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The Frontiers of International Humanitarian Law

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Since ancient times, war has been regulated by certain rules and rituals. Modern restraints date back to the emergence of centralized states with standing armies. In the international legal order which has developed since then, the law of war (the *ius in bello*) has occupied a prominent place. This traditional law of war, and international law in general, was certainly inspired by humanitarian considerations (e.g., the protection of prisoners of war and of aliens). But such considerations found expression only through a predominant filter: the state interest. In the present century, international law to a large extent has become treaty-based, and directed towards regulating peacetime conditions. The very right of states to resort to war has been severely restrained, and especially during the last 25 years limitations have also been placed on their peacetime armaments. Moreover, a number of rules have been devised for the protection of the individual, not only in his capacity as a representative of a foreign state, but also as a human being as such. With these developments, the law of war finds itself in a markedly new setting. The fairly recent term 'international humanitarian law applicable in armed conflicts', which today covers a considerable part of the law of war, is an indication of this. The present article analyses the relationship between the concept of international humanitarian law applicable in armed conflicts and certain related fields of international law and puts forward some thoughts on the implications of recent trends for the future development of international humanitarian law and for the activities of the International Red Cross and Red Crescent Movement.

1. A General Framework

The laws of war have never been an isolated phenomenon. They have been shaped by societal factors, such as economic, political and military developments. They have also evolved in a broader international legal framework, including the basic principles relating to the state as a subject of international law. Yet, one cannot avoid the impression that the setting of the law of war (the *ius in bello*) today is wider than ever.

In this expanding setting, the status of the traditional law of war (nowadays sometimes referred to as the law of armed conflict) has become somewhat moot. The more recent concept of *international humanitarian law applicable in armed conflicts* — endorsed by the Geneva Diplomatic Conference on Humanitarian Law of 1974–1977 — is an indication of this. This concept covers a considerable part of the more traditional law of war but has been introduced in order to put the focus on the protection of the human being. It is thus reminiscent of the interrelation which exists between the law of war and *human rights*.

This focus on the individual and the link to the concept of human rights serves an

additional purpose: Aggressive war has been outlawed by the Kellogg-Briand Pact of 1928 and the UN Charter of 1945 and the former *ius ad bellum* has become a *ius contra bellum*. In this environment, the mere *regulation of warfare* has acquired dubious overtones. The concept of humanitarian law carries the message that the main idea is to protect human beings rather than to regulate warfare as such. The contemporary law of war has developed side by side with efforts at strengthening *peace* and the *prohibition on the use of force* (the *ius contra bellum*).

The law of war has always contained prohibitions and restrictions on methods and means of combat, including the use of specific weapons (e.g., poison, the dum-dum bullet). Later on, states have accepted limitations on their peacetime armaments as well. The recent law of *arms control* and *disarmament* has provided a new perspective for that part of the law of war which deals with methods and means of combat and the use of weapons in war.

The starting point for our analysis is the law of war and especially that part of it termed international humanitarian law applicable in armed conflicts. We are thus con-

cerned with restraints on *collective violence*. From this perspective, the three concepts introduced above, that is, human rights, peace (i.e., negative peace = *ius contra bellum*) and disarmament, seem to offer the most relevant setting.

There are, of course, other fields of the international legal order which could be considered in this context, such as the law relating to the peaceful settlement of disputes. However, we shall in the following discussion limit ourselves to an analysis of the relationships between the concepts of humanitarian law on the one hand and those of human rights, peace and disarmament on the other. For instance, the law on the peaceful settlement of disputes is a corollary to the prohibition on the use of force; its links to humanitarian law and the law of war are more indirect.

As was noted above, the concept of *international humanitarian law applicable in armed conflicts* is related to the protection of the human being against the calamities of war. The historical roots of the concept lie in the protection of the 'victims of war', that is, persons who do not take an active part in hostilities. The famous Geneva Conventions introduced rules on the protection of wounded and sick soldiers (1864), prisoners of war (1929) and civilian persons (1949). These three categories are covered by the four Geneva Conventions of 1949, which form the bulk of international humanitarian law applicable in armed conflicts. This legal tradition has often been called the *Law of Geneva*.

It is interesting to note, however, that the very concept of humanitarian law does not yet appear in the title of the 1949 Geneva Diplomatic Conference or the four conventions adopted by the Conference. But the Conventions refer to 'humanitarian activities' carried out by the Red Cross and other 'humanitarian organizations', and a resolution adopted by the Diplomatic Conference states that its work was inspired 'solely by humanitarian aims' (see below). Nor is the very term humanitarian law to be found, for instance, in *Erik Castrén's* monumental treatise *The Present Law of War and Neutrality* (Castrén 1954), or in the Draft

Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War, drawn up by the International Committee of the Red Cross (ICRC) in 1956 (Schindler & Toman 1981, p. 187).

The most ardent spokesman of the concept of humanitarian law has been *Jean Pictet*, former Vice-President of the International Committee of the Red Cross (ICRC). He has characterized humanitarian law as 'that considerable portion of international law which is inspired by a feeling for humanity and is centred on the protection of the individual in time of war' (Pictet 1985, p. 1). Pictet has distinguished between 'humanitarian law properly so-called', which encompasses the Law of Geneva referred to above, and humanitarian law in a wider sense, encompassing also the so-called *Law of the Hague* (Pictet 1966). The Law of the Hague is more concerned with the actual regulation of warfare. Its historical bulk are the Hague Conventions of 1907.

When discussions started in the mid-1960s on the need to update the law of war, the term 'humanitarian law' soon gained ground. For instance, resolution No. XXVIII adopted by the XXth International Red Cross Conference (Vienna 1965), urged the ICRC 'to pursue the development of International Humanitarian Law' (International Red Cross Handbook 1971, p. 448, see also a resolution adopted already in 1961 by the Council of Delegates, *ibid.*, p. 452).

At the same time, there was general support for the need to include elements of the Law of the Hague in the process. It was felt that modern methods and means of warfare raised such humanitarian concerns (the increasing proportion of civilian casualties, etc.) that they could not be ignored in an intergovernmental effort to update the law. To underscore this widening of the subjects dealt with in the 1949 Geneva Conventions, the ICRC gave a report submitted in 1969 the title 'Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts' (ICRC 1969).

The concept of humanitarian law was not lost, however; it appears, e.g. in the title of the 1974-1977 Geneva Diplomatic Conference, which adopted the two Protocols

additional to the 1949 Geneva Conventions. The official title of the Conference was 'Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts'.

With these developments, the concept of humanitarian law has come to be used in the *wider* meaning referred to by Pictet. Additional Protocol I of 1977 contains a number of provisions on methods and means of warfare and on the protection of the civilian population against the effects of hostilities. It is thus difficult any longer to uphold a distinction between the Law of Geneva and the Law of the Hague.

It would be an exaggeration, however, to claim that humanitarian law covers the whole of the law of war (=law of armed conflict, *ius in bello*). The term 'humanitarian law' still connotes the idea of a specific humanitarian interest. The border-line between humanitarian law and the 'non-humanitarian' areas of the law of war is admittedly open to discussion. As examples of the latter may be mentioned the laws of *economic warfare*, such as prize law, including the laws relating to *neutral* property (Schindler 1979). Conventions prohibiting the use of specific weapons or protecting cultural property in times of war are examples of border-line cases. Probably they too can be considered as part of humanitarian law (see, e.g., Toman 1984, p. 571, who regards the protection of cultural property as part of humanitarian law).

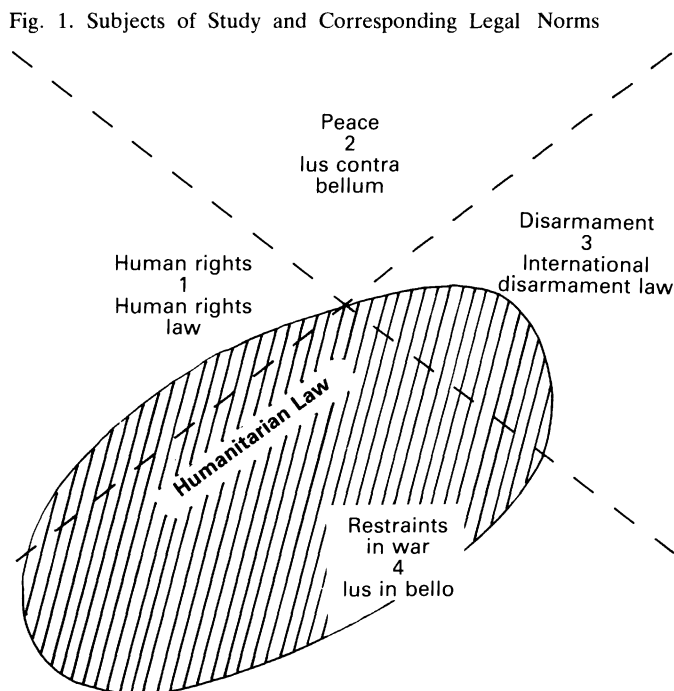
There seems to be no pressing need for making a sharp legal distinction between humanitarian law and other parts of the law of war in the application of the law. For instance, the actual text of Additional Protocol I does not use the term humanitarian law. Instead, frequent references are made to the 1949 Geneva Conventions and the Protocol itself. If a broader reference is needed, the expression 'rules of international law applicable in armed conflict' does the trick (Protocol I, article 2, subparagraph b). This expression arguably means the same as the concept of the law of war (*ius in bello*), as used above. These comments are related to legal dogmatics in

the strict sense (the application and interpretation, e.g., of Additional Protocol I) and do not imply that the concept of humanitarian law would be unnecessary from a broader juridico-political angle.

The above discussion has been based on the assumption that the concept of humanitarian law is confined to situations of *armed conflict* ('international humanitarian law applicable in armed conflicts'), that is, situations of war in a material sense (as opposed to war in the formal sense, on this distinction see, e.g., Rosas 1976, p. 224). But some authors use the concept of humanitarian law in a still wider sense, to include *human rights law*, that is, law which is essentially applicable in peacetime. For instance, Pictet who, as was noted above, distinguishes between wartime humanitarian law in the proper sense (the Law of Geneva) and wartime humanitarian law in a wider sense (including the Law of the Hague), has also suggested the use of the concept of humanitarian law in a third sense, to include the law of human rights (Pictet 1966, 1975; see also Syquia 1984). More recently, Pictet has abandoned this terminology, confining the term humanitarian law to law applicable in armed conflicts (Pictet 1985). Instead, he suggests the term 'humane law' as a possible common name for humanitarian law and human rights law.

We shall in the following discussion use the concept of humanitarian law as an abbreviation of the concept of international humanitarian law *applicable in armed conflicts*. Humanitarian law thus does not cover the totality of human rights law (although, as will be suggested below, a certain overlapping exists). On the other hand, humanitarian law today includes elements of both the Law of Geneva and the Law of the Hague, as confirmed by the title of the 1974–1977 Diplomatic Conference.

A distinction has sometimes been made between three schools of thought concerning the relationship between humanitarian law and human rights, namely the 'integrationist', 'separatist' and 'complementarist' theories (The Red Cross and Human Rights 1983, p. 27). It is obvious that the use of the concept of humanitarian law



in this article is primarily in line with the 'complementarist' theory, which teaches that human rights law and humanitarian law are two distinct systems which complement each other.

As can be seen from the above survey, the terminological and conceptual situation is bewildering. Fig. 1 visualizes in a broad manner our general field of interest (from Rosas 1984, p. 19), starting from the four subjects of peace, disarmament, restraints in war and human rights.

The four subjects are not legal concepts but there are four roughly corresponding legal notions which are entered below the numbers.

We have chosen to place the notion of peace (negative peace) at the top, as an overriding concept. As a kind of a counterpart is the notion of restraints in war (which would be unnecessary if peace can be preserved). In an in-between position are the notions of human rights and disarmament. Both subjects have links both to the notion of peace and to that of restraints in war. Suffice it to mention here as an example of

the linkage between human rights and peace the concept of the *right to peace* as a possible 'new' human right (see, e.g., Tomasevski 1982) and as an example of the linkage between disarmament and peace the various principles and arrangements, devised in an arms control environment, which are aimed at preventing the outbreak of war, especially nuclear war (see, e.g., Rosas 1982, p. 204).

The overall picture painted in Fig. 1 is only one possible conceptualization, and there are many overlaps and borderline cases. The same goes for the scope of the concept of humanitarian law, as portrayed above. We shall come back to the latter question later on.

The four subjects in Fig. 1 can also be related to *political* interest figurations. Studies of UN General Assembly votes in the 1960s and 1970s have found Socialist and Non-Aligned states on the one hand and Western states on the other on many issues. With respect to our four subjects, the first grouping has given the notions of peace (2) and disarmament (3) priority over those of human rights (1) and war-restraints (4),

Table I. Aims and Functions of International Norms

	'Harder norm'		'Softer norm'	
<i>level</i>	focussing on individuals	1	focussing on nations	2,3,4
<i>aim</i>	aiming at preventing collective violence	2	aiming at limiting collective violence	1,3,4
<i>rules</i>	containing material limitations	3	implying rules of conduct	1,2,4
<i>application</i>	in wartime	4	in peacetime	1,2,3

The numbers correspond to the four subjects of Fig. 1.

whereas the Western states have paid at least equal — if sometimes not more — attention to the last two (see Rosas 1976 *passim*).

Table I relates the four subjects and their corresponding areas of law of Fig. 1 to four dimensions which illustrate the aims and functions of the relevant law. With the following four dimensions, it is possible to group the four subjects so that one of the subjects in turn fits into one category and the other three subjects in turn into the other category. One category in each dimension implies a more far-reaching, 'harder' norm (=a norm which is supposedly more difficult to obtain and/or implement), the other category a 'softer' alternative:

There are inevitably a number of simplifications in such a scheme. The relevant norms may have additional functions; for instance, disarmament norms may aim at saving costs. A given area of norms may belong to both categories; for instance, disarmament norms can also be said to aim

at preventing war altogether, not only at limiting it. Legal restraints in war focus increasingly on the protection of the individual as such, not only on affording him protection indirectly, through the state or a similar entity. As will be elaborated below, especially the norms of contemporary humanitarian law have a multi-purpose character.

Finally, our four legal notions are related directly to the relevant international legal instruments in Table II. We have selected two central conventions from each group. The figures in the right hand column indicate the number of state parties (as of 1 January 1987). Some of the titles of the conventions are in abbreviated form. This list is not exhaustive and some additional treaties will be considered below.

2. Humanitarian Law and Human Rights

The numerous conventions and other instruments on the protection of human rights

Table II. Legal Notions and Legal Instruments

	<i>State parties</i>
1. <i>Human rights law</i>	
International Covenant on Economic, Social and Cultural Rights, 1966	88
International Covenant on Civil and Political Rights, 1966	85
2. <i>Prohibition on the use of force</i>	
Kellogg-Briand Pact, 1928	64
UN Charter (article 2, paragraph 4), 1945	159
3. <i>Disarmament law</i>	
Partial Test Ban Treaty, 1963	115
Biological Weapons Convention, 1972	104
4. <i>Humanitarian law</i>	
Geneva Conventions, 1949	165
Additional Protocols I and II, 1977	66, 60

which have emerged particularly during the post-war period today form a fairly sophisticated area of international law often referred to as international human rights law. At a global level, the two Covenants of 1966 mentioned in Table II stand out as the most important instruments. One of them, the International Covenant on Civil and Political Rights, is of paramount importance for a discussion on the relationship between human rights law and humanitarian law. Two regional conventions (the European Convention of 1950 and the American Convention of 1969) will also be considered below. We shall ignore the various special conventions on certain categories of persons or particular forms of behaviour (refugees, stateless persons, racial discrimination, etc.; see, e.g., Rosas 1987, p. 168).

In Table I we argued that human rights norms focus on the *individual*, aim at *limiting* rather than preventing collective violence, contain *rules of conduct* rather than material limitations (on inventories) and are applicable in *peacetime* (rather than in wartime). These statements are simplifications, particularly with respect to the *first* and *fourth* dimensions of Table I. A fair amount has already been written about the relationship between humanitarian law and human rights law (e.g. The Red Cross and Human Rights 1983; Eide 1984; Robertson 1984). We shall not provide a full review in this context but content ourselves with a few remarks on the following three aspects, the two first being related to the fourth dimension and the third aspect to the first dimension above:

- the border-line between armed conflict and peace
- the applicability of human rights norms during armed conflict
- the existence of human rights principles in humanitarian treaties applicable in armed conflicts

Traditionally, what is now called humanitarian law applicable in armed conflicts was fully applicable only when there was a 'war'. The Geneva Conventions of 1949 introduced the concept of armed conflicts (Rosas 1976, p. 224). They are also applicable in cases of partial or total occupation of the territory of

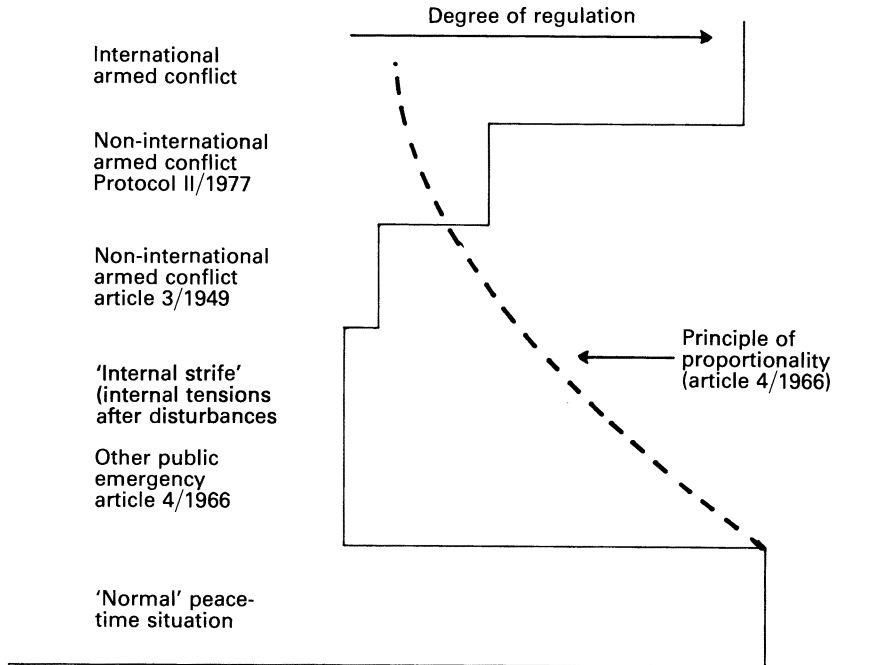
one state by another, even if the occupation meets with no armed resistance (article 2). And common article 3 of the Geneva Conventions applies even to cases of 'armed conflict not of an international character'. This basic provision has been supplemented by Additional Protocol II of 1977, which is applicable in non-international armed conflicts of a certain intensity (not covering all the situations where common article 3 of 1949 is applicable).

The applicability of existing humanitarian law thus presupposes the existence of an 'armed conflict'. Exceptions are provided by certain provisions in the Geneva Conventions of 1949 and the Additional Protocols of 1977 which have been made applicable to peacetime conditions. Among such provisions can be mentioned the obligation of the High Contracting Parties to disseminate, in time of peace as in time of armed conflict, the Conventions and the Protocols in their respective countries.

The main global human rights instrument to be considered in this context, the 1966 International Covenant on Civil and Political Rights, does not refer to war or armed conflict. The Covenant is, in principle, applicable both in time of peace and war. But article 4 of the Covenant permits the parties to derogate, under certain conditions, from some of their obligations under the Covenant 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'. This formulation includes situations of armed conflict (Buergethal 1981, p. 79). Article 15 of the European Convention on Human Rights of 1950 and article 27 of the American Convention on Human Rights of 1969 spell out that war is included in the concept of public emergency.

Other cases of public emergencies may be various situations of internal tensions and disturbances short of non-international armed conflict. Also the term 'internal strife' has been used to cover such situations involving collective violence (Meron 1984). This notion as well as the concept of public emergency point to a grey area between 'armed conflict' and 'normal peacetime conditions'. The international normative situation is at

Fig. 2. Levels of Conflict and Degree of Legal Regulation*



* The degree of legal regulation does not have to coincide with actual state behaviour and the level of violence in the conflict.

its weakest when it comes to this grey area. The situation is illustrated by Fig. 2.

The minimum requirement which has to be respected in all situations is provided by the so-called *nonderogable rights* under article 4 of the 1966 Covenant (prohibitions on torture, slavery, etc.), that is, rights which cannot be derogated from even in times of public emergency. The dotted line in the diagram points to the fact that the right of High Contracting Parties to derogate in time of public emergency from their *other* obligations under the Covenant is not unlimited: they can take derogatory measures only 'to the extent strictly required by the exigencies of the situation' (a kind of a rule of proportionality: derogations must be in proportion to the specific requirements at hand). From a human rights perspective, a reinforcement of the dotted line seems to be a vital and topical task for the international community.

A partly different approach has been advocated by *Meron*, who favours the elab-

oration of a new instrument (a declaration) on 'internal strife' (Meron 1983, 1984). The ICRC has held consultations with experts on the subject (Meron 1984, p. 859), but it appears that the idea will not be actively pursued by this organization. In any case, it is important to stress the right of the ICRC to carry out its humanitarian activities also in situations of internal disturbances and tensions (ICRC 1986).

As can be seen from the above discussion, the 1966 Covenant and the European and American Conventions establish some restraints for situations of international and non-international armed conflict as well. It is arguable that the more intense an armed conflict is, the more provisions may a party to the conflict derogate from. The non-derogable provisions, of course, remain in force whatever the nature of the conflict. As the Covenant requires a High Contracting Party to ensure to 'all individuals within its territory and subject to its jurisdiction' the rights recognized in the Covenant, there are

some doubts as to what extent the Covenant is applicable outside the national territory of a state party. A liberal interpretation would imply, for instance, that the Covenant extends to territory under the actual authority of that state (Buergenthal 1981, p. 76). With respect to the nonderogable rights, this question seems to be of limited significance, as these rights are presumably to be applied in all circumstances (also under customary law).

A comparison of human rights law and humanitarian law at the level of individual rights and duties reveals a fairly complex interplay of peacetime and wartime provisions. For instance, some peacetime human rights may disappear altogether in wartime, while certain rights may come into play in wartime only (Dinstein 1984, p. 350 distinguishes between six variations in this regard). One has to add that the human rights instruments do not command the more or less universal adherence which is a striking feature of the 1949 Geneva Conventions: whereas the number of High Contracting Parties to the Geneva Conventions is 165 (but the number of parties to Additional Protocol I of 1977 is only 66 and to Additional Protocol II 60), 85 states are bound by the 1966 Covenant on Civil and Political Rights. In addition, 11 states which are not bound by the Covenant are parties to either the 1950 European Convention or the 1969 American Convention. Thus, almost 70 states which are bound by the Geneva Conventions are outside the general human rights instruments. Among these states are to be found Brazil, China, Cuba, Pakistan, South Africa, and the United States (Chart of Ratifications 1986).

Finally, some examples should be given of human rights principles in humanitarian treaties applicable in armed conflicts: Before the 1974–1977 Geneva Diplomatic Conference there were even efforts at designing a common basic humanitarian instrument for all types of armed conflicts (Rosas 1976, p. 239). These efforts were not successful, as most states resented common rules for international and non-international armed conflicts. But the very existence of humanitarian law applicable in *non-international* armed

conflicts, that is, common article 3 of the 1949 Geneva Conventions and Additional Protocol II of 1977, points to the human rights elements of contemporary humanitarian law. Moreover, Additional Protocol I applicable in international armed conflicts contains a whole Section on the ‘treatment of persons in the power of a party to the conflict’, which contains provisions additional to the Fourth Geneva Convention of 1949 (which concerns the protection of civilians) and to ‘other applicable rules of international law relating to the protection of fundamental human rights during international armed conflict’ (article 72).

It is clear that at least some of the provisions of this Section apply to a party’s *own nationals* (Bothe et al. 1982, p. 444). The most interesting provision in this regard is article 75 on ‘fundamental guarantees’. This article draws upon common article 3 of the 1949 Conventions, articles 4–6 of Additional Protocol II of 1977 and general human rights instruments such as the 1966 Covenant on Civil and Political Rights. The Draft Protocol submitted in 1973 by the International Committee of the Red Cross (ICRC) spelled out that the article was applicable also to a party’s own nationals (ICRC 1973, p. 21). Due to opposition, e.g., from some Socialist countries, this express reference was dropped. The correct interpretation still appears to be that the parties’ own nationals are covered, provided, however, that they — as article 75 in its final version requires — ‘are affected by’ the international armed conflict (Bothe et al. 1982, p. 458). For instance, when Finland ratified the Additional Protocols in 1980, she made an interpretative declaration stating that article 75 is applicable also to a party’s own nationals and to nationals of neutral countries (Bothe et al. 1982, p. 728).

3. *Humanitarian Law and Peace*

The traditional law of war was based on the notion of war as an unavoidable tool of national policy. War had to be *restrained* but it could not be outlawed altogether. The need for military restraints and respect for basic humanitarian principles was explained

not only by the elements of common interests of the belligerents (and of neutrals) during the actual conduct of hostilities but also by a desire to facilitate the restoration of peace (Rosas 1976, p. 17). During the nineteenth century and early twentieth century such considerations were still based on the idea of the right of states under certain conditions to a *ius ad bellum*.

As the Kellogg-Briand Pact and the UN Charter introduced a *ius contra bellum*, the relationship between the law of war and the prohibition of the use of force became a moot point. As was noted above, the latter aims at preventing inter-state violence altogether, whereas the law of war and humanitarian law are primarily applicable *in war*. It will also be recalled that the most important legal instruments both of the *ius contra bellum* and of humanitarian law enjoy universal adherence, the UN Charter being formally binding on 159 states and the 1949 Geneva Conventions on 165 states.

Today there appears to be general agreement that humanitarian law should be applied without discrimination to both parties to a conflict, irrespective of which side may be responsible for the outbreak of hostilities. But this consensus did not come about without difficulties (see below). And the general approach towards a reaffirmation and development of humanitarian law may be affected by considerations pertaining to a strengthening of the *ius contra bellum*. As Fig. 1 illustrates, however, there is at present little, if any, outright overlap between humanitarian law and the *ius contra bellum*.

The subject should be studied at least at two different levels:

- the general approach to the reaffirmation and development of the *ius in bello* (should the law of war be reaffirmed and developed? If so, what parts of it should be given priority? What concepts should be used? etc.)
- the status and scope of the principle of equality (non-discrimination) in the application of the *ius in bello*

It will be noted that these questions are of special relevance for the law of war

(humanitarian law) applicable in *international* armed conflicts. The prohibition on the use of force contained in article 2 (4) of the UN Charter does not as such apply to civil wars and other non-international armed conflicts.

With regard to the first aspect, one is reminded of the stand taken by the UN International Law Commission in 1949: the Commission decided to omit the law of war from its long-term programme of work, as 'public opinion might interpret its action as showing lack of confidence in the efficiency of the means at the disposal of the United Nations for maintaining peace' (ILC Yearbook 1949, p. 281). In the same year, however, the four Geneva Conventions were adopted. They dealt almost exclusively with the protection of the 'victims of war' and thus showed the way for further developments in this field.

With all the local wars of the sixties (Vietnam, Middle-East, wars of national liberation, etc.) the need for such developments was more strongly felt. One of the international events which gave an impetus to the ensuing Diplomatic Conference of 1974–1977 was the UN International Conference on Human Rights (Teheran 1968). In resolution XXIII on 'Human Rights in Armed Conflicts' (Schindler & Toman 1981, p. 197) the Conference noted on the one hand that 'peace is the underlying condition for the full observance of human rights and war is their negation', but on the other hand that, 'even during the periods of armed conflict, humanitarian principles must prevail'. Two years earlier, the two Covenants on human rights had been adopted. Now the efforts to promote human rights were extended to periods of international and non-international armed conflict. The historical background of the 1974–1977 Diplomatic Conference highlights the relevance of both the *ius contra bellum* and human rights considerations for the development of humanitarian law.

The philosophy behind the development of humanitarian law after 1945 is reflected already in resolution No. 8 adopted by the Geneva Diplomatic Conference of 1949 (Final Record 1949, Vol. I, p. 362):

The Conference wishes to affirm before all nations: that, its work having been inspired solely by humanitarian aims, its earnest hope is that, in the future, Governments may never have to apply the Geneva Conventions for the Protection of War Victims;

That its strongest desire is that the Powers, great and small, may always reach a friendly settlement of their differences through cooperation and understanding between nations, so that peace shall reign on earth for ever.

This statement was not included in the 1949 Conventions themselves but in a separate resolution adopted by the Diplomatic Conference, and it did not refer expressly to the prohibition of the use of force. The Draft Additional Protocols submitted by the ICRC in 1973 introduced a slightly different approach: In the Preamble to Draft Protocol I the High Contracting Parties would have proclaimed 'their earnest wish to see peace prevail among peoples' (ICRC 1973, p. 3). While the formal status of the declaration had been enhanced, the actual formulation was somewhat muffled.

During the 1974–1977 Diplomatic Conference, formal amendments were submitted by a number of Socialist and Third World countries proposing a separate article referring to the definition of aggression adopted by the UN General Assembly in 1974 or a redrafting of the Preamble in the same spirit (Official Records 1974–1977, Vol. III, pp. 3, 4, 153). As these amendments also referred to the principle of non-discrimination in the application of the Geneva Conventions and Additional Protocol I there was room for a generally acceptable consensus solution. The outcome was a redrafting of the Preamble, which came to include several paragraphs of relevance for our discussion. The first, second and fourth paragraphs read as follows:

*The High Contracting Parties,
Proclaiming their earnest wish to see peace prevail among peoples,*

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Expressing their conviction that nothing in this Protocol or in the Geneva Conventions of 12 August 1949 can be construed as legitimizing or authorizing any act of aggression or any other use of force inconsistent with the Charter of the United Nations.

The first paragraph of the Preamble of Additional Protocol I is a reproduction of the ICRC draft. The second paragraph, with its reference to the 'sovereignty' of states, contains a slight modification of article 2, paragraph 4, of the UN Charter (Bothe et al. 1982, p. 33). The express reference in the above-mentioned amendments to the definition of aggression was not included in the Preamble as adopted.

The *ius contra bellum* and related principles of contemporary international law may be of some relevance also for the drafting of material provisions of the *ius in bello*. One fundamental feature of the recent inter-governmental activities in this field has already been brought out above: the focus upon human rights and the concept of humanitarian law. That approach might have been taken even further, so as to draw up certain basic humanitarian principles applicable in all types of armed conflicts (and perhaps even in situations of internal strife). But in 1974–1977 the time was not ripe for such an approach, and the Diplomatic Conference decided to maintain the traditional distinction between international and non-international armed conflicts.

Moreover, as has already been noted above, Additional Protocol I on international armed conflicts contains a host of provisions expanding the victims of war-approach of the 1949 Conventions to areas of combat law and the 'Law of the Hague'. There was some discussion before and during the Diplomatic Conference on the desirability and implications of this broadening of the concept of humanitarian law. We content ourselves here with some comments on the terminology used in Protocol I.

During the Diplomatic Conference, it was proposed by some (mainly Socialist) states to avoid expressions like 'the right' of parties to armed conflicts to adopt or not to adopt certain methods and means of combat (Official Records 1974–1977, Vol. III, pp.

155, 156, 193, 195). The idea behind such proposals was to avoid the impression that states have a right to resort to force except as allowed under the UN Charter (Rosas 1976, p. 42). The Conference did not follow this line of thought, but went even further than the ICRC draft in revitalizing traditional principles of the laws and customs of war.

Perhaps the most striking example is provided by articles 43 and 44 on 'Armed Forces' and 'Combatants and Prisoners of War'. Whereas the ICRC draft confined itself to a provision on the organization and discipline of armed forces (draft article 41) and one on prisoner-of-war status (draft article 42), article 43 as adopted by the Conference not only contains a comprehensive definition of armed forces but links this definition to the concept of *combatants*. According to article 43, paragraph 2, members of the armed forces of a party to the conflict are combatants, 'that is to say, they have the right to participate directly in hostilities'. Article 44 refers accordingly to the right of certain categories of persons 'to be a combatant and a prisoner of war'.

One of the reasons for this wording was to underline the fact that combatants complying with certain basic conditions cannot be tried for the mere fact of having taken part in hostilities (assuming that only persons with political responsibilities may be tried for crimes against peace). The solution is certainly impeccable from a strictly legal point of view. The only question which remains is whether it was necessary, from a peace-oriented point of view, to introduce such terminology in Additional Protocol I (Rosas 1976, p. 496). Be that as it may, the above examples indicate that the *ius contra bellum* and related principles cannot be ignored in the development of the *ius in bello*.

In this context, it should be noted that the provisions of Additional Protocol I on methods and means of warfare do express a certain delimitation of the subject: they are primarily aimed at the protection of combatants *hors de combat* and of the civilian population rather than at a regulation of all aspects of combat law. For instance, the

law of *sea warfare* is largely left untouched. Within the framework of arms control at sea, Sweden has recently proposed in the UN that the law of sea warfare should be taken up as a subject for modernization (see, e.g. UN doc. A/C.1/40/PV.4). This possibility is also mentioned in a 1985 UN Study on the Naval Arms Race (UN doc. A/40/535). Sweden also pursued this question at the XXV International Conference of the Red Cross (Geneva 1986), which adopted a resolution (VII) entitled 'Work on international humanitarian law in armed conflicts at sea and on land' (Bring 1987, p. 22).

It should be noted that an inter-governmental effort to revise this branch of the *ius in bello* would seem to imply a further step away from the 'Geneva Law' and human rights approaches described above. The implications of such an effort for a comprehensive strategy for peace and for the involvement of the Red Cross Movement in the development of humanitarian law should be given careful consideration (see further below). It will be noted that the recent International Conference of the Red Cross did not advocate direct Red Cross participation, but appealed 'to governments to coordinate their efforts in appropriate fora in order to review the necessity and the possibility of updating the relevant texts of international humanitarian law relating to sea warfare'. With respect to the law relating both to sea and to land warfare, the Conference only invited the ICRC 'to follow these matters and to keep the International Conference of the Red Cross and Red Crescent informed'.

Finally, some words should be said about the *principle of equality* (non-discrimination) in the application of humanitarian law (Meyrowitz 1970 *passim*). With the prohibition of the use of force, some countries—mainly the Socialist ones—have challenged the principle that the law of war applies to both parties to an armed conflict alike, irrespective of which side is the aggressor. However, none of the conventions or UN General Assembly resolutions pertaining to the *ius in bello* which have been adopted after 1945 contain any hint of a possibility to discriminate against the aggressor (Rosas

1976, p. 38). Without prejudice to possible elements of discrimination in the application of the law of neutrality and the law on economic warfare, it is beyond doubt that the 1949 Geneva Conventions should be equally applied to both parties to a conflict. This is required already by the humanitarian nature of the instruments, not to speak of the difficulties often inherent in determining guilt in the context of the *ius contra bellum*.

However, in the context of *partisan and resistance movements*, some of the Socialist countries have made statements which would seem to imply that the additional protections accorded to members of such movements in the Third Geneva Convention (concerning prisoners of war) of 1949 benefit participants in just wars only (Rosas 1976, p. 381). In a reservation to article 85 of the Third Convention formulated by the then Provisional Revolutionary Government of South Vietnam when acceding to the 1949 Conventions in 1973, prisoners of war prosecuted and sentenced for, inter alia, 'crimes of aggression' were deprived of the protection of the Third Convention (*ibid.*, p. 404). At the 1975 session of the Geneva Diplomatic Conference, the then Democratic Republic of Vietnam submitted a proposal for a new article, which would have deprived 'persons taken *in flagrante delicto* when committing crimes against peace or crimes against humanity, as well as persons prosecuted and sentenced for any such crimes' of the status of prisoners of war (Official Records 1974–1977 Vol. III p. 191). It will be noted that the concepts of crimes of aggression and crimes against peace appearing in these proposals are clearly concepts of the *ius contra bellum*.

Needless to say, the adoption of such provisions would have been unthinkable. The Vietnamese amendment was later withdrawn, and the provisions of Additional Protocol I on methods and means of warfare and combatant and prisoner-of-war status do not contain any express linkage to the *ius contra bellum*. Instead, the principle of equality was recognized in the Preamble of the Protocol, the fifth paragraph of which reads as follows:

Reaffirming further that the provisions of the

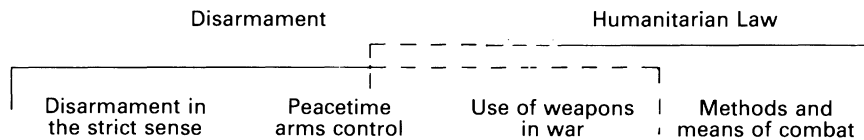
Geneva Conventions of 12 August 1949 and of this Protocol must be fully applied in all circumstances to all persons who are protected by those instruments, without any diverse distinction based on the nature or origin of the armed conflict or the causes espoused by or attributed to the Parties to the conflict.

This principle of equality covers 'all persons who are protected by those instruments'. Could there be categories of persons who do not enjoy full protection under individual provisions of Additional Protocol I because they take part in an 'unjust' war? Article 44 on combatants and prisoners of war would seem to give rise to this question. Paragraph 3 of this article establishes a more liberal requirement for combatants to distinguish themselves from the civilian population than is normally required, provided that, 'owing to the nature of the hostilities an armed combatant cannot so distinguish himself' (that is, cannot respect the 'normal' requirement in this regard). The negotiating history of the provision suggests that the special situations can exist only in occupied territory and in wars of national liberation (Bothe et al. 1982, p. 253). The additional protection was presumably intended by many Socialist and Third World countries to apply only to the side that fights *against* the occupying or colonial power (see also Official Records 1974–1977, Vol. XV, pp. 156–187). Even if this were the case, article 44, paragraph 3, would not necessarily amount to introducing the *ius contra bellum* into the *ius in bello*, as the concepts of occupation and, with Additional Protocol I of 1977, wars of national liberation, are concepts of the latter. But in the determination in actual practice of whether there is a situation of occupation or war of national liberation, 'just war' considerations may come into play as extra-legal factors ('extra-legal' from the point of view of the *ius in bello*).

4. Humanitarian Law and Disarmament

In Fig. 1, humanitarian law was made to overlap to some extent with disarmament law. This conceptualization rests on a fairly broad view not only of humanitarian law but also of the concept of disarmament. It is used

Fig. 3. Disarmament and Humanitarian Law



here to cover not only the strict sense of destruction of existing arsenals but also various restraints on armaments ('arms control').

In addition to the two disarmament treaties mentioned in Table I, the Non-Proliferation Treaty of 1968 and the Sea-Bed Convention of 1971 are typical examples. Adherence to the disarmament treaties is usually around 100 states, less universal than for the 1949 Geneva Conventions.

To clarify the relationship between disarmament and humanitarian law, Fig. 1 is too rough. Fig. 3 presents a more elaborate picture.

The only existing disarmament treaty in the strict sense is the Biological Weapons Conventions of 1972 (Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction). In contrast, a number of arms control treaties have been concluded since 1963.

Some of the treaties which prohibit or restrict the use of weapons in war have disarmament connotations as well. The St. Petersburg Declaration of 1868 prohibits the use of certain explosive projectiles and the Hague Declaration of 1899 prohibits the use of so-called dum-dum bullets, but these are of limited relevance today (Rosas 1983, p. 276). More relevant in a disarmament framework is the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 1925. For instance, both the Preamble and one of the substantive articles (VIII) of the 1972 Biological Weapons Convention refer to the Geneva Protocol.

The so-called ENMOD Convention of 1977 (Convention on the Prohibition of Military or Any Other Hostile Use of En-

vironmental Modification Techniques) is generally conceived as a disarmament treaty but the Convention, on closer scrutiny, contains certain *ius in bello* elements, too. According to article 1, the parties undertake 'not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party'. This prohibition is not confined to situations which have already turned into armed conflicts, but it certainly remains in force in such situations.

The links of the ENMOD Convention to the *ius in bello* and humanitarian law are highlighted by two provisions in Additional Protocol I of 1977 (articles 35 and 55) dealing with the protection of the natural environment. In contrast to the Convention, the Additional Protocol prohibits the use of *any* methods or means of warfare (and not just special 'environmental modification techniques') which cause a certain level of damage to the environment. On the other hand, the Additional Protocol also presupposes that there is widespread, long-term and severe damage to the natural environment, while the ENMOD Convention uses the three qualifications disjunctively, and presupposes destruction, damage or injury 'to any other State Party'.

Another example of the interplay between disarmament and humanitarian law considerations is provided by the 1981 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. The Convention — or rather the Protocols annexed to it — prohibit or restrict the use in armed conflicts of non-detectable fragments, mines, booby-traps and other similar

devices, and incendiary weapons. The background of this Convention is rooted in the Diplomatic Conference on Humanitarian Law (Joenniemi & Rosas 1975). The question of certain cruel or indiscriminate conventional weapons was even considered in a special Committee of the Conference, but due to opposition from the major military powers (both NATO and the Warsaw Pact) the question was referred by the Diplomatic Conference to the UN, which convened a separate conference to consider this matter.

The Convention adopted in 1980 by that Conference is a curious blend of disarmament law and humanitarian law. The elements of humanitarian law seem to us to be predominant. For instance, the field of application of the Convention and its Protocols is the same as that of the 1949 Geneva Conventions and Additional Protocol I of 1977 (article 1 of the 1981 Convention). Several of the paragraphs in the Preamble refer to principles of humanitarian law, such as the prohibition to cause unnecessary suffering or superfluous injury. The High Contracting Parties also reaffirm the need to continue the codification and progressive development of the rules of international law applicable in armed conflicts. But the parties also recognize the importance of pursuing every effort which may contribute to progress toward general and complete disarmament under strict and effective international control.

While Additional Protocol I of 1977 is obviously closer to the core of contemporary humanitarian law, some elements in the Protocol point to restraints on the use of certain weapons and even to peacetime arms control considerations. Of the various provisions on methods and means of warfare the principle prohibiting superfluous injury and unnecessary suffering (article 35, paragraph 2) refers expressly to 'weapons, projectiles and material and methods of warfare'. Reference should also be made in this connection to the prohibition of indiscriminate attacks, meaning attacks which employ methods or means of combat which cannot be directed at a specific military target or the effect of which cannot be limited as required by Additional Protocol I (article 50, paragraph 4).

Additional Protocol I even touches upon

arms control in peacetime. Article 36 on new weapons reads as follows:

In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

This obligation, of course, is a fairly 'soft' one, as it only requires the parties 'to determine' whether the use of the weapon would be prohibited (Rosas 1983, p. 261). It is in any case an interesting example of the expanding setting of humanitarian law, and of the increasing interaction of humanitarian law and disarmament law.

Most disarmament treaties relating to *nuclear* weapons deal with peacetime aspects only (non-testing, non-proliferation, etc.). There is no general prohibition in treaty law on the *use* of such weapons. Such prohibitions exist for certain environments only, namely the Latin American nuclear-weapon-free zone (Additional Protocol II of the Treaty of Tlatelolco of 1967), the South Pacific nuclear free zone (Protocol II of the Treaty of Rarotonga of 1985) and the moon and other celestial bodies (article 3, paragraph 3, of the Moon Treaty of 1979). Among both governments and scholars there has been disagreement as to whether the use of nuclear weapon is prohibited under customary law and/or the general principles of the treaty-based law of war (Rosas 1979, 1982). In security policy, there has been a vivid debate on the desirability of so-called no-first-use pledges.

While the intergovernmental activities related to the question of the use of nuclear weapons have primarily taken place in a disarmament context, they have left their mark on the humanitarian law context as well. On substance, it is after all a question also for the *ius in bello*, and the humanitarian dimensions of nuclear war need no elaboration. An effort to tackle the question was made in the Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Time of War submitted by the ICRC in 1956 and adopted by the XIXth

International Conference of the Red Cross in 1957 (Schindler & Toman 1981, p. 187). One of the provisions of this draft (article 14) would have prohibited the use of weapons whose harmful effects — ‘resulting in particular from the dissemination of incendiary, chemical, bacteriological, radioactive or other agents’ — could escape from the control of those who employ them.

This draft did not lead to any inter-governmental activities. In submitting the draft Additional Protocols in 1973, the ICRC followed a much more cautious approach, stating that ‘problems relating to atomic, bacteriological and chemical warfare’ were subjects of intergovernmental agreements and negotiations and that the ICRC in submitting the draft Protocols did ‘not intend to broach these problems’ (ICRC 1973, p. 2). During the Diplomatic Conference of 1974–77, the Western nuclear powers declared that Additional Protocol I was not applicable to nuclear warfare. After the Conference, there has been a vivid debate on this question (Bothe et al. 1978, p. 44; Rosas 1979, p. 86; Bothe et al. 1982, p. 188; Meyrowitz 1982, p. 227; Fischer 1985). The fact that there has not been unanimity on the existence of an understanding to the effect that the use of nuclear weapons is outside the purview of the Protocol may have been one reason for the major military powers to delay ratification of Additional Protocol I.

5. Perspectives

To summarize the most basic conclusions: the scope of humanitarian law has widened, its content has become more influenced by human rights, peace, and disarmament considerations, and at the same time its frontiers have been blurred. In consequence, the legal and conceptual situation has also become more bewildering. To a certain extent this development has been inevitable. One cannot imagine humanitarian law, dealing with highly sensitive issues such as collective violence and the status of the individual, developing in isolation from the most pressing problems of our times.

Nevertheless, has the time not come for a certain evaluation and even reassessment of

the aims and functions of humanitarian law? Is the scope of humanitarian law becoming too wide? Should there be a certain consolidation and even simplification of humanitarian law? This branch of law is extremely complex and detailed. The Geneva Conventions of 1949 and the Additional Protocols of 1977 alone contain a total of 559 articles — not to speak of the jungle of other law-of-war treaties as well as human rights and disarmament treaties of relevance for an understanding of humanitarian law. Only a few experts can have a both comprehensive and profound knowledge of the legal and factual problems involved.

We would tend to believe that possible future efforts at developing humanitarian law should focus upon the *human rights* perspective rather than attempt to regulate warfare and methods and means of combat. Thus the direct links between humanitarian law and disarmament should at least not be strengthened further. At the same time efforts at drawing up new legal instruments should be viewed critically, unless they imply a consolidation and simplification.

As regards the relationship between humanitarian law and *peace*, one should avoid legally intertwining the two, as that would probably imply introducing some element of discrimination in the application of humanitarian law. But the peace perspective may receive appropriate indirect attention by underscoring the human rights perspective in the development and application of humanitarian law.

Would our approach not raise political problems, taking into account the Western focus on human rights and the Eastern focus on peace and disarmament? The answer is not necessarily in the affirmative, and the reasons are two. First of all, the political connotations of the concept of human rights seem to be changing. The on-going Vienna follow-up meeting of the Conference on Security and Cooperation in Europe shows that the East is now more inclined to participate in international deliberations on the international and national protection of human rights. Besides, we are only stressing a human rights *perspective* for humanitarian law, not necessarily a merger of the two.

Secondly, a human rights perspective for humanitarian law does not, of course, imply a negative stand on disarmament and arms control as such. It is only a question of fora and contexts. With our approach, the question of regulating warfare and especially of prohibiting or restricting the use of specific weapons could rather be dealt with in a disarmament context, and not devised as parts of humanitarian law proper. This goes, e.g., for possible future deliberations on the question of certain conventional weapons (the UN Convention of 1981), and for the present efforts at updating the law of sea warfare, both topics referred to above.

However, stressing the human rights perspective of humanitarian law should not lead to added terminological and conceptual diversity. For instance, there seem to be quite enough of different levels of conflicts related to the scope of application of different sets of rules (war — international armed conflict — non-international armed conflict under Protocol II of 1977 — non-international armed conflict under common article 3 of 1949 — public emergency under the human rights conventions). Thus, the idea mentioned above to draw up a new instrument for 'internal strife' is not free from problems.

It goes without saying that humanitarian law establishes a basic framework for the *International Red Cross Movement* to perform its tasks in difficult conditions. As can be seen from the previous discussion, the Red Cross Movement has not confined itself to being an actor in the field, but its role has also been one of an initiator. The ICRC and the International Conferences (the latter including representatives of Governments) have played an important role in the development of humanitarian law.

It is thus unavoidable that the problems and perspectives discussed in this article present themselves in one way or another to the Red Cross Movement as well. Indeed, the two concrete examples given above, the proposals for new rules on sea warfare and a new instrument on internal strife, have recently been considered also in a Red Cross context. The question of the law of sea and land warfare was considered at the XXV

International Conference (Geneva, October 1986), and the question of internal strife has been under consideration with the ICRC. In both cases, the Red Cross Movement has been reluctant to sponsor new initiatives.

The role of the Red Cross as an initiator would seem to require that it defines its own positions not only vis-à-vis humanitarian law proper but also in relation to human rights, peace and disarmament. For instance, if the human rights perspective of humanitarian law were to be favoured, it would seem pertinent to clarify the position of the Red Cross Movement on human rights issues (e.g., *The Red Cross and Human Rights* 1983). At present, there is no definite position.

The Red Cross has convened two Peace Conferences, in Belgrade in 1975 and in the Aaland Islands and Stockholm in 1984 (*To Promote Peace* 1986). At these Conferences human rights were also discussed but no overall policy was adopted. It is obvious that many National Societies still consider human rights questions as political ones where the Red Cross has to be very careful. While this point of view is understandable, it may be time to start reconsidering it. A step in this direction was taken in April 1987, when the Red Cross and Red Crescent Commission on Peace decided to set up a working group on human rights. Perhaps a Conference on Human Rights and Peace could later be organized in order to help formulating a more explicit Red Cross policy.

REFERENCES

- Bothe, Michael; Knut Ipsen & Karl Josef Partsch 1978. 'Die Genfer Konferenz über humanitäres Völkerrecht — Verlauf und Ergebnisse', *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, vol. 38, pp. 1–159.
- Bothe, Michael; Karl Josef Partsch & Waldemar A. Solf 1982. *New Rules for Victims of Armed Conflicts*. Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949. The Hague, Boston, London: Nijhoff.
- Bring, Ove 1987. 'Regulating Conventional Weapons in the Future: Humanitarian Law or Arms Control?' Working Paper, no. 5: 87. Geneva: Institut Henry-Dunant (IHD).
- Buergethal, Thomas 1981. 'To Respect and to Ensure: State Obligations and Permissible Derogations', pp. 72–91 in Louis Henkin, ed. *The International Bill of Rights*. New York: Columbia University Press.
- Castrén, Erik 1954. *The Present Law of War and Neu-*

- trality. Helsinki: Annales Academiae Scientiarum Fennicae, Ser. B, Tom. 85.
- Chart of Ratifications of Major International Human Rights Instruments as of 1 January 1986. Annex I to The International Dimensions of Human Rights (UNESCO 1982).
- Dinstein, Yoram 1984. 'Human Rights in Armed Conflict: International Humanitarian Law', pp. 345–368 in Theodor Meron, ed. *Human Rights in International Law*, vol. II. Oxford: Oxford University Press.
- Eide, Asbjørn 1984. 'The Laws of War and Human Rights — Differences and Convergences', pp. 675–697 in Christophe Swinarski, ed. *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*. Geneva, The Hague: International Committee of the Red Cross & Nijhoff.
- Final Record of the Diplomatic Conference Convened by the Swiss Federal Council for the Establishment of International Conventions for the Protection of War Victims and Held at Geneva from April 21st to August 12th, 1949, vol. I–III. Berne 1950–1951: Federal Political Department.
- Fischer, Horst 1985. *Der Einsatz von Nuklearwaffen nach Art. 1 des I. Zusatzprotokolls zu den Gender Konventionen von 1949*. Berlin: Duncker & Humblot.
- ICRC 1969. *Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts*. Report submitted by the International Committee of the Red Cross to the XXIst International Conference of the Red Cross (Istanbul 1969). Geneva: International Committee of the Red Cross.
- ICRC 1973. *Draft Additional Protocols to the Geneva Conventions of August 12, 1949*. Submitted by the International Committee of the Red Cross. Geneva: International Committee of the Red Cross.
- ICRC 1986. *The International Committee of the Red Cross and Internal Disturbances and Tensions*. ICRC Protection and Assistance Activities in Situations Not Covered by International Humanitarian Law. Geneva: International Committee of the Red Cross.
- ILC Yearbook 1949. *Yearbook of the International Law Commission*. New York: The United Nations.
- International Red Cross Handbook 1971. Conventions, Statutes and Regulations. Resolutions of the International Conference of the Red Cross and of the Board of Governors of the League of Red Cross Societies. Eleventh edition. Geneva: International Committee of the Red Cross & League of Red Cross Societies.
- Joenniemi, Pertti & Allan Rosas 1975. 'International Law and the Use of Conventional Weapons.' *Research Reports*, no. 9. Tampere: Tampere Peace Research Institute (TAPRI).
- Meron, Theodor 1983. 'On the Inadequate Reach of Humanitarian and Human Rights Law and the Need for a New Instrument', *American Journal of International Law*, vol. 77, pp. 589–606.
- Meron, Theodor 1984. 'Towards a Humanitarian Declaration on Internal Strife', *American Journal of International Law*, vol. 78, pp. 859–868.
- Meyrowitz, Henri 1970. *Le principe de l'égalité des belligérants devant le droit de la guerre*. Paris.
- Meyrowitz, Henri 1982. 'Le statut des armes nucléaires en droit international — le part', *German Yearbook of International Law*, vol. 25, pp. 219–251.
- Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva (1974–1977), vol. 1–17. Bern 1978: Federal Political Department.
- Pictet, Jean 1966. *The Principles of International Humanitarian Law*. Geneva: International Committee of the Red Cross.
- Pictet, Jean 1975. *Humanitarian Law and the Protection of War Victims*. Leyden, Geneva: Sijthoff & Henry Dunant Institute.
- Pictet, Jean 1985. *Development and Principles of International Humanitarian Law*. Dordrecht, Boston, Lancaster: Nijhoff & Geneva: Henry Dunant Institute.
- The Red Cross and Human Rights* 1983. Working document prepared by the International Committee of the Red Cross in collaboration with the Secretariat of the League of Red Cross Societies, Council of Delegates, Geneva, 13–14 October 1983, CD/7/1. Geneva: International Committee of the Red Cross.
- Robertson, A. H. 1984. 'Humanitarian Law and Human Rights', pp. 793–802 in Christophe Swinarski, ed. *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*. Geneva, The Hague: International Committee of the Red Cross & Nijhoff.
- Rosas, Allan 1976. *The Legal Status of Prisoners of War*. A Study in International Humanitarian Law Applicable in Armed Conflicts. *Dissertationes Humanarum Litterarum* 9. Helsinki: Annales Academiae Scientiarum Fennicae.
- Rosas, Allan 1979. 'International Law and the Use of Nuclear Weapons', pp. 73–95 in Kari Hakapää, ed. *Essays in Honour of Erik Castrén*. Helsinki: Finnish Branch of the International Law Association.
- Rosas, Allan 1982. 'Negative Security Assurances and Non-Use of Nuclear Weapons', *German Yearbook of International Law*, vol. 25, pp. 199–218.
- Rosas, Allan 1983. 'Conventional Disarmament — A Legal Framework and Some Perspectives', pp. 259–285 in Helena Tuomi & Raimo Väyrynen, eds. *Militarization and Arms Production*. London, Canberra: Croom Helm.
- Rosas, Allan 1984. *Mänskliga rättigheter under krig*. 2. utvidgade och reviderade upplagan. Helsingfors: Finlands Röda Kors.
- Rosas, Allan 1987. 'Nordic Human Rights Policies'. *Current Research on Peace and Violence*, vol. 9 (Special Issue on Human Rights and the Nordic Countries, Allan Rosas, ed.), pp. 167–182.
- Schindler, Dietrich 1979. 'State of War, Belligerency, Armed Conflict', pp. 3–20 in Antonio Cassese, ed. *The New Humanitarian Law of Armed Conflict*. Napoli: Editoriale Scientifica.
- Schindler, Dietrich & Jiri Toman 1981. *The Laws of Armed Conflicts. A Collection of Conventions, Reso-*

lutions and Other Documents. Second revised and completed edition. Alphen aan den Rijn, Rockville, Md.: Sijthoff & Noordhoff; Geneva: Henry Dunant Institute.

Syquia, Enrique P. 1984. 'Dr. Jean Pictet and International Humanitarian Law', pp. 551-557 in Christophe Swinarski, ed. *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*. Geneva, The Hague: International Committee of the Red Cross & Nijhoff.

Toman, Jiri 1984. 'La protection des biens culturels dans les conflits armés internationaux: cadre juridique et

institutionnel', pp. 559-580 in Christophe Swinarski, ed. *Studies and Essays on International Humanitarian Law and Red Cross Principles in Honour of Jean Pictet*. Geneva, The Hague: International Committee of the Red Cross & Nijhoff.

Tomasevski, Katarina 1982. 'The Right to Peace', *Current Research on Peace and Violence*, vol. 5, pp. 42-69.

To Promote Peace 1986. *Resolutions on Peace adopted by the International Movement of the Red Cross and Red Crescent since 1921*. Geneva: International Committee of the Red Cross & League of Red Crescent Societies.

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