Editorial

The notion of "war victims" has several connotations. It can be understood as meaning all persons whom humanitarian law seeks to protect in the event of international or non-international armed conflict. It is well known that armed conflicts often affect — directly or indirectly — the entire population of the country or countries at war, and that any person may be harmed physically or mentally, be deprived of their fundamental rights, suffer emotional distress or lose their property.

Humanitarian assistance for all victims of war, within this meaning of the term, is intended to attenuate as far as possible the harmful effects of conflicts. Humanitarian organizations working in a situation of conflict often compensate for the inadequacy of aid from the warring parties, and their activities must as a general rule be based on the Fundamental Principles of the Red Cross and Red Crescent. In other words, humanitarian assistance must be given to the victims impartially and without discrimination.

At the end of hostilities, humanitarian action should conform to the same principles. But when action is no longer sufficiently guided by urgent immediate needs, it seems far more difficult to determine the beneficiaries and the duration and scale of humanitarian operations. The ICRC has given thought to this sensitive issue and has tried to find appropriate answers: in her article on the work of the ICRC in periods of transition, Marion Harroff-Tavel outlines the reasons for the policy and criteria for action it has adopted to address such situations to the best of its ability.

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In international law, however, the notion of "victim" is normally defined more restrictively, for it applies only to those persons who have been harmed by the consequences of an internationally illegal act. It should be noted in this regard that international humanitarian law provides for reparation only for violations of its norms. This acceptation of the term, compared to that of the humanitarian organizations, narrows down the range of victims considerably, since it means that a person killed in accordance with the principle of proportionality (the oft-cited collateral damage) would not be a "victim", whereas a neighbour 100 metres away who is hit in an indiscriminate attack would be, and could therefore claim reparation. Yet even within this narrower circle of victims, the large majority never obtain the reparation to which they would be entitled.

Liesbeth Zegveld's article examines the right to reparation of victims of violations of international humanitarian law and analyses the means of legal recourse at their disposal, as well as the — limited — extent to which they can enforce this right. Emanuela-Chiara Gillard's contribution on the same subject concludes that without specific mechanisms, victims are unable to enforce their rights and do not obtain any reparation. The emergence of such mechanisms — for example, the Claims Commission established after the armed conflict between Eritrea and Ethiopia — serves as a precedent, even though they remain few in number and are circumscribed in terms of principles. Indeed, their implementation is sometimes no easy task. In the foregoing example it is hard to see, for instance, how the far too many victims of violations of international humanitarian law committed during that conflict between two impoverished countries could one day receive

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indemnification, or how, in the actual circumstances, non-indemnification of other victims in the wider sense could be justified.

The article by Fred Wooldridge and Olufemi Elias describes the importance of humanitarian considerations within mechanisms such as the United Nations Compensation Commission, established by the UN Security Council to process claims for compensation filed by victims of Iraq's unlawful invasion and occupation of Kuwait in 1990. It is interesting to note that the Commission has dealt first of all with claims from conflict victims who correspond to protected persons within the meaning of the Geneva Conventions – the wounded, prisoners of war and internees – thus reverting to a much broader notion of victim than is normally applicable in reparation cases. But this Commission may not be repeated: the Security Council's application of international law as contained in the Charter, when determining a possible violation, is essentially political and often one-sided. Recent examples show, moreover, that the compensation to which victims are entitled varies tremendously from one State to another.

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In criminal law, any natural person against whom a violation within a court's jurisdiction has allegedly been committed is a victim and can assert his or her right to prosecution of the perpetrators. The system of universal jurisdiction seems to acknowledge the rights of this kind of victims. However, despite the creation of international courts and tribunals, universal criminal prosecution of war criminals has remained the exception. Furthermore, amnesties for war crimes or other international crimes are a political reality. In her article Yasmin Naqvi examines the question whether these amnesties can or must be recognized by courts, and if so, to what extent. Once again, it would appear that penal repression of war crimes is first and foremost an instrument of the international system, before being a means of enforcing the right of victims to see justice done.

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