

Foreword by Judge Abdul G. Koroma

The decision of the *International Review of the Red Cross* to commemorate the 50th anniversary of the Universal Declaration of Human Rights is both understandable and commendable, given the *Review's* mission to promote and strive for observance of international humanitarian law during armed conflicts and the increasing convergence of that law with human rights law — as evidenced by the gradual substitution of the term “international humanitarian law” for the term “the law of war”.

While it is generally recognized that international humanitarian law and human rights norms vary as to their origins and the situations in which they apply (the former during armed conflicts and the latter in peacetime), the two not only share a universal value, namely, that of humanity, but they also have the common objective of protecting and safeguarding individuals in all circumstances.

Since 1948, when the Universal Declaration proclaimed and recognized the inalienable rights of all individuals, as well as their inherent dignity and equality, the United Nations has adopted the following principal legal instruments in the field of human rights:

- the International Covenant on Civil and Political Rights;
- the International Covenant on Economic, Social and Cultural Rights;
- the International Convention on the Elimination of All Forms of Racial Discrimination;
- the Convention on the Elimination of All Forms of Discrimination against Women;
- the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- the Convention on the Rights of the Child.

In the sphere of international humanitarian law, apart from the various United Nations resolutions calling for the protection of human rights

during armed conflicts, the following principal legal instruments have been adopted:

- the Convention on the Prevention and Punishment of the Crime of Genocide;
- the four Geneva Conventions of 1949 for the protection of war victims;
- Protocol I additional to the Geneva Conventions, and relating to the protection of victims of international armed conflicts;
- Protocol II additional to the Geneva Conventions, and relating to the protection of victims of non-international armed conflicts.

Both sets of legal instruments could be seen as an expression of the international community's determination to strengthen and protect the rights of the individual both in peacetime and during armed conflicts.

But despite this impressive array of legal instruments, and their convergence, the international community has continued to witness, even most recently, many instances of the brutal and large-scale violation of human rights and humanitarian law in various parts of the world. It is because of such abuses that there have been renewed and urgent calls not only for the observance and enforcement of these instruments, but also for the establishment of institutions that would ensure their implementation. This has led to the setting up of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, which have the power to prosecute those responsible for serious human rights abuses and violations of international humanitarian law, including genocide.

For its part the International Court of Justice, which is enjoined to apply international law when making its rulings, has, in appropriate cases, applied both human rights law and international humanitarian law. Already in 1949, in the *Corfu Channel* case, the Court had referred to "elementary considerations of humanity" (*ICJ Reports*, 1949, p. 22) which are to be observed by the parties to a conflict. In the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits*, the Court pointed out that "the Geneva Conventions are in some respects a development, and in other respects no more than the expression, of fundamental principles of humanitarian law" (*ICJ Reports*, 1986, p. 113). Accordingly, the parties must respect those principles independently of their obligations under the Conventions.

Most recently, in considering the request for an advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court considered the effects of the use of such weapons in the light of human rights law and international humanitarian law. In that case, the Court took the view that the most fundamental problem posed by nuclear weapons related to the protection of human life on the planet, in other words the right to life. It referred to Article 6 of the International Covenant on Civil and Political Rights, which provides that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. The implication is that to the extent that the effects of nuclear weapons cannot discriminate between civilians and combatants, human life will be taken arbitrarily. This would seem to be a case in which human rights law and humanitarian law are in convergence.

If the objectives set out in the Universal Declaration some 50 years ago have not been achieved, and if its principles have not been upheld, it cannot be for want of specific legal instruments or institutions to implement and enforce them. The answer lies elsewhere, namely, in our unwillingness or inability to respect the obligations we have undertaken.

The articles contained in this issue of the *Review* will show how the rules and principles of international humanitarian law and human rights law have influenced and interacted with each other in such a way as to further their common goal — the protection of the individual. We are duly grateful to the *Review* and the authors for providing a forum for elucidating these points and showing why it is so important that each of the two bodies of law should retain its autonomy.

**Abdul G. Koroma, Judge
International Court of Justice
The Hague**