The 125th anniversary of the International Review of the Red Cross

*A FAITHFUL RECORD**

II. VICTORIES OF THE LAW

by Jacques Meurant

> From a strictly legal standpoint a veritable law of humanity has been created, whereby the integrity and dignity of the individual are protected in the name of a moral principle that transcends the boundaries of national law or politics.
>
> Max Huber
> *Le droit des gens et l'humanité*[1]

1. Law, time and morality

The first issue of the *Bulletin international des Sociétés de secours aux militaires blessés* (October 1969) contains an appeal by the International Committee for ratification of the Articles of 1868 additional to the 1864 Geneva Convention. It is addressed to the Central Committees of the Relief Societies, with the request that they approach their respective governments on the matter.[2] By the same token, the Committee proposed

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* Part I of this article, "Protection and Assistance", appeared in the *International Review of the Red Cross (IRRC)*, No. 303, November-December 1994, pp. 532-541.

[1] *Revue internationale de la Croix-Rouge (RICR)*, No. 404, August 1952, pp. 646-669, at p. 666.

[2] "Ratification des articles additionnels à la Convention de Genève", pp. 6-7.

as recommended reading the work by Gustave Moynier, *Etude sur la Convention de Genève,*[3] which was described as a guide for use by army officers and doctors to give them a better understanding of the provisions of the 1864 Convention, "to refute the objections of its detractors and, by demonstrating that this instrument represents a victory for civilization, to turn them into zealous supporters".[4] In the second issue of the *Bulletin* (January 1870), the Committee asked the Central Committees to what extent States had promulgated penal or other legislation and military ordinances or regulations relating to the stipulations of the Geneva Convention or action by relief societies.[5]

One hundred and twenty-five years later, the *Review* still reflects the same matters of concern to the ICRC. It still makes exactly the same type of appeal and reports on similar action, in order to ensure that what we now refer to as "international humanitarian law applicable in armed conflicts" still lives and breathes, and that it is understood and disseminated and hence increasingly observed.[6] Indeed, ever since its creation the *Review* has been telling the story of the never-ending quest for what Gustave Moynier referred to as "the gradual mellowing of the law of war".[7] It is a story about the wide range of initiatives taken by the ICRC in accordance with its mandate,[8] about a wealth of research, studies, and representations made to governments, and about numerous expert consultations both within the International Red Cross and Red Crescent Movement and outside it. It is a long litany of proposals that have been accepted and then amended, of projects that have been aborted and then reinstated, and of concessions made at innumerable conferences and preparatory meetings.

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[3] Gustave Moynier, *Etude sur la Convention de Genève*, Librairie Joël Cherbuliez, Paris, 1870, 376 pp.

[4] *Ibid.*, p. 10.

[5] "Questions adressées aux Comités centraux", pp. 62-64.

[6] Over time, the *Review* has gradually specialized in humanitarian law, and is probably the only multilingual, international journal to deal with this body of law on a regular basis. However, it is encouraging to note that in recent years National Societies and academic institutions have launched international reviews on humanitarian law, sometimes jointly. Furthermore, an increasing number of international and national reviews on public international law are giving wider coverage to humanitarian law and humanitarian activities.

[7] Gustave Moynier, *op. cit.*, p. 19.

[8] See Article 5, paras. 2 and 3, of the Statutes of the International Red Cross and Red Crescent Movement, and Article 4, paras. 1 and 2, of the Statutes of the ICRC (of 20 January 1988). Furthermore, Article 3 of the ICRC Statutes of 10 March 1921 had already stipulated that the goal of the ICRC was to coordinate efforts to relieve the victims of war, sickness and civil disaster.

Readers interested in tracing the evolution of humanitarian law through the *Review* will notice at once that, as with other branches of international law, humanitarian law is remarkable for its complex relationship with time, not as an abstract phenomenon but as a gauge of human attitudes and convictions. With time, *de facto* situations acquire the force of law; this is how custom and written law came about, with the law constantly striving to keep pace with the facts.

As Jean Pictet observed in 1966, "the law is always lagging behind the logical and moral interpretation of social facts. It therefore tends to complete and improve itself the better to comply with what is required of it".[9] As regards humanitarian law, an extraordinary law which applies in extraordinary situations, the struggle to keep up with events takes on tragic proportions, for the stakes are none other than protection of the individual and respect for his or her dignity in situations of armed conflict. In truth, political and military considerations have always posed a challenge for the law, and to a certain degree have forced it to adapt and evolve. It is a well-known fact that the 1929 Geneva Convention relative to the Treatment of Prisoners of War resulted directly from the dreadful experiences of the war of 1914-1918. And the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War resulted from the boundless suffering endured by millions of civilians during the Second World War.

The ultimate goal of humanitarian law, which engages the responsibility of the State, is to protect the individual. Here again, it took decades for humanitarian law to succeed in giving the individual primacy over State sovereignty. And it was 85 years before the protection afforded to wounded and sick combatants and medical personnel by the 1864 Geneva Convention was extended by the Fourth Geneva Convention of 1949 to the civilian population. But the adoption of Article 3 common to the Geneva Conventions must be seen as major breakthrough. In the words of Max Huber, this "humanitarian iron ration"[10] at all times affords minimum guarantees to individuals, even vis-à-vis the authorities of their own countries of origin.

The originality of humanitarian law lies in the fact that it bridges two different types of concept — one judicial, the other moral. In addition to

[9] Jean Pictet, "The principles of international humanitarian law", *IRRC*, No. 66, September 1966, p. 462.

[10] Max Huber, "Le droit des gens et l'humanité", *op. cit.*, p. 666.

striking a compromise between military imperatives and humanitarian obligations, humanitarian law has a very special moral dimension in that it preserves a measure of humanity in the heart of violence. This is exactly what Henry Dunant and the other founders of the Red Cross were calling for. As former ICRC member Edmond Boissier wrote: "Greatest credit goes to the founders of the Red Cross for having introduced into relations between all States in the event of war the recognition of a moral principle, and for having incorporated this principle in international law and in practice by means of a universally respected and generally observed convention."[11]

Gustave Moynier[12] was the father of a long line of ICRC jurists and thinkers who over the years have built up the present sound structure of humanitarian law. The *Review* has been privileged to record their reflections and their initiatives. Members or staff of the ICRC, they have journeyed through the past 125 years with the fervour of pioneers. Like master craftsmen, they did and still do take pride in a job well done. They had and still have the strength to see their job through to the end, and the capacity to adapt constantly to the times. They have also understood that law is not made in diplomatic circles or universities alone, but is enriched by the experience of practitioners in touch with reality, delegates out in the field or members of National Red Cross and Red Crescent Societies.

Their contribution to the development of the law and their efforts to introduce a measure of morality into conflicts must be duly recognized.

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The period 1969-1994 is particularly noteworthy since during those 25 years great progress was made in the field of humanitarian law. The years 1969 to 1977 were a time of intense preparation and negotiation which culminated, with the adoption on 8 June 1977 of the Protocols additional to the Geneva Conventions, in the reaffirmation and development of humanitarian law applicable in armed conflicts.

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[11] Edmond Boissier, "Morale internationale et Croix-Rouge", *RICR*, No. 249, May 1923, p. 449.

[12] Gustave Moynier was President of the International Committee from 1864 to 1910. He was also the *Bulletin*'s first editor, a position he held until 1898.

The following year saw the start of a fresh era, in which the new law was actively promoted and disseminated and efforts were made to explain and interpret the new provisions. That era continues to the present day, but in the late 1980s the problems caused by an upsurge in all forms of violence and in breaches of the law made it imperative to take measures to uphold the existing law and to make certain innovations.

This was the conclusion reached by the International Conference for the Protection of War Victims held in Geneva from 30 August to 1 September 1993. The Conference marked the start of a new phase that is primarily focused on a more rigorous application of humanitarian law.

At each successive stage, the *Review* has kept a record of developments in the law, while at the same time helping to clarify, explain and spread knowledge of its provisions.

2. Reaffirming and developing the law

By the end of the 1960s the Movement's components and the United Nations alike were facing a plethora of conflicts, many of them internal, and new types of players, such as national liberation movements. In particular, they were faced with horrendous suffering among the civilian population as indiscriminate bombing and new lethal weapons claimed increasing numbers of victims. They thus became aware of the need not only to reaffirm the existing humanitarian rules relating to armed conflicts, but also to adapt the law to these new situations.

To mention but a few points, the law of The Hague — which had been neglected for some 50 years — and the law of Geneva could certainly no longer be dissociated. The bombing of the city of Dresden made a deep impression on the collective memory, and the recent ceremonies marking its fiftieth anniversary serve as an opportune reminder that 24 million civilians died in the Second World War, one and a half million of them in air raids. As Jean Pictet pointed out, "It is realized now, somewhat late, that the massive bombardments of cities did not pay from the military standpoint. Such bombardments were not justified morally, legally, or even from a practical point of view"[13].

[13] Jean Pictet, "The need to restore the laws and customs relating to armed conflicts", *IRRC*, No. 102, September 1969, pp. 459-483, at p. 478.

Furthermore, the limits imposed on ICRC activities in a number of conflicts during the 1960s threatened to jeopardize the organization's credibility. States parties to the Geneva Conventions contested the applicability of all or part of their provisions and refused to grant the ICRC access to prisoners, so that the organization was unable fully to discharge its functions.[14]

Mindful of its mandate and the duties entrusted to it by International Conferences of the Red Cross in regard to developing the law, in 1957 the ICRC began preparing a set of rules intended to limit the effects of hostilities on the civilian population and to protect it from indiscriminate attacks.

The draft rules were submitted to the 19th International Conference of the Red Cross in New Delhi in 1957. The extremely detailed text, which included a ban on atomic, bacteriological and chemical weapons, was attacked from all sides, particularly by States in possession of nuclear weapons.[15] A resolution was eventually adopted inviting the ICRC to submit the draft for consideration by governments, and it subsequently sank without trace.

The United Nations, meanwhile, had not been idle. Under political pressure from newly independent States which felt that international humanitarian law was inadequate to deal with the type of campaign they had waged to gain their independence, and as other movements pursued their own struggles in Viet Nam, Mozambique, Rhodesia and South Africa, in the late 1960s the United Nations passed a series of resolutions on respect for human rights in armed conflicts. One of these was adopted in 1968 by the International Conference on Human Rights; others were adopted in 1968, 1969 and 1970 by the General Assembly. All of them provided a stimulus for the International Red Cross.

The 21st International Conference of the Red Cross, held in Istanbul in October 1969, gave a decisive impetus to this trend in its Resolution XIII on the Reaffirmation and Development of the Laws and Customs applicable in Armed Conflicts, which underlined "the necessity and the

[14] See previous article in this series (note*), pp. 534-535.

[15] 19th International Conference of the Red Cross, New Delhi, October-November 1957, *Proceedings concerning Draft Rules for the limitation of the dangers incurred by the civilian population in time of war*, Geneva, April 1958 (mimeographed), 199 pp. See also *IRRC*, October 1956.

urgency of reaffirming and developing humanitarian rules of international law applicable in armed conflicts of all kinds, in order to strengthen the effective protection of the fundamental rights of human beings, in keeping with the Geneva Conventions of 1949". This important decision, which the ICRC had prepared well beforehand, marked a turning-point in the history of humanitarian law over the last quarter-century.

In 1971 and 1972, the ICRC convened conferences of government experts and specialists from the National Red Cross and Red Crescent Societies representing the world's principal legal and social systems. The goal was to analyse a number of issues that Max Petitpierre, former President of the Swiss Confederation, aptly summarized in the *Review:* "The new treaty law should in particular provide civilian populations with protection against indiscriminate warfare, should prohibit certain weapons and safeguard the victims of wars, internal disorders and guerrilla warfare. The latter gives rise to some delicate problems. Who may legitimately carry out hostile acts, and against whom or what, is something which must still be defined. There must also be rules which belligerents must observe during hostilities, such as the safety of surrendering enemies; the treatment of parachute troops; looting; and blockade (bearing in mind the experience of the war in Nigeria). The chapter on supervision, reprisals and sanctions will be capital".[16]

Following these series of meetings, the ICRC was in a position to prepare two draft protocols; one relating to the protection of victims of international armed conflicts and the other to the protection of victims of non-international armed conflicts. These drafts were to serve as basic documents for the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, which opened in Geneva on 20 February 1974. The Conference held four sessions, the last in June 1977.

Throughout this period, the *Review* not only provided detailed accounts of the preparatory meetings and the sessions of the Diplomatic Conference (see *Bibliographical notes*, pp. 305-306 below), but also endeavoured to make a contribution by publishing pertinent studies, especially on new or sensitive issues.

For example, the issue of aggression was broached at the very beginning of the Diplomatic Conference. Some States asserted that from the

[16] Max Petitpierre, "A contemporary look at the International Committee of the Red Cross", *IRRC*, No. 119, February 1971, pp. 63-81.

legal and the moral standpoint it is wrong for the aggressor and the State attacked to find themselves on the same footing with regard to the laws and customs of war because acts of war committed by an aggressor State are, *ipso facto*, illegal; those who commit them deliberately put themselves outside the law and should therefore be punished.

Statements like these undermine the entire structure of humanitarian law and it took all the persuasive powers of the ICRC representatives, supported by other delegates, to convince the participants that, "while the Conventions take the form of agreements between States, they are above all a declaration of the rights of the individual vis-à-vis the arbitrary acts of the enemy; moreover, they were drawn up in the interests of individuals rather than governments".[17]

Another question widely discussed in the *Review* is the scope of application of Protocol I, which encompasses "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination...". The provisions relating to this third type of conflict, which the ICRC had categorized as non-international, were transferred to Protocol I during the first session. The issue was the subject of a lengthy and arduous debate, which caused considerable apprehension among those who feared that the law might end up distinguishing between several types of conflicts, combatants and civilian victims, with some enjoying better protection than others. Did this signify a return to the concept of a "just war", thereby threatening the outcome of the Conference?

These fears were overcome, however, and Article 1, para. 4, was finally adopted by a large majority, prompted, in fact, by quite different motives. There were those who considered that the provision was of a transitory nature and would apply merely in the very few cases where colonialism or foreign domination still existed. For others, this new category of armed conflict was of a permanent nature, and the list of such conflicts was by no means limited to those currently taking place in the world.[18] It is ironic that the former argument won the day, since no movement has ever referred to Article 1, para. 4, since the Protocols were adopted! On the other hand, it is regrettable that this new article caused States — and powerful ones at that — to refuse to become party to the Protocols.

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[17] Claude Pilloud, "The concept of international armed conflict: further outlook", *IRRC*, No. 166, January 1975, pp. 7-16, at p. 9.

[18] Claude Pilloud, *ibid.*, p. 13.

Another controversial issue was the status of combatants, particularly guerrilla fighters. The *Review* has published numerous legal and historical studies on guerrilla warfare since the end of the First World War. Since the 1960s, this formerly exceptional type of warfare has become the norm, yet very little progress has been made in the provisions relating to the status of guerrillas. Admittedly, Article 3 common to the Geneva Conventions prohibits the summary executions that were once the lot of captured guerrilla fighters, and *ad hoc* agreements have been reached between parties on the treatment of such prisoners. Nonetheless, there was a need for regulations such as those proposed by the ICRC in 1971 at the First Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law. "It would be advisable for [States] to convince themselves, by means of careful historical study, of the urgent need to reach a solution which may safeguard the essential rights of the human person — even if he is the worst criminal — and their overriding political needs. There can be no doubt that the humane treatment of prisoners entails considerable advantages, not only from the standpoint of reciprocity (and sometimes even without reciprocity), but also for a return to domestic and international peace".[19]

The lengthy discussions on this issue that began at the first session of the Conference finally resulted in a liberal provision so complex that, if truth be told, it remains open to subtle differences of interpretation to this day.

The Conference was jeopardized by a number of other thorny issues, too numerous to be described here. However, the proceedings of the meetings and the analyses published in the *Review* reveal the weighty nature of the discussions and the results of a process which may be considered a new victory for humanitarian law.

Admittedly, Protocol II relating to non-international armed conflicts was weakened, but such was the price to be paid for the support of young States of the Third World. Moreover, discussions on atomic, biological and chemical weapons were ruled out at the Conference, and here again, an ironic glance can be cast at the usefulness of the rule of consensus, which gave rise to a unity of views prompted by a wealth of ulterior motives!

Nonetheless, the gains by far outweighed the shortcomings and the Additional Protocols were invaluable in helping humanitarian law keep

[19] See Michel Veuthey, "Military instructions on the treatment of prisoners in guerrilla warfare", *IRRC*, No. 132, March 1972, pp. 125-137, at p. 137.

pace with contemporary reality. Consensus was reached on the essentials: protection of the civilian population against the dangers of indiscriminate warfare; prohibition of blanket or indiscriminate bombing. This fundamental achievement was accompanied by increased protection for medical personnel, equipment and transports, for civil defence activities, for the natural environment and for cultural objects.

The role of the ICRC was reaffirmed, while the High Contracting Parties and the parties to international armed conflicts pledged to facilitate action taken by National Red Cross and Red Crescent Societies and the League of Red Cross Societies in behalf of conflict victims.

Two other noteworthy points were the adaptation of the provisions limiting the right of belligerents to choose methods or means of warfare for military operations, and the efforts made to strengthen monitoring and repression mechanisms.

In 1987 ICRC President Cornelio Sommaruga declared: "Is there any room left for doubt that the protection of the individual was one of the primordial objectives of the Protocols, when the States agreed to strengthen the rights accorded to the individual and the minimum fundamental guarantees of humane treatment for all individuals in times of armed conflict, both international and internal?"[20]

3. Promoting and disseminating the law

As soon as the Diplomatic Conference drew to a close the ICRC embarked on a campaign to persuade States to ratify the Protocols or accede to them. Senior ICRC officials and delegates set out on a tour of the world's capitals, and the National Societies were invited to make their own approaches to their respective governments.

The initial results were hardly encouraging, despite resolutions adopted by International Conferences of the Red Cross in Bucharest (1977) and Manila (1981) urging States to ratify the Protocols. By 1981, only 17 States were party to Protocol I and 16 to Protocol II. The numerous impediments to ratification stemmed from underlying political and ideological motivations. Very often, ratification was rejected on grounds of

[20] Cornelio Sommaruga, "The Protocols additional to the Geneva Conventions: a quest for universality", *IRRC*, No. 258, May-June 1987, p. 245.

national sovereignty as States applied their unilateral interpretations of the law. Further, it should be borne in mind that "the decision to ratify the Protocols is also a political act in the context of international relations. Governments want to know who has already ratified the Protocols and for what reasons, just as they want to know what has prompted others to hesitate or to reject the Protocols".[21] A certain degree of ignorance and indifference in diplomatic circles and government departments also played a part, not to mention the complex, even esoteric, nature of the subject matter.

Yet the ICRC never tired in its efforts and little by little, as the political situation eased with the breakdown of the two major power blocs in the late 1980s, the number of ratifications and accessions increased. By 1994, fully two-thirds of the world's States were party to the Protocols and they were well on the way to universal acceptance.

On the other hand, to date only 44 States have recognized the obligatory competence of the International Fact-Finding Commission, which is responsible for monitoring respect for humanitarian law. The ICRC will have to intensify its efforts in this regard.

The humanitarian law treaties may remain a dead letter unless States take legal and practical domestic measures to guarantee their application. The ICRC has frequently made written approaches to governments and National Societies encouraging such action. The *Review* regularly publishes information on legislation and rules of application that States have adopted for the protection of the red cross and red crescent emblems and on instructions they have issued concerning medical personnel, units and means of transport, the establishment in peacetime of National Information Bureaux and the penal sanctions to be applied in the event of grave breaches of the law. It has also reported on practical measures taken by a number of countries, such as the creation of interministerial committees or the compiling of military manuals.

Spreading knowledge of international humanitarian law is a treaty-based obligation of States, stressed in the Conventions of 1949 and reaffirmed in the Protocols. The progress made in this regard is interesting in several respects. In 1949 it was still feared that dissemination of the law might be interpreted as an attempt to justify war. Yet by 1977 not only was dissemination seen as a crucial factor in ensuring application

[21] Hans-Peter Gasser, "Steps taken to encourage States to accept the 1977 Protocols", *IRRC*, No. 258, May-June 1987, p. 266.

of the law, but it was also considered to be a moral duty in that it served to propagate a spirit of peace and solidarity.

The ICRC, the National Red Cross and Red Crescent Societies and their Federation, which were already active in the field of dissemination, were called upon by the Diplomatic Conference to play an important role in supporting the States' dissemination policies. In 1978, dissemination activities were put on a systematic and structured footing by the Programme of Action of the Red Cross with respect to dissemination of knowledge of international humanitarian law and of the principles and ideals of the Red Cross. Initially established for a four-year period, and twice extended up to 1990, the programme's essential objectives were to conduct and coordinate activities relating to dissemination, education and research and to encourage States to become party to the Protocols. The text also describes the tasks to be undertaken by each of the Movement's components with support from the Henry Dunant Institute.

Referring to the *Oxford Manual* on the laws of land warfare, in 1880 Gustave Moynier wrote: "If this purpose is to be achieved, it is not enough for sovereigns to promulgate new laws. It is also essential that they disseminate knowledge of them ...".[22]

The dissemination of humanitarian law is hampered by the very nature, volume and complexity of its rules. Yet making as many people as possible familiar with the law has always been one of the primary goals of the Movement. This effort was given new impetus by the publication in 1979 of a collection of the "Fundamental rules of humanitarian law applicable in armed conflicts", which in seven maxims expresses the very essence of the law.[23] With a view to facilitating teaching of the law, the *Review* has also published summaries, outlines and synopses, which to this day are considered to be authoritative sources.[24]

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[22] Quoted by Paul Ruegger, "Gustave Moynier", *IRRC*, No. 178, January 1976, p. 6.

[23] The text of the "Fundamental rules of humanitarian law applicable in armed conflicts" is reproduced in *IRRC*, No. 206, September-October 1978, pp. 247-249.

[24] Some examples:
- Stanislaw E. Nahlik, "A brief outline of international humanitarian law", *IRRC*, No. 241, July-August 1984, pp. 187-226 (offprint with bibliography)
- Jean de Preux, Synopses I to IX, published in the *Review* between 1985 and 1989 (complete offprint)
- Technical note on the Protocols of 8 June 1977 additional to the Geneva Conventions, *IRRC*, No. 242, September-October 1984, pp. 274-277

Promoting a better understanding of humanitarian law also entails demonstrating that its principles and rules have their roots in all civilizations, religions and traditions. On a number of occasions the *Review* has published articles about the contribution of Christianity, Islam, Buddhism and African traditions to respect for the individual in time of armed conflict. "Historical and philosophical works on the humanitarian movement thus constitute not only an indispensable contribution to our knowledge of humanitarian law, but also an essential means of strengthening it, since legal rules are not followed as standard practice until they become part of the collective consciousness of all peoples and nations".[25] Within the Movement, a number of tactics have been used to disseminate the law among target groups, particularly the armed forces. These initiatives have been given wide coverage in the *Review*,[26] which also reports on training seminars organized by the ICRC in all parts of the world, usually in cooperation with National Societies or academic institutions.

Such activities, combined with the production of an impressive amount of written and audiovisual material, demonstrate how the Movement's greatest and most remarkable efforts over the past 20 years have been channelled into spreading knowledge of humanitarian law and the Fundamental Principles of the Red Cross. Yet dissemination of the law can be a thankless task, requiring self-sacrifice and professionalism as well as a firm belief in the long-term effects.

Although several States have understood the importance of disseminating humanitarian law and have taken measures accordingly, it is only too evident that the results are still inadequate.

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[25] Karel Vasak's "Conclusions" to the collective work *International Dimensions of Humanitarian Law*, UNESCO, Pedone, Paris/Henry Dunant Institute, Geneva, 1986, p. 297.

[26] For example, between 1976 and 1993 over 1,000 high-ranking officers from 118 countries attended international courses for military officers on the law of armed conflict, organized by the San Remo Institute with the support of the ICRC. In this regard, the Institute's invaluable contribution to the development of the law cannot be overstated. As Jovica Patrnogic, Honorary President of the Institute, pointed out, "During the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (1974 to 1977), the Institute organized annual round tables, between sessions of the Conference, at which those taking part in the Conference and others informally discussed the main issues and the means of resolving them. The ICRC gave its full support to this forum." "Working for a humanitarian dialogue. The International Institute of Humanitarian Law celebrates its twentieth anniversary", *IRRC*, No. 278, September-October 1990, pp. 449-455, at p. 453.

Round table meetings and seminars have been organized by the Institute jointly with the ICRC and other organizations for the purpose of discussing ways — like those described in this article — of revising, updating and adapting the law.

In order to keep up the momentum, the ICRC and the Federation drew up the "Guidelines for the '90s", a body of advice and rules for all those concerned with dissemination, and submitted them for approval by the Council of Delegates at its November 1991 session in Budapest. While the objectives of dissemination remain unchanged, methods have evolved. National Societies can no longer engage in dissemination as a separate activity; it must be associated with other practical services for the community. In certain cases, it may be useful to link the dissemination of humanitarian law with that of other branches of law, such as human rights or refugee law. Lastly, priority must be given to training instructors and other partners to serve as relays.[27]

Today, four years after the "Guidelines" were adopted, the chaotic nature of current conflicts, the growing numbers of civilian victims, and the increased dangers faced by operational personnel makes dissemination seem even more vital to prevent new outbreaks of violence or, failing that, to prevent breaches of the law. It would appear that the time has come for a new preventive strategy, one designed to help States engage in systematic dissemination of the law in peacetime among the armed forces and the police, and also among young people, academic circles and the media, and, in time of conflict or unrest, to set up ad hoc programmes that focus on the needs of actual or potential victims.

4. Explaining and upholding the law

The dissemination process cannot be dissociated from the efforts made to explain the law and its provisions, if only to avoid reducing its scope through oversimplification or to prevent erroneous interpretations.

For this reason, the ICRC published *Commentaries* on the Geneva Conventions of 1949 and later on the Additional Protocols of 1977. Where necessary, the *Commentaries* were supplemented by studies in the *Review* that discussed important issues such as the protection of the civilian population, national liberation movements, internationalized internal conflicts, the role of neutral States, and violations of the law. The *Review* also addressed specific topics such as protection of medical activities,

[27] René Kosirnik, "Dissemination of international humanitarian law and of the principles and ideals of the Red Cross and Red Crescent", and "Guidelines for the '90s", *IRRC*, No. 287, March-April 1992, pp. 173-178.

journalists on dangerous missions, cultural objects, national information bureaux, judicial guarantees, and the status of mercenaries.

Care should be taken, however, not to dismiss these explanatory studies as mere academic exercises, since they formed part of an ongoing process of reflection prompted, on the one hand, by the proliferation of internal conflicts in which women and children were the main victims and, on the other hand, by a plethora of population movements that swelled the ranks of refugees and displaced persons moving either across national borders or within their own countries. These conflicts also caused large-scale damage to the infrastructure and the environment, thereby severely hampering protection and assistance activities conducted under the terms of humanitarian law and revealing shortcomings in application of its provisions. Consequently, there were those who reached the rather hasty conclusion that the time had come to create new legal instruments geared to new conflict situations.

Faced with such arguments the ICRC felt there was a real danger that humanitarian law could become isolated, but was convinced that, instead of encouraging the drafting of new rules, it was vital to explain the law the better to uphold its provisions.

This approach was reflected in the *Review*, which published a number of articles on the protection of children, of refugees and displaced persons, and of the environment in times of conflict. These issues, particularly since the Gulf war, had triggered a number of separate initiatives on the part of the international community. The ICRC and the experts and practitioners consulted on the subject agreed that the existing law covered practically every situation and that it did afford sufficient protection as long as it was properly implemented and respected. Indeed, "the true problem does not really lie in the inadequacy of the norms, but in ignorance of or disregard for them ...".[28] And the true remedy can be summed in just a few basic principles — that States respect and ensure respect for the law, and make its rules widely known.[29]

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[28] "Protection of the environment in armed conflicts", statement by the ICRC to the 47th Session of United Nations the General Assembly on 1 October 1992, *in* Antoine Bouvier, "Recent studies on the protection of the environment in time of armed conflict", *IRRC*, No. 291, November-December 1992, note 36, p. 565.

[29] At the conclusion of her article, "The protection of children during armed conflict situations", Sandra Singer exclaims: "What is needed is not more laws to protect the child in armed conflict situations. What is needed is dissemination and implementation of existing international humanitarian law", *IRRC*, No. 252, May-June 1986, pp. 133-167, at 166.

The conflict between Iraq and the Kurds in the wake of the Gulf war, and the wars in Somalia and the former Yugoslavia have highlighted the problems of humanitarian assistance and access to victims. The difficulties encountered in these conflicts shook the structure of humanitarian law to the core by giving rise to the notion of a "right of intervention on humanitarian grounds". That indicated a failure — or a refusal — to understand that the right to humanitarian assistance is a fundamental principle of humanitarian law. Over 20 provisions in the Geneva Conventions and the Protocols deal with the medical and material assistance to which the victims of armed conflicts are entitled. In this context, the law reflects moral values in that they both hold that assistance to a person in need cannot be regarded as interference.

Studies published in the *Review* since 1991 demonstrate how the notion of a right to interfere on humanitarian grounds as defined by its advocates does not stand up to scrutiny under existing humanitarian law. Nonetheless, as has been pointed out, "there is certainly room for improvement in means of implementation to facilitate access to victims, protect relief workers and coordinate their efforts".[30]

Which brings us to the crux of the matter. The law is there, it does exist, but the way in which it is applied leaves much to be desired owing to lack of political will on the part of the States concerned and to poor understanding of a law made difficult to grasp by complexity of its provisions.

Just as there is a need for better coordination in large-scale humanitarian operations between the United Nations system and other humanitarian organizations, an effort must be made to define the guiding principles and the enforceable rules of humanitarian law which take into account the specific stipulations of human rights law, refugee law, etc. One example of this is the "Guiding principles on the right to humanitarian assistance" adopted in April 1993 by the Council of the International Institute of Humanitarian Law in San Remo following its Round Table meeting on "The evolution of the right to assistance".[31]

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[30] Maurice Torrelli, "From humanitarian assistance to '*intervention on humanitarian grounds*'?", *IRRC*, No. 288, May-June 1992, pp. 228-248. On this subject, see also: Yves Sandoz, "'*Droit*' ou '*devoir d'ingérence*' and the right to assistance: the issues involved", *ibid.*, pp. 215-227; and Denise Plattner, "Assistance to the civilian population: the development and present state of international humanitarian law", *ibid.*, pp. 249-263.

[31] "Guiding Principles on the Right to Humanitarian Assistance", *IRRC*, No. 297, November-December 1993, pp. 519-525.

Admittedly, these guiding principles do not have the force of law, but they can help strengthen the law by adapting it where appropriate and can highlight areas requiring new provisions.

5. Adapting the law and introducing new provisions

Upholding the law also means adapting it to keep pace with the political, social and technical changes that take place in contemporary society.

In its role as a pioneer, the ICRC has consistently adhered to two golden rules: to take initiatives only on issues that fall strictly within its competence and never to propose new developments in the law until discussions have taken place with relevant sectors of the international community and expert opinions have been obtained.

In recent years the ICRC has focused its attention on three areas. The first concerns signals and the identification of persons and objects protected by international humanitarian law; the second concerns the conduct of hostilities and methods and means of warfare, particularly in internal conflicts; and the third concerns the protection of the individual against all forms of violence.

(a) Signals and identification

The identification of medical personnel, units and transports is an essential element of the system of protection introduced by the 1864 Geneva Convention. The ICRC has always attached great importance to this issue, which has received ample coverage in the *Review*. Developments in aerial warfare, for example, prompted the institution to conduct aerial tests with the Swiss army on the visibility of the red cross and red crescent emblems from the air and to make improvements. Such tests took place in 1936, and most recently in 1990.

Technological advances, however, have profoundly affected methods and means of warfare, so that the distinctive emblem alone no longer affords sufficient protection for medical personnel, units and transports. Systematic research has been undertaken to develop the use of radiocommunications, radar, underwater acoustic signals, and light signals.

In 1990, a meeting of technical experts convened by the ICRC set about reviewing Annex I of Protocol I to incorporate the technical provisions already adopted by the competent international organizations. The

review process lasted until 1993, and the amendments proposed by the experts came into force on 1 March 1994.[32]

It would now appear that identification is no longer a technical problem, but an issue that depends largely on the will of the parties concerned. Indeed, as one ICRC expert pointed out, parties should "recognize the right of protected transports and those not involved in a conflict to use all technical means of identification available today, in order to avoid being taken as targets, or even destroyed, by belligerent forces".[33]

(b) The conduct of hostilities

As regards the conduct of hostilities, Protocol I of 1977 reaffirms two fundamental rules of humanitarian law, namely: "the right of the Parties to the conflict to choose methods or means of warfare is not unlimited", and "it is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering" (Article 35, paras. 1 and 2). These rules have been developed and implemented by a series of international instruments, ranging from the 1868 Declaration of St. Petersburg, which prohibited the use of certain types of projectiles in time of war, to the 1980 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. They have been reflected in a growing number of limitations on methods and means of warfare and the choice of targets, all taking due account of the principles of proportionality and discrimination. In the words of one former member of the ICRC: "Looking at the progress achieved in the past 125 years, therefore, one might conclude that this evolution represents triumphant progress in the field of arms control, steadily limiting the area, means, methods and targets of warfare, thus efficiently taming the tragedy of war and reducing the amount of suffering and damage it brings about."

Nonetheless, the author sagely adds: "... the evolution of constraints reducing the suffering and damage of warfare must always be seen in conjunction with the lethal and destructive power of the means and methods of combat available. In this connection a far less positive evalua-

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[32] "Entry into force of the amended version of Annex I to Protocol I, concerning technical means of identifying medical units and transports", *IRRC*, No. 298, January-February 1994, pp. 27-41.

[33] Gérald Cauderay, "Means of identification for protected medical transports", *IRRC*, No. 300, May-June 1994, p. 277.

tion seems appropriate: While international humanitarian law has made undeniable progress, the 'progress' made in terms of killing and the destructive power of the weapons available has also kept growing and seems to have grown even faster [...] Nevertheless, one cannot but conclude that in the absence of the extension and consolidation that has taken place in the field of international humanitarian law the consequences would be unimaginably more tragic".[34]

Recognizing this close link between humanitarian law and arms control, the ICRC has for many years taken an interest in the matter of weapons of mass destruction. In 1925, for example, the institution played an active role in preparing the Geneva Protocol for the prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare. More recently, it was instrumental in the drafting of the 1980 Convention on prohibitions or restrictions on the use of certain conventional weapons. In accordance with its mandate, the ICRC has also taken action to ensure that States respect the obligations incumbent on them under humanitarian law with regard to the conduct of hostilities, in particular Article 36 of Protocol I, which obliges States to determine whether the employment of a new weapon would be prohibited by the rules of international law.

In line with its usual policy, the ICRC encouraged experts from all backgrounds to formulate their views on the subject and consider ways of improving the law. The *Review*'s special issue on conventional weapons marking the tenth anniversary of the 1980 Convention gave experts, jurists and military personnel the opportunity to evaluate the contents of the Convention and its three Protocols and to underscore its shortcomings, notably the absence of provisions to prevent the excessive damage wreaked by current conflicts, particularly internal ones.

The question of the applicability of rules governing the conduct of hostilities to non-international armed conflicts was not addressed in the 1980 Convention for reasons connected with possible interference in national sovereignty. Yet this is the area where the need for new developments in the law is most pressing, and in this regard the San Remo Institute should be commended for the work done at a Round Table which led in 1989 to the adoption of the "Rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts".[35]

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[34] Daniel Frei, "International Humanitarian Law and Arms Control", *IRRC*, No. 267, November-December 1988, pp. 491-504, at p. 497.

[35] *IRRC*, No. 278, September-October 1990, pp. 383-408.

The forthcoming Review Conference of the 1980 Convention on prohibitions or restrictions on the use of certain conventional weapons will provide an opportunity for close examination of the problems caused by the use of certain weapons, for adapting the law accordingly and for deciding on measures to be taken with regard to new weaponry.

The ICRC has prepared the ground by organizing meetings of experts on anti-personnel mines and by contributing to studies of new weaponry, particularly blinding weapons.[36] It is up to the States to draw the appropriate conclusions.

(c) Protecting the individual against violence

One of the ICRC's priorities is to provide protection for the individual in situations not normally covered by humanitarian law, generally described as internal disturbances and other situations of internal violence.

The adoption of fundamental guarantees that protect individuals not only from the enemy but also from their own governments, such as those stipulated in Article 75 of Protocol I and Article 4 of Protocol II, was undoubtedly a major step towards the universal protection of victims. However, there is an important condition for the application of these guarantees, namely, the existence of an armed conflict as defined by humanitarian law.

By the exercise of its right of initiative, the ICRC has acquired unique experience in the field of internal disturbances and tension. Since 1918, when it conducted its first visit to security detainees, the ICRC has constantly expanded its activities to protect the fundamental rights of the individual in these situations that are not covered by the law, and has diversified its action in response to various forms of violence. The ICRC's role in this respect nowadays is not to take action itself, "but to approach those in power to ensure that they are aware of and meet their humanitarian responsibilities both inside and outside places of detention".[37]

The ICRC has an established policy governing its protection and assistance activities for detainees and its response to indiscriminate violence against defenceless persons, hostage-taking and forced

[36] See special issue of the *Review*, No. 299, March-April 1994, pp. 93-193.

[37] Marion Harroff-Tavel, "Action taken by the International Committee of the Red Cross in situations of internal violence", *IRRC*, No. 294, May-June 1993, p. 220.

disappearances.[38] While its offers of services can no longer be regarded as interference in the internal affairs of States, it nonetheless holds true that States are under no obligation to accept such offers.

The late 1980s saw a number of developments in the codification of international rules intended for situations of internal disturbances and tension.

In this regard, in 1988 the *Review* published two "trial balloon" articles. The first, written by an eminent international lawyer, was a draft Model Declaration containing "an irreducible and non-derogable core of human and humanitarian norms that must be applied in situations of internal strife and violence". The other was a draft Code of Conduct prepared by an ICRC expert. The Code set out the generally applicable fundamental rules, and was intended first and foremost as an instrument of dissemination appealing to the individual conscience.[39]

Both texts are based on a set of fundamental standards deriving from general legal principles, international humanitarian law, and the non-derogable rules of the international law of human rights. Although the approaches adopted by these two texts are complementary, they differ in several respects. For example, the Declaration, which is primarily addressed to States and to citizens, seeks to codify international rules, backed by procedural provisions, that protect the individual in situations of internal disturbances and tension. The Code of Conduct, on the other hand, is mostly concerned with victims, and appeals to all those who may commit acts of violence to respect the fundamental rules of behaviour. The former refers mostly to the law; the latter is more of an appeal to moral considerations.

The publication of these texts sparked the interest of jurists in a number of universities and international organizations. The result, at the conclusion of a meeting held in Turku, Finland, in 1990, was a "Declaration of minimum humanitarian standards", the purpose of which was to codify certain basic rules to be respected in times of internal disturbances and tension, or during periods when the public is exposed to exceptional danger.[40] The Declaration prescribes a normative approach,

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[38] "ICRC protection and assistance activities in situations not covered by international humanitarian law", *IRRC*, No. 262, January-February 1988, pp. 9-37.

[39] Theodor Meron, "Draft Model Declaration in internal strife", and Hans-Peter Gasser, "A measure of humanity in internal disturbances and tensions: proposal for a Code of Conduct", *IRRC*, No. 262, January-February 1988, pp. 38-76.

[40] *IRRC*, No. 282, May-June 1991, pp. 328-336.

the first step towards codification of the international rules currently in force. It was recently introduced — albeit timidly — into the United Nations system when the Commission on Human Rights decided to invite States to voice their views on its content.

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As we conclude this review of the evolution of humanitarian law over the past 25 years, one question that the ICRC was already asking ten years ago comes to mind: What is the best way of developing the law as the century draws to a close? Should one "draft new legal provisions in the form of a treaty binding on the parties or [...] work out a (non-binding) declaration of general principles whose applicability is proclaimed as a matter of course?"[41]

Where there is a lacuna in the law, a generalized declaration could prompt the drafting of a legal instrument creating new law, and in this respect the Turku Declaration might be a preliminary step towards the codification of principles and rules specific to situations of violence.

As regards situations already covered by existing treaties, on the other hand, a declaration of principles might be prejudicial to the obligatory legal provisions in that it could weaken respect for the existing law. "Is there not a danger that governments may hide behind general principles — which are more easily respected due to their general character — in order to evade specific treaty obligations?"[42]

In fact, faced with the proliferation of situations of violence, the challenge for the years ahead lies not so much in new codifications, which are all too often subject to the vagaries of politics, but rather in "the rooting of the existing values and standards, if possible even progressively extending them by means of a generous interpretation and application".[43]

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[41] Hans-Peter Gasser, "Some Reflections on the Future of International Humanitarian Law", *IRRC*, No. 238, January-February 1984, pp. 18-25, at p. 24.

[42] *Ibid.*

[43] Michel Veuthey, "Guerrilla warfare and humanitarian law", *IRRC*, No. 234, May-June 1983, p. 136.

The same message was delivered by the International Conference for the Protection of War Victims (Geneva, August-September 1993). Many participants at the Conference reaffirmed the value of existing humanitarian law while stressing that some rules required clarification or further development. Thus — as this survey of the *Review* demonstrates — too much emphasis cannot be given to the usefulness of simple rules of execution and of clear guidelines that can be used to explain and adapt the law, minimize its shortcomings, and even make up for its deficiencies. Such an approach has proved its worth in areas such as the conduct of hostilities in internal strife, humanitarian assistance, protection of the environment, and naval warfare.

Apart from providing an opportunity to take stock of the law some 16 years after the adoption of the Additional Protocols, the main purpose of the Conference was to seek means of curbing the suffering and horror wrought by present-day conflicts which themselves are the products of hatred, fanaticism and intolerance. The States refused to accept the current human tragedies as inevitable; instead they pledged to do everything in their power to prevent such situations. It is to be hoped that the Final Declaration adopted by the Conference will give new impetus to humanitarian mobilization, will make humanitarian law truly universal and place its dissemination on a systematic footing, and will put an end to grave violations of its provisions.

We must trust in the words of Gustave Moynier, whose message is more relevant now than ever before. "By strengthening one point after another, we shall build an unbroken line of defence that will humanize war as far as possible. To put it plainly, treaties drafted specially for the purpose of attenuating the horrors of war will probably grow in number. Treaties already in existence will lead to others, designed either to supplement the existing treaties or to remedy their deficiencies. As time goes by, international legislation will become an increasingly faithful reflection of contemporary standards. This might even lead to a general codification of the law of war."[44]

*(To be continued)***

[44] Gustave Moynier, *op. cit.*, pp. 30-31.

** Section to follow:
III — The Movement: solidarity and unity

BIBLIOGRAPHICAL NOTES

To supplement the articles from the *Review* and other books and documents cited in the footnotes to this article, a list of sources and reference documents relating to the creation of the Protocols additional to the Geneva Conventions and published in the *Review* between 1971 and 1977 is given below.

1. Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts:
   - First Session, Geneva, 24 May - 12 June 1971. Report on the work and conclusions of Commissions I and II, *IRRC*, No. 127, October 1971, pp. 529-548.
   - *Idem.* Report on the work of Commission III and records of the final plenary meetings, *IRRC*, No. 128, November 1971, pp. 587-602.
   - Second Session, Geneva, 3 May- 2 June 1972. Results of the work of the Commissions, *IRRC*, No. 136, July 1972, pp. 381-390; No. 143, February 1973, pp. 61-73; No. 144, March 1973, pp. 115-140.

2. Conference of Red Cross Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts:
   - First session, The Hague, 1-6 March 1971. Proceedings, *IRRC*, No. 121, April 1971, pp. 193-206.
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3. Draft Additional Protocols to the Geneva Conventions - Brief Summary, *IRRC*, No. 151, October 1973, pp. 507-515.

4. Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (1974-1977)
   - Opening of the Conference, *IRRC*, March 1974, No. 156, pp. 117-129.
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