

A note from the Editor

Twenty-five years ago, on 8 June 1977, the plenipotentiaries of one hundred States agreed on and signed the text of two Protocols additional to the 1949 Geneva Conventions. They thus “reaffirmed and developed” the Conventions, in accordance with the title of the preparatory Conference. In signing this text they also approved the monumental endeavour of Jean Pictet, architect of the Geneva Conventions and their Additional Protocols. Jean Pictet saw these texts as a “Charter of Mankind” constituting “a significant step forward in the evolution of a movement whose aims from its inception have been to ensure respect, protection and humane treatment for all those who are not able to fight”.

In 2002, the year of Jean Pictet’s death, the Geneva Conventions are almost universally in force. As for the Additional Protocols, 160 States are party to Protocol I and 153 to Protocol II. These two treaties essentially adapt old law to the circumstances of modern conflicts. As was the case in 1977, the vast majority of present-day conflicts are non-international in nature and are governed by Protocol II.

Despite the large number of States party to Protocol I the treaty has not yet achieved universal acceptance, notably because of the absence among its adherents of the world’s greatest military power, the United States. The inclusion of wars of national liberation in the definition of international armed conflict has had practically no effect and has not contributed to wider acceptance of the treaty because, ironically, States that emerged from the colonial wars have not adopted it.

Nevertheless, Additional Protocol I brought substantial progress in the rules governing the conduct of hostilities. Two articles in

this issue of the Review deal with this matter. The first, written by Isabelle Daoust et al., draws attention to the obligation to assess the legality of new weapons and new methods of warfare. The second, written by Michael Schmitt and devoted to “wired warfare”, examines the issue in relation to attacks on computer networks. Protocol I offers an appropriate response even to forms of warfare not yet envisaged when the treaty was drawn up. Michael Schmitt’s article also shows that most of the provisions of Protocol I correspond to customary law. The Protocol, moreover, has an influence on custom and indicates the direction in which the law should move.

The results of the United Nations International Law Commission’s deliberations on State responsibility also concern international humanitarian law. Marco Sassòli’s article outlines the implications for this body of law of the Commission’s draft articles on State responsibility. Indeed, while penal sanctions are intended for individuals, these rules would deal with the inter-State consequences of violations. The draft rules also give further weight to States’ obligation to respect and ensure respect for the Geneva Conventions, individually or collectively. Another example of fulfilment of this obligation is the policy of the European Union, which is increasingly having recourse to humanitarian law in its efforts to gradually shape a foreign policy (see the article by Tristan Ferraro).

Respect for international humanitarian law, as is the case for any branch of the law, largely depends on its implementation. The strengthening of individual and State responsibility can help ensure that the “Charter of Mankind” does not remain a mere declaration.

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