A new step forward in international law:

PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS

by Yves Sandoz

I. INTRODUCTION

On 10 October 1980, the "United Nations Conference on Prohibitions or Restrictions of Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to have Indiscriminate Effects" ended with the adoption by consensus of the following instruments:

— Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons,

— Protocol on Non-Detectable Fragments (Protocol I),

— Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II),

— Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III).

In addition, at its first session, the Conference had adopted a Resolution on small-calibre weapon systems. All these texts are reproduced in this issue of the *Review*. It should also be pointed out that the Conference took note of six draft resolutions and one proposition which it will submit in its report to the UN General Assembly.

We propose here to give an account of the stages which led up to the successful outcome of the Conference; to indicate the place of the Convention and the three Protocols in international law; to analyse briefly the contents of the instruments and the Resolution adopted by the Conference, and of the different motions and propositions; and finally, to attempt to assess the influence of this accord in humanitarian terms.

II. BACKGROUND

The Second World War clearly showed the necessity of ensuring better protection for the civilian population during armed conflicts. The Fourth Geneva Convention of 1949 represents a great advance in this respect, but is essentially concerned with the population in the hands of an enemy Power. The general protection of civilians against the effects of hostilities is still inadequately covered by this Convention. The ICRC soon realized this, and as early as September 1956 it drew up a set of "Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War". These rules included a chapter on weapons, entitled "Weapons with Uncontrollable Effects", proposing, in particular, that weapons whose harmful effects might escape the control of those using them and delayed-action weapons should be banned, and that belligerent parties making use of mines should be obliged to chart minefields and, at the cessation of active hostilities, to hand over the charts to the authorities responsible for the safety of the population. This proposal was presented in 1957 to the Nineteenth International Red Cross Conference which requested the ICRC to submit it to governments.

This move towards a further development of international humanitarian law was premature, however, since many States were still not parties to the Geneva Conventions.

The matter was taken up again in 1965, at the Twentieth International Red Cross Conference which in its Resolution XXVIII pointed out that "indiscriminate war constitutes a danger to the civilian population and the future of civilization" and that "the right of parties to a conflict to adopt means of injuring the enemy is not unlimited". The International Conference on Human Rights, held in Teheran in 1968, voiced similar anxieties, and the United Nations General Assembly, in Resolution 2444, adopted the principles which these Conferences established on the subject.

In the report on the reaffirmation and development of the laws and customs applicable in armed conflicts presented to the Twenty-first International Red Cross Conference in 1969, the ICRC set forth as its principal conclusions that the belligerents should abstain from using weapons:

— likely to cause unnecessary suffering;

— which, because of their lack of precision or their effects, affect civilians and combatants without distinction;

— whose harmful effects were beyond the control, in time or space, of those employing them.

The Conference requested the ICRC to continue its efforts in this field.

In the same period, studies on the subject were published by the UN Secretariat and again by the Stockholm International Peace Research Institute.

In 1971 and 1972, the ICRC organized a Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts.

The documentation presented to the Conference dealt with protection of the civilian population in time of armed conflicts and, in particular, with protection against certain types of bombing and against the effects of certain weapons. While not inviting the experts to discuss "prohibitions of specific weapons", so as not to overlap the work of bodies concerned with disarmament, the ICRC thought it possible for them to examine, in addition to general principles, the principles relating to weapons which in any case, owing to their effects or their lack of precision, might affect the civilian population indiscriminately. The experts' opinions fell into three categories. According to the first, the problem of weapons ought not to be dealt with by such a body. The second felt that, without dealing directly with the question of weapons of mass destruction (nuclear, biological, chemical), the necessity of banning them should be affirmed, since greater protection for the civilian population largely depended on such a ban. The third current of opinion held that the Conference should not consider weapons of mass destruction—under discussion by the Conference of the Disarmament Committee—but other particularly cruel weapons which were not being studied anywhere else.

This third tendency won the day, and at the second session of the Conference, in 1972, the experts of nineteen States asked the ICRC to organize a special meeting to consult legal, military and medical experts

on the question of the explicit prohibition or restriction of conventional weapons likely to cause unnecessary suffering or to have indiscriminate effects. This consultation took place in Geneva in 1973. A purely documentary report was produced, without formulating any specific proposals. Its role was to stimulate further studies on the subject, and it was distributed to all National Red Cross Societies, all the governments of States parties to the Geneva Conventions and all the relevant non-governmental organizations.

The draft of the Protocols additional to the Geneva Conventions, as presented to the Diplomatic Conference which met in Geneva in 1974, contained general principles applying to weapons but no provisions on the use of any specific weapon. The Conference nevertheless set up an *ad hoc* Committee to deal with the problem. Again, the prevailing view was that the Committee's work should be restricted to conventional weapons. [1] With the encouragement of the Diplomatic Conference, the ICRC organized a Conference of Government Experts, which held two sessions, one at Lucerne in September-October 1974, the other in Lugano in January-February 1976.

Like the *ad hoc* Committee of the Diplomatic Conference, the experts discussed various conventional weapons; but in the end no article on the subject of a specific weapon was included in the Protocols. An article envisaging the creation of a committee on the prohibition or restriction of certain conventional weapons, whose task would have been to examine definite proposals on the matter and to prepare agreements, was dropped as it failed, by a few votes, to obtain the required two-thirds majority.

However, a resolution was adopted by the Diplomatic Conference (Resolution 22) recommending, *inter alia*, "that a Conference of Governments should be convened not later than 1979 with a view to reaching agreements on prohibitions or restrictions on the use of specific conventional weapons" and "agreement on a mechanism for the review of any such agreements and for the consideration of proposals for further such agreements".

The UN General Assembly supported this recommendation (see Res. 31/52 of 19 Dec. 1977, 33/70 of 28 Sept. 1978 and 34/82 of 11 Dec. 1979), and the proposed Conference, the subject of the present article, after a preparatory Conference which met in August-September 1978 and March-April 1979, took place in Geneva from 10 to 28 September 1979 and from 15 September to 10 October 1980.

[1] This expression covers all weapons not included in the category of "nuclear, biological or chemical" weapons.

III. CONTEXT

The specific prohibition of certain weapons belongs to two branches of international law, disarmament law and international humanitarian law applicable in armed conflicts. This dual relationship is not unimportant, since each of these laws approaches problems differently.

In matters of disarmament, stress is laid on problems of security. The aim is to proceed steadily toward general and total disarmament, without any sudden disruption in the balance of forces at some stage in the proceedings jeopardizing the security of the various States. Moreover, agreements on disarmament should cover not only prohibitions or restrictions on the use of any weapon, but also on its manufacture, storage and sale or purchase. In short, it should deal not merely with the use of a weapon but with its possession.

Problems of security are not entirely disregarded by international humanitarian law, but in that context they do not have the vital interest which they possess in relation to disarmament. The aim of international humanitarian law is, in fact, a modest one: "humanize" as far as possible those armed conflicts which cannot be avoided. Since it is by its nature subsidiary, operating only when the law prohibiting the use of force has failed to fulfil its role, international humanitarian law cannot claim to be a substitute for the other. It would be unrealistic to think that conflicts could be prevented by laying down such severe limits on means of combat that conflict would be made impossible. There is no reason whatever why such an obstacle should prove any stronger than that formed by the law prohibiting the use of force.

It is therefore imperative for international humanitarian law to confine itself to modest objectives. True, it has had its failures; but there have also been undeniable successes, and these have been due essentially to the fact that its provisions are of humanitarian interest to everybody while harming the military interests of nobody.

The considerations outlined above also apply in connection with weapons. It is highly unlikely that States will accept, as part of international humanitarian law, the prohibition of weapons of strategic importance which bedevil all discussions on disarmament. On the other hand, there are some weapons the possession of which does not materially affect the balance of forces in the world, and which are not essential from the military viewpoint, but whose effects are particularly cruel or cause extensive damage without military justification. Hence some people have remarked, understandably, that international humanitarian law should be satisfied with prohibiting useless weapons. Yet in the long

run this is not as ironic as it seems. Obviously, if the only effect of international humanitarian law on armed conflicts were to prevent any use of force not strictly justified by military necessity, it would still save a great many lives and much suffering. However, the urgent need to improve the protection of the civilian population led the States, in the 1977 Protocols, to go further and agree to take humanitarian factors into account even at the sacrifice of some military advantage. The same could be said of the Conference on conventional weapons. But it should never be forgotten that it is not in the interests of international humanitarian law to venture too far in this direction. To force the pace might well lead to catastrophe.

Yet such considerations should not be understood as a suggestion to give up all efforts in this sphere. Nor should it be thought, as is sometimes the case, that military necessity is used as a pretext to reject any new humanitarian measure.

IV. CONTENT

As the Convention and its three Protocols are appended to this article, we will not go into their contents in detail.

A few items, however, seem to be worthy of close study.

1. The Convention

The scope of the Convention was established by reference to the Geneva Conventions and to Protocol I additional to them. This means international conflicts, with the understanding that it includes "armed conflits in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercice of their right of self-determination".

The date on which the Convention comes into force will be six months after the date of receipt of the twentieth instrument of ratification, acceptance, approval or accession. It will be noted that there is a disparity between these instruments and the Geneva Conventions and their Additional Protocols, for which only two instruments of ratification or accession are sufficient. This disparity is explained by the fact that some States placed the debate in the sphere of disarmament. Any agreement in this sphere aimed at reducing the level of armaments and thus diminishing the military power of States can obviously be envisaged only if it is applied by all States or, at the least, by all the military Powers.

Observance of the Conventions belonging to international humanitarian law, on the other hand, should have no effect on the military efficiency of the States involved. But even if these instruments on conventional weapons are applicable only between parties to a conflict which have accepted them, it may be assumed that States which decide to ratify or accede to these instruments will forgo possession of the weapons they prohibit. These, while not of vital importance from the strategic viewpoint, still have implications for security, according to some States, who consequently demanded substantial support for the Convention and the Protocols before their entry into force. The figure of twenty is therefore a compromise between the States which held this view and those which unreservedly associated these instruments with international humanitarian law.

Another point to be noted is that a State cannot become party to the Convention alone; this is logical, since the Convention merely provides the legal framework within which the prohibitions contained in the Protocols are applicable. But the conditions fixed go further: a State becoming a party to the Convention must accept at least *two* of the Protocols. This requirement was aimed mainly at preventing any State from becoming a party only to Protocol I, which is at present of little practical significance (see below).

An interesting aspect is the system of relationships established when the Convention takes effect; the same flexible system as for the Geneva Conventions. A State which is party to the Convention is obliged not only to observe it with respect to another State also party to the Convention and having an ally not bound by it—in contrast to the rigid system adopted at The Hague Conferences of 1899 and 1907—but must also apply the Convention to the ally if the latter accepts and applies the Convention (and the relevant Protocol or Protocols) and notifies the depositary State of this fact. It will be noted, however, that the formality of notifying the depositary is not required in the Geneva Conventions.

Concerning wars of liberation (in the sense of Art. 1, para. 4, of Protocol I of 1977), the authority representing a liberation movement may undertake to apply this new Convention and the associated Protocols with respect to a State which is party to these instruments and likewise bound by the 1977 Protocol I. The Convention and its Protocol or Protocols then become applicable between that State and the liberation movement, as does the 1977 Protocol I.

But the real innovation lies in the fact that the authority representing a liberation movement may act in the same way toward a State party to

the present Convention and to two or more of its Protocols, even if the movement is not bound by the 1977 Protocol I. Moreover, such commitment will result in the application, not only of the present Convention and its Protocols, but also of the Geneva Conventions as a whole. This means that the present Convention provides access to the whole body of the Geneva Conventions, something which was not envisaged by the Conventions.

The provision making this access possible calls for four comments.

1. It demonstrates clearly that recognition of the international character of wars of liberation, in the sense of Article 1, paragraph 4, of Protocol I of 1977, is not linked in international humanitarian law to this Protocol alone. The international character of such wars, already affirmed by numerous Resolutions of the UN General Assembly, [1] here obtains additional confirmation and, above all, direct involvement in the applicability of the Geneva Conventions.

2. Logically, the hypothesis presented by this provision should not occur. It would seem inconsistent for a State to agree to the present Convention without also accepting the 1977 Protocol I, which reaffirms or develops the principles applied in this Convention and its Protocols. But the possibility cannot be excluded, since refusal to accede to the 1977 Protocol I might be due to provisions unrelated to the question of weapons.

3. While this new step may be seen as encouraging the wider application of international humanitarian law in wars of liberation, it should be emphasized that the principle of equality of rights and obligations of the parties to a conflict—a vital element in international humanitarian law—has not been disputed: in fact it has been clearly reaffirmed.

4. The unlikely hypothesis of a State's becoming a party to the Convention without being a party to the Geneva Conventions was not even envisaged. This demonstrates the recognized universal character of those Conventions and should encourage the few States not yet officially bound by them to accede to them without delay.

The procedure for revising the Convention was one of the crucial points in the negotiations. Agreement was finally reached on an *ad hoc* system although the opinion was also expressed that the matter should be entrusted to the Disarmament Committee. A conference is to be convened at the request of the majority of the States parties to the

[1] In particular, Resolutions 2105 (XX), 2621 (XXV) and 3103 (XXVIII).

Convention (but at least eighteen States, as some felt it to be unacceptable for only eleven States to possess such powers).

Revision of the Convention and its Protocols is to be decided solely by the States which are parties to them, while the addition of further Protocols may be decided by all those States attending such a Conference. Though there is no explicit mention of the fact, the Conference would probably reach its decisions by consensus, as did the Conference which produced the Convention, and this should make it impossible, even for revision of the existing instruments, for decisions to be made on the basis of a majority of the moment.

A Conference will probably be held at least once every ten years, since, if a period of this duration has elapsed without a Conference, a request from only one of the High Contracting Parties is sufficient for the depositary to be obliged to convene a Conference.

Establishment of this procedure was imperative, as it gives lasting value to the Convention by leaving the door open for the introduction of other restrictions and by urging all States to practise constant vigilance to ensure that conventional weapons conform with the principles laid down in the Protocol I of 1977. The revision method also represents a valuable addition to Article 36 of Protocol I, which binds all Contracting Parties to examine all new weapons to make sure their use is not prohibited by international law.

2. The Protocols

a) *Protocol on Non-Detectable Fragments (Protocol I)*

This Protocol has little immediate importance, since the weapons concerned have not been used—or in any case not widely—up to now. But it constitutes a ban for the future and should prevent undesirable developments. The prohibition is an expression of the principle that the purpose of a weapon should not be to hinder the healing of wounds it causes, and this principle is certainly one of the basic elements for determining whether a weapon produces "unnecessary suffering".

b) *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II)*

The purpose of Protocol II is to prevent or at any rate to reduce as far as possible loss and damage to civilians by the devices it covers, during hostilities and afterward, when those devices no longer have any military usefulness. The Protocol deals with a very definite problem: even today, many civilians are still being injured by mines, long after the events which led to the sowing of the minefield.

The Protocol does not tackle the awkward problem of mines laid during war at sea, a problem still covered by Conventions adopted at the beginning of the century. It might be thought, incidentally, that it is high time to consider updating international humanitarian law applicable to armed conflicts at sea.

In Article 3, Protocol II applies to the devices with which it is concerned the general principles which prohibit attacks on civilians and their property and indiscriminate attacks. This means that the use of certain booby-traps specially designed to attract civilians, or even children, is totally prohibited (see Article 6), while restrictions are laid on the use of mines, booby-traps and "other devices" defined in Article 2 (cf. Art. 4 and 5). A distinction is made between devices put in place from nearby and those delivered from a distance, i.e., "delivered by artillery, rocket, mortar or similar means or dropped from an aircraft". Those dropped from the air, especially, are very difficult to neutralize when they have ceased to fulfil their military function. The problem was solved by requiring either that they be supplied with a mechanism which makes them inactive after a certain lapse of time or that they be launched or dropped with sufficient precision for their positions to be recorded with accuracy. However, there was no agreement on more precise rules which might have determined, in particular, the height from which it was admissible for an aircraft to drop such mines.

Another aspect of this Protocol which should be stressed is the "international co-operation in the removal of minefields, mines and booby-traps" (Article 9). It is essential, if civilians are to be properly protected, for the parties to the conflict to collaborate, once active hostilities are over, by at least providing information concerning the mines they have laid. The text adopted does not go as far as was initially envisaged. In particular, it does not include the obligation to hand over, immediately after the cessation of active hostilities, charts showing the location of mines, even, to an occupying Power. Such an obligation was intended solely to give adequate protection for the civilian population, including those within occupied territory. Some delegations, however, found it impossible to envisage any co-operation whatever with an occupying force, even for humanitarian purposes.

Several of the rules in this long Protocol are consequently not very rigorous. For example, we may note that Article 3, paragraph 4, requests the parties to take "all feasible precautions" to protect civilians, that is, "those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations"; that advance warning is obligatory

before remotely-delivered mines are launched or dropped "unless circumstances do not permit" (Article 5 (2)); that the parties "shall endeavour to ensure" the recording of the location of minefields which were not pre-planned (Article 7 (2)).

The indecisive and complex character of the rules finally adopted indicates how acute were the problems encountered. Mines undeniably play an important part in military activities, but their indiscriminate use gives rise to inadmissible loss and damage to civilians. Protocol II is a typical offspring of the arranged marriage between military necessity and humanitarian imperatives, a union which has produced the whole of international humanitarian law. The legal protection of civilians against the effects of mines, booby-traps and other devices is far from perfect, but it is definitely better than it was.

c) *Protocol on the prohibitions or restrictions on the use of incendiary weapons (Protocol III)*

Incendiary weapons are probably the conventional weapons which have the greatest impact on public opinion. Many felt that any agreement on conventional weapons which did not include a Protocol on incendiary weapons would have the distressing appearance of a fire-brigade which had forgotten to bring the hose-pipe. If nothing had been achieved on this subject, it is likely that all the work of the Conference would have been wasted. This is a further reason to welcome the agreement finally obtained, during the last few days of the Conference, on this category of weapons.

Protocol III applies to incendiary weapons the general principle, reaffirmed in the 1977 Protocol I, that civilians should not be subject to attack. But it takes a big step further by placing severe restrictions on attacks on military objectives located within a concentration of civilians and particularly by prohibiting completely any attacks by air on such objectives. This provision is intended to prevent the terrible danger of huge concentrations of civilians being wiped out by fire.

Forests and plant cover are civilian property unless used for military purposes, and their protection is therefore included in the general rule prohibiting attacks on civilian property. Nevertheless, it was considered desirable to give prominence to this protection by mentioning it specifically, in view of the potentially disastrous nature of forest fires.

It will be noted that there is no provision to protect combatants against incendiary weapons. This is because emphasis was placed on the indiscriminate nature of these weapons and on the danger they present for civilians, rather than on their cruelty, an aspect which would have justified restriction of their use against combatants also.

Of course it may be argued that combatants are generally better equipped and can therefore deal more efficiently with the use of incendiary weapons. But among combatants too there have been extremely cruel burns, and several delegates regretted that no agreement could be reached after all on protecting combatants. A resolution on the subject was drafted by the Conference and sent to the UN General Assembly. This text "invites all governments to continue the consideration of the question of protection of combatants against incendiary weapons with a view to taking up the matter at the conference that may be convened in accordance with the provisions of Article 3 of the Convention adopted."

3. Resolution on Small-Calibre Weapon Systems

The Conference did not produce a Protocol on small-calibre projectiles which tumble upon impact and transfer considerable energy into the victim's body, thus causing extremely cruel wounds. But at its first session it adopted a resolution inviting governments to carry out further research and appealing to all governments "to exercice the utmost care in the development of small-calibre weapon systems, so as to avoid an unnecessary escalation of the injurious effects of such systems".

One of the major working documents distributed at the Conference emphasizes that research at present is being carried on in two directions: one, to find a medium capable of being used to simulate living tissue, the other, to evolve a simple test to determine the energy-transfer characteristics of a projectile.

V. SCOPE

The attempt to place the Convention of 10 October 1980 and its three Protocols in their context indirectly raises the question of their scope.

Obviously, the Convention, like the rest of international humanitarian law, does not claim to resolve any political problems. At most it could be argued that the moderation which it introduces into conflict is a factor favouring settlement.

The significance of a Convention of this kind, therefore, is purely humanitarian. Its relation is solely to men, women and children who would otherwise have been blown to pieces by mines, had their faces mutilated by booby-traps or their bodies burned by napalm. Those

who have been saved from these weapons will remain unknown, unlike those who, in spite of all efforts, will become victims. It is a peculiarity of such prohibitions that their merit is truly known through being breached.

Yet the potential victims who are spared because of the new law do exist. This is the firm belief and sole guiding motive of those who work for the development of international humanitarian law.

The link between the instruments adopted on 10 October 1980 and Protocol I of 8 June 1977 additional to the Geneva Conventions has not been settled categorically. It seems logical, however, to consider these restrictions and prohibitions as rules intended to put into concrete terms some of the principles laid down in the 1977 Protocol I, particularly in its Articles 35 and 51. Moreover, several points of the Convention's preamble give a clear indication in this direction. Yet it cannot be claimed that the prohibitions follow so naturally from the principles reaffirmed by the 1977 Protocol that an obligation concerning them existed before they were explicitly formulated. The protracted negotiations which were necessary to achieve these instruments plainly demonstrate that their content was by no means an obvious matter. So the Convention and its Protocols should be considered as a development of law and any condemnation of action taken previous to their enactment, by retroactive application of their underlying philosophy, would be, juridically, as sterile as it would be inadmissible.

We have already noted the conditions necessary for the Convention and its Protocols to be formally applicable. In particular, we have seen that they are to be applied only in international conflicts. Nonetheless, it seems undeniable that texts of this kind also carry great weight outside their official legal context.

The method of consensus, used very frequently in international conferences nowadays, undoubtedly confers a certain weight, in international circles, on the agreements reached at such conferences. The Vienna Convention on treaty law, very often cited well before it came into force, is a good example of this. But such a situation is true even more of humanitarian instruments.. If States are agreed on the specially cruel character of certain weapons or certain combat methods and on the necessity of prohibiting them, can they decently fail to take such agreement into account even before they are legally bound to do so? In this connection, it is interesting to note that a draft resolution which the Conference sent to the UN General Assembly "calls upon all States which are not bound by the present Convention and which are engaged in an armed conflict, to notify the Secretary-General of the United

Nations that they will apply the Convention and one or more of the annexed Protocols in relation to that conflict, with respect to any other party to the conflict which accepts and abides by the same obligations.

But although the Convention is applicable in principle only in international armed conflicts, it is improbable that governments will feel free to use against their own population, in conflicts not of an international nature or in internal unrest, weapons and combat methods which they have agreed to forgo against an alien enemy.

In international humanitarian law, more than in any other sphere, public opinion would demur at any recourse to purely legal arguments for refusing to observe principles whose value had been widely acknowledged. An interesting fact reported by various technical experts is that the discussions and trials carried on by experts in relation to small-calibre weapon systems, although they have not yet resulted in binding prohibitions or restrictions, have nevertheless had a beneficial influence on several States when renewing their stock of weapons of this kind. (See also the resolution on the subject adopted by the Conference, the text of which is given below.)

VI. CONCLUSIONS

The adoption on 10 October 1980 of a Convention and three Protocols marks the completion of a significant phase in the evolution of international humanitarian law, a phase whose prime purpose has been to provide better legal protection for the civilian population against the effects of hostilities. In order to accomplish this, it was felt essential to reintroduce into international humanitarian law, without ambiguity, principles concerning the conduct of hostilities which had been laid down at the beginning of this century, at The Hague Conferences in 1899 and 1907, and to develop those principles. This was done in the 1977 Protocols additional to the Geneva Conventions. But the principles alone, without precise rules to buttress them, were in danger of remaining mere words, and the merit of the Convention of 10 October 1980 and its three Protocols is that they have tackled the problem directly and specifically. In this sense, the instruments are valuable, or rather indispensable, supplements to the 1977 Protocols.

While the reaffirmation in international humanitarian law of principles concerning the conduct of hostilities was intended chiefly to give better protection for the civilian population, it must be acknowledged that these principles were originally formulated, above all, to alleviate

the suffering of combatants. Simplifying the matter, it may be said that methods or means of combat having indiscriminate effects are prohibited because there is too great a risk of their harming the civilian population, while the ban or restriction on excessively cruel weapons takes into account combatants as well as civilians. Mines may be placed in the first category, non-detectable fragments in the second. Even so, there are weapons, such as incendiary weapons, which may be classified, depending on which aspect is considered, in one or other of these categories. The restrictions placed on the use of these weapons in Protocol III are motivated by the indiscriminate character of such weapons and the risk that they may injure civilians. Yet the reason that several delegations expressed the wish to continue work on the subject was that they considered these weapons—or some of their uses, at any rate—to be excessively cruel and for this reason wanted combatants also to be granted protection.

We have seen that some international value must undeniably be attributed to the instruments which have just been adopted, regardless of when they enter into force. Yet it is plain that formal accession to such instruments gives them much more weight and that lack of interest by the States might well lead to their being forgotten. It is to be earnestly hoped that the States will sign and then ratify these instruments rapidly and in very large numbers. Incidentally, many States refused to ratify the 1977 Protocols until or unless they were supplemented by an instrument concerning weapons. For those States, as for the great majority of others, the adoption of the Convention of 10 October 1980 and its Protocols should be the occasion of acceding to the whole of the corpus of modern international humanitarian law. The phase just completed was essential to maintain the credibility of this law. The States which have patiently worked together to produce the Convention should now, by acceding to it, indicate their determination to respect its humanitarian principles and rules.

The texts adopted in 1980, like those of 1977, indicate that the world is horrified by the massacre and mutilation of millions of civilians during the conflicts of our century. These texts are the result of patient effort and we should welcome their adoption. But progress made in international humanitarian law is never completely satisfactory: there is always the question whether it could not have been taken a step further, whether more lives could have been saved, more suffering avoided. Alongside the advances made, however substantial, there is the shadow of those which have perhaps failed to come into being for lack of perseverance or persuasion.

The mixed feelings which greet any advance in international humanitarian law, however, are due to deeper causes, to be found in the nature of that law, able only to relieve and not eliminate the absurd suffering engendered by armed conflicts. In our time, as never before, the necessity of attacking the causes of evil and not merely its effects is obvious to everyone. The extent of the probable consequences of any large-scale conflict makes any efforts to attenuate them appear derisory. Those engaged in such efforts, therefore, even though convinced of the nobility of their task, must regard it as a contribution to peace and an urgent appeal to those capable of achieving it.

Yves Sandoz

Assistant Director
Department of Principles and Law, ICRC
