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INTERNATIONAL HUMANITARIAN LAW AND SPIRITUALITY

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A vast subject, or even two completely distinct, one could almost say ! And yet, the links between the two are vital, in more ways than one :

- sources
- reality today
- perspectives for the future.

Sources

Over the course of time, we have seen, in each civilisation, islands of humanity being formed, inside which certain rules limited violence in war-time, by imposing duties of responsibilities towards victims.

The problem is that these barriers to violence and the notion of responsibility for others were, for the most part, only valid inside the group, which is why I use the term islands of humanity, which on some rare occasions have allowed bridges to be built, sometimes through single acts of generosity, but sometimes too at the expense of long and tedious battles.

These rules were, of course, set to ensure the survival of a group, and forbade behaviours which would have permanently endangered the group.

Today's Reality

Too often the religious aspect has been put aside as concerning only questions regulating the religious freedom of civilian victims of war or of prisoners of war, or at the worst, because it was considered as a possible cause of war itself.

Without forgetting these aspects, I would like to stress the spiritual origin of today's international humanitarian law, remembering names such as Vittoria and Suarez, or Bartolomeo de Las Casas who fought to enlarge the circle of people entitled to these guarantees to the entire human race.

We cannot separate spirituality from the implementation of international humanitarian law : in 1999, the ICRC made a survey, for the 50th Anniversary of the Geneva Convention, on the reasons which motivate civilians and military to implement it today. One of the most astonishing results was that the reasons generally quoted were religious convictions, and particularly among the Muslims who answered the questionnaire.

Now, I would like to turn to the last point : perspectives for the future.

International Humanitarian Law, despite the developments of the basic rules, such as the 1977 Additional Protocols - whose 25th Anniversary will be celebrated this year – despite also the interesting developments in setting up of ritual mechanisms, such as the ad hoc tribunals for ex-Yugoslavia and Rwanda, and while we continue to hope that an International Court of Justice will see the day, despite all these developments, positive law is today in a deadlock. A deadlock which may well lead us to the point where, with the fragmentation of humanitarian law, new islands of humanity will appear, at the very moment when we thought we had attained universality of humanitarian law and Human Rights.

We must resort to our deepest spiritual resources, not only those of ages past, but those present and which carry weight – enabling us to go beyond the choice of either justice which is sometimes impossible and or else oblivion which is always a scandal, by the processus of Truth and Reconciliation Commissions. This processus was first used in South Africa, on the initiative of the Anglican Archbishop, Desmond Tutu, but has been used in numerous other situations to reinstate national concord by an original means, combining confession and pardon in an individual and collective processus. The second element is to anchor once again essential humanitarian rules and principles in the conscience of each spiritual current without it losing its universality. We are not talking here of the survival of a tribal group or a people or even a civilisation, but in several different ways, of the entire human race. Geneva is an ideal place for this, we need to kindle up the public conscience, bringing together jurists, military, politicians, of course, but also inviting spiritual leaders to add to these rules - which have perhaps become too rational – some of the moral binding, based not only on texts and treaties, but in the depth of every one of us.

In a globalized and nevertheless chaotic world, there is a renewed need for ethical and legal standards,¹ especially regarding the fundamental guarantees of human dignity in today's armed conflicts.

International instruments of human rights and of international humanitarian law are not the only sources providing these fundamental guarantees.² International law is only one of the many sources of humanitarian standards. Legal mechanisms alone are insufficient to provide for an effective protection of fundamental human values.

There are many different approaches (such as spiritual, political, legal and organizational) to the promotion of respect for fundamental human values in today's conflicts. Historical

¹ Yersu KIM, Director, Division of Philosophy and Ethics, UNESCO “Global Problems And Universal Values”, available at <http://www.unesco.org/opi2/philosophyandethics/pronpro.htm> ,

« The last decade of our century is witness to a rising demand for a universal ethics. Against the backdrop of the positivistic abstinence on questions of value and of the relativism of values of the preceding decades, there is an increasing search for universal values and principles that could serve as the basis for collective efforts toward peace and development, as well as for peaceful and productive interaction among nations and societies. [...] In 1993, representatives of more than 120 religions of the world, meeting for the first time in one hundred years in the Parliament of the World's Religions in Chicago, adopted a Declaration toward a Global Ethics. [...] In 1996 some thirty former heads of state and government who constitute the InterAction Council made an appeal for a set of “Global Ethical Standards” needed to deal with the global problems facing humanity in the 21st century.

² RENNER, Michael (2002) ‘Breaking The Link Between Resources And Repression’, in: World Watch Institute State Of The World 2002: Special World Summit Edition, Chapter 7, New York, W.W. Norton & Company.

considerations, including spiritual and ethnic research,³ could also be among the remedies for today's impasses.

³ Ethics & International Affairs, Volume 13, 1999, New York, published by the Carnegie Council on Ethics and International Affairs, with contributions from Thomas G. WEISS, Cornelio SOMMARUGA, Joelle TANGUY, Fiona TERRY, David RIEFF, and others.
http://www.cceia.org/lib_volume13.html

We shall deal with the topic of “International Humanitarian Law and Spirituality” along the following lines:

1. Origins and Development

1.1. Spiritual Origin of Humanitarian Standards

1.2. Proliferation and Universality of Standards

1.3. Multiplication of Legal Mechanisms

2. Today's Impasse:

2.1. Denial of Respect (Human Dignity)

2.2. Denial of Justice

2.3. Denial of Forgiveness and Reconciliation

3. Towards a Renaissance of Fundamental Humanitarian Values:

3.1. Research Roots

3.2. Re-Anchor in All Civilizations

3.3. Reaffirm Universality of Fundamental Values

3.4. Reinforce Existing Mechanisms

3.5. Reinvent Remedies

3.6. Re-Activate the Humanitarian Network

3.7. Rebuild Public Conscience

I. ORIGIN AND DEVELOPMENT

1.1. Spiritual Origin of Humanitarian Standards

Limiting Violence in War in order to ensure the survival of the group

Each civilization has formed islands of humanity inside which certain rules limited violence, by imposing restraints on the use of force and an obligation of solidarity towards victims.

These religion-based rules were of two types :

1. A **taboo** by which it was forbidden to attack women and children, destroy temples or sacred places, to kill priests or people in religious orders as well as women, children and elderly people belonging to the group. In the West, the Peace of God (*Pax Dei*)⁴ or the Truce of God (*Treuga Dei*)⁵ were such rules. The *Pax Dei* was a conciliar movement which began in southern France in the late tenth century and spread to most of Western Europe over the next century, surviving in some form until at least the thirteenth century. It combined lay and ecclesiastical legislation regulating warfare and establishing a social peace in the Middle Ages. By the 1040s, the Truce of God became the center of legislative action and aimed, by declaring Thursday through Sunday days of peace, at restricting controlling feuds and private warfare. The Truce led to the emergence of public institutions for the control of violence. The Catholic Church tried to mitigate in some way the horrors of warfare in Second Lateran Council (1139) forbidding the use of crossbow and arch as “deadly and odious to God”; The Third Lateran Church Council (1179) prohibited the enslavement of Christian prisoners of war. Others similar rules can be found in every religion. Some of these rules were even more generous in so-called primitive civilizations than in today’s international law.
2. The **Golden Rule**, which can be found in several civilizations, not only Judeo-Christian ones, and which can be resumed thus: *So, whatever you wish that men would do to you, do so to them*⁶

These rules were set to ensure the survival of a group, and forbade behaviors, which would have permanently endangered the group⁷. Indigenous people of all continents have aimed to

⁴ See: COWDREY, H.E.J. (1970), "The Peace and the Truce of God in the Eleventh Century", Past and Present, pp. 42-67; DUBY, Georges, "The Laity and the Peace of God," The Age of Chivalry, tr. Cynthia Postan (Ithaca: Cornell U. Press, 19); The Peace of God: Social Violence and Religious Response in France around 1000, ed. Thomas HEAD and Richard LANDES (Cornell U. Press, Ithaca, 1995).

See also : <http://www.mille.org/people/rlpages/paxdei.html>

⁵ See : SEMICHON (1869), La paix et la trêve de Dieu (Paris); HUBERTI (1892), Gottes und Landfrieden (Ansbach), The Catholic Encyclopedia, Volume X, <http://www.newadvent.org/cathen/>

See also: <http://www.hillsdale.edu/dept/History/Documents/War/Med/1063-peace.htm> and <http://www.bartleby.com/65/tr/truceGod.html>

⁶ New Testament Mt 7 : 7-12 ;but also : Muhammad ; 13° Hadiths de Nawawi ; Mahavira : Yogashastra 2,20 ; Bouddha ; Sutta Pitaka, Udanavagga 5, 18 ; Confucius ; Analecta 15, 23 ; Mahabharata 5 ; 15,17 ; Talmud bab, Shabbat 31a ; Baha'u'llah : Kitab-i-aqdas 148 ; Isocrate, : Nicoclès 61. Calendrier inter religieux 2001-2002, Enbiro Lausanne & Plate-Forme inter religieuse Genève, 2000,

⁷ PLATON, La République. Introduction, traduction et notes de R. BACCON, Paris, 1966, pp. 224-227. See also BERNAND, André (1999), Guerre et violence dans la Grèce antique, Paris, Hachette, 431 p., DUCREY, Pierre

avoid excesses that would turn conflicts into collective suicides. Customs of Melanesians,⁸ Inuit⁹ and Nilotic peoples¹⁰; Buddhism,¹¹ Hinduism,¹² Taoism,¹³ Confucianism¹⁴, and Bushido¹⁵ in Asia; Judaism,¹⁶ Christianity¹⁷ and Islam¹⁸ in the Middle East; customary humanitarian law in Africa¹⁹; and mutual restrictions imposed by chivalry and military honor²⁰ in Europe contain examples of rules of "*Life-Affirmative Societies*", in which the main emphasis of ideals, customs and institutions is the preservation and growth of life in all its forms.²¹

All these rules were aimed at precluding excesses that would turn clashes into anarchy and hence make peace more difficult to achieve. Thus, in article 6 of his Perpetual Peace, Kant wrote: "*No State shall, during war, permit such acts of hostility which would make mutual confidence in the subsequent peace impossible.*"²²

(1978) *Le traitement des prisonniers de guerre dans la Grèce antique*, Paris, and DE ROMILLY, Jacqueline (2000), *La Grèce antique contre la violence*, Paris, Ed. de Fallois, 188 p.

⁸ F. KEITSCH *Formen der Kriegführung in Melanesien*, Bamberg, 1967, p. 380

⁹ M. DAVIE *La guerre dans les sociétés primitives. Son rôle et son évolution*. Traduit de l'anglais par M. Guérin. Paris, Payot, 1931, 440 p.

¹⁰ E. E. EVANS-PRITCHARD *The Nuer A Description of the Modes of Livelihood and Political Institutions of a Nilotic People*, Oxford University Press, 1940, 271 p.

¹¹ Buddhism contains two fundamental principles, maitri (friendliness, benevolence) and karuna (mercy, compassion) closely related to the principle of humanity.

¹² For Hinduism, numerous rules on the kind treatment to be granted to the vanquished are found in the Mahabharata (XII, 3487, 3488, 3489, 3782, 8235) which also prescribes loyalty in combat (XII, 3541 and 42, 3544 to 51, 57 to 60, 64, 3580, 3659, 3675, 3677). See also the famous Laws of Manu, VII, 90 to 93 (*The Laws of Manu*, Oxford 1886)

¹³ On Taoism, see LAO TSE: *Tao Te Ching*, A new translation by Gia-Fu and Jane ENGLISH (New York 1972) and in particular No. 68 ("a good winner is not vengeful") and No. 38

¹⁴ See Barbara ARIA and Russell ENG GON, *The Spirit of the Chinese Character*, San Francisco: Chronicle Books, p. 47

¹⁵ On Bushido, see Sumio ADACHI, "Traditional Asian approaches: A Japanese view" in *Australian Yearbook of International Law*, Vol. 9, 1985, pp. 158 - 167, and, by the same author, "The Asian Concept", in: *International Dimensions of Humanitarian Law*, Paris, UNESCO, 1986, pp. 13-19, which also considers Buddhism.

¹⁶ On Judaism, see Erich FROMM's *You Shall Be As Gods* (New York: Holt, Rinehart and Winston, 1966)

¹⁷ On Christianity, Max HUBER *The Good Samaritan: Reflections on the Gospel and Work of the Red Cross*, London, Gollancz, 1945, 77 p. See also Joseph JOBLIN, *L'Eglise et la Guerre. Conscience, violence, pouvoir*, Paris 1988, and in particular, for jus in bello, pages 193 onwards; Alfred VANDERPOL, *La doctrine scolastique du droit de la guerre*, Paris 1919

¹⁸ On Islam, see among others Hamed SULTAN, "The Islamic Concept", in *International Dimensions of Humanitarian Law*", Geneva/Paris, UNESCO/Nijhoff, 1988, pp. 29-39, Marcel BOISARD, *L'Humanisme de l'Islam*, Paris 1979; Jean-Paul Charney, *L'Islam et la guerre. De la guerre juste à la révolution sainte*, Paris 1986. See also the article published in the *International review of the Red Cross* by M.K. EREKSOUSSI, "The Koran and the Humanitarian Conventions" (May 1962); Ameer ZEMMALI, *Combattants et prisonniers de guerre en droit islamique et en droit international humanitaire*, Paris, Pedone, 1997, 519 p.

¹⁹ On African customs, see Emmanuel BELLO, *African Customary Humanitarian Law*, Geneva: ICRC, 1980; the articles by Yolande DIALLO published in February and August 1976 in the *International Review of the Red Cross* under the title "Humanitarian Law and African Traditional Law".

²⁰ See Geoffrey BEST, *Humanity in Warfare. The Modern History of International Law of Armed Conflicts*, London, Weidenfels and Nicolson, 1980, 400 p.

Michael IGNATIEFF, *The Warrior's Honour. Ethnic War and the Modern Conscience*. New York: Viking, 1998, 207 p. compares this warrior's honor with today's ethnic conflicts...

²¹ See: Eric FROMM *The Anatomy of Human Destructiveness*, New York: Holt, Rinehart and Winston, 1973, p.168

²² The full text, available on the Website <http://www.mtholyoke.edu/acad/intrel/kant/kant1.htm> is "No State shall, during War, permit such Acts of Hostility which would make mutual Confidence in the subsequent Peace impossible: such are the employment of assassins ("percussores"), poisoners ("venefici"), breach of Capitulation, and Incitement to Treason ("perduellio") in the opposing State"

These barriers to violence and the notion of responsibility for others were, for the most part, only valid inside the group. Only on rare occasions bridges were allowed to be built between those islands of humanity, sometimes through individual acts of generosity.

Recognizing the human dignity of every human being

Francisco de Vitoria (1480-1546), a member of the Dominican Order, is often considered the founder of Western international law. He believed in *jus gentium*, a 'law of nations' established on the basis of natural law and universally valid. Living at the time of the conquest of the Americas, Vitoria developed his teaching partly in the context of his discussions on the appropriate treatment of the native peoples of the New World.

Supported by Vitoria, Bartholomew de Las Casas (1474-1566) devoted himself to the defense of the Indians against the ruthless exploitation and ferocious cruelty, which they suffered from the Spanish conquerors.²³

Building bridges among civilizations

St. Francis of Assisi tried to open a dialogue between Christians and Muslims in 1219.²⁴ All of the world's great religious traditions today emphasize the intrinsic value of each individual human life, and in recent decades religious communities have recognized their vital role in expressing moral outrage and taking actions to curb the types of inhumanity that people have time and again inflicted upon one another over the last century. Religious communities are, without question, the largest and best-organized civil institutions in the world today, claiming the allegiance of billions of believers and bridging the divides of race, class and nationality.²⁵

In the year 2000, the Millennium was an opportunity to bring to the United Nations a Millennium World Peace Summit of Religious and Spiritual Leaders, which sought to coordinate religious and spiritual leadership as a driving force for building tolerance, fostering peace and encouraging inter-religious dialogue among all regions of the world.²⁶

2001 was proclaimed by the United Nations “Year of Dialogue Among Civilizations”. After the 11 September, the United Nations Secretary-General stressed the need to reaffirm the rule of law, on the international as well as the national levels. Kofi Annan also denied the inevitability of a “clash of civilizations”, and reasserted “our common humanity and the values that we share”.²⁷ His report to the General Assembly²⁸ and the book *Crossing the*

²³ http://35.1911encyclopedia.org/L/LA/LAS_CASAS_BARTOLOME_DE.htm

²⁴ See Giulio Basetti Sani, *L'Islam et St François d'Assise. La mission prophétique par le dialogue*, Paris, Publisud, 1987, 254 p.

²⁵ WORLD CONFERENCE ON RELIGION AND PEACE. Mission Statement.

http://www.wcrp.org/RforP/MISSION_MAIN.html

²⁶ <http://www.millenniumpeacesummit.org/>

²⁷ United Nations Press Release SG/SM/7965, 24 September 2001

²⁸ A/56/523, 2 November 2001, available, as well as other documents on this Year at <http://www.un.org/documents/dialogue.htm>

Divide as well as the “Salzburg reflections”,²⁹ the “Declaration of Athens” (“The heritage of ancient civilizations: Implications for the modern world”)³⁰ should be only the beginning of a much needed dialogue based on equality and mutual respect.

²⁹ A/56/419

³⁰ A/54/60

Proliferation and Universality of Standards

International humanitarian law

International humanitarian law is usually defined as the set of principles and rules restricting the use of violence in armed conflicts, both to spare the persons not (or no longer) directly engaged in hostilities (wounded, sick, and shipwrecked members of the armed forces, prisoners of war and civilians), and limit the use of methods and means of warfare causing superfluous injury (or excessive suffering, as in the case of "*dumdum bullets*", or with gas warfare³¹), or severe damage to the natural environment or betrayal of an adversary's confidence in agreed-upon obligations ("perfidy").

The principle of the limitation of armed violence is reflected, in contemporary written law, in the Saint-Petersburg Declaration of 1868³², as well as in Article 22 of the Hague Regulations of 1907³³, which stipulates that: "*The right of belligerents to adopt means of injuring the enemy is not unlimited*". This text is taken up again, slightly reworded, in paragraph 1 of Article 35 ("*Basic rules*") of Protocol I of 1977: "*In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited*".

The terminology used to refer to international treaties may vary ("humanitarian law"³⁴, "international humanitarian law applicable in armed conflicts"³⁵, "laws of war"³⁶, "law of Geneva"³⁷, "Red Cross Conventions", "law of The Hague"³⁸, "human rights in armed conflicts"³⁹), but all seek the same objective - namely, to limit the use of violence in war.

³¹ Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, Geneva, 17 June 1925

³² Declaration Renouncing the Use, in Time of War, of certain Projectiles, Saint Petersburg, 29 November/11 December 1868

³³ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907

³⁴ See Jean PICTET, *Humanitarian law and the protection of war victims*, Leiden 1975

³⁵ This was the term used by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (CDDH), which met at Geneva from 1974 to 1977 to adopt the two Additional Protocols to the Conventions of 1949.

³⁶ Laws of war is the expression still most widely used today in military circles. Cf Frederic de MULINEN, *Handbook on the Law of War for Armed Forces*, Geneva, ICRC, 1987, or Thomas B. BAINES, "The laws of war and the rules of peacekeeping" presented to the Joint Services Conference on Professional Ethics, 30-31 January 1997, at the National Defense University, Washington, D.C., available at <http://www.usafa.af.mil/jscope/JSCOPE97/Baines97.htm>

³⁷ Law of Geneva is sometimes used with the intention of stressing aspects relating to the protection of victims of war, as opposed to the regulation of conduct as regards methods and means of destruction between combatants, designated by the expression "Law of the Hague".

³⁸ The Protocols of 1977 have to some extent merged the law of Geneva and the law of the Hague; this was merely the culmination of a trend which began when the rules of the Hague relating to the treatment of prisoners of war were incorporated and expanded upon in the Second Geneva Convention of 1929, and later the Third Convention of 1949; similarly, the Fourth Convention of 1949 incorporated most of the Hague Regulations of 1907 on military occupation. All this is of considerable significance: apart from the historical memory, it is the customary nature of the rules of the Hague (and hence of the provisions incorporated in 1949 and 1977) which should be emphasized.

³⁹ This was the term used by the United Nations for almost ten years after the International Conference on Human Rights held in Teheran (22 April - 13 May 1968). Numerous resolutions of the United Nations General Assembly, advocating further codification, and describing how this was to be done, were adopted under the heading of "Respect for human rights in armed conflicts", as well as reports by the Secretary-General of the United Nations (A/7720 in 1969, A/8052 in 1970, A/8370 in 1971, A/8781 in 1972, A/9123 in 1973, A/9669 in 1974, A/10195 in 1975).

Contemporary international humanitarian law is the moving balance between two dynamic forces: “*the requirements of humanity*” and “*military necessity*”.⁴⁰ It is also a sum of tragic real-life experiences which need not be repeated: military wounded and shipwrecked – and the humanitarian personnel taking care of them – must be rescued and respected; prisoners of war must be humanely treated and released at the end of active hostilities; and civilians not be killed nor harmed.

Each stage of the codification of international humanitarian law was the result of a post-war shock wave in public opinion and governments, a collective painful process of learning. These codifications occurred as follows:

- The battle of Solferino (1859)⁴¹ between Austrian and French armies was the impetus for the First Convention, in 1864, protecting military wounded on land;
- The naval battle of Tsushima (1905) between Japanese and Russian fleets prompted adjustment of the Convention on war at sea, in 1907, extending protection to military shipwrecked;
- World War I brought about the two 1929 Conventions, including a much broader protection for prisoners of war;
- World War II led to the four 1949 Conventions⁴², an extensive regulation of the treatment of civilians in occupied territories and internment, and decolonization;
- The Vietnam War preceded the two 1977 Additional Protocols⁴³, which brought written rules for the protection of civilian persons and objects against hostilities;
- A worldwide campaign by Governments, United Nations agencies, the Red Cross and Red Crescent Movement and NGOs in a full partnership, which stressed the human suffering and socio-economic costs caused by anti-personnel mines resulted on the total ban on anti-personnel landmines signed in Ottawa on 4 December 1997;

Universality of International Humanitarian Law

The four 1949 Geneva are universally ratified. The two Additional Protocols are widely ratified, but still lack the ratification by the US and some other countries.

The 1907 Hague Regulations, which establish laws for conducting war on land, are

⁴⁰ See Georges ABI-SAAB, “The specificities of humanitarian law” in Christophe Swinarski (Ed.) *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet*, Geneva, ICRC, 1984, 1143 p., pp. 265-280

⁴¹ See: Henry DUNANT: *A Memory of Solferino*, Geneva: ICRC. 1939.

⁴² Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949.

⁴³ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

considered part of international customary law since the International Military Tribunal of Nuremberg declared on 1 October 1946, addressing both signatories and non-signatories, that they were declaratory of the laws and customs of war.⁴⁴

Humanitarian law has evolved from a law protecting only certain categories of individuals (from medieval knights to today's prisoners of war), to a set of provisions ensuring fundamental human rights guaranteeing the survival of civilian populations in wartime.

The International Tribunals on former Yugoslavia⁴⁵ and on Rwanda⁴⁶ broke down the distinction between international and non-international armed conflicts regarding the prosecution of war crimes.⁴⁷

Humanitarian rules and principles are to be respected in all circumstances. This is especially important today, in the case of "collapsed States",⁴⁸ "postmodern wars",⁴⁹ and anarchic conflicts.⁵⁰ According to the ICRC's Commentary to the 1949 Conventions, "The words "in all circumstances" in Common Article 1 of the four 1949 Geneva Conventions refer to all situations in which the Convention has to be applied and these are defined in Article 2. It is clear, therefore, that the application of the Convention does not depend on whether the conflict is just or unjust. Whether or not it is a war of aggression, prisoners of war belonging to either party are entitled to the protection afforded by the Convention."⁵¹

The First Geneva Convention of 1864 had only twelve Articles. The four 1949 Geneva Conventions and their two Additional Protocols of 1977 count more than four hundred and fifty provisions... One Article summarizes international humanitarian law: Common Article 3 of the 1949 Geneva Conventions.

⁴⁴ See ICRC, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, Geneva, 1987, p. 381, para. 1364.

⁴⁵ The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 was established by the Security Council on 25 May 1993

⁴⁶ The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 was established by the Security Council on 8 November 1994

⁴⁷ See the Tadic Case: International Criminal Tribunal for the former Yugoslavia, Prosecutor v. Dusko Tadic a/k/a "Dule": Decision on the defence motion for interlocutory appeal on jurisdiction. Decision of 2 October 1995, Case No. IT-94-1-AR72. On this case, two articles in the International Review of the Red Cross: John DUGARD "Bridging the gap between human rights and humanitarian law: the punishment of offenders" (September 1998, No 324, pp. 445-453), and Thomas GRADITZKY "International criminal responsibility for violations of international humanitarian law committed in non-international armed conflicts" (March 1998, No 322, pp. 29-56)

⁴⁸ See I. William ZARTMAN (Ed.), Collapsed States. The Disintegration and Restoration of Legitimate Authority, Boulder: Lynne Rienner, 1995, p. 301, and the Preparatory document drafted by the ICRC for the first periodical meeting on international humanitarian law, Geneva, 19-23 January 1998, Armed conflicts linked to the disintegration of State structures, mentioning Resolution 814, para. 13 (Somalia), Res. 788, para. 5 (Liberia).

⁴⁹ See Robert FOX, "On the Age of Postmodern War. Beyond Clausewitz: the long and ragged conflicts of the coming millenium", The Times Literary Supplement, 15 May 1998.

⁵⁰ As Martin VAN CREFELD puts it in The Transformation of War, New York, Free Press, 1991, "Once the legal monopoly of armed force, long claimed by the State, is wrestled out of its hands, existing distinctions between war and crime will break down."

⁵¹ ICRC Commentary III, Art. 1, available online at :

<http://www.icrc.org/ihl.nsf/b466ed681ddfcd241256739003e6368/49cfe5505d5912d1c12563cd00424cdd?OpenDocument>

The International Court of Justice, in the Nicaragua case, considered Article 3 of the 1949 Geneva Conventions as "*elementary considerations of humanity*" binding all:

*"The Court considers that the rules stated in Article 3, which is common to the four Geneva Conventions, applying to armed conflicts of a non-international character, should be applied. The United States is under an obligation to "respect" the Conventions and even to "ensure respect" for them, and thus not to encourage persons or groups engaged in the conflict in Nicaragua to act in violation of the provisions of Article 3. This obligation derives from the general principles of humanitarian law to which the Conventions merely give specific expression".*⁵²

⁵² International Court of Justice, Case concerning the military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America), Judgement of 27 June 1986 (Merits), Vol. 114, Para. 218. On this case, see: Rosemary ABI-SAAB, "The 'General Principles' of humanitarian law according to the International Court of Justice", International Review of the Red Cross, July-August 1987, pp. 367-375.

The Law of Geneva

1. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention of 12 August 1949)
 2. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention of 12 August 1949)
 3. Geneva Convention relative to the Treatment of Prisoners of War (Third Convention of 12 August 1949)
 4. Geneva Convention relative to the protection of civilian persons in time of war (Fourth Convention of 12 August 1949)
- * Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (First Protocol);
- * Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International (Second Protocol)

Human Rights

The Preamble of the United Nations Charter states the determination of Member States “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. Article 1, paragraph 3 defines one of the purposes of the UN as “To achieve international co-operation in solving internal problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”. World War II and regional conflicts prompted the drafting of the United Nations instruments on human rights, disarmament, prohibition of terrorism and mercenaries, protection of the environment⁵³, and of the rights of children⁵⁴.

While instruments of international humanitarian law are normally applicable during armed conflicts, human rights treaties are based on a peacetime approach, yet their scope often overlaps, especially in regard to the fundamental guarantees they embody.

⁵³ The United Nations Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, adopted on 10 December 1976 (ENMOD)

⁵⁴ Convention on the Rights of the Child, adopted by Resolution 44/25 of the United Nations General Assembly on 20 November 1989.

The universality of humanitarian standards can also be seen with Human Rights instruments⁵⁵

- The 1948 Universal Declaration of Human Rights
- The 1948 Convention on the Prevention and Punishment of the Crime of Genocide
- Both 1966 Covenants (International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights)
- The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The 1989 Convention on the Rights of the Child.

The universality⁵⁶ and indivisibility⁵⁷ of human rights was reaffirmed by the UN International Conference in Tehran in 1968⁵⁸ and by the World Conference of Human Rights in Vienna in 1993⁵⁹

The Advisory Opinion of the I.C.J. on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, of 28 May 1951, confirmed that the prohibition of genocide is part of customary international law.⁶⁰

The following regional instruments complement the UN instruments:

- the 1950 Convention for Protection of Human Rights and Fundamental Freedoms of the Council of Europe signed in Rome;
- the 1969 Inter-American Convention on Human Rights, San Jose de Costa Rica;
- the 1981 African Charter on Human and Peoples' Rights;
- the Charter of Fundamental Rights of the European Union, signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European

⁵⁵ See: Michael IGNATIEFF, 'The Attack on Human Rights', Foreign Affairs, November/December 2001

⁵⁶ See the interesting article by Chih-yu SHIH, « Opening the Dichotomy of Universalism and Relativism » *Human Rights and Human Welfare. International Review of Books and Other Publications*, Vol. 2, No 1 /January 2002), reviewing Linda S. BELL, Andrew J. NATHAN and Ilan PELEG (Editors) *Negotiating Culture and Human Rights*, New York, Columbia University Press, 2001, 428 p. and Daniel A. BELL, *East Meets West : Human Rights and Democracy in East Asia*, Princeton, Princeton University Press, 2000, 369 p.

⁵⁷ See Amartya SEN, *Development as Freedom*, New York, Random House, 2000, 366 p.

⁵⁸ Paragraph 2 of the Proclamation of 1968 Tehran reads as follows: „The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community“.

⁵⁹ Paragraph 1 of the 1993 Vienna Declaration states that -

„The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond doubt. (...)

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms“.

⁶⁰ I.C.J. Reports 1951, p. 12. See Christa ROTTENSTEINER, „The denial of humanitarian assistance as a crime under international law“, *International Review of the Red Cross*, 1999, No. 835, pp. 555-582

Council meeting in Nice on 7 December 2000.⁶¹

Two regional instruments prohibit torture:

- the 1985 Inter-American Convention to Prevent and Punish Torture
- the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

In addition to the first two “Human Rights generations” (civil and political / economic and social) new Human Rights – a third generation of „Solidarity Human Rights“⁶² are under consideration at the United Nations and at regional fora, among which

- the human right to development,
- the right to an healthy environment,⁶³
- the human right to peace,
- the right to health, and
- the right to food.

The “**Declaration on the Right to Development**” was adopted by the United Nations General Assembly in 1986.⁶⁴ The item has been regularly debated at the General Assembly since then.⁶⁵

The “**Human Right to Peace**” was hailed by Federico Mayor, Director-General of UNESCO, as “a prerequisite for the exercise of all human rights and duties”⁶⁶

⁶¹ See the Website dedicated to the Charter : http://www.europarl.eu.int/charter/default_en.htm

The text was published in the Official Journal of the European Communities, 2000/C 364/1.

⁶² For this « third generation of human rights » see

- Karel VASAK, « Pour une troisième génération des droits de l’homme » in SWINARSKI, Christophe (Ed.) Studies and essays on international humanitarian law and Red Cross principles, Geneva, ICRC, 1984, pp. 837-845.

- Karel CRAWFORD and Hans KRUIK, The Rights of Peoples, Oxford, Oxford University Press, 1992, 248 p.

⁶³ See Edith BROWN WEISS (Ed.) Environmental change and international law : New challenges and dimensions , The United Nations University, 1992

<http://www.unu.edu/unupress/unupbooks/uu25ee/uu25ee0k.htm>

and especially : Alexandre KISS, « An introductory note on a human right to environment »

<http://www.unu.edu/unupress/unupbooks/uu25ee/uu25ee0k.htm>

« The fundamental right to life at the basis of the ratio legis of international human rights law and environmental law » <http://www.unu.edu/unupress/unupbooks/uu25ee/uu25ee0p.htm>

See also the « Report of the joint OHCHR-UNEP seminar on human rights and the environment », 16 January 2002, E/CN.4/2002/WP. 7, 22 March 2002, submitted to the 58th session of the Commission on Human Rights

<http://www.unhchr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset>

⁶⁴ Declaration on the Right to Development, G.A. res. 41/128, annex, 41 U.N. GAOR Supp. (No. 53) at 186, U.N. Doc. A/41/53 (1986). Available at the University of Minnesota Human Rights Library Website

<http://www1.umn.edu/humanrts/instr/s3drd.htm> and on the UN Website

<http://www.un.org/documents/ga/res/41/a41r128.htm> . See also Arjun SENGUPTA „The Right to Development as a Human Right“ on the François-Xavier Bagnoud Center for Health and Human Rights, Harvard University, Website: www.hsph.harvard.edu/fxbcenter/FXBC_WP7--Sengupta.pdf

⁶⁵ See the Website of the Office of the High Commissioner for Human Rights

http://www.unhchr.ch/html/menu2/10/e/rt_d_main.htm and the Report of the High Commissioner for Human Rights submitted in accordance with Commission on Human Rights resolution 1998/72

(E/CN.4/2002/27, 27 November 2001) available at

<http://www.unhchr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset>

⁶⁶ Statement in January 1997 <http://www.unesco.org/general/eng/whatsnew/decl.eng.html>

The “**Human Right to Health**” is proclaimed in the World Health Organization’s Constitution, as well as in Article 25 of the Universal Declaration and in the 1988 Protocol of San Salvador.⁶⁷ The Secretary-General of the United Nations submitted a report to the 58th session of the Commission on Human Rights on “Access to medication in the context of pandemics such as HIV/AIDS”⁶⁸

As for the „**Right to Food**“, the Preamble to the FAO Constitution sets "ensuring humanity's freedom from hunger" as one of its basic purposes. The World Food Summit in November 1996 reaffirmed the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger, and gave a specific mandate to the High Commissioner for Human Rights to better define the rights related to food and propose ways to implement and realize them.⁶⁹ The General Assembly⁷⁰ and the Commission on Human Rights regularly examine this item. The Commission on Human Rights appointed in September 2000 a Special Rapporteur on the right to food.⁷¹

UN Instruments

- Charter of the United Nations, adopted 26 June 1945
- Convention on the Prevention and Punishment of the Crime of Genocide, adopted 9 December 1948
- Convention Relating to the Status of Refugees, signed 28 July 1951
- Protocol Relating to the Status of Refugees, opened for signature 31 January 1967
- International Covenant on Civil and Political Rights, adopted 16 December 1966
- International Covenant on Economic, Social, and Cultural Rights, adopted 16 December 1966
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984
- Convention on the Right of the Child, adopted 20 November 1989

⁶⁷ See the WHO Website « Health as a Human Right » <http://www.who.int/archives/who50/en/human.htm> and the interdisciplinary discussion held at Harvard Law School in September 1993 <http://www.law.harvard.edu/programs/HRP/Publications/economic1.html> and Henrik Karl NIELSEN, The World Health Organisation – Implementing the right to health as well as « Health and Human Rights. An International Journal » published by the François-Xavier Bagnoud Center for Health and Human Rights, Harvard University, since 1994 <http://www.hsph.harvard.edu/xbcenter/journal.htm>

⁶⁸ E/CN.4/2002/52 (21 January 2002) and Add. 1 (26 February 2002) <http://www.unhcr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset>

⁶⁹ See the FAO Website : <http://www.fao.org/Legal/rtf/rtfood-e.htm>

⁷⁰ See Resolution A/RES/56/155 (« The right to food ») adopted on 19 December 2001

⁷¹ Jean ZIEGLER (Switzerland). See A/56/210 (« Preliminary report »), 21 July 2001, and E/CN.4/2002/58 (10 January 2002) « Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2001/25 » and Add. 1 („Mission to Niger“), 23 January 2002.

Regional Instruments

1. Africa

- Charter of the Organization of African Unity, adopted 25 May 1963
- Convention Governing the Specific Aspects of the Refugee Problems in Africa, adopted 10 September 1969
- African Charter on Human and Peoples' Rights, adopted 27 June 1981
- African Charter on the Rights and Welfare of the Child, adopted July 1990

2. Americas

- Charter of the Organization of American States, signed 1948
- American Declaration of the Rights and Duties of Man, signed 2 May 1948
- American Convention on Human Rights (Pact of San Jose), signed 22 November 1969
- Inter-American Convention to Prevent and Punish Torture, signed 9 December 1985
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), adopted 17 November 1988 (not yet in force)

3. Europe

- Statute of the Council of Europe, adopted 5 May 1949
- European Convention for the Protection of Human Rights and Fundamental Freedoms, signed 4 November 1950
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed 26 November 1987

“Soft Law” Standards

Treaty law is not the only source of humanitarian standards. “Soft law” is also a source of humanitarian standards. One example is the adoption, by the International Conference of the Red Cross in Vienna in 1965 of the **Fundamental Principles of the Red Cross/Crescent** - humanity, impartiality, neutrality, independence, voluntary service, unity, universality.

HUMANITY

The Red Cross, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavors – in its international and national capacity – to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, co-operation and lasting peace amongst all peoples.

IMPARTIALITY

It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavors only to relieve suffering, giving priority to the most urgent cases of distress.

NEUTRALITY

In order to continue to enjoy the confidence of all, the Red Cross may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

INDEPENDENCE

The Red Cross is independent. The National Societies, while auxiliaries in the humanitarian services of their Governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with Red Cross principles.

VOLUNTARY SERVICE

The Red Cross is a voluntary relief organization not prompted in any manner by desire for gain.

UNITY

There can be only one Red Cross Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

UNIVERSALITY

The Red Cross is a worldwide institution in which all Societies have equal status and share equal responsibilities and duties in helping each other.

Solidarity and compassion have always been widely expressed in both words and deeds in the most diverse cultures.⁷² The Fundamental **Principles** are the result of a century of experience. Proclaimed in 1965, they bond together the National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies.⁷³ They were imitated in many ways. The principle of neutrality has even become one of the core principles of organizations such as Médecins Sans Frontières.

The “MSF Charter”⁷⁴ also mentions the principles of impartiality, non-discrimination, independence, and voluntary service. It stresses the right to humanitarian assistance.

⁷² See ICRC, *The Fundamental Principles of the Red Cross and Red Crescent Movement*, Geneva, 1996, 2nd ed., 35 p.

⁷³ See Jean PICTET, *The Fundamental Principles of the Red Cross. Commentary*, Geneva, 1979, 93 p.

⁷⁴ Text available at <http://www.doctorswithoutborders.org/about/charter.shtml>

THE MSF CHARTER

Médecins Sans Frontières (also known as Doctors Without Borders or MSF) offers assistance to populations in distress, victims of natural or man-made disasters, and victims of armed conflict, without discrimination and irrespective of race, religion, creed, or political affiliation.

MSF observes strict neutrality and impartiality in the name of universal medical ethics and the right to humanitarian assistance, and demands full and unhindered freedom in the exercise of its functions.

MSF volunteers undertake to observe their professional code of ethics and to maintain complete independence from all political, economic, and religious powers.

Volunteers are aware of the risks and dangers of the missions they undertake and have no right to compensation for themselves or their beneficiaries other than that which MSF is able to afford them.

Beyond institutional rivalries or humanitarian policy-making, such principles could certainly help humanitarian organizations in coping with constantly changing challenges.

Neutrality of the ICRC – or of MSF – has a different meaning from the neutrality of Switzerland or Sweden. It should be understood as the capacity of being available to everyone for service, the ability to assist and protect victims without discrimination, a tool not a virtue, enhancing the security of humanitarian workers and the sustainability of their action, more important in its perception by all actors than in actual practice, closely linked also to funding and access to victims.

In order to promote the complementarities of diverse humanitarian organizations, the implementation of the principle of neutrality could be interpreted in various nuances according to the needs of each individual situation.⁷⁵

⁷⁵ See Hugo SLIM, « Relief agencies and moral standing in war : Principles of humanity, neutrality, impartiality and solidarity », *Development in Practice* Vol. 7, No. 4 (1997): 342-352. Denise Plattner, « ICRC neutrality and neutrality in humanitarian assistance », *International Review of the Red Cross* No. 311 (1996) : 167-179. Rony BRAUMAN, *Devant le Mal : Rwanda. Un Génocide en Direct* (Paris : Arléa, 1994). See also: Frances SMITH *Principles of Engagement for Emergency Humanitarian Assistance in the DRC*, <http://www.odihpn.org/report.asp?ReportID=1071> and *Principles of engagement for emergency humanitarian assistance in the Democratic Republic of Congo*, UNITED NATIONS Session 8: Handout 8.4 http://coe-dmha.org/unicef/HPT_Session8Handout8_4.htm

Other “soft law” texts could be mentioned as ethical standards, such as:

- the **Code of Conduct for Law Enforcement Officials**⁷⁶ adopted by the United Nations General Assembly in 1979;
- the **Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief** developed and agreed upon by eight of the world's largest disaster response agencies in the summer of 1994⁷⁷;
- the **SPHERE Project**⁷⁸;
- the **Universal Declaration Of Human Responsibilities** proposed by the InterAction Council in 1997⁷⁹;
- the **People in Aid “Best Practices”**⁸⁰;
- the **Humanitarian Accountability Project**⁸¹;
- as well as guidelines adopted by ecumenical aid agencies⁸² and individual agencies such as the **“Caritas International’s Guiding Values and Principles”**⁸³ and **World Vision’s Core Values**.⁸⁴

⁷⁶ See: Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979, http://www.unhchr.ch/html/menu3/b/h_comp42.htm

⁷⁷ Code of Conduct for The International Red Cross and Red Crescent Movement and NGOs in Disaster Relief <http://www.ifrc.org/publicat/conduct/index.asp>

⁷⁸ See: <http://www.sphereproject.org/>

⁷⁹ A Universal Declaration Of Human Responsibilities (Proposed by the InterAction Council) 1 September 1997. See: <http://www.asiawide.or.jp/iac/UDHR/EngDecl1.htm>

⁸⁰ See: <http://www.tgwu.org.uk/voluntarysector/peopaid.htm>

⁸¹ See: <http://www.hapgeneva.org/>

⁸² See: Ethics of humanitarian aid: Consultation on Humanitarianism and Ethics, Stony Point, New York APRODEV Bulletin February 1997 www.oneworld.org/aprodev/feb97_6.htm

⁸³ Caritas International’s Guiding Values and Principles:

- 1) *Dignity of the human person*
- 2) *Preferential option for the poor and marginalised*
- 3) *The Universal Destination of the Earth's Good*
- 4) *Solidarity*
- 5) *Stewardship*

⁸⁴ See the World Vision International Website: <http://www.wvi.org/home.shtml>

„The World Vision Partnership shares a common understanding bound together by six core values. These core values are the fundamental and guiding principles that determine World Vision's actions. The core values are our aim, a challenge that we seek to live and work to.

We are Christian.

We are committed to the poor.

We value people.

We are stewards.

We are partners.

We are responsive“

Professional Ethics (Military,⁸⁵ Police,⁸⁶ Medical,⁸⁷ Media⁸⁸) also strive for universality.

In 1999, the Secretary-General of the United Nations proposed the “**Global Compact**” to create a dialogue between business and civil society along nine fundamental principles, drawn from the Universal Declaration of Human Rights, the ILO's Fundamental Principles on Rights at Work and the Rio Principles on Environment and Development⁸⁹

Multiplication of Mechanisms

The proliferation of standards is matched by the multiplication of implementation mechanisms for international humanitarian law or for human rights instruments or for both.

International humanitarian law mechanisms

The mechanisms provided for in the 1949 Geneva Conventions on the protection of war victims are:

1. The **States Party**, which undertake to “respect and ensure respect” for the Conventions in

⁸⁵ See the following websites: <http://www.tandf.co.uk/journals/tfs/15027570.html> (Journal of Military Ethics) <http://dir.yahoo.com/Government/Military/Ethics/>, <http://www.usna.edu/Ethics/> (Center for the Study of Professional Military Ethics), <http://plato.stanford.edu/entries/war/> (Stanford Encyclopedia of Philosophy), <http://www.iihl.org> (International Institute of Humanitarian Law)

⁸⁶ See Cees DE ROVER, ‘Police and Security Forces. A new interest for human rights and humanitarian law’ International review of the Red Cross, no. 835 (September 1999) pp. 637-647, and C. DE ROVER, To Serve and to Protect. Human Rights and Humanitarian Law for Police and Security Forces, ICRC, Geneva, 1998.

⁸⁷ The Hippocratic Oath (available at <http://classics.mit.edu/Hippocrates/hippooath.html>) and the following document of the World Medical Association :

World Medical Association Resolution on Human Rights (adopted by the 42nd World Medical Assembly Rancho Mirage, California, USA, October 1990 and amended by the 45th World Medical Assembly, Budapest, Hungary, October 1993, the 46th General Assembly, Stockholm, Sweden, September 1994, the 47th General Assembly, Bali, Indonesia, September 1995):

„Having regard to the fact that:

- 1.The World Medical Association and its member associations have always sought to advance the cause of human rights for all people, and have frequently taken actions endeavoring to alleviate violations of human rights.
 - 2.Members of the medical profession are often amongst the first to become aware of violations of human rights.
 - 3.Medical Associations have an essential role to play in calling attention to such violations in their countries.
- The World Medical Association again calls upon its member associations
- 1.To review the situation in their own countries so as to ensure that violations are not concealed as a result to fear of reprisals from the responsible authorities and to request strict observance of civil and human rights when violations are discovered.
 - 2.To provide clear ethical advice to doctors working in the prison system.
 - 3.To provide effective machinery for investigating unethical practices by physicians in the field of human rights.
 - 4.To use their best endeavours to ensure that adequate health care is available to all human beings without distinction.
 - 5.To protest alleged human rights violations through communications that urge the humane treatment of prisoners, and that seek the immediate release of those who are imprisoned without just cause.
 - 6.To support individual physicians who call attention to human rights violations in their own countries ».

http://www.wma.net/e/policy/20-2-90_e.html

⁸⁸ See the Code accepted in 1954 by the World Congress of the IFJ, and amended in 1986 <http://www.ifj.org/ifj/codee.html> and the Databank for European Codes of Journalism Ethics

<http://www.uta.fi/ethicnet/>

⁸⁹ See : <http://www.unglobalcompact.org/un/gc/unweb.nsf/content/thenine.htm>

all circumstances.”⁹⁰ “Respect” clearly refers to the individual obligation to apply it in good faith from the moment that it enters into force.⁹¹ “To ensure respect”, according to the ICRC Commentary to the 1949 Conventions, “demands in fact that the States which are Parties to it should not be content merely to apply its provisions themselves, but should do everything in their power to ensure that it is respected universally.”⁹² This collective responsibility to implement international humanitarian rules⁹³ often takes the form of bilateral or multilateral measures by States Party. Leaving aside the exceptional meeting provided for in Article 7 of Protocol I of 1977⁹⁴ States Party to international humanitarian law treaties have used bilateral or multilateral meetings, at the United Nations, the Non-Aligned Movement (NAM), regional organizations (OAS, OAU, OSCE, the European Parliament, the Council of Europe) as well as the Inter-Parliamentary Union (IPU), to manifest their concern that humanitarian law should be respected.⁹⁵ “In all circumstances” means in time of armed conflict as well as in

⁹⁰ Common Article 1 to the 1949 Geneva Conventions

⁹¹ ICRC Commentary on the Additional Protocols, Geneva, ICRC, 1987, p. 35, para. 39

⁹² ICRC Commentary III, p. 18 (Art. 1). See Luigi CONDORELLI and Laurence BOISSON DE CHAZOURNES, « Quelques remarques à propos de l’obligation des Etats de « respecter et faire respecter » le droit international humanitaire « en toutes circonstances », in SWINARSKI, Christophe (Ed.) Studies and essays on international humanitarian law and Red Cross principles, Geneva, ICRC, 1984, pp. 17-35 and Umesh PALWANKAR. “Measures available to States for fulfilling their obligation to ensure respect for international humanitarian law” IRRC no 298, pp. 9-25

⁹³ The 1949 Geneva Conventions as well as Additional Protocol I, for the States Party to this Protocol. See the ICRC Commentary on the Protocols, ad Art. 1 of Protocol I, p. 35-38

⁹⁴ Article 7 (« Meetings ») : « The depositary of this Protocol [Switzerland] shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties and upon the approval of the majority of the said Parties, to consider general problems concerning the application of the Conventions and of the Protocol ». Such a meeting was convened by Switzerland on 5 December 2001 in Geneva. (« Conference of the High Contracting Parties to the Fourth Geneva Convention.»)

⁹⁵ ICRC Commentary on the Additional Protocols, p. 36, paragr. 43.

. See also Michel VEUTHEY, « Pour une politique humanitaire » in SWINARSKI, Christophe (Ed.) Studies and essays on international humanitarian law and Red Cross principles, Geneva, ICRC, 1984., pp. 989-1009.

time of peace, taking preventive steps, in the form of training⁹⁶ or evaluation,⁹⁷ and prosecution.⁹⁸

2. The **Protecting Power**,⁹⁹ which was widely used in Europe during WW II¹⁰⁰ and much less thereafter.¹⁰¹ Additional Protocol I defines the Protecting Power in international humanitarian

⁹⁶ Training is an obligation according to the four 1949 Geneva Conventions : Article 47 of the First Convention states the following : « The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains. »

The Second Convention contains a similar provision (Article 48).

Article 127 of the Third Convention adds the following paragraph : « Any military or other authorities, who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions. »

Article 144, 2 of the Fourth Convention reads as follows : « Any civilian, military, police or other authorities, who in time of war assume responsibilities in respect of protected persons, must possess the text of the Convention and be specially instructed as to its provisions. »

Additional Protocol I

- reaffirms the duty to disseminate (Article 83 – Dissemination) ; and
- adds the obligation to ensure that legal advisers are available (Art. 82 – Legal Advisers in armed forces)

Additional Protocol II, applicable in non-international armed conflicts, simply states that « This Protocol shall be disseminated as widely as possible. » (Art. 19 – Dissemination).

⁹⁷ Article 36 (« New Weapons ») of Protocol I 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. »

⁹⁸ The four 1949 contain common provisions on the « Repression of Abuses and Infractions » :

- First Convention : Art. 49-51
- Second Convention : Art. 50-52
- Third Convention : Art. 129-131
- Fourth Convention : Art. 146-148

Article 85 of Additional Protocol I reaffirms those provisions, adds a few acts to be considered as grave breaches (specially attacks against civilians and civilian objects), and classifies grave breaches of the 1949 Conventions and Protocol I as war crimes.

See also Maria Teresa DUTLI and Cristina PELLANDINI « The International Committee of the Red Cross and the implementation of a system to repress breaches of international humanitarian law » IRRC, No 300, May 1994, pp. 240-254.

⁹⁹ See George A.B. PEIRCE, « Humanitarian protection for the victims of war. The system of Protecting Powers and the role of the ICRC », *Military Law Review*, Vol. 90, 1980, pp. 89-162. and D. P. FORSYTHE, "Who guards the guardians : Third parties and the law of armed conflict", *American Journal of International Law*, vol. 70, 1976, pp. 41-61

¹⁰⁰ H. COULIBALY, "Le rôle des Puissances protectrices au regard du droit diplomatique, du droit de Genève et du droit de La Haye", in: F. KALSHOVEN, Y. SANDOZ, eds., *Implementation of International Humanitarian Law*, Dordrecht, Martinus Nijhoff, 1989, pp. 69-78

C. DOMINICE, J. PATRNOGIC, "Les Protocoles additionnels aux Conventions de Genève et le système des Puissances protectrices", *Annales de droit international médical*, vol. 28, 1979, pp. 24-50

J.-P. KNELLWOLF, *Die Schutzmacht im Völkerrecht unter besonderer Berücksichtigung der schweizerischen Verhältnisse*, Dissertation Bern, Bern, Ackermanndruck, 1985

B. LAITENBERGER, "Die Schutzmacht", *German Yearbook of International Law*, vol. 21, 1978, pp. 180-206

¹⁰¹ It was used in Suez in 1956, in Goa in 1961 and in India and Pakistan in 1971. For a more recent example, see the State Department Press Briefing, Thursday, April 1, 1998 p.m. :

« The United States Government is contacting authorities in Belgrade through our Protecting Power, Sweden, in regard to the illegal abduction of three American servicemen who were serving in non-combatant status in Macedonia. There is no basis for their continued detention by the Belgrade authorities. We insist that they be provided any necessary medical assistance and treated humanely and in accordance with all prevailing

law as “a neutral or other State not a Party to the conflict which has been designated by a Party to the conflict and accepted by the adverse Party and has agreed to carry out the functions assigned to a Protecting Power under the Conventions and this Protocol”¹⁰² the role of the Protecting Power is to maintain the liaison between two States at war, to bring relief assistance to the victims and protection to prisoners of war and civilian internees.

3. The **ICRC**, which received mandates from the international community in the 1949 Geneva Conventions:

- to visit and interview prisoners of war¹⁰³ and civilian internees;¹⁰⁴
- to provide relief to the population of occupied territories;¹⁰⁵
- to search for missing persons and to forward family messages to prisoners of war¹⁰⁶ and civilians;¹⁰⁷
- to offer its good offices to facilitate the institution of hospital zones¹⁰⁸ and safety zones;¹⁰⁹
- to receive applications from protected persons.¹¹⁰
- to offer its services in other situations¹¹¹ and especially in time of non-international armed conflicts¹¹²

The First 1977 Additional Protocol adds two mechanisms of implementation:

- The **United Nations**, “in situations of serious violations of the Conventions or of this Protocol” (Art. 89 of Protocol I).
- The optional “**International Fact-Finding Commission**” (Art. 90 of Protocol I)¹¹³

To this day, none of these provisions (Article 89 and 90 of Protocol I) have been invoked.

The implementation mechanisms of international criminal law¹¹⁴ was significantly developed as the United Nations Security Council established the ad hoc Tribunals on Former Yugoslavia and Rwanda¹¹⁵ and with the 60th ratification of 1998 Rome Statute of the

international agreements and standards. We will hold Belgrade authorities responsible for their safety and treatment. » <http://www.aiipowmia.com/inter/in040299e.html>

¹⁰² Protocol I, Art. 2, letter C

¹⁰³ Third Geneva Convention, Article 126

¹⁰⁴ Fourth Geneva Convention, Article 143

¹⁰⁵ Fourth Geneva Convention, Articles 59 and 61

¹⁰⁶ Third Geneva Convention, Article 123

¹⁰⁷ Fourth Geneva Convention, Article 140

¹⁰⁸ First Geneva Convention, Article 23

¹⁰⁹ Fourth Geneva Convention, Article 14

¹¹⁰ Fourth Geneva Convention, Article 30

¹¹¹ Article 9 of Conventions I, II and III ; Article 10 of the Fourth Convention

¹¹² Common Article 3 to the 1949 Conventions.

¹¹³ The website of the Commission : <http://www.ihffc.org>

¹¹⁴ See „International Criminal Law“ by Patrick HEALY & Kimberly PROST, McGill University Faculty of Law <http://www.law.mcgill.ca/academics/coursenotes/healy/intcrimlaw/> and the following links mentioned there: <http://www.yale.edu/lawweb/avalon/imt/imt.htm> Nuremberg Trials London Agreement of August 8th 1945 (<http://www.yale.edu/lawweb/avalon/imt/imt.htm>), Judgment of the IMT for the Trial of German Major War Criminals (<http://www.yale.edu/lawweb/avalon/imt/imt.htm>)

¹¹⁵ See the following links, quoted by Patrick HEALY & Kimberly PROST: [Jurisdiction of the Yugoslavian and Rwandan Ad Hoc Tribunals](http://www.un.org/Docs/sc.htm), Security Council Resolution 827(1993), 25 May 1993 (<http://www.un.org/Docs/sc.htm>), Security Council Resolution 955 (1994), 8 November 1994, (<http://www.un.org/Docs/sc.htm>), Statute of the International Criminal Tribunal for the Former Yugoslavia

International Criminal Court¹¹⁶ on 11 April, and its entry into force on 1 July 2002. This is a milestone in the international community's fight to end impunity for war crimes, genocide and crimes against humanity.

The International Criminal Court will be able to punish war criminals and perpetrators of genocide or crimes against humanity in cases where national criminal justice systems are unable or unwilling to do so. It is vital for the Court's effective functioning that the States Parties rapidly adopt comprehensive implementing legislation in order to be able to cooperate with the Court.¹¹⁷

("ICTY"), Arts. 6,8,9. (<http://www.un.org/icty/basic.htm>), Statute of the International Criminal Tribunal for Rwanda ("ICTR"), Arts. 5,7,8 (<http://www.icttr.org>), ICTY, Rules of Procedure and Evidence, Rules 7-13 (<http://www.un.org/icty/basic.htm>), ICTY, Prosecutor V. Dusko Tadic a/k/a "Dule", Appeals Chamber Decision on the Jurisdictional Motion, 2 October 1995, ss. 9-48, 9-64. (<http://www.un.org/icty/cases-ae2.htm>), Substantive Law and the Ad Hoc Tribunals, Statute of the ICT Y, Arts 2-5, 21 (<http://www.un.org/icty/basic.htm>), Statute of the ICTR, Arts 2-4, 20 (<http://www.icttr.org>), ICTY, Prosecutor v. Drazen Erdemovic, Appeals Chamber, Joint separate opinion of Judge McDonald and Judge Vohrah, ss. 32-58, 66, 73-91, Separate and dissenting opinion of Judge Cassese, ss. 11-12, 40-51. (<http://www.un.org/icty/cases-ae2.htm>), ICTR, The Prosecutor v. Jean-Paul Akayesu, Trial Chamber, Summary of the Judgment. (<http://www.icttr.org>), ICTR, The Prosecutor v. Jean-Paul Akayesu, Trial Chamber, Judgment, ss. 5.5 and 7. (<http://www.icttr.org>), Evidence, Procedure, and the Ad Hoc Tribunals, ICTY, Rules of Procedure and Evidence, Rules 39-43, 54-61, 89-98 (<http://www.un.org/icty/basic.htm>), ICTY, Prosecutor V. Dusko Tadic a/k/a "Dule", Judgment on evidentiary matters. (<http://www.un.org/icty/cases-te.htm>), Judgment on Corroboration in section V(c), Judgment on Hearsay in section V(h), ICTY, Prosecutor v. Blaskic, Judgment on the request of The Republic of Croatia for review of the decision of Trial Chamber II of 18 July 1997, ss. 25-60. (<http://www.un.org/icty/blaskic/ace14.htm>)

¹¹⁶ See Jurisdiction of the ICC: Trigger Mechanisms and the Exercise of the Court's Jurisdiction (<http://www.un.org/icc/backinfo.htm>) Rome Statute of the International Criminal Court, Arts 11-15, 17-18. (<http://www.un.org/icc>)

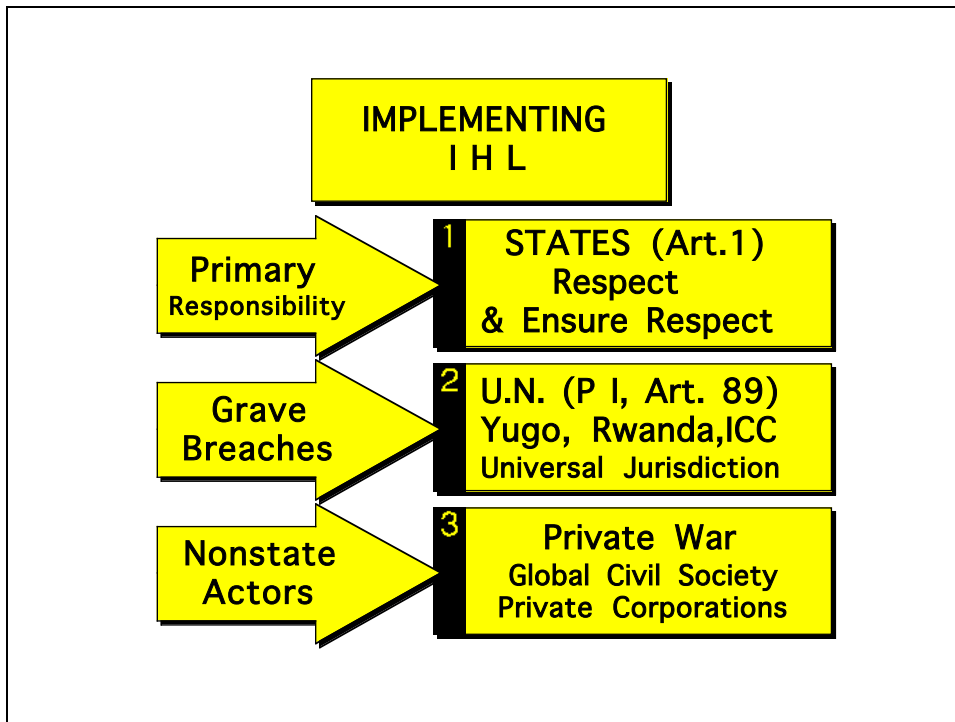
Substantive Law and the ICC:

Crimes within the Court's Jurisdiction (<http://www.un.org/icc/backinfo.htm>)

Rome Statute of the International Criminal Court, Arts 5-9, 21, 22-33, 55, 67, 69. (<http://www.un.org/icc>)
Preparatory Commission for the International Criminal Court: results of working groups on ICC rules of procedure and evidence

Most recent laws (<http://www.un.org/law/icc/prepcomm/docs.htm>)

¹¹⁷ International Criminal Court: A reality at last, ICRC, Geneva, 11 April 2002.



Human Rights mechanisms

Increasingly, human rights mechanisms, on the international, regional and national level, deal with human rights as well as with international humanitarian law issues:

- **The United Nations** General Assembly (Third Committee), the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights, the Human Rights Committee;
- **For the Americas:** the Organization of American States Commission on Human Rights and the Human Rights Court;
For Africa: the African Commission on Human and Peoples' Rights, under the aegis of the OAU. The Commission was established in 1987 in Banjul, The Gambia. The Commission comprises 11 officials, each from a different country. They serve for renewable six-year terms which governments cannot cut short. They also elect their own president and vice-president, and determine their own operational rules. The African Commission's role is more wide-ranging than that of its European counterpart, which is confined to handling complaints. Its missions also includes promotion of human and peoples' rights and interpreting the Charter. The Commission may also develop and set out principles and rules for use by African lawmakers, and co-operate with other African or international institutions involved in rights issues. The OAU adopted in 1998 a Protocol on the Establishment of the African Court on Human and People's Rights, which is not yet in force.

In Europe: the European Commission, the European Court, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, all under the aegis of the Council of Europe,¹¹⁸ as well as the relevant organs of OSCE¹¹⁹ and the European

¹¹⁸ See the website of the CPT : <http://www.cpt.coe.fr/>

¹¹⁹ Elisabeth KARDOS-KAPONYI « The Charter of Fundamental Human Rights in the European Union » p. 139, mentions the Office for Democratic Institutions and Human Rights (ODHIR), the High Commissioner of

Union.¹²⁰

1.3.3. Informal mechanisms

In addition to the formal mechanisms of implementation of international humanitarian law and human rights, there is an increasing role for informal mechanisms, on the international as on the national level:

- good offices¹²¹
- media, local, regional and international,¹²²
- NGOs such as Human Rights Watch¹²³ or Amnesty International
- engaging non-State actors¹²⁴ to abide by humanitarian rules and principles¹²⁵
- civil society¹²⁶
- ad hoc independent monitors, agreed upon by all parties;¹²⁷
- private diplomacy, including private economy (multinational as well as local);
- spiritual leaders,¹²⁸ including mediators such as the Sant'Egidio Community.¹²⁹

National Minorities and the Representative on Freedom of the Media. Document available online :

www.lib.bke.hu/gt/2001-1-2/kardos-kaponyi.pdf

¹²⁰ Ibidem, pp. 140-170

¹²¹ The ICRC can offer its good offices to facilitate the establishment of hospital zones (according to Article 23 of the First 1949 Convention) and safety zones (Art. 14, First Convention). Other institutions or persons could offer their good offices. See B.G. RAMCHARAN. *Humanitarian Good Offices in International Law: The Good Offices of the United Nations Secretary-General in the Field of Human Rights*. The Hague: Martinus Nijhoff, 1983.

¹²² See Roy W. GUTMAN, «Spotlight on violations of international humanitarian law. The role of the media » IRRC no 325 (December 1998), pp. 619-625, Urs BOEGLI, « A few thoughts on the relationship between humanitarian agencies and the media » ibidem, pp. 627-631, and, more generally, DANIELI, Yael (Ed.), *Sharing the Front Line and the Back Hills. International Protectors and Providers: Peacekeepers, Humanitarian Aid Workers and the Media in the Midst of Crisis*, Amityville, NY, Baywood Publishing, 2002, 429 p.

¹²³ See the open letters sent to public officials in Washington DC and in Europe after the 11 September 2001 in order to promote the application of international humanitarian law and fundamental human rights guarantees. See also the open letter sent to the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP) on 8 May 2002 denouncing the use of indiscriminate weapons (gas cylinder bombs) as contrary to international humanitarian law. A copy of the letter sent to Commander Marulanda can be found at <http://www.hrw.org/press/2002/05/colombia0508.pdf>

¹²⁴ See Rainer HOFMANN (Ed.) / Nils GEISLER (Assistant Ed.): *Non-State Actors as New Subjects of International Law. International Law – From the Traditional State Order Towards the Law of the Global Community. Proceedings of an International Symposium of the Kiel Walther-Schücking-Institute of International Law, March 25 to 28, 1998*. Berlin 1999. Duncker und Humblot. 175 p.
Daniel BYMAN, Peter CHALK, Bruce HOFFMAN, William ROSENAU, David BRANNAN. *Trends in Outside Support for Insurgent Movements*, Washington, DC, Rand, 2001,

¹²⁵ See the « Guidelines for Engaging Non-State Actors in a Landmine-Ban »

<http://www.icbl.org/wg/nsa/library/draft%20guidelines.html>

and Claude BRUDERLEIN, "The Role of Non-State Actors in Building Human Security: The Case of Armed Groups in Intra-State Wars." *Policy paper for the Centre for Humanitarian Dialogue*, Geneva, Switzerland (prepared for the Ministerial Meeting of the Human Security Network in Lucerne), May 2000.

www.hdcentre.org/NewsEvents/1999/Policy%20paper.doc

¹²⁶ Safeguarding human rights is not only the concern of Governments and international organizations. Representatives of other international and local players, like human rights defenders, drawn from civil society, have also felt committed to this issue for a long time. See the « Human Security Network » Commitments at the Second Ministerial Meeting in Lucerne, Switzerland, May 11-12, 2000

<http://www.humansecuritynetwork.org/commit-e.asp>

¹²⁷ See the following Human Rights Watch appeals :

-Israel/Palestinian Authority: Protect Civilians, Allow Independent Reporting (HRW Press Release, April 3, 2002) at <http://hrw.org/press/2002/04/isr-pa040302.htm>

-Jenin: War Crimes Investigation Needed (HRW Press Release, May 3, 2002) at <http://hrw.org/press/2002/05/jenin0503.htm>

¹²⁸ See Daniel L. SMITH-CHRISTOPHER (Ed.) *Subverting Hatred. The Challenge of Nonviolence in Religious Traditions*. New York, Orbis Books, 1998, 177 p.

¹²⁹ See <http://www.santegidio.org/> and Andrea RICCARDI, *Sant'Egidio, Rome et le monde*, Beauchesne éditeur, Paris, 1996 and Philippe LEYMARIE, « Les bâtisseurs de paix de Sant'Egidio », *Le Monde Diplomatique*, Septembre 2000, pp. 16-17

TODAY'S IMPASSE

International Humanitarian Law finds itself in a deadlock today, despite the development of basic rules, such as the 1977 Additional Protocols, whose 25th Anniversary will be celebrated this year; the development of implementation mechanisms, such as the ad hoc tribunals for ex-Yugoslavia and Rwanda; and the possibility of an International Criminal Court. A deadlock which may well lead us to the point where, with the fragmentation of humanitarian law, new islands of humanity will appear, at the very moment when we think we have attained universality of humanitarian law and human rights.

Denial of Humanity

In spite of starting up with two Peace Conferences (The Hague, 1899 and 1907) and two attempts of establishing global intergovernmental security systems, the Twentieth Century was characterized by prolonged and extraordinarily devastating wars,¹³⁰ a century where the terms of “*genocide*”¹³¹ and “*ethnic cleansing*” were coined.

The impact of conflict on human lives, economic development and the environment has been devastating.¹³² Today's conflicts (in Afghanistan, Bosnia, Burundi, Chechnya, Colombia, Congo, Liberia, Rwanda, Sierra Leone, Somalia to name just a few) provide a powerful illustration of the absolute necessity of protecting and bringing aid to war victims and, at the same time, the extreme difficulty of conducting humanitarian operations in a context of anarchy.

Peace, justice and development are linked as the Secretary-General of the United Nations reaffirmed for Africa:

“Since 1970, more than 30 wars have been fought in Africa, the vast majority of them intra-State in origin. In 1996 alone, 14 of the 53 countries of Africa were afflicted by armed conflicts, accounting for more than half of all war-related deaths worldwide and resulting in more than 8 million refugees, returnees and displaced persons. The consequences of those conflicts have seriously undermined Africa's efforts to ensure long-term stability, prosperity and peace for its peoples”.¹³³

Unattended poverty leads to conflict. Unpunished crimes call for revenge: in Rwanda, the great needs are justice and cash, in that order.¹³⁴

¹³⁰ Zbigniew BRZEZINSKI, *Out of Control. Global Turmoil on the Eve of the Twenty-First Century*, New York: Charles Scribner's Sons, Chapter One (“The Century of Megadeath”)

¹³¹ See the most recent definition of “Genocide” in Article 6 of the Rome Statute of the International Criminal Court: “For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group”.

¹³² Michael CRANNA (Editor) *The True Cost of Conflict*, London, Earthscan, 1994, p. 197

¹³³ The causes of conflict and the promotion of durable peace and sustainable development in Africa. Report of the Secretary-General, Paragraph 4

¹³⁴ Gérard. PRUNIER, *The Rwanda Crisis 1959-1994. History of a Genocide*, p. 354

With so many tragedies of today, one is struck by a feeling of predictability, the social equivalent of Greek tragedy, and a time bomb waiting for the moment to be detonated.¹³⁵

Collapsed States bring entire populations back to the Stone Age, the only difference being modern weaponry. The new phenomena of destruction of any social fabric, the complete disappearance of any form of authority excepting that of guns, the denial of basic values, and the increasing chaos and anarchy are making conflicts more complex, the suffering of civilians ever more cruel, humanitarian workers and the international community more helpless.¹³⁶

In the words of an Auschwitz survivor, the psychotherapist Viktor Frankl: “*Since Auschwitz we know what man is capable of. And since Hiroshima we know what is at stake.*”¹³⁷

Denial of Justice

Should justice for war crimes, crimes against humanity and crimes of genocide be victors’ justice, token justice or selective justice? Despite the establishment by the Security Council of the International Criminal Tribunal on Former Yugoslavia (ICTY) and of the International Criminal Tribunal on Rwanda (ICTR), despite also of the entry into force in April 2002 of the Rome Statute of the International Criminal Court (ICC), most States Party to the 1949 Geneva Conventions on the protection of war victims make no meaningful use of the universal jurisdiction for crimes of war and grave breaches provided for by the 1949 Geneva Conventions. Important Governments have yet to ratify the Rome Statute and enact national legislation.

For too many years, deserved attention was only exclusively given to war crimes, crimes against humanity and genocide in Europe, while genocides were denied in Rwanda and elsewhere. Will there ever be a prosecution of the “*génocidaires*” in Cambodia? Virtually on the eve of the Milosevic trial in The Hague, the United Nations announced it could no longer be a party to the creation of a war crimes tribunal in Cambodia. After spending nearly five years in negotiation with Cambodian officials over a court that would try the surviving senior leaders of the Khmer Rouge, a genocidal communist regime responsible for the death of more than 1.5 million of its own people between 1975 and 1979, the UN concluded that officials in Phnom Penh did not and would not meet the basic standards for a fair trial.

One key matter of dispute involved the Cambodian government's attempts to preserve amnesty deals it worked out for key Khmer Rouge leaders.¹³⁸

The prosecution of criminals of war and against humanity is still lacking in Cambodia, Liberia and Sierra Leone, as well as in Guatemala. National courts only too rarely see cases of torts

¹³⁵ Ibid. p. 346

¹³⁶ See the Preparatory Document drafted by the ICRC for the First Periodical Meeting on International Humanitarian Law (Geneva, 19-23 January 1998) “Armed Conflicts Linked to the Desintegration of State Structures”

¹³⁷ Viktor E. FRANKL, *Man’s Search for Meaning*, New York, Pocket Books, 1985, p. 179

¹³⁸ Ilene R. PRUSHER, « Foe war-crimes tribunal, « justice » is a relative term » », *The Christian Science Monitor*, 15 February 2002

and liability for violations of humanitarian law and human rights.¹³⁹

¹³⁹ See John F. MURPHY. “Civil Liability for the Commission of International Crimes as an Alternative to Criminal Prosecution” *Harvard HRJ HRJ*, Vol. 12 (Spring 1999), pp. 1-56 and HUMAN RIGHTS WATCH « Business and Human Rights », « Law Suits Under the Alien Torts Claims Act (ACTA) » available at : <http://www.hrw.org/wr2k2/business.html>

Denial of Forgiveness and Reconciliation

The ethics deficit¹⁴⁰ is not only in the denial of the fundamental dignity of others or in the denial of justice for too many victims of war crimes, crimes against humanity and genocide. It is also to be seen in the excessive emphasis on an impossible justice, and on the denial of forgiveness and reconciliation.

The South African Truth and Reconciliation Commission (TRC)¹⁴¹ was set up by the Government of National Unity to help deal with what happened under apartheid. The conflict during this period resulted in violence and human rights abuses from all sides. No section of society escaped these abuses.¹⁴² The TRC was the result of a compromise settlement between one side asking for a Nuremberg-like trial¹⁴³ and the other side for a blanket amnesty. It was an original combination of African tradition („ubuntu“) and Christian sacramental approach („penance“)¹⁴⁴.

The Chairman of the TRC, Archbishop Desmond Tutu, in his foreword of the Final Report, quotes Judge Marvin Frankel:

„A nation divided during a repressive regime does not emerge suddenly united when the time of repression has passed. The human rights criminals are fellow citizens, living alongside everyone else, and they may be very powerful and dangerous. If the army and police have been the agencies of terror, the soldiers and the cops aren't going to turn overnight into paragons of respect for human rights. Their numbers and their expert management of deadly weapons remain significant facts of life... The soldiers and police may be biding their time, waiting and conspiring to return to power. They may be seeking to keep or win sympathisers in the population at large. If they are treated too harshly – or if the net of punishment is cast too widely – there may be a backlash that plays into their hands. But their victims cannot simply forgive and forget.“¹⁴⁵

Less elaborate approaches of “Truth and Reconciliation Commissions” have been considered and experimented as tools of mending societies torn apart by war in Argentina, Bolivia, Bosnia, Brasil, Chad, Chile, East Timor, El Salvador, Ethiopia, Germany, Guatemala, Honduras, Northern Ireland, Morocco,¹⁴⁶ Paraguay, Peru, Philippines, Rwanda, Sierra Leone,¹⁴⁷ Uruguay, Zimbabwe.¹⁴⁸ It certainly is a painful process,¹⁴⁹ and a healing one, which

¹⁴¹ See Alex BORAINÉ, *A Country Unmasked : Inside South Africa's Truth and Reconciliation Commission*. New York, Oxford University Press, 2001, 448 p.

¹⁴² See the official website of the South African TRC : <http://www.doj.gov.za/trc/>

The full report is available online at : <http://www.polity.org.za/govdocs/commissions/1998/trc/index.htm>

A printed version (5 volumes and a CD-ROM) was published in March 1999 by MacMillan (London, UK)

¹⁴³ Apartheid has been declared a grave breach of international humanitarian law in Protocol I, (Art. 85, 4, c)

¹⁴⁴ Michael Jesse BATTLE and Desmond Mpilo TUTU *Reconciliation : The Ubuntu Theology of Desmond Tutu*, Cleveland, OH, The Pilgrim Press, 1997

¹⁴⁵ Marvin FRANKEL, *Out of the Shadows of the Night : The Struggle for International Human Rights*

¹⁴⁶ Susan SLYOMOVICS, « A Truth Commission for Morocco », *Middle East Report* 218, Spring 2001

http://www.merip.org/mer/mer218/218_slymovics.html

¹⁴⁷ See the 2000 Report of the UN Office of the High Commissioner for Human Rights to the General Assembly (A/55/38, paras. 37-45) <http://www.hri.ca/fortherecord2000/vol2/sierraleonega.htm>

« The report notes that the OHCHR provided technical assistance to the government in drafting the law on the Truth and Reconciliation Commission (TRC). The OHCHR also developed a project for the preparatory phase of the Commission. The resumption of hostilities in May 2000 caused the Security Council to reconsider the role of UNAMSIL as well as other justice issues, including the establishment of a court to try human rights and humanitarian law abuses related to the conflict. The High Commissioner stated that these issues are crucial for the proper functioning of the TRC. The ongoing armed conflict, however, has delayed the implementation of the preparatory phase of that Commission ».

should not be exceptional¹⁵⁰

¹⁴⁸ Priscilla B. HAYNER « Fifteen Truth Commissions » *Human Rights Quarterly* Vol. 16, n. 4, Nov. 1994, pp. 597 – 655, Mike KAYE « The Role of the Truth Commissions in the Search for Justice, Reconciliation and Democratisation : Salvadorean and Honduran Cases » *J. Lat Amer. Stud.* 29, pp. 695-716 ; Neil J. KRITZ (Ed.) *Transitional Justice : How Emerging Democracies Reckon with Former Regimes*, Washington DC, USIP, 1995, 3 vol., José ZALAUQUETT, « Moral Reconstruction in the Wake of Human Rights Violations and War Crimes » in Jonathan Moore (Ed.) *Hard Choices*, Lanham, Rowman & Littlefield, 1998, pp. 211-227 and the website of the USIP <http://www.usip.org/library/truth.html>

¹⁴⁹ See Priscilla B. HAYNER, *Unspeakable Truths: Confronting State Terror and Atrocity* New York, Routledge, 2001, 340 p.

¹⁵⁰ See this prayer by Archbishop Tutu :

„We pray that wounds that may have been re-opened in this process have been cleansed so that they will not fester; that some balm has been poured on them and that they will now heal.“

<http://www.macmillan-reference.co.uk/PandH/TRCforeword.htm>

TOWARDS A RENAISSANCE OF FUNDAMENTAL HUMAN VALUES

Research Roots

Renaissance literally means re-birth, renewal, return to the source. We need to research the roots of fundamental values in all civilizations, in order to move beyond the superficial universality of legal instruments, too often perceived as imposed by Western powers, and poorly implemented in too many cases.

As the ICRC survey conducted in 1999 for the 50th anniversary of the 1949 Geneva Conventions demonstrated, the local spiritual values are often the only efficient, convincing factor, which motivate the compliance with humanitarian rules in warfare.¹⁵¹

Re-Anchor in All Civilizations

“The whole idea of compassion is based on a keen awareness of the interdependence of all these living beings, which are all part of one another and all involved in one another”

Thomas Merton

Without losing the universality attained by the 1949 Geneva Conventions – and in especially Common Article 3 – we need to re-anchor them in all civilizations in a new awareness of belonging, empowerment and interdependence, a renewed commitment to common humanity (*“humanité commune”*) and for the respect of common values (*“patrimoine commun de l’humanité”*) and objects indispensable to the survival of humankind such as water, food supplies, public health structures, cultural and spiritual treasures.

Reaffirm Universality of Fundamental Values

We need to underline the common values, to move beyond the celebrations of the 20th century of the 50th anniversary of the UN Charter, of the Universal Declaration on Human Rights, of the 1949 Geneva Conventions, of the 1951 Convention on Refugees etc. to reaffirm the universality of fundamental values.

There are divergences of opinion between American and European allies (on the death penalty, for example). There are differences of emphasis between civil and political rights on one hand and social and economic rights on the other. There are also differences of importance of individual and group rights.¹⁵²

We therefore need to reaffirm a common core of human values, in discovering what makes them universal beyond cultural differences:

- The right to life
- The right to personal security and religious freedom

¹⁵¹ See the Executive Summary of the Global Report at: <http://www.icrc.org/icrceng.nsf/5cacdf48ca698b641256242003b3295/be5298c00339e340c1256af4004efaf3?OpenDocument>

¹⁵² “Human rights is a complex idea with differing emphases even as between various Western societies. Only with appropriate humility and self-doubt can true dialogue be encouraged.” Stephen J. Toope, Cultural Diversity and Human Rights (F. R. Scott Lecture) <http://collections.ic.gc.ca/tags/cultural.html>

- The right to family life
- The right to health care, adequate nutrition and shelter
- The principle of non-discrimination
- The prohibition of torture, inhuman or degrading treatment or punishment.¹⁵³

Reinforce Existing Mechanisms

The international community of States Party to the 1949 Geneva Conventions should reaffirm their collective responsibility according to Article 1, common to all four Conventions and to Protocol I. According to this provision, "*The High Contracting Parties undertake to respect and to ensure respect for this Convention in all circumstances*". Should measures¹⁵⁴ be limited to diplomacy, adoption of resolutions or rather the use of sanctions¹⁵⁵ and peace-enforcement operations in order to stop genocide and arrest war criminals? A number of Security Council resolutions, including those on anarchic conflicts, call upon all parties to respect international humanitarian law and reaffirm that those responsible for breaches thereof should be held individually accountable.

Common Article 1 to the four 1949 Geneva Conventions, duplicated in Additional Protocol I, establishes very clearly the collective responsibility of all States Party:
"The High Contracting Parties undertake to respect and to ensure respect for the present Convention [this Protocol] in all circumstances"

According to Article 89 of Protocol I, "*In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter*". This is a quite important provision, allowing for creativity and flexibility, as needed.

The involvement of the UN in the implementation of IHL took many forms: denunciations of violations of IHL in resolutions by the Security Council or the General Assembly (regarding "human rights violations in territories occupied by Israel", but also in Afghanistan, in El Salvador, in Guatemala, in the Iraq-Iran conflict, in the Gulf War, and even the dispatching of a mission to Iraq and Iran in 1985 to investigate conditions under which prisoners of war were being held, and, since 1992, in former Yugoslavia¹⁵⁶)

¹⁵³ Paul GROSSRIEDER, "Humanitarian Standards and Cultural Differences" in ICRC, Seminar for non-governmental organizations on humanitarian standards and cultural differences. Summary Report, ICRC & The Geneva Foundation to Protect Health in War, Geneva, 14 December 1998.

¹⁵⁴ See Umesh PALWANKAR, « Measures available to States for fulfilling their obligation to ensure respect for international humanitarian law » IRRC, no. 298, pp. 9-25
<http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList113/35289C31F0187A41C1256B6600591427>

¹⁵⁵ Such as the U.S. Foreign Assistance Act, which forbids security assistance to any government that "engages in a consistent pattern of gross violations of internationally recognized human rights" [22 U.S.C. Secs. 2034, 2151n].

¹⁵⁶ Of special interest are: Resolution 764 (1992) of 13 July 1992, in which the Security Council reaffirmed that all parties are bound to comply with the obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches; Resolution 771 (1992) of 13 August 1992, in which it demanded that all parties immediately cease and desist from all breaches of international humanitarian law; Resolution 780 (1992) of 6 October 1992, in which it requested the Secretary-General to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyze the information submitted pursuant to resolutions 771 (1992) and 780 (1992), together with such further information as the Commission of Experts may obtain, with a view to providing the Secretary-General with its conclusions

Ending the impunity of perpetrators of atrocities is a major challenge.¹⁵⁷

The most important step taken by the UN in this context is the establishment of international criminal tribunals such as

"The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the Territory of the Former Yugoslavia". The Security Council established it in May 1993¹⁵⁸ for serious violations committed there since 1991. The Tribunal has competence on the following offenses: grave breaches of the Geneva Conventions,¹⁵⁹ violations of the laws and customs of war,¹⁶⁰ genocide,¹⁶¹ and crimes against humanity.¹⁶²

"The International Tribunal on Rwanda". It was established by the Security Council in 1994. This is the first time that an international criminal tribunal has been established with respect to an essentially non-international conflict.

Those *ad hoc* Tribunals will need adequate resources and political support.¹⁶³ Their existence does not do away with the requirement in the 1949 Geneva Conventions for all States Party to see to the punishment of grave breaches wherever they occur, be it by Government officials or warlords...¹⁶⁴

The *International Criminal Court* needs to be supported. It is only one part of a system that would end impunity to the perpetrators of genocide, crimes against humanity, war crimes, and torture. Such a system could certainly contribute to deter people contemplating such crimes, to allow victims to obtain justice and to support reconciliation efforts. States Party to the Geneva Conventions have been increasingly aware of their responsibility to respect international humanitarian law as individual States and increasingly collectively. The awareness of their collective responsibility is a more recent phenomenon, resulting from the combined pressure of public opinion, the ICRC and various human rights NGOs,¹⁶⁵ bilaterally

on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia.

¹⁵⁷ Mary GRIFFIN, « Ending the impunity of human rights atrocities : A major challenge for international law in the 21st century ». *International Review of the Red Cross*. 2000, No. 838, pp. 369-389

¹⁵⁸ Resolution 827

¹⁵⁹ Article 2 of the Statute

¹⁶⁰ Article 3

¹⁶¹ Article 4

¹⁶² Article 5

¹⁶³ See Iain Guest (Overseas Development Council) on National Public Radio ("All Things Considered"), Friday 16 April 1999. "The Hague Tribunal was established by the UN Security Council in May 1993, ostensibly to deter war crimes, but the [Security] Council squabbled over funding and even delayed appointing a prosecutor for a year." (on 8 July 1994, Resolution 936, appointing Richard J. Goldstone)

¹⁶⁴ See Patricia GROSSMAN, „Bring Warlords to Justice“, *International Herald Tribune*, Saturday-Sunday, March 9-10, 2002, p.10

¹⁶⁵ See the following recommendations by Amnesty International :

1. Ratify the Rome Statute of the International Criminal Court and enact effective implementing legislation to cooperate fully with the Court.
2. Enact and use universal jurisdiction legislation for the crimes of genocide, crimes against humanity, war crimes, torture, extra-judicial executions and "disappearances", in order that their national courts can investigate and, if there is sufficient admissible evidence, prosecute anyone who enters its territory suspected of these crimes, regardless of where the crime was committed or the nationality of the accused or the victim.

or before United Nations bodies. This collective responsibility not only pertains the enforcement of humanitarian rules. It is contributing to national stability and international security, preventing disorderly movements of populations, uprooting of displaced persons and refugees, and the spreading of uncontrolled violence around the world.¹⁶⁶

Reinvent Remedies

We need to be more creative in applying remedies¹⁶⁷ to promote the respect of fundamental values in all situations.

Some remedies might include :

1. The reaffirmation of fundamental humanitarian rules, customs and principles in a simple, easy to understand form, and translation into local languages;
2. Training of arm bearers (military, police, private security groups) in fundamental restraints of violence and essential humanitarian principles;¹⁶⁸
3. Conducting international, regional and local public opinion campaigns to promote fundamental humanitarian values¹⁶⁹ and counter hate campaigns;
4. Mobilization of public role models (such as artists or athletes) who can influence leaders and public opinion at large in close contact with local traditions;¹⁷⁰

3. Enact legislation to ensure effective cooperation with the International Criminal Tribunals for the former Yugoslavia and Rwanda and any other international criminal court created in the future.

¹⁶⁶ International humanitarian law is one of the many legal, political, ethical instruments to deal, in today's global disorder, with our "genocidal mentality" and to "become healers, not killers, of our species" (Robert Jay LIFTON, Eric MARKUSEN, *The Genocidal Mentality. Nazi Holocaust and Nuclear Threat*, New York, Basic Books, 1990, p. 279).

¹⁶⁷ See <http://www.guardian.co.uk/waronterror/story/0,1361,583028,00.html>

Dr Scilla Elworthy, "Conflict resolution in the 21st century", Tuesday October 30, 2001

And Michel VEUTHEY "Remedies to Promote the Respect of Fundamental Human Values in Non-International Armed Conflicts", *The Israeli Yearbook on Human Rights*, Vol. 30 (2001), pp. 37-77.

¹⁶⁸ The March 2002 issue of "Democracy Issues", an electronic journal published by the United States Department of State, is dedicated to human rights education. It includes some interesting contributions, including articles by Felisa Tibbitts ("Emerging Models for Human Rights Education") and Nanc Flowers (Human Rights Education in U.S. Schools); an interview with human rights educators from South Africa ("Human Rights Education in Diverse, Developing Nations: A Case in Point -- South Africa"); and an article on training for judges, prosecutors, attorneys and the police ("International Human Rights Training" by Michael Hartmann). The journal also features a short bibliography and related web sites. The full text of the journal can be found at: <http://usinfo.state.gov/journals/itdhr/0302/ijde/ijde0302.htm>

¹⁶⁹ Including by campaigns for a universal ratification of human rights and international humanitarian law treaties. See Hans-Peter GASSER, "Steps taken to encourage States to accept the 1977 Protocols", *IRRC*, No. 258, May 1987. An other example is the campaign conducted in February 2002 to recommend to the U.S. Senate that it ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (<http://world.pylduck.com/02/0212.html>)

¹⁷⁰ See the ICRC's „Woza Africa! Music goes to war." This was the slogan adopted by six popular African musicians who, responding to the ICRC's call, led a campaign in 1997 to help curb the indiscriminate violence that has long plagued their continent. The musicians strove to reach people's hearts and minds through a series of original songs which they performed live and recorded.

5. Including spiritual leaders in those campaigns, especially when religious and spiritual values have been used to fuel conflicts;¹⁷¹
6. Preparing the youth to recognize and defend the distinction between humanity and inhumanity through educational programs.¹⁷² Reintegrate child soldiers in society;¹⁷³
7. Learning from human rights¹⁷⁴ and environmental¹⁷⁵ activists in order to promote fundamental humanitarian values in order that in the long run humanitarian norms become a part of humanitarian consciousness;
8. Monitoring arms transfers, beginning with light weapons,¹⁷⁶ and promoting innovative disarmament approaches, such as “weapons for food” or “weapons for development”;
9. Exerting better targeted bilateral and multilateral diplomatic, economic and adequate military pressures against violators, in accordance with the UN Charter and international humanitarian law;¹⁷⁷

¹⁷¹ See THE MILLENNIUM WORLD PEACE SUMMIT OF RELIGIOUS AND SPIRITUAL LEADERS New York, August 2000 « Commitment to Global Peace » (<http://global-forum.org/research/globalpeace.html>)

¹⁷² See the educational programs of the International Committee of the Red Cross (ICRC) (www.icrc.org) , Red Cross and Red Crescent National Societies as well as by the UNESCO (www.unesco.org) and Human Rights NGOs such as Human Rights Watch, Human Rights Internet and academic institutions such as the International Institute of Humanitarian Law, in San Remo (Italy) with courses on laws of war for military personnel, on refugee law and on international humanitarian law (www.iijl.org)

¹⁷³ It is not only needed to stop the use of child soldiers (<http://www.hrw.org/campaigns/crp/index.htm>) but also to reintegrate them in society: see Mike WESSELS, « Child Soldiers », *Bulletin of Atomic Scientists*, Chicago, Nov/Dec 1997 (http://pangaea.org/street_children/africa/armies.htm) and the website of the Office of the SRSG for Children and Armed Conflict <http://www.undp.org/erd/recovery/ddr/organizations/osrg.htm> and the UNICEF « Children at both ends of the gun » : <http://www.unicef.org/graca/kidsoldi.htm>

¹⁷⁴ See AMNESTY INTERNATIONAL HANDBOOK (Seventh Ed.), available online, at <http://www.amnesty-volunteer.org/aihandbook/> and especially Chapter 4 (« Campaigning ») and 5 (« AI Action - Advice and Guidelines ») as well as the excellent HUMAN RIGHTS EDUCATION HANDBOOK available online : <http://www.hrusa.org/hrmaterials/hreduseries/hrhandbook1/toc.html> (Human Rights Resource Center, University of Minnesota, 2000)

¹⁷⁵ See Morton WINSTON, « NGO Strategies for Promoting Corporate Social Responsibility » *Ethics & International Affairs*, Vol. 16, Number 1 (Spring 2002). According to Morton Winston, there is a basic divide between NGOs :

-Engagers try to draw corporations into dialogue in order to persuade them by means of ethical and prudential arguments to adopt voluntary codes of conduct, while confronters believe that corporations will act only when their financial interests are threatened, and therefore take a more adversarial stance toward them.

-Confrontational NGOs tend to employ moral stigmatization, or “naming and shaming,” as their primary tactic, while NGOs that favor engagement offer dialogue and limited forms of cooperation with willing MNCs.

¹⁷⁶ See William HARTUNG “The New Business of War: Small Arms and the Business of Conflict” *Ethics & International Affairs Annual Journal of the Carnegie Council on Ethics and International Affairs*, Vol. 15, No 1 (2001). The author’s argument is the following: The proliferation of internal conflicts fueled by small arms poses a grave threat to peace, democracy, and the rule of law. The weapons of choice in today’s conflicts are not big-ticket items like long-range missiles, tanks, and fighter planes, but small and frighteningly accessible weapons ranging from handguns, carbines, and assault rifles on up to machine guns, rocket-propelled grenades, and shoulder-fired missiles. In conflict zones from Colombia to the Democratic Republic of the Congo, picking up a gun has become the preferred route for generating income, obtaining political power, and generating “employment” for young people, many no more than children, who have little prospect of securing a decent education or a steady job. Ending the cycle of violence fueled by small arms must become a top priority for the international community. No single treaty or set of actions, however, will “solve” the problem of light weapons proliferation. What is needed is a series of overlapping measures involving stricter laws and regulations, greater transparency, and innovative diplomatic and economic initiatives.

10. Fully including the respect of fundamental human values in the framework of the maintenance and re-establishment of international security.¹⁷⁸

Re-Activate the Network of Humanity

We need to re-activate – or to create, when needed – a network of humanity carrying fundamental human values in all circumstances, and to maintain – or re-establish – the corresponding mechanisms on the local, national, regional and international level.

The same fundamental values should be applicable in all situations of emergency¹⁷⁹ (armed conflicts and other emergency situations), reconstruction, development, economical growth,¹⁸⁰ peaceful settlement of conflicts, international, regional and national legal cooperation. In all situations, the human person should be at the center, taking into account the spiritual dimension of all human activities.

Rebuild Public Conscience

“Either we live together as brothers, or we perish as fools.” Martin Luther King

“Public conscience” was introduced in positive international law by the Martens Clause at the Hague Peace Conference in 1899. It was the result of a compromise reached at the 1899 Hague Peace Conference to break a deadlock between Great and small Powers in Europe over the definition of combatants: in case of doubt international humanitarian rules should be interpreted in a manner consistent with standards of humanity and the demands of public conscience.¹⁸¹

Humanitarian law is at the same time rooted in the history of all traditions of humankind, in all parts of the world, and is also very much part of our future, as one essential safeguard for our survival as a species. In the words of Jean Pictet, one of the founding fathers of

¹⁷⁷ See Anna SEGALL. « Economic sanctions : legal and policy constraints » *IRRC* December 1999, Vol. 81, No 836, pp. 763-784, and Claude BRUDERLEIN, « U.N. Sanctions Can Be More Humane and Better Targeted » *Public Affairs Report*, University of California, Berkeley, Vol. 41, No. 1, January 2000 (<http://www.igs.berkeley.edu/publications/par/Jan2000/Bruderlein.html>)

Arthur C. HELTON and Robert P. DeVECCHI, « Human Rights, Humanitarian Intervention & Sanctions » <http://www.foreignpolicy2000.org/library/issuebriefs/IBHumanRights.html> and H.C. Graf SPONECK, « Sanctions and Humanitarian Exemptions : A Practitioner’s Commentary » *European Journal of International Law*, Vol. 13, Issue 1, 2002, pp. 81-87 – Full text available at :<http://www3.oup.co.uk/ejilaw/current/130081.sgm.abs.html>

¹⁷⁸ See Michel VEUTHEY “The Contribution of the 1949 Geneva Conventions to International Security”, *Refugee Survey Quarterly*, Vol. 18, Nr. 3, 1999, pp. 22-26.

¹⁷⁹ See OXFAM, « Africa at the Crossroads », Oxfam Policy Papers No 19 (March 02) <http://www.oxfam.org.uk/policy/papers/africacrossroads/africacrossroads.html>

¹⁸⁰ See Michael K. ADDO (Editor) *Human Rights Standards and the Responsibility of Transnational Corporations*. The Hague, Kluwer Law International, 1999, 384 p.

¹⁸¹ See Antonio CASSESE “The Martens Clause: Half a Loaf or Simply Pie in the Sky?” *EJIL* (2000), Vol. 11 No 1, pp. 187-216; Theodor MERON, “The Martens Clause, Principles of Humanity, and Dictates of Public Conscience”, *AJIL*, Vol 94, No. 2 (2000), pp. 78-89; Shigeki MIYAZAKI, “The Martens Clause and international humanitarian law” ” in SWINARSKI, C. (Ed.) *Etudes et essais sur le droit international humanitaire et sur les principes de la Croix-Rouge en l'honneur de Jean Pictet*, Geneva, ICRC, 1984, 1143 p., pp. 433-444

contemporary humanitarian law, respect for humanitarian law is “*necessary to humankind's survival*”.

In the words of Martin Luther King: “*The chain reaction of evil - hate begetting hate, wars producing more wars - must be broken, or we shall be plunged into the dark abyss of annihilation*”.

As the spiritual dimension was at the origin of universal fundamental human values, we now need to bring back the spirit of humanity into the letter of international humanitarian law.

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MV, 28 April 2002 DG

APPENDIXES

- a) Universal Declaration of Human Rights
- b) Common Art. 3, 1949 Geneva Conventions

a) Universal Declaration of Human Rights

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect

for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage,

during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

b) Common Art. 3, 1949 Geneva Conventions

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

VEUTHEY, Michel. « International Humanitarian Law and Spirituality » *Refugee Survey Quarterly*, Geneva, UNHCR, Vol. 21, Nr. 3, 2002, pp. 45-110