

## THOUGHTS ON INTERNATIONAL HUMANITARIAN LAW

*Mr Hans Haug, President of the Swiss Red Cross, gave a lecture in Berne on 18 September 1975, the final part of which we reproduce below. Our purpose in doing so is to inform our readers of some of the views on the work being done at present in the sphere of international humanitarian law. At the same time we would like to remind them of the studies which are being conducted by the ICRC in this field and which serve as the basis for the work of the Diplomatic Conference. During its first two sessions, the Conference considered the drafts of the two Protocols additional to the Geneva Conventions prepared by the ICRC with the aim of supplementing international humanitarian law in the light of the changing character of armed conflicts.*

The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts has already made considerable progress and it is likely that it will adopt the Additional Protocols at the forthcoming session or, if not, at a fourth session. It is still uncertain however whether and when the various States will ratify or adhere to the Protocols. Even on the most optimistic assumption—that the Additional Protocols, sooner or later, assume the force of law for many States—we cannot completely dismiss our doubts as to their efficacy. Too optimistic a view is excluded for the following reasons:

1. The Geneva Conventions, with a total of 429 articles, and the Additional Protocols, which will probably have more than 140, constitute a treaty system of extreme complexity. The Conventions and Protocols are interrelated and many articles overlap one another. Some principles, which in themselves are clear, are the

subjects of exceptions and limitations. It is difficult to have an overall view and to understand this great complex of standards. This has practical significance, since the Conventions and Protocols will have to be applied in situations of great tension characteristic of armed conflicts, and perhaps by field officers and ordinary soldiers, most of whom know nothing about law in general and even less about the law of war. In this respect they differ a great deal from conventions on human rights which are usually applied in peacetime and by qualified authorities. If it is to be effective, international humanitarian law must enter into the consciousness of the people and especially of members of the armed forces, which calls for major efforts in propaganda and teaching. Such teaching cannot be effective unless it manages to make clear the fundamental principles of the Geneva Conventions and of the Protocols and explain them by reference to actual examples.

2. The effectiveness of international humanitarian law applicable in armed conflicts is related to two other conditions: its application should be in the *interests of the parties to the conflict*; it must be applied by people who have some understanding of its ethical content, that is, of the *humanitarian imperative*. The first of these conditions is met if the regulations take into account the vital politico-military interests of the parties to the conflict and are primarily aimed at preventing *suffering*. The second condition is met if the idea of humanity is applicable in relations between enemies. Here is where the weakness lies in the law of war—it fails whenever humanity is lacking. It is useless to work out grandiose and complicated treaties in diplomatic conferences if we do not at the same time strengthen humane sentiments. But those who, in war, have a responsibility to observe and enforce observance of legal rules which are based on moral precepts—officers, for example—must be determined to ensure the practical application of those rules in a humanitarian spirit.
3. It is not only the lack of knowledge and the lack of humane feelings however which raise doubts about the effectiveness of international humanitarian law; it is also the *technology of modern warfare*. In future armed conflicts, if there is recourse to weapons whose effects are uncontrollable and not limited in space and time, the application of important parts of the law of war

becomes illusory. In addition to efforts aimed at forbidding or limiting the use of certain conventional weapons, there must be efforts to prevent the use of weapons of mass destruction. The danger that such weapons will be used cannot be appreciably diminished unless there is, on the one hand, a development of the law of war and, on the other hand, progress in arms limitation.

The draft preamble to the Additional Protocol I contains a phrase in which the contracting parties proclaim their wish to see peace prevail among peoples. There is no contradiction between this desire and the efforts being made to develop the law of war because, after all, such efforts are not based upon the expectation of war but upon the *prevention of war*. The concept of humanity upon which the Geneva Conventions and the Additional Protocols depend is the true and profound concept of *peace*. Working for the development of the law of war is working not for war but for peace, for the strengthening of humane sentiments which run counter to the use of force in the settlement of conflicts. International law applicable in armed conflicts contributes to peace primarily because it seeks to preserve an oasis of humanity amidst the fury of combat and thus to provide a foundation for the rebuilding of peace. As Max Huber once said, in conflict the laws of war must be observed at all cost if there is to be any hope of world peace.

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