 between Ethiopia and Somalia in the Ogaden, the ICRC had been allowed only sporadic visits, under conditions not in conformity with the Third Convention, to 227 Ethiopian and 236 Somali prisoners. This situation continued until August 1988, when the two governments organized the repatriation of all prisoners. The ICRC, called in by both governments to conduct the operations, then confirmed something that it had for many years suspected to be the case, namely, that for eleven years the Somali government, despite untiring ICRC endeavours, had been depriving 3,300 Ethiopian prisoners of war and civilian internees of the protection of the Convention and had been detaining them in particularly appalling physical and psychological conditions.

To these three examples should be added the violations of the law noted during the Gulf war, when the government of Iraq refused the ICRC access to prisoners who had fallen into its hands during the invasion of Kuwait and during the hostilities which later broke out against the forces of the international coalition. But I shall return to this conflict later.

So there is indeed a pressing need today to ensure the full implementation of the Third Convention. In the new climate of international relations, this is an objective that must be resolutely pursued by the States.

Humanitarian law in internal conflicts

This analysis would be quite incomplete if it were confined to international conflicts. We have observed that sometimes through ignorance and more often as a matter of policy, a distinction is drawn between the rules of humanitarian law applicable in international conflicts and those governing internal conflicts. Whereas from the point of view of legal logic the law distinguishes between these two types of conflict, the applicable humanitarian provisions are essentially identical and are based on the same principle, that of respect for persons who take no part in hostilities or who are *hors de combat.*

It would indeed be absurd to condone in the case of internal conflicts acts which are condemned by international law and morality in the context of inter-State relations or to accept that the law should recognize different levels of perception and tolerance in the face of the same pain and suffering depending on whether the conflict is internal or international. Humanitarian law, through the provisions of Article 3 common to the Geneva Conventions supplemented by those of Protocol II additional to those Conventions, has risen above such contradictions and has founded,

even within national boundaries, a genuine law of humanity under which the individual, his physical integrity and his dignity must be respected on the basis of moral principles which transcend the narrow limits of international law. It is in this sense that the treaty rules applicable to internal conflicts oblige all the parties to accord humane treatment to non-combatant civilians, the wounded and sick, and prisoners. With a view to maintaining the strictly humanitarian nature of these provisions, the last paragraph of Article 3 specifies that their application shall not affect the legal status of the parties to the conflict. We have noted, however, that in the particular case of prisoners, the parties tend to give priority to what they regard as their political and security imperatives, and only too often contest the applicability of the law and invoke their national sovereignty in refusing to allow us to intervene, thus creating a particularly difficult context for our efforts in this respect.

Nevertheless, through patient negotiations some progress has been made. In Sri Lanka our representatives are allowed to visit prisoners in government hands and on several occasions have been able to intervene in favour of a handful of prisoners held by a Tamil opposition movement. In Afghanistan, they are also allowed to visit governmental places of detention and have been able to help government soldiers captured by certain armed opposition groups. In Mozambique and Uganda, the authorities have given us access to prisons, and also in Rwanda, after the clashes that took place in October 1990. In Latin America, in the El Salvador conflict, our visits have continued without interruption, while in Nicaragua they ended in 1990 since all the prisoners had been released. In Yugoslavia, since the outbreak of fighting last July, ICRC delegates have visited several thousand people held by various parties to the conflict; some of them have been released under ICRC supervision, notably on the basis of an agreement concluded with the parties to the conflict on 6 November of this year.

These developments are certainly encouraging by comparison with the as yet unsuccessful attempts to intervene in other conflicts in Africa, the Middle East and Asia. In this regard, the situation in Angola calls for further consideration. Throughout this conflict, the parties only exceptionally granted the ICRC access to prisoners they held, and this refusal was maintained until the signature of the Estoril Peace Agreements in Portugal on 31 May of this year. After 16 years of war, these agreements established a cease-fire and a process of normalization leading to elections in the autumn of 1992. Both parties to the agreements undertook to release all their prisoners and then asked the ICRC to register them and subsequently to supervise their release. This peaceful outcome would have been made much easier if the ICRC had been authorized to discharge its mandate throughout the conflict. Imagine how much suffering those

prisoners and their families could have been spared in all those endless years!

In Ethiopia, until the fall of the Mengistu government which put an end to hostilities, ICRC representations had always met with a flat refusal from all parties. In Sudan and in Somalia, our efforts remain fruitless to this day, while there has recently been some progress in Liberia. In the Western Sahara conflict, the different views of the parties on whether the conflict is international or internal have proved to be a constant barrier to our activities: from the outset of that conflict in 1975, the ICRC has only once — in 1987 — been authorized to visit 75 Sahraoui prisoners held by the Moroccan government, while our delegates have had access in eight very widely spaced visits to 935 Moroccan prisoners held by the Polisario Front. Apart from the tragic consequences in humanitarian terms for the prisoners concerned — some of whom have been held captive for more than 15 years — care has to be taken to ensure that this issue does not hamper the efforts being made under United Nations auspices to reach a peaceful settlement of the conflict. As developments in Angola have shown, respect for humanitarian law would have helped to preserve, during the period of the conflict itself, that measure of human compassion which, in due course, also facilitates the restoration of peace. In Lebanon, ICRC delegates can visit prisoners held by certain factions, while others still categorically refuse them access. In the security zone they have also been denied access to prisoners under the control of the South Lebanon Army and the Israeli armed forces. The ICRC also still has no information on the fate of Israeli servicemen who have been reported missing for years in Lebanon. With regard to the many hostages held in that country, in flagrant violation of fundamental legal and humanitarian principles, we have repeatedly called for their release and have publicly condemned such practices. In Cambodia, new hope has arisen with the signature of the peace agreement in Paris on 23 October 1991. Here again, in this long-suffering region which has given such constant cause for concern, we have been unable to work on behalf of prisoners held by any of the parties to the conflict: their fate is highly uncertain, as is that of the civilian population, over which the parties to the conflict have persistently fought for control. Last of all, in Myanmar, a country which has been ravaged by civil strife for decades, our approaches have met with no favourable response from the authorities, and the victims there have been deprived of any protection whatsoever.

The parties to internal conflicts very often publicly declare that the prisoners they hold are treated humanely. Such statements may sound reassuring, but are they to be believed when these same parties refuse to grant the ICRC access to the prisoners in question? I therefore appeal to the States concerned to respond favourably to the approaches we have

made to them, and thus to provide tangible proof of their willingness to comply with the minimum humanitarian requirements that the international community has laid down in the Geneva Conventions.

Protection of civilians

The purpose of humanitarian law is not only to protect wounded combatants or those, like prisoners, who are *hors de combat.* Under the provisions of the Fourth Geneva Convention of 1949 and the two Additional Protocols of 1977, protection is extended to civilians not taking an active part in hostilities.

As we all know, developments in weaponry during this century have made warfare more and more totally destructive. This increased weapon power is accompanied in many conflicts by increased political intransigence and blind hatred on the part of the belligerents, of which civilians are the first and most numerous victims. We have seen it again: war is everywhere, it subjects cities to indiscriminate bombing and shelling, it destroys the infrastructure essential for sustaining life, it infiltrates through guerrilla tactics the very core of peoples who are thus directly exposed to arbitrary treatment and reprisals by the parties fighting for their control. Entire civilian populations trapped by war and threatened by famine are deprived of assistance because the belligerents wilfully refuse to allow the ICRC or other humanitarian agencies to bring them relief. In Afghanistan, in Angola, in Mozambique, in Cambodia and in Somalia, indiscriminate mine-laying has rendered vast tracts of agricultural land useless and has killed or mutilated hundreds of thousands of civilians, a great many of them children.

This report is but a brief account of the immeasurable and pointless suffering inflicted on civilians which we have witnessed. I shall therefore, with no regard for chronological order, just touch on some of the situations in which there have been particularly serious breaches of humanitarian law and which have prompted us publicly to express our distress and disapproval.

Acts of war against civilians

In January 1987, during the war between Iran and Iraq, renewed bombing of civilian targets, particularly the cities of Baghdad and Tehran, led the ICRC publicly to condemn these indiscriminate acts of war. In view of the escalating reprisals and counter-reprisals, the ICRC at the same time informed all States party to the Geneva Conventions of the

representations it had made to both belligerents and in particular requested Member States of the United Nations Security Council and the Secretary-General of the United Nations to support its initiatives. After a lull, the bombing resumed in February 1988, killing several hundred civilians. But worse was to come: on 23 March 1988, several thousand civilians met a horrible death in the Kurdish town of Halabja, victims of chemical bombs. The ICRC then publicly denounced the use of such weapons, which are strictly prohibited under the 1925 Geneva Protocol.

In Lebanon also, the civilian population was subjected to the most terrible trials. In March 1989, Beirut and villages in the Chouf came under very heavy shelling. Artillery battles between General Aoun's forces and the pro-Syrian forces and Lebanese factions rained fire for six months on a civilian population forced to huddle in cellars or makeshift shelters. Relief workers of the Lebanese Red Cross were able to evacuate casualties only by running terrible risks and showing admirable courage. Electricity was cut-off, which led to the breakdown of the water distribution system in large parts of the capital, forcing about a million people to seek refuge in quieter areas. Throughout those months, the ICRC maintained a major assistance operation to supply hospitals and bring relief to the civilian population. In its efforts to persuade all the parties to the conflict to call humanitarian truces, the ICRC repeatedly appealed for respect for the most elementary principles of humanitarian law in the treatment of civilians, but by the time the fighting ended, more than 1,000 civilians had been killed and 5,000 wounded. In January 1990, heavy artillery fighting broke out afresh, this time between Christian factions in northern and East Beirut, and the same tragedies were re-enacted.

The effects of war on civilian populations have again become a grim reality in the conflict which is tearing Yugoslavia apart. Hundreds of thousands of civilians have been forced to flee the combat zones, the injured and the sick are refused assistance and protection and whole cities are shelled and blockaded by the besieging forces. For five months now the ICRC has been appealing to the parties to the conflict to abide by the elementary rules of law. It is indeed fortunate that the Presidents of the six Republics signed, at The Hague on 5 November of this year, a declaration undertaking to respect and to ensure respect for humanitarian law and humanitarian principles and expressing unreserved support for ICRC activities. I earnestly hope that on the basis of this declaration the parties will preserve a measure of humanity, will allow humanitarian truces to be concluded and will ensure that the red cross emblem is fully respected, and that blind passion and hatred will no longer override humanitarian considerations.

Civilians under occupation

In another context, 1987 marked the twentieth year of ICRC activity in the territories occupied by Israel. In December of that same year, the Intifada uprising began and the humanitarian situation in the occupied territories began to deteriorate alarmingly. In an attempt to give some idea of the reasons for this development, I should like to single out two factors which, among many others, may offer an explanation. The first relates to the very duration of the military occupation and the impact which certain policies of the occupying power, particularly the settlement policy pursued in violation of humanitarian law, have had on the life and sense of identity of the Palestinians. The second lies in what was then seen as the lack of any prospect of a possible settlement of the conflict, which added fuel to the flames of the popular uprising. Faced with this revolt, the Israeli armed forces and police resorted to repressive measures, acts of brutality, the use of fire-arms against civilians, the imposition of prolonged curfews, the demolition of houses, expulsions of residents from the occupied territories and mass arrests. The number of security detainees whom the ICRC has been authorized to visit regularly increased, from 4,000 in 1987 to 16,000 in 1990, and this increase in numbers inevitably led to a deterioration in conditions of detention. At the same time, the Israeli authorities intensified their programme of installing Israeli settlers in the occupied territories, and that resulted in clashes between settlers and Palestinian residents which sometimes involved fatalities. The serious humanitarian problems which ICRC delegates have noted and which I have just outlined have been raised in representations to the Israeli authorities and in a continuing dialogue with them.

In the light of these events, the question of the applicability of the Fourth Convention has become more pressing than ever. Indeed, since 1967 the Israeli authorities have contested the applicability of this Convention *de jure*, while declaring their willingness to apply some of its provisions *de facto* in the Gaza Strip and the West Bank, but not in the Golan Heights and East Jerusalem, which had been unilaterally annexed. Accordingly, ICRC representations, particularly those concerning expulsions, demolition of houses and the settlement policy, generally meet with no response. The ICRC, for its part, has always considered that the provisions of this Convention are applicable to all the occupied territories, irrespective of the status assigned them by the Israeli authorities. It seems to me important to remember in this connection — but also in other similar conflict situations, such as those of East Timor and, more recently, of Kuwait under Iraqi occupation, where humanitarian law was totally ignored — that the principle of the inviolability of the rights of protected persons is set out very clearly in Article 47 of the Fourth Convention.

This article provides that "*Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territory and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory*".

It will be seen from this provision that the sole purpose of humanitarian law is to protect people who are under the rule of a power of which they are not nationals, irrespective of any political, economic, territorial or other disputes between the parties to the conflict. Only a peace treaty can settle such issues, which cannot condition the applicability of humanitarian law without distorting the scope of that law.

Victims' right to assistance and protection

In Africa, although Namibia, Angola and Ethiopia have again found the way to peace after many long years of war, we cannot forget the dreadful suffering caused to civilians by these conflicts, whose effects continue to be felt long after the fighting itself. Who can forget the harrowing pictures published by the media in 1984 of men, women and children trapped by war and decimated by famine in the Ethiopian provinces of Tigray and Wollo and in Eritrea? These are the same agonized faces that our delegates have seen in the conflicts in southern Sudan, Somalia, Mozambique and Liberia. In view of the enormous scale of these tragedies, the ICRC, together with other humanitarian relief agencies, has become involved in vast assistance and protection operations. Since our annual reports give a detailed account of these activities, I shall now confine my remarks to some more general considerations.

While in recent years we have received very considerable financial, material and logistic resources from the governments and National Societies which support our activities — and I should like to take this opportunity of expressing our profound gratitude to them — we have had to conclude that the availability of these resources has not necessarily meant that victims could be helped without delay. Before taking action, we first had to overcome many political obstacles through complex and prolonged negotiations in order to ensure that all parties to the conflict would allow us to assist all victims without any discrimination. And that was not the end of our difficulties: once an operation was launched, our activities in the field were often restricted, thwarted and indeed sometimes totally paralysed because of new decisions or demands by the parties which ran counter to agreements previously reached. That was the kind of obstacle

that the ICRC encountered in Ethiopia in 1987 and again in April 1988 when the government forced it to suspend all its activities and to withdraw all its personnel immediately. Five months after launching a public appeal to all the parties to open the roads in order to allow humanitarian relief convoys to reach the victims, the ICRC, which had already brought help to more than half a million people, saw its work brought to a standstill; yet the Ethiopian government did not reverse its decision, despite repeated public appeals.

In Sudan, after two years of negotiations conducted with the government and with leaders of the Sudanese People's Liberation Army fighting in the south of the country, the ICRC was finally able in December 1988 to set up a very large-scale operation to bring assistance simultaneously to the civilian populations living in the zones controlled by each of the parties. Over a six-month period, more than 16,000 tonnes of relief supplies were airlifted to combat zones which were inaccessible by any other means. Despite our resolute commitment, our assistance activities were nonetheless repeatedly interrupted and severely hampered because of decisions taken by the parties concerned.

In Mozambique too, political and security constraints prevented our relief activities from reaching all the victims.

In Somalia and Liberia, political difficulties compounded by the violence and confusion of the fighting forced the ICRC to interrupt its activities and temporarily to withdraw its personnel for reasons of security.

There is obviously no need to underscore the tragic consequences of these denials of access for the civilian population. How can such decisions be justified when it is known that in some conflicts they spell death for tens of thousands of innocent civilians? Such attitudes, which seriously erode the right of civilian victims to receive relief, recognized by the Geneva Conventions and their Additional Protocols, have given rise to other tragedies, by causing mass population movements and forcing millions of civilians to swell the flood of refugees now camping in wretched conditions on the borders of Sudan, Ethiopia, Somalia, Malawi and other African countries. If the belligerents had permitted the full deployment of humanitarian activities, a great many of these civilians would not have been compelled to flee. Moreover, these denials of access have jeopardized the effective use of resources and relief provided by donors, who might on those grounds reconsider their support, thus calling into question their humanitarian duty of international solidarity — something we regard as an absolute moral and political obligation which cannot be evaded by any State having the requisite means. Yet, as we have said before, the solidarity we uphold on behalf of the victims cannot work on its own. If it is to be effective, the parties to the conflict must show the same sense of duty by fulfilling their obligations under humanitarian law,

recognizing the victims' right to relief and protection, and authorizing the ICRC to act without hindrance in accordance with its mandate as a neutral intermediary and its fundamental principles.

In this connection, parties sometimes accuse us of being too intransigent in our negotiations, but, as we know, in order to be effective, ICRC assistance and protection activities should be conducted in conformity with operational ethics based on impartiality, independence and neutrality, thus ensuring that any action taken will be for the benefit of all victims. Such ethics are also a prerequisite for gaining and keeping the trust of all parties to a conflict. These are the essential principles from which we can never depart and the criteria which ICRC delegates must use in the field to assess victims' needs, to organize relief and to monitor its use. Without such criteria, there would be a very great risk that humanitarian aid might become a mere cover serving the interests of partisan politics or that it might be diverted from those for whom it is intended. As we have seen, it is not always easy to persuade parties to allow us to operate in this way in the midst of their conflicts. In this connection, our ability to convince our partners in negotiation depends not only on the unqualified support that we expect from the States party to the Geneva Conventions, but also on the backing given to us by all the National Red Cross and Red Crescent Societies in conformity with the fundamental principles of our Movement.

At this point in my consideration of the issues that have marked ICRC activities in recent years, and in the hope that I have been able to convey to you matters which, I believe, remain a source of constant concern, I should have liked to have concluded, but I have yet to mention events which are still fresh in our minds and are fraught with consequence not only for those actively involved and for the victims but also for the ICRC and other humanitarian organizations. I am of course referring to the Gulf war.

Gulf war

The reason why I have deliberately chosen to discuss this conflict in the latter part of this report is because in its various stages, as considerable forces confronted each other over a very short space of time, it encapsulated in an unprecedented way all the humanitarian issues with which we are concerned. It also compels us to take a rather different view of the future.

Methods and means of combat

In the months following the invasion of Kuwait, as ICRC approaches met with repeated refusals from Iraq, as violations of human rights

proliferated in occupied Kuwait and as diplomatic moves sanctioned by so many Security Council resolutions ended in a stalemate, the prospect of war loomed larger and our hopes for a political settlement dwindled daily. At the same time new threats arose and, aware of the danger that chemical, bacteriological or other weapons of mass destruction might be used, the ICRC, in view of Security Council resolution 678 which authorized the use of force, took the initiative on 14 December 1990 of addressing a memorandum to all States party to the Geneva Conventions. This move was backed up some days later by a message to all the governments of the coalition countries and to the government of Iraq, whereby the ICRC reminded all the parties of their commitments under the 1949 Geneva Conventions and of the provisions of the law of war which prohibit the use of chemical and bacteriological weapons. It also called upon States which were not yet party to Additional Protocol I to take all necessary measures to ensure, in the event of conflict, respect for all objects indispensable for the survival of the civilian population, for the natural environment and for installations containing dangerous forces, such as nuclear power plants. On 17 January, when the hostilities began, the ICRC made a public appeal urging all the parties not to use atomic weapons.

While it is most fortunate that such weapons were not used, the potential threat loomed throughout the war, sending entire civilian populations scurrying into shelters, with their gas masks on and faces thus dehumanized, living symbols of the menace hanging over them. Missiles were fired indiscriminately, blindly striking the population of Israel and several other countries of the Gulf region and giving new reality to fears with which we had unconsciously learned to live during the period of the arms race. The manner in which the military operations were conducted also made us aware of the destruction that war can bring to the natural environment. The most serious damage caused by the firing of the Kuwaiti oilfields and the pouring of oil into the sea has largely been contained, but the consequences will be felt for a long time to come. The international community must now heed the warning sounded by these events. That is one of the lessons of the war, which should in particular stimulate the efforts of those who are continuing to make progress in disarmament negotiations. Treaties on arms reduction should no longer be considered a simple matter of seeking a new military, strategic or political balance of power: we know better than before that they involve the moral duty of mankind to protect itself against itself.

With this consideration in mind, I should like to emphasize that States which ratify the Additional Protocols can also participate in the disarmament process. Indeed, the provisions of those instruments relating to methods of combat show that the right of parties to a conflict to choose means of warfare is not unlimited. There again, a further effort

should be made to bring about the ratification of the Protocols by all States.

ICRC action during the Gulf war

In the midst of this conflict, the ICRC could not confine itself to making representations or noting, without being able to remedy the situation on its own, the manifold violations of humanitarian law of which civilians in Kuwait were the first victims. At an early stage, it deployed a vast assistance and co-operation programme with the Jordanian Red Crescent and the League of Red Cross and Red Crescent Societies, when thousands of foreign nationals forced to leave Kuwait and Iraq poured into Jordan; over 150,000 people were assisted by this operation. In January 1991, observing the effects of the embargo on the Iraqi civilian population, the ICRC began to send relief supplies to Iraq in pursuance of Article 23 of the Fourth Convention. ICRC involvement took on a new dimension when very violent internal conflicts broke out first in the south and then in the north of Iraq, thus prolonging the effects of the war. With the agreement of the authorities, the ICRC had access to these zones and assisted more than 300,000 people in Iraqi Kurdistan, bringing them 15,000 tonnes of emergency food supplies. It also took action on several occasions on behalf of prisoners captured during these conflicts. At the same time, in Iran, where more than a million Kurds and Iraqi Shiites had taken refuge, the ICRC provided support for the Iranian Red Crescent: 7,000 tonnes of relief supplies, 16,000 tents and 550,000 blankets were distributed to these displaced people who were in a state of utter deprivation. At the same time, when a threat of serious epidemics arose in Baghdad and several of the provinces, the ICRC launched large-scale operations and technical programmes to restore the drinking water supply, which had been severely disrupted by coalition bombing of power stations. At the height of its activities, the ICRC delegation in Iraq comprised 314 people, 214 of whom were seconded from National Societies, and, with their efficient help, four field hospitals were set up in Iraqi Kurdistan. In Iran, 80 delegates from different National Societies came to work in ICRC operations. The Turkish authorities however declined the ICRC's offer to send delegates to areas bordering on Iraq where several hundred thousand Kurds fleeing the combat zones had gathered in a matter of days.

With regard to the prisoners of war held by Iraq, the stalemate was finally broken on 27 February when Iraq, in accepting Security Council resolution 687 which put an end to hostilities, then undertook to facilitate the repatriation of all Kuwaiti civilians and nationals of third countries, together with all prisoners of war held since the invasion of Kuwait. On

7 March, in accordance with its mandate as a neutral intermediary, the ICRC organized a meeting in Riyadh bringing together military representatives of the coalition forces and of Iraq. An agreement was signed on the procedures and time-table of operations under which the ICRC was to repatriate more than 6,600 Kuwaiti prisoners of war and civilian internees, 64 coalition prisoners and more than 71,000 Iraqi prisoners of war and civilians. It should be recalled here that upon the outbreak of hostilities the ICRC had been authorized, in accordance with its mandate and the provisions of the Third Convention, to visit all the prisoners captured by the coalition forces, but that the government of Iraq consistently rejected our representations, in flagrant violation of this Convention. For the same reasons, the ICRC never gained access to Kuwait throughout the entire Iraqi occupation. The civilian population was subjected to reprisals, coercion, arrests and deportation, not to mention the plunder of public and private property, and the fate of a large number of Kuwaiti soldiers and civilians deported to Iraq remains uncertain to this day. Immediately after the liberation of Kuwait, in view of the acts of violence and denials of justice prevailing there, the ICRC offered its services to the authorities and obtained permission to visit people held on the grounds of collaborating with the enemy. It also took steps to protect people who were under expulsion orders. In this context, the problem of stateless persons is still a matter of great concern for the ICRC.

I shall conclude my analysis here, since my intention was not to draw up a complete inventory of conflicts, but to use the most telling examples to draw attention to the significance and scope of humanitarian law and to demonstrate the tragic consequences that its rejection or only partial implementation will inevitably entail for the victims. To that extent, my remarks apply to all conflicts.

Conclusions

While the effects of so many wars have been partly contained by constantly expanding humanitarian action, I have to admit to you that we at the ICRC are very often dismayed by the urgent need to find solutions which always seem to elude our grasp. Of course, we remain determined to pursue our mission and to intensify our efforts, but what we need to be able to make progress is evidence from all governments party to the Conventions of a similar determination to match their commitments by their actions.

Pacta sunt servanda! That is my first conclusion. Article 1 common to the Geneva Conventions leaves room for no possible doubt on the matter, since *the High Contracting Parties undertake to respect and to ensure respect for humanitarian law in all circumstances.*

This is a clear legal obligation, primarily engaging the individual responsibility of States in conflict, but at the same time having a wider scope, since every State party to the Conventions is bound to ensure respect for the law. That is why, when a State violates the commitment it entered into by ratifying the Conventions, all other States must feel concerned. So what is to be done?

Humanitarian law relating to international conflicts includes several provisions designed to ensure its implementation and application. This task is assigned not only to the ICRC but also to the Protecting Powers, that is, third States which belligerents should appoint upon the outbreak of hostilities. This monitoring mechanism, strengthened in 1977 with the adoption of the Additional Protocols, has nevertheless been inadequately applied and has now practically fallen into disuse. This should give us food for thought, for we believe that in many cases the appointment of Protecting Powers could help to improve the implementation of international humanitarian law by parties to a conflict.

With the adoption of the Additional Protocols, another measure was added to the system for ensuring implementation of humanitarian law. Article 90 of Protocol I provides that when not less than twenty High Contracting Parties have agreed to accept its competence, an International Fact-Finding Commission shall be established. This was in fact done on 25 June 1991, and the Commission is competent to enquire into any serious violations of the Geneva Conventions and the Protocol and to facilitate on the basis of its report the restoration of strict respect for the provisions of the law. But although 107 States have so far ratified Protocol I, only 23 have recognized the mandatory competence of the Commission. The ICRC deeply regrets this state of affairs and calls upon States which have not yet done so to recognize the competence of the Commission and thus to make a decisive contribution to strengthening respect for the rules of humanitarian law.

Finally, Article 89 of Protocol I provides that in the event of serious violations of the Conventions, the High Contracting Parties undertake to act, jointly or individually, in cooperation with the United Nations and in conformity with the United Nations Charter.

While the responsibility of States to respect and to ensure respect for humanitarian law is thus clearly established, we cannot help but note, as I have mentioned in my report, that implementation of this law meets with a great many difficulties in both international and internal conflicts. It is obviously necessary to strengthen respect for the Geneva Conventions and their Additional Protocols, and this leads me to my second conclusion, namely, that it is essential not to leave humanitarian law in a state of stagnation. The question that arises is how the joint responsibility of all the States party to the Conventions to ensure respect for the law can be

more efficiently and rigorously exercised. Will the existing implementation mechanisms suffice for the achievement of that aim or should new ones be defined and developed? I have no immediate answer, but in the new international climate this is a topic that the ICRC intends to pursue actively in consultation with the States party to the Geneva Conventions. At the same time, we must also redefine and intensify our action to disseminate humanitarian law in order to stimulate public awareness of the vital need for observance of its provisions. The National Red Cross and Red Crescent Societies will clearly have to be more active in this respect in their own countries. We should also associate the media more closely into this effort, since they are often direct witnesses of the tragic consequences of violations of humanitarian law, and the impact of their reports on public opinion and government leaders has been strikingly demonstrated in recent months.

My third and final conclusion concerns the recognized need for improved coordination of humanitarian action. This matter is being debated within the United Nations system. The very scale of the needs of victims of the conflicts in Cambodia, Afghanistan, Sudan, Somalia, Mozambique, and recently of the Gulf war and its aftermath, is enough to convince us that closer coordination of humanitarian aid is indeed a necessity. Such concertation is indeed necessary to preclude any duplication of effort and enhance the efficiency of everyone concerned. The ICRC, while maintaining its independence as a strictly humanitarian, neutral and impartial institution mandated to perform the tasks assigned to it by the Geneva Conventions, is prepared to take part in such mechanisms which may be set up within the United Nations.

The ICRC further intends to improve coordination within the International Red Cross and Red Crescent Movement itself by establishing a broader and more intensive working relationship with the National Societies, whose help, collaboration and support are essential for the performance of the tasks entrusted to the ICRC by the Statutes of our Movement. Our solidarity will thus be strengthened and our efficiency enhanced.

The profound political upheavals of the last few years have brought us to a turning point between a past which is scarcely behind us and a future in which mankind is trying with fresh enthusiasm to redefine relationships and to rediscover human values. Let us ensure that we do not miss the opportunity history offers us today and let us work together to restore to the Red Cross and Red Crescent ideal the universal dimension which has given it full force of law.
