

Prevention

[Source: Report on the Protection of War Victims, Prepared by the ICRC, Geneva, June 1993; footnotes omitted.]

[...]

2. Prevention

Armed conflicts cause unspeakable suffering, whatever is done to prevent it and however well international humanitarian law is respected. It is therefore vital to encourage and intensify all efforts to tackle the root causes of conflicts, such as poverty, inequalities, illiteracy, racism, the uncontrolled growth of huge cities, the collapse of governmental and social structures, corruption, crime organized on a world scale, drug trafficking and arms dealing...

To encourage *compliance with international humanitarian law* is not enough. Such encouragement cannot serve as an excuse to ignore those fundamental problems, which are moreover not only the source of conflicts but often also stand in the way of respect for that law. How indeed should young people whose sole education has been that of the streets understand the underlying principles of humanitarian law and respect humanitarian work?

Neither the present document nor the International Conference for the Protection of War Victims have any ambition of addressing problems relating to the root causes of armed conflicts. It is nevertheless essential to stress that efforts to tackle those causes and efforts to protect the victims of war are mutually complementary.

The measures described below are therefore intended, to be taken in peacetime, to ensure that international humanitarian law will be respected if an armed conflict breaks out. They may well seem unspectacular, but they stem from the conviction that the most wonderful statements have no effect unless they are accompanied by persistent, long-term work.

2.1 Promotion of the international humanitarian law treaties

[...]

Now that the Geneva Conventions enjoy almost universal recognition, it would be desirable if the same could be achieved for the whole range of international humanitarian law treaties and particularly the Additional Protocols of 1977. It is only through such recognition that the humanitarian rules to be applied in armed conflicts can be laid down clearly and without ambiguity. Admittedly, many of the rules codified in the 1977 Protocols may be considered international customary law, but there are still grey areas. Since international humanitarian law, which applies in situations of armed conflict and therefore fraught with tension and distrust between the belligerents, suffers if there is any uncertainty as to the applicability of its rules, it is of paramount importance for its security and credibility that the rules taught during military training should be the same everywhere.

All States which have not yet adopted one or other of the international humanitarian law treaties are asked to examine or re-examine the possibility of doing so without delay.

[...]

It is recommended that efforts be made to promote all international humanitarian law treaties and that all States party thereto should actively support such efforts.

Finally, note should be taken of the important task assigned to the International fact-finding Commission set up in accordance with Article 90 of 1977 Additional Protocol I. As recognition of the general competence of this Commission requires a formal declaration of acceptance, it is essential that all the States should make such a declaration and communicate it to the depositary State, either on ratifying or acceding to the Protocol or at a later date. The Commission will not be able to play an active role unless it is widely recognized. However, only 34 States have hitherto made the aforesaid declaration. [...]

2.2 Adoption in peacetime of national implementation measures

The virtually universal acceptance of the Geneva Conventions of 1949 and the fact that a large number of States are party to their 1977 Additional Protocols are not enough to guarantee the effective application of these treaties, owing to the inadequacy of laws and other measures adopted by States at national level to implement them.

Certain crucial obligations undertaken by States may well remain a dead letter if the necessary legislative and practical measures are not adopted, for it is by adopting such measures, in particular, that States demonstrate their genuine intention to fulfil their commitments.

Concern for this situation has prompted the international community to encourage the ICRC on various occasions to promote the adoption of such laws and measures. The ICRC accordingly followed up previous steps to that effect by writing to the States party to the Geneva Conventions of 1949 to request information with regard to the measures they had taken or were planning to take, at national level, to ensure that

international humanitarian law was effectively applied. These written representations, some of which were made in conjunction with the National Red Cross or Red Crescent Societies, also request ideas as to mechanisms that could be used more effectively to help States fulfil their obligations.

On the basis of reactions to date – about one third of the States party to the Geneva Conventions have replied to the written enquiry – certain domains of international humanitarian law, are considered to be of greatest importance, in particular the repression of grave breaches, the protection of the red cross and red crescent emblem, and dissemination of international humanitarian law. National measures have also been adopted in other areas such as the definition of protected persons, safeguards for humane treatment, the protection of medical units and staff, the disciplinary system within the armed forces ensuring respect for international humanitarian law, and the training of legal advisers in these forces. The replies also indicated that although most States generally welcomed assistance in this field, they were not in favour of more compulsory systems or systems that might imply monitoring of the measures adopted.

The ICRC intends to continue collecting information in order to identify the most appropriate means of helping States to fulfil their obligations. [...]

2.3 Spreading knowledge of international humanitarian law

The dissemination of knowledge of international humanitarian law must imperatively begin in peacetime, for there is no chance of it being applied unless it is known by those whose duty it is to comply and ensure compliance with it. The importance of such work was recognized at the outset of modern international humanitarian law. It was accordingly included as an obligation in the Geneva Conventions of 1949 and their Additional Protocols of 1977.

The international community has furthermore mandated the ICRC to participate in this effort. It performs this task with the particular support of the National Red Cross and Red Crescent Societies and their Federation.

Activities to disseminate international humanitarian law have indisputably been considerably intensified over the past fifteen years. [...]

For its part, the ICRC has set up a structure specially for dissemination and has been able to raise the level of awareness of international humanitarian law in the various parts of the world through its network of regional delegations and with the support of the National Red Cross or Red Crescent Societies and their Federation. Thousands of seminars, courses, and exhibitions have been organized at both national and regional level for such diverse audiences as soldiers and officers, political and academic circles. The ICRC has also produced or helped to produce a significant range of teaching materials, adapted to various cultures. It has a list of over a thousand publications, many of them available in a large number of languages. Care has been taken to ensure that materials are suited to the level of education concerned: children are not approached in the same way as academics, or soldiers in the same way as senior officers.

Between 1988 and 1991 the International Red Cross and Red Crescent Movement as a whole led a World Campaign for the Protection of Victims of War which increased the awareness of the public and of governments throughout the world.

However, although a number of States have realized the importance of disseminating international humanitarian law and have begun to make the necessary arrangements, the results are still far from satisfactory.

The ignorance of humanitarian rules shown by members of the armed forces or armed groups in certain recent conflicts, or their disregard for those rules, should induce every State to consider what precautions it is taking to avoid such excesses. The International Conference for the Protection of War Victims should serve as an opportunity to examine this question seriously and without complacency.

Three subjects have been singled out here for closer consideration, namely the coordination of efforts to spread knowledge of international humanitarian law with other efforts of a similar nature, training for the armed forces, and the role of the media.

2.3.1 The coordination of efforts to spread knowledge of international humanitarian law with other educational activities aimed at preventing conflicts

It is imperative to begin spreading knowledge of the principles and basic rules of international humanitarian law in time of peace and, at national level, to have a well thought out programme of instruction to do so. The work carried out among young people in particular should pave the way for specific courses in universities and for instruction within the armed forces.

It is only logical that the work undertaken to spread knowledge of international humanitarian law, with the aim of preventing excesses in armed conflicts, should go hand in hand with educational efforts to prevent the conflicts themselves.

In this context, dissemination of the *principles contained in the Charter of the United Nations and education in human rights* come particularly to mind. It is indispensable that greater attention be given to these domains, placing special emphasis on young people and on harmonization of such work with activities to spread knowledge of international humanitarian law. How can we talk about the eventuality of armed conflicts without simultaneously saying that the international community nowadays rejects this means of settling differences? Should we not point out that strict respect for human rights is the best way of avoiding armed conflicts? Should there not be a special effort to explain that human rights and international humanitarian law are complementary and not mutually contradictory?

In other aspects of prevention, the International Red Cross and Red Crescent Movement can play a role, though a more modest one.

States should be helped in such work mainly by other intergovernmental institutions, in particular UNESCO, or non-governmental organizations. [...]

2.3.2 Training for the armed forces

In countries where the armed forces are taught the rules of international humanitarian law, this subject is often a marginal item in military training programmes. However, unless international humanitarian law becomes an integral part of regular combat training and a key constituent of training programmes at all levels in the chain of command, it can hardly be expected to have a favourable impact on the conduct of members of the armed forces engaged in the field. International humanitarian law considerations have already been experimentally included, with success, in the military decision-making process during certain military manoeuvres. [...]

With the rapid development of different types of armed conflict, the armed forces are increasingly engaged in operations to maintain or restore law and order. This new role calls for particular attention to the training of the armed forces, in view of the basic differences between traditional combat missions and the tasks of maintaining law and order within their own country. In certain cases, such training should also be given to the police.

The ICRC recently organized a meeting of experts on the teaching of international humanitarian law to the armed forces, at which the majority of participants were senior officers from a variety of countries. The meeting concluded that it was important to increase the coordination of activities in this domain at the national, regional and international level. In particular, regional experience in Asia, Africa and Latin America suggests that greater cooperation could be established between armed forces and, more especially, between people responsible for instruction in international humanitarian law. [...]

2.3.3 The role of the media

The media have a key part to play during conflicts, as they are then the main means of communicating with the population. Their role consequently merits extensive consideration.

What can the media be expected to do to alert governments and the general public to tragic but forgotten situations? How can they help to spread knowledge of the humanitarian rules both in time of peace and in time of war? What is their duty as regards the denunciation of excesses? How should manipulation of the media for political purposes, and in particular to exacerbate hatred between diverse communities, be avoided? How can they avoid trivialising horror? Where exactly does the independence of the media with regard to the previous questions begin and end?

Although these various subjects have already been considered to some extent, they should be discussed in even greater detail with senior media management and with journalists. [...]

Action

3. Action taken despite all adversity

It has been pointed out that the proliferation of armed conflicts and the course they are taking are threatening humanitarian values, and that everything must be done to protect them. [...]

Three interrelated issues call for particular attention here: the action to be taken to ensure respect for international humanitarian law; the coordination of humanitarian action; and the safety of those engaged in humanitarian work.

3.1 Action to be taken to ensure respect for international humanitarian law

In many recent armed conflicts, the difficulties encountered in applying international humanitarian law have been so great that even its underlying philosophy has been called into question.

International humanitarian law is based on the principle that parties who can find no other way of settling their differences other than by the use of force will agree to observe certain humanitarian principles during the conflict, irrespective of the merits of the cause being defended.

This approach is to the benefit of all the victims of armed conflict. It is therefore in the humanitarian interest of each of the parties to the conflict and does not place them at a political or military disadvantage, since respect for international humanitarian law does not have a significant effect on the military outcome of the conflict.

For this system to work, a number of conditions must be fulfilled. Many of them have been cited in the "Prevention" section of the present document.

The crucial question arising from recent armed conflicts is how the international community should react when the parties to a conflict are unwilling to respect the principles and rules of international humanitarian law, or are incapable of ensuring respect for them.

The International Conference for the Protection of War Victims provides an opportunity to clarify this question.

3.1.1 Is there still a place for international humanitarian law within the international system?

In a long-term assessment it might seem that international humanitarian law will not retain its present importance. The end of the Cold War restored hope of a world at peace based on the universally recognized values laid down in international law and guaranteed by the United Nations, which would itself be backed by an international court whose mandatory authority in international disputes would be recognized by every

State, and by armed forces capable of imposing the decisions of such a tribunal. National armed forces would be progressively reduced to the minimum necessary for ensuring internal order.

In the system established by the Charter, as originally conceived and briefly described above, there would no longer be a place for armed conflicts and consequently for international humanitarian law, or for the principle that emergency humanitarian aid should be neutral and independent. This was clear to the International Law Commission at the outset of its deliberations.

Moreover, although the climate of the Cold War at first prevented all necessary arrangements from being made for the system to work well, it is now felt, as expressed recently by the United Nations Secretary-General, that "*...an opportunity has been regained to achieve the great objectives of the Charter*".

[footnote 20 reads: Report by the Secretary-General entitled: An Agenda for Peace, document A 47/277 S/24111 of June 17, 1992]

It cannot, however, be ignored that the aforesaid objectives are still far from being achieved: the mandatory authority of the International Court of Justice is not recognized by all States, the States themselves still possess powerful armed forces and the United Nations does not have the resources to maintain or, if necessary, restore, an international order devoid of armed conflict and based on international law.

The essential role of the United Nations nonetheless remains the maintenance of peace and the search for a solution to these conflicts. To end them, it must take measures tantamount to a political commitment. Such a commitment, however, carries the risk that one or other of the parties, or even all of them, may reject the United Nations.

International humanitarian law and the neutrality and independence of humanitarian emergency aid consequently retain all their present significance, and the real difficulties encountered in applying this law cannot possibly be resolved by questioning the principles on which it is based.

3.1.2 The obligation of the States to "ensure respect" for international humanitarian law

When large-scale violations of international humanitarian law occur, the first response must be a redoubling of efforts to make it operative, whatever the difficulties involved.

For this purpose, it is essential to speak with parties to conflict in order to obtain their commitment to respect the obligations placed upon them by international humanitarian law, and to find practical solutions to urgent problems such as access to populations in need or to defenceless prisoners. It is here that the ICRC's role as a specifically neutral and independent intermediary assumes its full significance. The use of instruments provided by international humanitarian law for its own implementation, in particular, the designation of Protecting Powers or recourse to the International Fact-Finding Commission, must also be encouraged.

This indispensable dialogue is no longer sufficient, however, if grave breaches of international humanitarian law nonetheless persist. Belligerents are accountable for their acts to the entire international community, as the States party to the Geneva Conventions have undertaken to “*respect and ensure respect*” for these Conventions *“in all circumstances”*.

According to the terms of this provision, all the States party to the Geneva Conventions are under the obligation to act, individually or collectively, to restore respect for international humanitarian law in situations where parties to a conflict deliberately violate certain of its provisions or are unable to ensure respect for it.

There are lastly situations in which total or partial failure must be admitted, despite all efforts to ensure application of international humanitarian law. While these must certainly be maintained, violations are of such magnitude that their very continuation would represent an additional threat to peace within the meaning of Article 39 of the United Nations Charter.

It is then the responsibility of the United Nations Security Council to make such an assessment and recommend or decide on what measures are to be taken in accordance with Articles 41 and 42 of the Charter.

These measures differ from those provided for by the Geneva Conventions in that the use of force as a last resort is not excluded, and their purpose is not essentially to ensure respect for international humanitarian law but to tackle a situation which is threatening peace.

3.1.3 Action taken to ensure respect for international humanitarian law

A large range of options are possible within the framework of *Article 1 common to the Geneva Conventions* and Article 1 of Additional Protocol I. Among these are: diplomatic approaches of a confidential, public, individual or collective nature; encouragement to use the means of implementation provided for in international humanitarian law, such as the designation of Protecting powers and recourse to the International Fact-Finding Commission; and offers of good offices. It should be noted, moreover, that the limits imposed on such action are those of general international law, and that international humanitarian law could not possibly provide a State not involved in the conflict with a pretext for intervening militarily or for deploying forceful measures outside the framework provided for by the United Nations Charter.

Article 89 of Additional Protocol I moreover stipulates that the obligation to act in situations of serious violations of international humanitarian law, either jointly or individually, must be carried out in cooperation with the United Nations. The manner of this cooperation, however, has yet to be defined.

The steps taken to ensure respect for international humanitarian law have a direct effect on the work of organizations such as the ICRC. Their aim may even be to enable or facilitate the work of such organizations.

Conversely, the measures decided upon and recommendations made by the Security Council under Chapter VII of the Charter cannot be considered neutral within the meaning of international humanitarian law, even though their ultimate objective may in some cases include the aim of putting an end to violations of that law. The use of armed force is thereby not excluded. Should such force be used, it will itself be subject to the relevant provisions of international humanitarian law.

It follows that a humanitarian organization such as the ICRC cannot be involved in the execution of such measures. It is vital for the ICRC to retain its complete independence and with it the possibility to act as a neutral intermediary, between all the Parties to a conflict, including any armed forces deployed or authorized by the United Nations.

Independent humanitarian organizations must nonetheless take into account the new situations created by measures adopted by the Security Council and examine with those carrying them out and with all the parties concerned the way in which they can play their traditional role within this context such as care of the wounded, visits to and protection of detainees, transport and distribution of aid to vulnerable persons, transmission of family messages or the reuniting of families, etc.

As to the implementation of humanitarian measures stemming from decisions taken by the Security Council within its mandate to maintain or restore peace, the role of the subsidiary bodies or specialized agencies of the United Nations, and even that of the peace-keeping forces themselves, are questions which require further consideration first and foremost within the United Nations itself.

To sum up, it is important to mark a clear distinction between action taken to facilitate the application of international humanitarian law (which is primarily based on the consent of the Parties to conflict), and action (which does not exclude coercion) to maintain or restore peace. Recent practice should be analysed in this respect: apart from the undeniable merit of certain actions, the stress placed in peace-keeping or peace-making operations upon activities with purely humanitarian objectives threatens to create a certain confusion which may ultimately prove harmful to humanitarian work and to the objective of restoring peace. It should be noted, moreover, that although attention has been drawn several times, in specific situations, to the obligation to ensure respect for international humanitarian law, the action taken on this basis has not been a conclusive indication of customary practice.

Consequently, consideration must be given to a suitable framework for holding a regular multilateral and structured dialogue to address problems encountered in the application of international humanitarian law, bearing in mind the role that the International Conferences of the Red Cross and Red Crescent can play in this respect.

Consultation is therefore still necessary to determine the most appropriate methods and framework for implementation of the States' obligation to ensure respect for international humanitarian law, as

well as the type of cooperation to be established with the United Nations in the event of serious violations of that law. Further consideration should also be given to the most suitable framework in which a structured multilateral discussion of specific difficulties encountered in its application could take place at regular intervals. The ICRC intends to hold talks on these subjects with government and United Nations experts in 1994.

3.2 Coordination of humanitarian action

In its desire to contribute more effectively to the growing needs of the victims of armed conflicts and natural disasters, the United Nations has recently established coordinating mechanisms.

Adopted by consensus on 19 December 1991 after several work sessions, General Assembly Resolution 46/182 envisages a series of measures for the improved coordination of humanitarian aid. The most important of these are:

- the appointment of a humanitarian coordinator directly responsible to the Secretary-General;
- the creation of a rotating and automatically renewable fund at the disposal of the specialized agencies during the first phase of an emergency;
- the creation of a permanent Inter-Agency consultative committee for the coordination of humanitarian aid.

Inter-Agency coordination should help to avoid the overlapping or absence of action in particular situations or areas, thanks to a distribution of tasks according to the respective mandates of the different organizations. It should certainly be continued and further improved, for the magnitude of needs requires combined efforts to overcome them.

At this stage, however, it must be conceded that this dialogue aimed at a distribution of tasks has not yet enabled emergency action in the theatres of operations to be deployed on the scale and at the speed required. The ICRC itself stood alone for too long – despite the support it received from the Red Cross and Red Crescent National Societies and their Federation and the courageous work of certain non-governmental organizations – in a number of theatres of operation where additional assistance by other agencies would have been necessary. Apart from the quantitative aspect, such assistance would moreover have enabled the specific abilities of each organization to be turned to the best possible account to meet the victims' various needs.

The above-mentioned Resolution 46/182 certainly provides for early-warning systems. In addition, programmes for *disaster preparedness*, such as those of the National Red Cross and Red Crescent Societies under the aegis of their Federation, deserve to be encouraged.

However, the needs are so great that the basic problem is now the inability of the international community to react to those needs when they are identified. Given that there is a primary duty to provide aid on the spot

and in good time in the face of atrocities committed against whole populations, to do so is also more economical and effective than to render aid belatedly or to have to receive hundreds of thousands of refugees and displaced persons.

Besides the need for a coordination of tasks, a *concerted approach* is extremely important to improve the effectiveness and quality of emergency humanitarian action. The political, logistic and socio-cultural difficulties that had to be overcome before emergency aid could be completely effective have for too long been underestimated. Action taken without respect for certain ethical principles may well be ineffective, or do more harm than good. Moreover, it enables the authorities to deny the humanitarian organizations which respect those principles the guarantees which they are duty bound to demand as regards the destination of aid and the monitoring of its distribution.

For this reason, it is important for the International Conference for the Protection of War Victims to encourage the work of the International Red Cross and Red Crescent Movement, in consultation with various nongovernmental organizations, so as to draw up a code of conduct for organizations engaged in emergency aid.

It is also essential to ensure that the transition from the emergency phase to that of reconstruction and development takes place smoothly, for this decreases or minimizes the dependence of those receiving aid, as well as limiting the duration of relief undertaken by organizations set up specifically for emergency work.

3.3 The safety of those engaged in humanitarian action

[...]

Humanitarian action is dangerous nowadays and the terrible dilemma facing humanitarian organizations is to decide how far their representatives can be put at risk in order to supply women, children, prisoners, sometimes entire populations with food and medicines or other goods essential for their survival; to provide them with some measure of protection; and to give them comfort and support.

The danger is ever-present and each incident must be analysed and evaluated. Was it an accident? Was it due to the general climate of insecurity? Was it perpetrated by the armed forces or armed groups? Did it arise from the disobedience of a soldier? Did it reflect the unacknowledged desire of the authorities to hinder humanitarian action?

The measures that have to be taken will depend on the reply to these questions: and they might sometimes be more severe than those working in the field would wish.

Confronted by this problem, humanitarian organizations must be stringent and clear-sighted in setting limits to their operations, for there are degrees of risk beyond which they cannot and should not go.

The particular problem of armed escorts has arisen in this connection in certain recent situations. The use of such escorts is obviously regrettable in that according to international humanitarian law the emblem of the red cross or red crescent should be sufficient protection for those who have come to help.

However, international humanitarian law itself does not exclude the arming of medical personnel to protect the convoys for which they are responsible against acts of banditry. Regrettable though they may be, and irrespective of the multiple problems they entail, armed escorts are thus not a means of protection that can immediately be excluded.

An absolute condition for their use by independent humanitarian organizations must be the consent of the relevant party to a conflict or, in situations where the structures of the State are in such disarray that it is difficult to identify the authorities, the absence of formal opposition. It is one thing to protect oneself from banditry with the agreement of the party to a conflict on whose territory the humanitarian operation is taking place, but quite another thing to impose humanitarian convoys by force on a party to a conflict which refuses to grant permission for such convoys.

Obviously, humanitarian organizations have no other weapon than that of persuasion, and cannot themselves envisage imposing convoys by force.

But, as stressed above, an organization such as the ICRC would not be able to participate, not even marginally, in operations imposed by force upon Parties to conflict because they are after all of a military nature even though their aim is humanitarian. An organization which is called upon to act as a neutral intermediary in conflicts must of necessity retain the possibility to give protection and assistance to all the victims, including the potential victims of precisely such an operation.

Lastly, attention must be drawn to the particular problem of spreading knowledge of the humanitarian rules, which has an evident bearing on the safety of humanitarian activity.

It has been mentioned that thorough preparatory instruction in international humanitarian law should be provided in peacetime, but in many of the present conflict situations such prior instruction has not been given, or not sufficiently. The need to save the victims is so imperative that different approaches must be adopted, calling on the media to issue daily reports on how humanitarian work is conducted, its objectives and progress, and relying on the support of whatever political or military structure still exists.

The problems are even more serious in situations where government structures collapse.

In such extreme circumstances, to enable humanitarian action to take place it is indispensable to ensure that its nature and purpose are clearly understood. In view of recent experience, particular attention should now be given to means of getting this message across in such circumstances.

Repression - Reparation

4. Repression and reparation

The States party to the 1949 Geneva Conventions are obliged to suppress all acts contrary to the provisions of those instruments and to repress any grave breaches. A number of these breaches are listed in the four Conventions and more are found in 1977 Additional Protocol I. All grave breaches are considered as *war crimes*.

Provision must be made in peacetime for the repression of breaches of rules of international humanitarian law; this has a dissuasive effect and therefore constitutes an important preventive measure.

However, the repression of breaches is also considered one of the emergency measures which must be taken in situations where international humanitarian law is violated on a massive scale.

This part of the report first discusses the role of the International Fact-Finding Commission. Although the Commission is not a court of law, its purpose is to facilitate the repression of breaches committed in situations of armed conflict.

The report goes on to examine the necessary penal measures at national and international levels.

4.1 The International Fact-Finding Commission

Additional Protocol I of 1977 introduced an important additional mechanism for implementing international humanitarian law. Article 90 of the Protocol provides for the establishment of an International Fact-Finding Commission when not less than 20 High Contracting Parties have agreed to accept its competence. This was the case as from June 25, 1991, when the 20 States elected the 15 members of the Commission.

The Commission is a permanent body whose mandate is to enquire into all allegations of grave breaches or other violations of the 1949 Geneva Conventions and of Protocol I, provided that the party alleging the violation and the party against whom the allegation was made have both accepted the Commission's competence. At its first meeting on March 12 and 13, 1992 the Commission expressed its readiness, subject to the agreement of all the parties to the conflict in question, to enquire into other breaches of international humanitarian law, including those committed during non-international armed conflicts.

Any party which has made the declaration accepting its competence may apply to the Commission by right and without special agreement concerning breaches alleged to have been committed by any other party having made the same declaration. Any party which has not made the declaration may apply to the Commission on an ad hoc basis with the agreement of the other party or parties concerned. The Commission will present a report on the result of its enquiry and, if need be, its recommendations to the Parties concerned. It will not report its findings publicly unless requested to do so by all the parties to the conflict.

In its capacity as a permanent and completely independent body, the Commission represents a new and important mechanism for promoting respect for international humanitarian law. Fact-finding in a situation of armed conflict is a means of averting unnecessary dispute and violence. The Commission also affords the belligerents the opportunity to show their willingness to comply with international humanitarian law.

This machinery can only prove its effectiveness, however, if it can function and draw lessons from its experiences. For this reason, it is most important, as mentioned above, for the States which have not yet accepted the competence of the Commission to do so.

Apart from this important step, it devolves upon the States to avail themselves of the International Fact-Finding Commission in order to enquire, as soon as possible, into all breaches of international humanitarian law, including those committed in non-international armed conflicts. In this way they can show their commitment to this important mechanism of international humanitarian law, and their desire to shed light on alleged breaches of the law.

It should be pointed out that the role of the Commission is not to pass judgement on States, but to assist them in improving the application of the law.

4.2 Penal sanctions

An important part of international humanitarian law is concerned with the repression of breaches of its rules, given that sanctions are an integral part of every coherent legal system, and that the threat of punishment has a dissuasive effect.

4.2.1 National measures

The war crimes alleged by a party to a conflict almost always involve acts committed by the soldiers of the adverse party. It is therefore useful to point out that the obligation to suppress breaches of international humanitarian law and to repress grave breaches thereof requires the authorities to exercise great vigilance concerning acts committed by members of their own armed forces. As previously mentioned, this implies taking the necessary measures at the national level, especially by introducing these breaches into their penal codes.

In many countries, judges cannot base a judgement directly on international treaty law; the relevant provisions of that law should therefore be incorporated into the national legislation. The introduction of these provisions into the national penal system is indispensable, moreover, since the Geneva Conventions and Additional Protocol I contain no indication of the penalties to be applied to the various breaches.

To be effective during armed conflicts, moreover, repression must be carried out within a context of strict discipline in the conduct of hostilities and of determination throughout the whole military hierarchy. It is the laxity of commanders that turns soldiers into bandits.

The International Conference for the Protection of War Victims is invited to emphasize the duty of military commanders to inform their subordinates of their obligations under international humanitarian law, to do everything to avoid breaches of its rules and, if necessary, to repress or report any breaches committed to the authorities.

4.2.2 International measures

[...]

4.3 Reparation for damages

Additional Protocol I of 1977 contains one short article entitled “Responsibility” (Article 91) which specifies that a party to the conflict which violates the provisions of the 1949 Geneva Conventions or of Protocol I shall, if the case demands, be liable to pay compensation, and that it shall also be responsible for all acts committed by persons forming part of its armed forces.

This article confirms a rule which is today accepted as being part of customary law and was already stated, in almost identical terms, in Article 3 of the Hague Convention No IV of 1907. Moreover, an article common to the four Geneva Conventions emphasizes that no High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred as a result of the commission of grave breaches of the Conventions. This provision entails first of all criminal responsibility, but it also implies that, irrespective of the outcome of an armed conflict, no decision or agreement can dispense a State from the responsibility to make reparation for damages caused to the victims of breaches of international humanitarian law or to pay compensation for those damages.

This responsibility applies first of all in the context of relations among States and has acquired a new dimension with the reaffirmation and development of the rules governing the conduct of hostilities. A State which has laid mines indiscriminately, or which has caused other unlawful damage to the environment, for example, is under the obligation to make reparation (in particular by carrying out mine-clearing operations) or pay compensation.

The problems arising in connection with reparation for damages to persons and individual compensation are more complex for the following reasons:

- Application for reparation or compensation can be made only via the State; this often makes the process and its outcome uncertain.
- Although legally a clear distinction should be drawn between them, confusion may arise between damages attributed to violations of the right to engage in warfare (*jus ad bellum*) and those attributed to breaches of international humanitarian law (*jus in bello*), and thus dilute the responsibility to make reparation.
- The international obligation to provide reparation which exists under international humanitarian law does not apply to non-international armed conflicts. However, in the internal situations brought about by these

conflicts the national legal mechanisms which should enable victims to obtain reparation or compensation often fail to function adequately.

In practice there are of course cases in which the victims of breaches of international humanitarian law have obtained compensation.

Nevertheless the vast majority of victims do not receive the compensation to which they are entitled. A shocking example is provided by the innumerable children who have lost a limb to an exploding mine and have not even been granted the modest compensation of an artificial limb.

Of particular interest in this connection is the study by the Sub-Commission of the Human Rights Commission on the right of the victims of flagrant violations of human rights and fundamental freedoms to restitution, compensation and readaptation.

The International Conference for the Protection of War Victims should make it clear that it wishes procedures to be set up to provide reparation for damage inflicted on the victims of violations of international humanitarian law and award compensation to them, so as to enable them to receive the benefits to which they are entitled.

© International Committee of the Red Cross