

The Geneva Conventions of 12 August 1949: from the 1949 Diplomatic Conference to the dawn of the new millennium

FRANCOIS BUGNION

On 12 August 1949, the representatives of the 59 states taking part in the Geneva Diplomatic Conference, which had been convened by the Swiss Federal Council to review humanitarian law in the light of the Second World War, adopted the four Geneva Conventions,¹ which are still in force today and whose 50th anniversary is being celebrated on the eve of the new millennium.

What was the significance of the adoption of the new Geneva Conventions? What have been the main obstacles encountered in their implementation? What are the prospects concerning the future of international humanitarian law? These are some of the questions that deserve our attention as the twentieth century, scarred by so many wars, gives way to the twenty-first.

From the end of the Second World War to the downfall of the Berlin Wall

The adoption of the new Geneva Conventions marked the conclusion of four years of intense and almost continuous negotiations which the International Committee of the Red Cross (ICRC) had initiated as far back as the final months of the Second World War. It was on 15 February 1945, while the Allied armies were preparing to bridge the Rhine and the Oder and begin their victorious march across Nazi Germany, that the ICRC issued a memorandum announcing that it was gathering information and initiating talks with a view to revising the Geneva Conventions to reflect the experience of six years of war.² Following two conferences of experts and other consultations, the diplomatic

¹ They are: the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; the Geneva Convention relative to the Treatment of Prisoners of War; the Geneva Convention relative to the Protection of Civilian Persons in Time of War. All four Conventions are dated 12 August 1949.

² 'Mémorandum adressé par le Comité international de la Croix-Rouge aux Gouvernements des États parties à la Convention de Genève et aux Sociétés nationales de la Croix-Rouge', 15 February 1945, *Revue internationale de la Croix-Rouge*, no. 314, Feb. 1945, pp. 85–9.

conference met in Geneva from 21 April to 12 August 1949 and adopted the new Geneva Conventions.³

From a humanitarian point of view, the adoption of the four Geneva Conventions of 12 August 1949 was a major breakthrough. Three achievements are worth noting in particular:

- the adoption of a new treaty—the Fourth Geneva Convention—protecting civilians in wartime;
- the adoption of a special provision—Article 3 common to all four Conventions—protecting the victims of non-international armed conflicts;
- the establishment of a mechanism for scrutiny; though essentially based on the work of ‘Protecting Powers’—neutral states mandated to look after the interests of nationals of warring states who find themselves in territory controlled by the adversary—scrutiny also relies on activity by the ICRC.

Like the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10 December 1948, the new Geneva Conventions were a response by the international community to the tremendous suffering and devastation brought about by the Second World War. But the adoption of the new Conventions was also a major success from a political point of view. The ‘Grand Alliance’ that defeated Hitler’s Germany broke down as soon as the common enemy disappeared, leaving on opposite sides of the ideological fence two groups of countries with conflicting outlooks and incompatible political agendas. In 1948 this confrontation intensified dramatically at the time of the coup in Prague and the blockade of Berlin, the civil wars in Greece and China, the war in Indochina and the nuclear arms race. It paralyzed nearly all aspects of international relations and brought the threat of a third world war long before the wounds left by the second had been able to heal. And yet, despite this menacing background—or maybe because of it—the nations of the world managed to rally around the red cross and red crescent emblems and adopt new treaties protecting the victims of war.

Credit for this political success was naturally due to all the governments that took part in the diplomatic conference in the spirit of compromise so necessary for agreement. Particular credit was due to the Swiss government, which had convened the conference and whose foreign minister presided over its plenary sessions. But credit was also due to the ICRC. Not only had it initiated the negotiations, it had prepared the drafts which the conference took as its sole

³ On the preparatory works that led to the adoption of the new Geneva Conventions, the following works may be found useful: Gerald I. A. D. Draper, *The Red Cross Conventions* (London: Stevens & Sons, 1958); Joyce A. C. Gutteridge, ‘The Geneva Conventions of 1949’, *The British Year Book of International Law*, vol. 26, 1949, pp. 294–326; Paul de la Pradelle, *La Conférence diplomatique et les nouvelles Conventions de Genève du 12 août 1949* (Paris: Editions internationales, 1951); Jean S. Pictet, ‘The new Geneva Conventions for the protection of war victims’, *American Journal of International Law* 45: 3, July 1951, pp. 462–75; Catherine Rey-Schyrer, ‘Les Conventions de Genève de 1949: une percée décisive’, *International Review of the Red Cross*, no. 834, June 1999, pp. 209–39; no. 835, Sept. 1999, pp. 499–529.

working documents, and ICRC experts took part in all meetings in an advisory capacity.⁴ The effect of its achievement in bringing the conference to fruition was to transform the ICRC's international standing. Lest it be forgotten, and despite the tremendous development of its activities throughout the Second World War, the ICRC had found itself in the dock when the fighting was over. It was accused of having failed to denounce the Nazi concentration camps, and it was held responsible for the appalling fate of Soviet prisoners of war in German hands. The Soviet Union and its allies requested that the ICRC be dissolved and its functions transferred to the League of Red Cross Societies, which by then was fully under Allied control. With the diplomatic conference, the ICRC's international standing was, to a large extent, restored. Over and above the important contribution of its experts, the new Conventions recognized its special status as a neutral intermediary and entrusted it with new tasks for the protection of war victims—a major success indeed, by any reckoning.

Nevertheless, cracks were soon to appear. Several provisions had been adopted only after long and bitter debate, leading frequently to votes in which the Soviet Union was defeated. Accordingly, when signing the new Conventions the USSR and its allies submitted a number of reservations greatly restricting their commitment.⁵ Furthermore, the Soviet Union and its allies revived the old scholastic doctrine of 'just war' to argue that a victim of aggression was not bound to respect the provisions of the laws and customs of warfare when fending off an aggressor state whose very act of war was itself a violation of the law. The states maintaining this doctrine were in fact claiming the benefits of international humanitarian law while reserving the right to disregard any provisions that might restrict their freedom of action.⁶

Respect for humanitarian law was indeed sorely lacking in the armed conflicts which were the direct consequence of the Cold War, such as the conflict in Indochina (1945–54), the Korean War (1950–3) and the Vietnam War (1962–75). All of these saw major violations by both sides, and the ICRC was never able either to accredit delegates or to provide any protection to prisoners held in North Korea or North Vietnam.⁷ In other conflicts, such as

⁴ 'No conference has ever been better prepared', wrote a former delegate (La Pradelle, *La Conférence diplomatique*, p. 15).

⁵ On the reservations to the Geneva Conventions, the following works may prove particularly useful: Claude Pilloud, *Reservations to the Geneva Conventions of 1949* (Geneva: ICRC, 1976; offprint from *International Review of the Red Cross*, no. 180, March 1976, pp. 107–24; no. 181, April 1976, pp. 163–87); François Bugnion, *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre* (Geneva: ICRC, 1994), pp. 716–24 (English trans. forthcoming from Macmillan, London and New York).

⁶ A summary of the Soviet doctrine may be found in Grigorij Ivanovic Tunkin, *Droit international public: problèmes théoriques*, trans. from Russian by the Centre de Recherches sur l'URSS et les Pays de l'Est de la Faculté de Droit et de Sciences Politiques et Economiques de Strasbourg (Paris: Editions A. Pedone, 1965). On the theory of just war and on relations between *jus ad bellum* and *jus in bello*, the following books may also be of value: Henri Meyrowitz, *Le principe de l'égalité des belligérants devant le droit de la guerre* (Paris: Editions A. Pedone, 1970); Robert W. Tucker, *The just war: a study in contemporary American doctrine* (Baltimore: Johns Hopkins University Press, 1960).

⁷ On the Korean War, readers might refer to the ICRC's *Annual Reports* as well as to the collection of documents published by the ICRC: *Le Comité international de la Croix-Rouge et le conflit de Corée: recueil de*

the many wars between Israel and its Arab neighbours (1956, 1967, 1973 and 1982), the wars between India and Pakistan (1965 and 1971) and the conflict between Argentina and the United Kingdom over the Falkland/Malvinas Islands (1982), the Geneva Conventions were broadly accepted and applied, although difficulties arose on every occasion.⁸

However, the majority of armed conflicts in the years after 1949 have been non-international armed conflicts—in other words, civil wars. The only part of the four Geneva Conventions which specifically applied to such situations was the common Article 3. Although it had been intended as a minimum set of essential humanitarian principles, to be supplemented by more elaborate rules adopted by special agreement between belligerents, all too often this article was the only body of rules which warring parties would accept.⁹ In such conditions, only a very basic level of protection could be guaranteed to war victims.

In addition, under the Geneva Conventions, the wars by means of which indigenous peoples sought to gain their freedom from colonial rule were considered to be non-international armed conflicts since, under the public international law then in force, a colonial territory was not regarded as distinct from the territory of the colonial power. This classification was rejected by the developing countries, which had not taken part in the 1949 diplomatic conference and resented being bound by rules in whose drafting they had had no say.¹⁰ These countries therefore requested a revision of the Geneva Conventions to take greater account of their circumstances and legitimate requirements.

Last but not least, whereas the Geneva Conventions had been thoroughly overhauled by the 1949 diplomatic conference, the law governing the conduct of hostilities had not been updated since the early years of the twentieth century. Despite two world wars, the only rules applicable in this field were those adopted in 1907 by the Second Hague Peace Conference. Many years

documents, 2 vols (Geneva: ICRC, 1952). On the Indochina War, see Florianne Truninger, *The International Committee of the Red Cross and the Indochina War: from the Japanese defeat to the Geneva Agreements (1945–1954)* (Geneva: ICRC, 1994; offprint from *International Review of the Red Cross*, no. 303, Nov.–Dec. 1994, pp. 564–94). On the Vietnam War, see Michel Barde, 'La Croix-Rouge et la Révolution indochinoise: histoire du Comité international de la Croix-Rouge dans la guerre du Vietnam' (Geneva: Graduate Institute of International Studies, 1975, cyclostyled); Jacques Freymond, *Guerres, Révolutions, Croix-Rouge: Réflexions sur le rôle du Comité international de la Croix-Rouge* (Geneva: Graduate Institute of International Studies, 1976), pp. 85–94.

⁸ Geoffrey Best, *War and Law since 1945* (Oxford: Clarendon Press, 1994); Bugnion, *Le Comité international de la Croix-Rouge, passim*; François Bugnion, 'From the end of the Second World War to the dawn of the third millennium: the activities of the International Committee of the Red Cross during the Cold War and its aftermath, 1945–1995', *International Review of the Red Cross*, no. 305, March–April 1995, pp. 207–24.

⁹ On the humanitarian rules applicable to non-international armed conflicts, see Erik Castrén, *Civil War* (Helsinki: Suomalainen Tiedakatemia, 1966); David P. Forsythe, 'Legal management of internal war: the 1977 Protocol on non-international armed conflicts', *American Journal of International Law* 72: 2, April 1978, pp. 272–95; Charles Zorgbibe, *La guerre civile* (Paris: Presses universitaires de France, 1975). On the activities of the ICRC in the event of non-international armed conflicts, see Marion Harroff-Tavel, 'Action taken by the International Committee of the Red Cross in situations of internal violence', *International Review of the Red Cross*, no. 294, May–June 1993, pp. 195–220.

¹⁰ On the question of how to classify wars of national liberation, see Georges Abi-Saab, 'Wars of national liberation in the Geneva Conventions and Protocols', *Collected Courses of the Hague Academy of International Law* 165: 4, 1979, pp. 353–445.

after the destruction of Coventry, Dresden and Hiroshima, the rules governing air warfare still dated from the age of the airship.¹¹

For all these reasons, calls for the Geneva Conventions to be revised grew increasingly insistent. This was the case particularly within the framework of the United Nations, where the influence of Third World countries was in the ascendant.¹² However, since there was no assurance that new treaties would provide enhanced protection for war victims, it would have been irresponsible to scrap the 1949 Conventions altogether. It was therefore agreed that the 1949 Geneva Conventions would be left as they were, but that they would be supplemented with additional protocols.

The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law, which met in Geneva between 1974 and 1977, adopted two protocols additional to the 1949 Geneva Conventions. Protocol I applies to international armed conflicts and Protocol II to non-international armed conflicts.¹³ The main achievement of the additional protocols was to update the rules on the conduct of hostilities so as to provide non-combatants, and the civilian population in particular, with enhanced protection.¹⁴ On the other hand, the fundamental question of the legality of nuclear weapons, on which the future of humanity could ultimately depend, was left unresolved.¹⁵

¹¹ This concern led the ICRC, in 1956, to formulate draft rules to limit the dangers incurred by the civilian population in wartime. This draft, intended primarily to protect civilians against indiscriminate attacks, included (or restated) the prohibition of atomic, bacteriological and chemical weapons. When submitted to the 19th International Conference of the Red Cross (New Delhi, Oct.–Nov. 1957), it was criticized by delegations of countries possessing nuclear weapons, in particular the United States and its allies. In Resolution XIII, the Conference requested the ICRC to transmit the draft to the governments for their consideration. But the ICRC's efforts had, in effect, been defeated. For details, see *Draft rules for the limitation of the dangers incurred by the civilian population in time of war*, 2nd edn (Geneva: ICRC, April 1958); 19th International Conference of the Red Cross, New Delhi, Oct.–Nov. 1957, 'Final record concerning the draft rules for the limitation of the dangers incurred by the civilian population in time of war' (Geneva: ICRC, April 1958, cyclostyled).

¹² Resolution XXIII of the International Conference on Human Rights, *Final Act of the International Conference on Human Rights*, Teheran, 22 April–13 May 1968 (New York: United Nations, 1968, Document A/CONF. 32/41), p. 18. Between 1968 and 1977, each regular session of the United Nations General Assembly adopted one or more resolutions relating to the reaffirmation and development of international humanitarian law, usually under the heading 'Respect for human rights in armed conflicts': Resolutions 2444 (XXIII) 1968, 2597 (XXIV) 1969, 2674 (XXV) 1970, 2675 (XXV) 1970, 2676 (XXV) 1970, 2677 (XXV) 1970, 2852 (XXVI) 1971, 2853 (XXVI) 1971, 3032 (XXVII) 1972, 3076 (XXVIII) 1973, 3102 (XXVIII) 1973, 3103 (XXVIII) 1973, 3319 (XXIX) 1974, 3500 (XXX) 1975, 31/19–1976, 32/44–1977.

¹³ On the work preparatory to the additional protocols, see Michael Bothe, Karl Josef Partsch and Waldemar A. Solf, with Martin Eaton, *New rules for victims of armed conflicts: commentary on the two 1977 protocols additional to the Geneva Conventions of 1949* (The Hague: Martinus Nijhoff, 1982); Claude Pilloud, Jean De Preux, Yves Sandoz, Bruno Zimmermann, Philippe Eberlin, Hans-Peter Gasser, Claude F. Wenger and Sylvie-S. Junod, with Jean Pictet, *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, ed. Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (Geneva: ICRC and Dordrecht: Martinus Nijhoff, 1987).

¹⁴ Protocol I, Articles 35–67; Protocol II, Articles 13–17.

¹⁵ See *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, pp. 585–96; Henri Meyrowitz, 'La stratégie nucléaire et le Protocole additionnel I aux Conventions de Genève de 1949', *Revue générale de Droit international public* 83: 4, 1979, pp. 905–61.

From the end of the Cold War to the recent conflict over Kosovo

The Cold War came to an end with the fall of the Berlin Wall in November 1989, which was soon followed by the collapse of the Soviet Union. What were the consequences of this momentous upheaval for the Geneva Conventions and their additional protocols?

Two main consequences should be recorded. First, hitherto the Conventions had been universal on paper rather than in fact. Since the end of the Cold War they have become genuinely universal. Each of the newly independent states which succeeded the former Soviet Union has adhered in its own right to the Conventions and, with the exception of Azerbaijan and Lithuania, to the additional protocols. The majority of these states have dropped the reservations made by the Soviet Union when it ratified the Conventions in 1954, although Russia, despite assurances given long ago by its Minister of Foreign Affairs, has regrettably not yet done so. For its part, the ICRC has been able not only to establish working relationships with all successor states to the Soviet Union, but also to set up large-scale operations to assist the victims of the numerous armed conflicts which have shaken the region from Abkhazia to Tajikistan and from Chechnya to Nagorny Karabakh.¹⁶

Second, the end of the Cold War has had far-reaching implications in every part of the globe. While it has paved the way to the political settlement of several long-standing armed conflicts in Central America, southern Africa and South-East Asia, it has not yet brought about the general peace that people long for. Several conflicts have continued unabated, with ethnic antagonisms taking the place of the ideological confrontation of previous times, and the eruption of new conflicts, in particular in the Balkans and on the frontiers of the former Soviet Union, has unleashed tensions and violence long suppressed during the Cold War years. Whereas the Cold War imposed a fixed pattern, so to speak, on most armed conflicts, compelling parties to both internal and international strife to seek superpower support from either the United States or the Soviet Union and to formulate their objectives in political terms, the world community is now faced with an increasing number of conflicts characterized by the proliferation of various warring factions and other armed groups, the collapse of state structures and a growing trade-off between political action and ordinary criminality. The ongoing conflicts in Somalia, Liberia and Sierra Leone are sad instances.¹⁷

¹⁶ The ICRC has nevertheless had to adapt to the new environment resulting from the end of the Cold War. See Simone Delorenzi, *Contending with the impasse in international humanitarian action: ICRC policy since the end of the Cold War* (Geneva: ICRC, 1999); Cornelio Sommaruga, 'Die Neugestaltung Europas und das Rote Kreuz', in Josef Krainer and Wolfgang Mantl, eds, *Ortsbestimmung, Politik, Wirtschaft, Europa* (Graz, Vienna and Cologne: Styria Verlag, 1993), pp. 207–15.

¹⁷ François Jean and Jean-Christophe Rufin, eds, *Économie des guerres civiles* (Paris: Hachette, 1996); Mark Duffield, 'Post-modern conflicts: warlords, post-adjustment states and private protection', *Civil Wars* 1: 1, Spring 1998, pp. 64–102; Jakkie Cilliers and Peggy Mason, eds, *Peace, profit or plunder? The privatisation of security in war-torn African societies* (Pretoria: Institute for Security Studies, 1999).

The former ideological prejudices and obstacles may well have disappeared, but present conditions of outright insecurity often make it impossible to pursue humanitarian goals. And rarely has humanitarian law been so totally disregarded. Indeed, in some extreme cases the objectives of the belligerents are contrary to the very basis of international humanitarian law, since they aim at uprooting or even destroying the civilian population of the opposing party. War is directed against the very persons whom humanitarian law endeavours to protect. The long war in Bosnia-Herzegovina, the Rwandan genocide and the present conflict in Kosovo are painful reminders that such practices are not a thing of the past.¹⁸

For humanitarian organizations, then, the end of the Cold War resulted in new opportunities, but also in new obstacles. New opportunities, because many of the former prejudices resulting from ideological polarization have been overcome; old barriers have been knocked down and countries that for many years rejected the very principles underlying humanitarian action—in particular impartiality and neutrality—now welcome such action, which has been able to develop in countries that had for decades rejected it. On the other hand, growing insecurity has often prevented access to war victims. The ICRC and other humanitarian organizations have suffered cruel losses in their attempts to continue humanitarian operations despite growing insecurity and, sometimes, outright anarchy. Insecurity has proved as formidable an obstacle as political prejudice, but a much more treacherous one.

Towards the twenty-first century

On the eve of the new millennium, let us now turn towards the future. Can there be any doubt that the Geneva Conventions will still be sorely needed? Unfortunately, there is abundant evidence that they will. No new international order has yet emerged from the ashes of the Cold War, and the period of instability which began with the fall of the Berlin Wall is far from over. Further armed conflicts are therefore to be expected as the next century gets under way. It is also to be expected that these will claim more victims than in the past, if only because of population growth and the ever-increasing number of weapons available to warring factions.

Owing to the difficulties of codification at a time when the international community comprises more than 180 sovereign states, a major overhaul of the Geneva Conventions is unlikely in the foreseeable future. Nor should such a radical move be necessary. The rules are there, and they meet essential humanitarian requirements. Whenever they are complied with in good faith, they provide victims with the best protection that can be expected given the circumstances of war. What is really necessary is to ensure that they are effectively

¹⁸ On the initial phases of the war in Yugoslavia, see Michèle Mercier, *Crimes without punishment: humanitarian action in former Yugoslavia* (London and East Haven, CT: Pluto Press, 1995).

implemented and accorded adequate respect. An important step in this direction was taken on 17 July 1998, when the Statute of the International Criminal Court was adopted in Rome. The court will have authority to try and sentence those who have committed war crimes in any capacity and in any conflict.¹⁹ This cannot but improve respect for the Geneva Conventions and persuade would-be violators to think twice before committing atrocities.

War is always waged by individuals, and the dissuasive effect of international tribunals should not be underestimated. However, punishment is likely to remain difficult while hostilities are still running their course. In most instances, the repression of war crimes will become effective only once the fighting is over. Furthermore, major violations of international humanitarian law always entail the responsibility of the state, whether the government or the supreme military command actually order, or merely condone, the perpetration of violations by their subordinates. This raises the question of the means which the international community may bring to bear to compel a state responsible for major violations of international humanitarian law to mend its ways.²⁰ Diplomatic pressure and resolutions by international organizations are of some use but, unless they lead to the adoption and implementation of concrete measures, they may not suffice. Provided that they are applied diligently and enforced through strict border controls, economic sanctions may put pressure more effectively on a delinquent state, but in the long run they will affect the civilian population much more severely than the armed forces or the political classes.

In the last resort, there is the military option. Military action can take two forms. The first is that of armed escorts to open up humanitarian corridors, to protect convoys carrying food and other supplies for the civilian population, or to protect safety zones where civilians have found refuge. The importance of this type of action cannot be denied, as seen with Operation 'Provide Comfort' in northern Iraq and the experience of the war in Bosnia-Herzegovina. However, the risk is that it may make humanitarian agencies dependent on armed forces. Above all, it may fail to have any impact on the causes of the

¹⁹ 'Rome Statute of the International Criminal Court', *International Legal Materials* 37: 5, Sept. 1998, pp. 999–1069; Marie-Claude Roberge, 'The new International Criminal Court: a preliminary assessment', *International Review of the Red Cross*, no. 325, Dec. 1998, pp. 671–83.

²⁰ 'The High Contracting Parties undertake to respect and ensure respect of the present Convention in all circumstances', declares Article 1 common to all four Geneva Conventions and Protocol I. This provision has been widely interpreted as implying a responsibility for all states party to the Geneva Conventions to see to it that those treaties are universally respected. On the interpretation of this provision, see Luigi Condorelli and Laurence Boisson de Chazournes, 'Quelques remarques à propos de l'obligation des états de "respecter et faire respecter" le droit international humanitaire en toutes circonstances', in Christophe Swinarski, ed., *Studies and essays on international humanitarian law and Red Cross principles, in honour of Jean Pictet* (Geneva: ICRC and The Hague: Martinus Nijhoff, 1984), pp. 17–35; on the measures which states are entitled to take to ensure compliance with the Geneva Conventions, see Umesh Palwankar, 'Measures available to states for fulfilling their obligation to ensure respect for international humanitarian law', *International Review of the Red Cross*, no. 298, Jan.–Feb. 1994, pp. 9–25; on a possible role for the United Nations in ensuring compliance with the Geneva Conventions, see Hans-Peter Gasser, 'Ensuring respect for the Geneva Conventions and Protocols: the role of third states and the United Nations', in Hazel Fox and Michael A. Meyer, eds, *Effecting compliance* (London: British Institute of International and Comparative Law, 1989), vol. 2, pp. 15–49.

suffering inflicted on civilians, on the behaviour of the belligerents, on the perpetration of atrocities or on the policies that gave rise to such atrocities.

This brings us to the question of whether the use of force—the second form of military action—may be necessary to prevent or put an end to serious violations of humanitarian law, to stop massacres, to restore order in a country ravaged by civil war or to allow refugees to return home. War to restore the rule of law, war to protect victims of war: this was certainly one of the ideas behind the recent intervention by NATO forces in Kosovo. NATO's operation forced the Belgrade government to withdraw its troops from Kosovo and accept the deployment of NATO forces in the province. The majority of Albanian refugees from Kosovo have already returned to their former homes or villages. Thus the NATO intervention did achieve its main objectives. Yet it still raises a number of thorny questions with regard to international humanitarian law.²¹ These questions can be identified, but it would be premature to say that we already have answers to them.

Despite the sophisticated weapons used and the precautions taken, the aerial bombardment caused considerable suffering, not to mention deaths and injuries, and undoubtedly caused more casualties among the civilian population than among the combatants. The raids did extensive damage to the economic infrastructure in Yugoslavia and also in Kosovo. Consequently, we cannot help wondering how the scale of suffering which the NATO intervention sought to prevent compares with that actually caused by the use of force. Analysis of the problem cannot, however, be limited to a count of the victims resulting solely from this operation. The long-term effects will also have to be taken into account, as will the consequences, impossible to quantify, that would have resulted from failure to take action.

Moreover, the NATO intervention has not yet achieved the hoped-for pacification. Serb refugees have now replaced the Kosovo Albanians on the road into exile. Only time will tell whether peaceful coexistence will ever again be possible for these two communities, which lay claim to the same land but which have been separated for years by a gulf of distrust and hatred, exacerbated by the events of recent months.

The use of the term 'humanitarian' to describe and even justify recourse to armed force also raises thorny issues for organizations whose ability to take action depends on the consent of the parties in conflict. And it would be unrealistic to think that this type of intervention can easily be transposed to other theatres of war. Will we in the years to come see NATO member states or those of other international organizations committing their armed forces to restore order in central Africa, the southern Caucasus or Afghanistan? This appears highly unlikely. In fact, any intervention by the Atlantic Alliance outside Europe would undoubtedly provoke an outcry from all those who

²¹ Our purpose here is not to discuss the legality of the NATO intervention from the point of view of *jus ad bellum*, or the provisions of the United Nations Charter, but solely to focus on the conditions in which international humanitarian law is implemented in contemporary conflicts.

would see this as a resurgence of colonialism. As for the other organizations, their scope for action is much more limited.

Conversely, remaining passive in the face of serious and deliberate violations of human rights and the laws and customs of war, and in the face of policies aimed at uprooting whole populations, or even at genocide—wherever these events may occur—can only destroy the authority of international humanitarian law and of the international system established for the protection of human rights. More generally, history has shown that inaction in such cases serves only to jeopardize the authority of international law, the stability of international relations and peace itself. Failure to take action results in new conflicts, new victims, new tragedies. ‘Violence breeds violence’, as Aeschylus so rightly observed.²²

A close look at these matters reveals the need for dialogue, joint action by states—particularly the major powers—and a mobilization of civil society to prevent and contain conflicts while there is still time. After all, the many recent examples have demonstrated that war has a dynamic of its own: when violence is given free rein, it is almost impossible to halt.

New forms of dialogue and cooperation must be found to save the world from slipping back into the divided state in which it found itself during the Cold War, with a struggle for global domination taking over from the old ideological confrontation. History has shown that lasting order cannot be based on force alone. Only a new world order based on dialogue, consultation and the rule of law will free the next century from the threat of armed confrontation which has weighed so heavily on the one about to end.

There can be no doubt that the Geneva Conventions of 12 August 1949 have saved thousands upon thousands of lives. For millions of war victims they have been a shield against barbarity and inhumane treatment, a ray of hope amid the horrors of violence. Their importance will continue undiminished into the next century. The international community must strive as one to ensure that the Conventions are upheld, remembering that respect for human life and dignity, even in the midst of war, is the cornerstone of peace, reconciliation and civilization, and that even wars have limits.

²² Aeschylus, *Agamemnon*, verse 763.