Significance of the Geneva Conventions for the contemporary world

by
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Two contradictory trends characterize the development of international humanitarian law over the past fifty years. The first is the enormous progress accomplished by that part of international law. International humanitarian law has become one of the most comprehensively regulated branches of international law: most aspects of the protection of individuals in armed conflicts and of the conduct of hostilities have been dealt with in detailed provisions. Moreover, the Geneva Conventions of 1949 have attained virtually universal recognition. They have been ratified by more States than any other convention, with the exception of the Convention on the Rights of the Child.[1] Furthermore, a great number of their rules have become recognized as customary rules and

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1 The four Geneva Conventions of 12 August 1949 for the protection of war victims have been ratified by 188 States, the Convention on the Rights of the Child of 1989 by 191 States. In comparison, the International Covenant on Economic, Social and Cultural Rights of 1966 has

as constituting *jus cogens*. This remarkable success contrasts, however, with the second trend, the gross violations of the Conventions and the frightening increase in inhumane and cruel acts committed in armed conflicts of recent years. Humanitarian disasters caused by armed conflicts have become one of the major problems of our time. Obviously, legal regulations have not always produced the results expected from them when they were adopted. In this sense, both success and failure characterize the development of the Geneva Conventions in the past fifty years.

I shall first examine the remarkable normative development of international humanitarian law since 1949, and then turn to the causes of the massive violations which occurred in the same period. I shall conclude with some remarks on the outlook for international humanitarian law.

International humanitarian law since the Second World War

In terms of the progress made by international humanitarian law in the last half century, three periods may be distinguished. In the *first period*, covering the time between the end of World War II and the early 1960s, the most important event was obviously the adoption of the four Geneva Conventions of 12 August 1949 for the protection of war victims, the fiftieth anniversary of which we are now celebrating. It is fortunate that their adoption proved possible soon after World War II and was not delayed, as was the revision of the preceding Geneva Conventions in the years after World War I. At that time the belief prevailed that the League of Nations had brought permanent peace to the world. That belief ruled out any consideration of new conventions on warfare. It was consequently not until 1929 that two new conventions, one on the wounded and sick, the other on prisoners of war, were adopted. However, a third convention and perhaps the most urgent one, dealing with the protection of civilians, met with political opposition and had not yet been adopted when the world was again engulfed by war.

142 ratifications, and the International Covenant on Civil and Political Rights has 144. Protocol I additional to the Geneva Conventions of 13 August 1949, and relating to the protection of victims of international armed conflicts, of 8 June 1977, has been ratified by 154 States, and Protocol II additional to the Geneva Conventions of 13 August 1949, and relating to the protection of victims of non-international armed conflicts, by 147 States. The United Nations has 188 member States. (Status in September 1999.)

After World War II, no expectations of permanent peace prevented the revision of the Geneva Conventions. The United Nations nevertheless kept aloof from this enterprise because it was thought that UN participation in the revision of the law of war would undermine confidence in the organization's capability to maintain peace. In conformity with earlier practice, the International Committee of the Red Cross (ICRC) prepared the new treaties and the Swiss government convened the international conference adopting them.

Notwithstanding its abstention, the United Nations exerted a considerable, though little noticed, influence on the Geneva Conventions, for its efforts to bring about an international guarantee of human rights left their imprint upon them. This is not surprising, as the Conventions were adopted only a few months after the proclamation of the Universal Declaration of Human Rights.[2] The attention paid to human rights had the effect that the traditional law of war was gradually transformed into a human rights-oriented law. Traces of this can already be seen in the 1949 Conventions, which speak of the "rights" of protected persons instead of only imposing obligations on the belligerents, and also stipulate that protected persons cannot renounce their rights.[3] In addition, Article 3 common to the four Conventions constitutes a kind of human rights provision; it regulates the relationship between governments and their own nationals in the event of an internal armed conflict, thus a question traditionally regulated by human rights provisions only. Furthermore, the previously unknown term "international humanitarian law" was introduced by the ICRC in the early 1950s, largely replacing the terms "law of war" and "law of armed conflicts".[4] It soon became generally used, somewhat blurring the distinction between the law applicable in armed conflicts and the law of human rights and giving rise to occasional confusion between these two branches of international law.

In the years following their adoption, the Geneva Conventions attracted surprisingly little interest. They were not considered as being of an immediate relevance. Although they played a certain but rather minor role

2 The Geneva Conventions were adopted on 12 August 1949, the Universal Declaration on 10 December 1948.

3 Article 7 of the First, Second and Third Conventions, Article 8 of the Fourth Convention.

4 The *Annual Report* of the ICRC for 1953 was the first one to use the term "international humanitarian law".

in the wars in Korea and Indochina in the early 1950s, they subsequently almost lapsed into oblivion. In university courses and treatises on international law the traditional chapters on the law of war were simply omitted. Only a few specialists and the ICRC cared about them. In 1956, the ICRC, recognizing that the Conventions of 1949 did not provide sufficient protection for the civilian population against indiscriminate warfare, drafted rules to safeguard the civilian population from the effects of hostilities.[5] They were approved by the International Red Cross Conference in New Delhi in 1957, but elicited virtually no reaction from governments. This discouraged the ICRC from taking further steps for the improvement of international humanitarian law until the United Nations gave fresh impetus in 1968.

A *second period* in the development of international humanitarian law started in the 1960s when several more extensive wars broke out, notably the war in Vietnam, the civil war in Nigeria/Biafra, the wars between the Arab States and Israel and the wars of national liberation in Africa. The latter type of conflicts in particular spurred the United Nations to ever-greater activity. As from 1968, the General Assembly adopted periodical resolutions demanding that wars of national liberation be regarded as international armed conflicts in which the Geneva Conventions were to be applied as a whole and freedom fighters to be treated as prisoners of war. Also in 1968, the International Conference on Human Rights in Teheran[6] and the UN General Assembly[7] adopted resolutions under the title "Respect for human rights in armed conflicts", requesting the Secretary-General, in consultation with the ICRC, to take steps (a) for the better application of existing international humanitarian conventions, and (b) for the adoption of additional humanitarian conventions to ensure better protection of victims and the prohibition and limitation of the use of certain methods and means of warfare. These resolutions opened the door

5 *Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War*, 2d ed., ICRC, 1958. Reprinted in D. Schindler/J. Toman (eds.), *The Laws of Armed Conflicts*, 3d ed., Martinus Nijhoff Publishers/Henry Dunant Institute, Dordrecht/Geneva, 1958, No. 28, p. 251 (4th edition to appear in 2000).

6 International Conference on Human Rights (Teheran), Resolution XXIII of 12 May 1968, reprinted in Schindler/Toman, *op. cit.* (note 5), No. 30, p. 261.

7 United Nations General Assembly, Resolution 2444 (XXIII) of 19 December 1968, reprinted in Schindler/Toman, *op. cit.* (note 5), No. 31, p. 263.

for the elaboration of the two Additional Protocols which were adopted in 1977.

In this period between the 1960s and the 1980s, the United Nations became fully involved in questions of international humanitarian law and, by combining that law with human rights, brought about the adoption of new international humanitarian law instruments. As Frits Kalshoven aptly stated, with UN Resolution 2444 of 1968 "the starting shot had been given for an accelerated movement which brought the three currents: Geneva, The Hague and New York, together in one main stream".[8] In spite of the important role played by the United Nations in this regard, the preparation of the Additional Protocols was left to the ICRC and the convocation of the conference adopting them to the Swiss government. The UN itself also adopted some treaties on questions of warfare during this period, notably the Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques of 1976[9] and 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.[10]

A *third period*, marked by a particularly intensive and almost revolutionary development of international humanitarian law showing almost revolutionary traits, began after the end of the Cold War in 1989. Never before had humanitarian issues and humanitarian law attracted so much international attention as in this period. And never before did the necessity of humanitarian action and humanitarian law become so evident as it has today.

Since 1989, most armed conflicts have been internal conflicts. During the Cold War, the animosity between the superpowers overshadowed all other conflicts. Internal divergences, stemming from ethnic, religious or political differences, were kept under control by external threats or totalitarian regimes. When it ended, however, many regimes collapsed and internal conflicts were no longer held in check. In several States rival groups, often impelled by ethnic or religious fanaticism, became engaged in embittered struggles. The expectation that the end of the Cold War would

8 Frits Kalshoven, *Constraints on the Waging of War*, ICRC, Geneva, 1987, pp. 22/23.

9 Adopted by UN General Assembly Resolution 31/72 of 10 December 1976, reprinted in Schindler/Toman, *op. cit.* (note 5), No. 18, p. 163.

10 Adopted on 10 October 1980, reprinted in Schindler/Toman, *op. cit.* (note 5), No. 20, p. 179.

lead to a period of peace and democratic regimes all over the world soon vanished. Internal conflicts began to cause even greater humanitarian problems than had occurred during the Cold War period. It was soon realized that only the international community could resolve this situation. For some time, the United Nations obtained satisfactory results by sending observer missions or peace-keeping forces into States affected by internal conflicts. This was the case in El Salvador, Cambodia and Mozambique. However, such operations, which were based on the consent of the warring parties, proved to be impossible or inadequate in later and more complex conflicts, such as those in the former Yugoslavia, in Somalia, Rwanda, Liberia and Sierra Leone. I shall not go into these conflicts and the measures taken, but shall confine myself to pointing out five major developments which international humanitarian law has undergone in this period.

The *first* is the decision of the Security Council that large-scale violations of human rights and international humanitarian law and the ensuing magnitude of human suffering can constitute a threat to international peace and give rise to measures under Chapter VII of the UN Charter.[11] The Security Council, by this decision, affirmed that respect for human rights and humanitarian law constitutes an integral element of the security system set up for the world organization.[12] On the basis of this finding, the Security Council has not only authorized the use of force in several humanitarian disasters since then, but has also set up two international criminal tribunals to prosecute persons responsible for serious

11 See esp. UN Security Council Resolution 794 (1992) on Somalia, Resolution 929 (1994) on Rwanda, but also Resolution 770 (1992) on Bosnia and Herzegovina. See also Resolution 1244 (1999) on Kosovo. In its resolutions on the establishment of the International Criminal Tribunals for the former Yugoslavia and for Rwanda, the Security Council also determined that "widespread violations of international humanitarian law (...) constitute a threat to international peace and security" (Resolutions 808 (1993) and 827 (1993) on Yugoslavia, Resolution 955 (1994) on Rwanda).

12 This is the wording of paragraph 12 of the preamble to the Resolution of the *Institut de Droit international* on "The application of international humanitarian law and fundamental human rights in armed conflicts in which non-State entities are parties", adopted on 25 August 1999, to be published in *Annuaire de l'Institut de Droit international*, Vol. 68-II. Bothe rightly stated that Security Council action in such cases is based on the assumption that respect for international humanitarian law is a precondition for the restoration of a just peace: Michael Bothe, "The United Nations actions for the respect of international humanitarian law and the coordination of related international operations", in L. Condorelli, A-M La Rosa, S. Scherrer (eds.), *The United Nations and International Humanitarian Law*, Geneva, 1995, p. 226; similarly Luigi Condorelli, *ibid.*, p. 462.

violations of international humanitarian law.[13] By so doing the Security Council has implicitly assumed the role of a supreme guardian of international humanitarian law.

As a *second development*, it should be noted that the distinction between international and non-international armed conflicts has lost much of its significance. The law of internal armed conflict has been increasingly aligned with the law of international armed conflict. This was especially emphasized by the International Tribunal for the former Yugoslavia in its *Tadic* decision (Jurisdiction) of 2 October 1995.[14] One of the causes of this development has been the proliferation of internal armed conflicts and the growing seriousness of their repercussions upon the international community. They can no longer be considered internal affairs of the respective States, as they used to be. Moreover, all-out recourse to armed violence in internal conflicts has become so generalized and so extreme that the difference between them and international wars has steadily diminished. As early as 1968, and again in 1970, the UN General Assembly characterized some basic humanitarian principles as applicable "in all armed conflicts"[15] or in "armed conflicts of all types".[16] In many resolutions on non-international conflicts in the past decade, the Security Council has furthermore called

13 Security Council Resolution 827 (1993) establishing the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia since 1991, and Resolution 955 (1994) establishing the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994.

14 Reproduced in *Yearbook 1995* of the Tribunal, p. 54 ff., esp. paras 96-137. See also Theodor Meron, "International criminalization of internal atrocities", *American Journal of International Law*, Vol. 89, 1995, pp. 554-577; Meron, "The continuing role of custom in the formation of international humanitarian law", *AJIL*, Vol. 90, 1996, pp. 238-249; Philippe Bretton, "Actualité du droit international humanitaire dans les conflits armés", *Mélanges offerts à Hubert Thierry*, Paris, 1998, pp. 57 ff., 60-64; Christopher Greenwood, "The development of international humanitarian law by the International Criminal Tribunal for the Former Yugoslavia", *Max Planck Yearbook of United Nations Law*, Vol. 2, 1998, pp. 97 ff., esp. 128-133; Christopher Greenwood, *International Humanitarian Law (Law of War)*, Revised Report for the Centennial Commemoration of the First Hague Peace Conference 1899, May 1999, 62-76; Marie-José Domestici-Met, "Cent ans après La Haye, cinquante ans après Genève: le droit international humanitaire au temps de la guerre civile", *RICR*, No. 834, June 1999, pp. 277 ff., esp. pp. 288-291.

15 Resolution 2444 (XXIII), *loc. cit.* (note 7).

16 UN General Assembly Resolution 2675 (XXV): "Basic Principles for the Protection of Civilian Populations in Armed Conflicts", adopted on 9 December 1970.

upon the warring parties to observe international humanitarian law and to desist from all breaches, without limiting itself to rules on non-international armed conflicts.[17] It is also revealing that practically all humanitarian law treaties concluded in the past few years have been made applicable to both international and internal armed conflicts.[18] It cannot be overlooked, however, that it would not be possible to apply all provisions of the law of international armed conflicts to internal armed conflicts.[19]

The gradual disappearance of the distinction between non-international and international armed conflicts has been facilitated by a *third development*, the growing importance of customary law. The International Criminal Tribunal, in its *Tadic* decision, came to the conclusion that many principles originally applicable in international armed conflicts had only in the course of time become customary rules applicable also in non-international conflicts; it enumerated a considerable number of such customary rules.[20] This finding constitutes one of the most important results of the post-Cold War developments. It shows that non-international armed conflicts are regulated to a much greater extent by legal rules than had generally been assumed. The International Court of Justice, in its Advisory Opinion of 1996 on the legality of the use of nuclear weapons, also affirmed that a great majority of treaty rules on international humanitarian law had become customary. It did not, however, specifically refer to rules on internal armed conflicts.[21]

17 See, e.g., Security Council Resolution 771 (1992), paras 1-3, on Bosnia and Herzegovina; Resolution 794 (1992), para. 4, and Resolution 814 B (1993), para. 13, on Somalia. It must be mentioned, however, that the Security Council has a broad concept of international humanitarian law: the Statutes of the two International Criminal Tribunals include genocide and crimes against humanity in the realm of international humanitarian law.

18 This is the case of the two new Protocols to the 1980 Weapons Convention: Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II), and Protocol on Blinding Laser Weapons (Protocol IV), adopted on 13 October 1995, as well as for the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, of 18 September 1997. The latter is to be observed also in the absence of any armed conflict.

19 Thus, for instance, the law relating to prisoners of war and to occupied territories could not as such be applied in internal conflicts. In the same sense the 1995 *Tadic* decision of the International Tribunal, *loc. cit.* (note 14), para. 126.

20 *Ibid.*, paras 96-137.

21 I.C.J. Reports 1996, pp. 256-259, paras 75-84.

The *fourth important development* has been the influence of human rights law on international humanitarian law. The fact that most contemporary armed conflicts are internal conflicts has accentuated this development, since in these conflicts human rights law and humanitarian law play an equally important role. Most of the serious violations of international humanitarian law are also violations of human rights. In most internal armed conflicts, the Security Council and other UN organs have appealed to the warring parties to respect both humanitarian and human rights law.[22]

The *fifth important development,* finally, can be seen in the statement of the International Court of Justice, in its Advisory Opinion of 1996 on the legality of the threat or use of nuclear weapons, that the fundamental principles of humanitarian law constitute "intransgressible principles of international customary law".[23] In other words, these principles belong to the most fundamental norms of international law, norms which form part of what could be called the unwritten constitution of the international community. They are an indispensable foundation of that community.

All these developments have been brought about by judicial pronouncements or by decisions of political organs of the United Nations, but not by the conclusion of new treaties. Indeed, it would hardly have been possible to attain the same results by treaties, for many governments would have been reluctant to give their express consent to limitations of what had hitherto been considered internal affairs of States. Nevertheless, governments have in the past few years also shown a considerable readiness to adopt new treaties. There are, for instance, the two new Protocols to the 1980 Weapons Convention,[24] that of 1995 on blinding laser weapons, and the amended 1996 text of that on mines; the Ottawa Convention of 1997 on anti-personnel mines;[25] the 1998 Rome Statute of the International Criminal Court; and the 1999 Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.[26]

22 See Adama Dieng, "La mise en œuvre du droit international humanitaire: Les infractions et les sanctions", in *Law in Humanitarian Crises*, European Commission, Luxembourg, 1995, Vol. I, pp. 311 ff., esp. pp. 350-358.

23 *Loc. cit.* (note 21), p. 257, para. 79. In para. 83, the Court states that in the case under examination there was no need for the Court to pronounce on the question whether these principles are part of *jus cogens*.

24 See note 18.

25 *Ibid.*

26 UNESCO Doc. HC/1999/7 and ILM 38/4 (July 1999), p. 769.

Another important enactment to be mentioned, although it does not take the form of a treaty, are the recently issued and long-awaited rules on the "Observance by United Nations forces of international humanitarian law", promulgated by the UN Secretary-General on 6 August 1999.[27]

In cases where the adoption of conventions could hardly have been successful, private drafts have been elaborated which restate and develop the existing law. The main examples are the 1990 San Remo rules on non-international armed conflicts,[28] the Turku Declaration of Minimum Humanitarian Standards, also of 1990,[29] and the 1994 San Remo Manual on the law of armed conflicts at sea.[30] These private drafts reinforce existing law and contribute to the formation of customary rules. If intergovernmental conferences had dealt with the respective subjects, this might have led to some retrogressive developments.

Non-observance of humanitarian obligations: causes

After having cast some light on what may be called the success story of international humanitarian law, we now turn to the causes of the grave and widespread violations experienced in recent years. First, there is a certain relationship between the progressive development of the law and gross violations of humanitarian principles. All conventions on international humanitarian law, beginning with the Geneva Convention of 1864, were a response to intolerable humanitarian situations. Similarly, the remarkable developments of the past ten years would not have been possible without the gross violations which occurred in the same period. The question remains, of course, to what extent new legal norms have prevented future humanitarian disasters and to what extent they have simply fostered the illusion that the steps needed to avoid them had been taken.

One of the main causes of the present-day non-observance of international humanitarian law is that most armed conflicts are internal conflicts. The great majority of the provisions of the Geneva Conventions apply solely to international armed conflicts. Only Article 3, common to the four Conventions, and Protocol II deal with non-international

27 United Nations, ST/SGB/1999/13 of 6 August 1999. See also *infra*, p. 795.

28 *IRRC*, No. 278, September-October 1990, p. 404.

29 *IRRC*, No. 282, May-June 1991, p. 330.

30 Grotius Publications, Cambridge University Press, 1995.

conflicts. The Conventions are thus insufficiently adapted to the now prevailing form of armed conflicts.

The Geneva Conventions are also based on the assumption that armed conflicts are conducted by armed forces which are under a responsible command, are trained in the conduct of hostilities and act in conformity with international law. Most internal armed conflicts, however, are fought by private groups which lack a clear command structure, are not trained in the conduct of hostilities and not familiar with the principles and rules of international humanitarian law. Internal armed conflicts have, moreover, always been marked by a higher degree of cruelty and hatred than international wars. Humanitarian rules have always had a lesser chance of being observed in internal conflicts than in international conflicts. No fundamental change can be expected in this respect.

The traditional law of war was furthermore based on the expectation of reciprocity. Armed forces expected that they would lose their protection if they disregarded the rules of the law of war vis-à-vis their enemy. In the last few decades, however, the law of war has been transformed into a human rights-oriented law, with the result that reprisals have been prohibited. Reciprocity has therefore lost its relevance, especially in non-international conflicts.[31] Implementation of international humanitarian law no longer depends on reciprocity, but on measures taken by the international community. Another factor which can undermine compliance with that law is the inequality of the means at the disposal of the parties to a conflict. If one party can rely on air power to combat its enemy, the other party, without similar resources, may be induced to resort to means contrary to international humanitarian law, such as terrorist attacks or other acts directed against civilians inside or outside its territory.

The widespread non-observance of international humanitarian law is also due to the incapacity of the international community and the unwillingness of States to take adequate measures to avert humanitarian disasters. Although the Security Council considers gross violations of human rights and humanitarian law to be a threat to international peace and security allowing measures to be taken under Chapter VII of the UN Charter, States have so far mostly been reluctant to consent to the measures needed

31 See Stefan Oeter, "Civil war, humanitarian law and the United Nations", *Max Planck Yearbook of United Nations Law*, Vol. 1, 1997, pp. 195 ff., esp. pp. 214-215.

to defuse impending internal conflicts. Instead they tend to wait until a crisis flares out of control. Once hostilities and hatred have spread throughout a country and crimes are being committed without punishment, it is much more difficult, or even impossible, to get a grip on the situation. In internal conflicts, therefore, timely measures to prevent humanitarian disasters are of the utmost importance, apparently even more so than the adoption of new legal rules on internal armed conflict.

The United Nations and in particular its Secretary-General are primarily responsible for the prevention of impending conflicts. It would be highly desirable to set up UN services with the task of keeping a watch on emerging conflict situations and analysing possibilities for preventive measures, and to provide those services with the necessary means. Their work could help to forestall much human suffering and to avoid the problems caused by interventions undertaken at a time when a humanitarian disaster has already reached its peak. Yet the United Nations does not currently seem to be able to intensify its activities in preventive diplomacy. As long as it is denied the necessary means, it is up to regional organizations and individual States to engage in the prevention of humanitarian crises and of ensuing violations of humanitarian law.

It follows that the responsibility for large-scale violations of human rights and international humanitarian law in internal armed conflicts must to some extent be attributed to those States which, although they have the means to take adequate preventive measures, are unwilling to do so.

After having thus drawn attention to the grave violations of international humanitarian law, it may be appropriate to emphasize that the Geneva Conventions are by no means ineffective. Although often violated, they have proved their salutary effect. They have secured the protection of great numbers of prisoners of war and detainees and made possible extensive relief operations for victims of war. Their positive effects have been underscored by the large-scale survey "People on War" recently carried out by the ICRC, in which people all over the world were asked about their experience of war.[32]

32 See Gilbert Holleufer, "Peut-on célébrer le 50e anniversaire des Conventions de Genève ?", *IRRC*, Vol. 833, March 1999, p. 135. The final results of the survey had not yet been published at the time of writing this report.

Concluding remarks and outlook

So what is the outlook for international humanitarian law? A globalized and closely interdependent world cannot exist without common values shared by all. The universally recognized principles of human rights and international humanitarian law form part of these common values. The International Court of Justice has rightly stated that the fundamental rules of international humanitarian law constitute intransgressible principles of international customary law. It has thereby confirmed that these rules belong to the indispensable basic principles of the entire international community. Compliance with them is essential for peaceful relations among States in the global village of today. No peaceful coexistence is possible between States which observe these principles and States which aim at the annihilation of certain peoples or groups of people. The conduct of such States inevitably affects other States and provokes counter-measures by them.

Yet the fact remains that human rights and international humanitarian law are far from being universally recognized as non-derogable principles of the international community. The humanitarian disasters of recent years and the gross violations of humanitarian principles are evidence of this. There is an obvious tension between what international lawyers, judicial bodies and most governments consider to be principles indispensable for the cohesion of the international community, and the behaviour of large sections of the world's population. Strong currents, among them nationalism, particularism and various forms of fundamentalism, are working against acceptance of universal humanitarian values.[33] It will take a long time and unwavering determination to overcome such adverse forces and gain due recognition for the fundamental principles of human rights and international humanitarian law in all parts of the world. The steps now being taken for that purpose are extremely important and must be pursued with perseverance. They include the dissemination of

33 Forsythe points to the clash between globalism and "romantic (and dangerous) particularism": see David Forsythe, "1949 and 1999: Making the Geneva Conventions relevant after the Cold War", *IRRC*, No. 834, June 1999, pp. 267/8. Roberts and, similarly, Dieng, refer to fears in post-colonial States that increased diplomatic attention paid to international humanitarian standards could lead to interventions and to a new form of colonialism: Adam Roberts, "The laws of war: Problems of implementation in contemporary conflicts", in *Law in Humanitarian Crises*, European Commission, Luxembourg, 1995, pp. 79/80, and Adama Dieng, *op. cit.* (note 22), p. 363.

knowledge of international humanitarian law, the adoption of new legislation enabling States to comply with their international obligations, the prosecution of war crimes by all States and the establishment of the International Criminal Court.[34]

However, these measures cannot be expected to have a rapid and profound effect on the actual behaviour of whole populations. Moreover, in internal conflicts, which have always been marked by a high degree of cruelty and intense enmity, it will remain difficult to secure observance of international standards of humanity. The task of improving respect for international humanitarian law will therefore be with us until armed conflicts themselves can be prevented.

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Résumé

L'importance des Conventions de Genève pour le monde moderne

par DIETRICH SCHINDLER

L'évolution du droit international humanitaire au cours des cinquante dernières années a été caractérisée par deux orientations contradictoires. La première est le progrès considérable intervenu dans cette partie du droit international. Le droit international humanitaire est aujourd'hui l'une des branches du droit international dont les règles sont les plus exhaustives : la plupart des aspects de la protection des personnes dans les conflits armés et de la conduite des hostilités ont fait l'objet de dispositions détaillées. En outre, les Conventions de Genève de 1949 ont acquis une reconnaissance pratiquement universelle. Un grand nombre de leurs dispositions sont maintenant reconnues comme étant des règles du droit coutumier et font partie du jus cogens. *Ce succès remarquable contraste toutefois avec la seconde orientation, à savoir les violations flagrantes des Conventions et l'augmentation inquiétante du nombre d'actes inhumains et cruels commis au cours des conflits armés des dernières*

34 These and other measures were recommended in the Final Declaration of the International Conference for the Protection of War Victims of 1993 and in Resolution 1 of the 26th International Conference of the Red Cross and Red Crescent of 1995, see *IRRC*, No. 310, January-February 1996, pp. 58 and 79 respectively.

années. Les catastrophes humanitaires causées par la guerre sont devenues l'un des problèmes majeurs de notre temps. Il est évident que les dispositions juridiques n'ont pas toujours donné les résultats que l'on attendait d'elles au moment de leur adoption. À cet égard, l'évolution des Conventions de Genève au cours des cinquante dernières années est marquée à la fois par le succès et l'échec. — L'auteur examine d'abord l'évolution normative du droit international humanitaire depuis 1949, puis analyse les causes des violations massives qui ont été commises pendant la même période.