

Cultural property v. cultural heritage: A “battle of concepts” in international law?

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The influence of domestic legal traditions in the elaboration of multilingual international conventions

According to an established rule of customary international law, the destruction, pillage, looting or confiscation of works of art and other items of public or private cultural property in the course of armed conflicts must be considered unlawful. The illicit character of the above practices may be asserted at least since the codification of that rule in the Hague Convention respecting the Laws and Customs of War on Land, adopted and revised respectively by the First and Second Peace Conferences of 1899 and 1907, and in the 1907 Hague Convention concerning Bombardment by Naval Forces in Time of War.

Although the opening sentence appears clear and correct, doubt may arise as to the meaning of some concepts expressed and hence the scope of the protection granted by the relevant international law rules. The scope of international legal protection cannot be determined without defining the scope of application of those rules.

In legal doctrine, the difficulty of providing a sole and universally accepted definition of the interests and values protected has been encountered by a number of authors, who have emphasized the difference between the concept of “cultural property” and the broader concept of “cultural heritage”.¹

It is well known that the first use of the term *cultural property* in an international legal context occurred in the 1954 Hague Convention for the Protection of *Cultural Property* in the Event of Armed Conflict,² followed some fifteen years later by the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of

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Ownership of *Cultural Property*.³ The same approach is taken in the Second Protocol to the Hague Convention of 1954 for the Protection of *Cultural Property* in the Event of Armed Conflict, of 26 March 1999,⁴ which applies to both international and non-international armed conflicts. Unlike the examples mentioned above, the more recent Unidroit Convention of 24 June 1995 relates to the slightly different concept of stolen or illegally exported "cultural objects",⁵ although it is of interest to note that most legal writers, including some who directly participated in drafting that Convention, still use the term "cultural property" in their commentaries on it.⁶

Other legal instruments expressly refer to the concept of heritage, notably some international agreements executed under the auspices of the Council of Europe, such as the 1969 European Convention on the Protection of the Archaeological Heritage and the 1985 Convention for the Protection of the Architectural Heritage of Europe. It would be wrong, however, to think that the said choice of terminology reflects a theoretical approach specific to that international organization, for UNESCO — unlike its previous usage — refers to that same concept in the 1972 Convention concerning the Protection of the World *Cultural and Natural Heritage*.⁷ It is

1 See Anna Przyborowska-Klimczak, "Les notions de 'biens culturels' et de 'patrimoine culturel mondial' dans le droit international", *Polish Yearbook of International Law*, Vol. XVIII, 1989-1990, p. 51; Lyndel Pratt and Patrick J. O'Keefe, "'Cultural heritage' or 'cultural property'?", *International Journal of Cultural Property*, Vol. 1, 1992, p. 307; Roger O'Keefe, "The meaning of 'cultural property' under the 1954 Hague Convention", *Netherlands International Law Review*, Vol. XLVI, 1999, p. 26; Janet Blake, "On defining the cultural heritage", *International and Comparative Law Quarterly*, Vol. 49, 2000, p. 61.

2 Emphasis added.

3 Emphasis added.

4 Emphasis added.

5 Emphasis added.

6 See, for instance, Kurt Siehr, "The Unidroit Draft Convention on the International Protection of Cultural Property", *International Journal of Cultural Property*, Vol. 1, 1992, p. 321; Riccardo Monaco, "Primo commento della Convenzione di Roma sui beni culturali rubati o illecitamente esportati", *Rivista di studi politici internazionali*, Vol. 62, 1995, p. 500; Marina Schneider, "La Convention Unidroit sur les biens culturels volés ou illicitement exportés", *Nouvelles de l'ICOM*, Vol. 49, 1995, p. 18; Vieira Loureiro, "A proteção internacional dos bens culturais: uma nova perspectiva", *Revista dos Tribunais*, 1995, p. 364; Ridha Fraoua, "Projet de Convention de l'Unidroit sur le retour international des biens culturels volés ou illicitement exportés", *Aktuelle Juristische Praxis*, 1995, p. 317; Pierre Lalive, "Une avancée du droit international: la Convention de Rome d'Unidroit sur les biens culturels volés ou illicitement exportés", *Revue de droit uniforme*, Vol. 1, 1996, p. 40; Manlio Frigo, "La convenzione dell'Unidroit sui beni culturali rubati o illecitamente esportati", *Rivista di diritto internazionale privato e processuale*, Vol. 32, 1996, p. 435; Manlio Frigo, *La circolazione internazionale dei beni culturali. Diritto internazionale, diritto comunitario, diritto interno*, Giuffrè, Milano, 2001.

7 Emphasis added.

found again in the wording of the more recent UNESCO Convention for the Protection of Underwater *Cultural Heritage* of 2 November 2001,⁸ the UNESCO Convention for the Safeguarding of the Intangible *Cultural Heritage* and the UNESCO Declaration concerning the Intentional Destruction of *Cultural Heritage*, both of 17 October 2003.⁹

It is evident that the concept of cultural heritage, if compared to that of cultural property, is broader in scope, as it expresses a “form of inheritance to be kept in safekeeping and handed down to future generations”.¹⁰ Conversely, the concept of cultural property is “inadequate and inappropriate for the range of matters covered by the concept of the cultural heritage”,¹¹ which includes, *inter alia*, the non-material cultural elements (like dance, folklore, etc.) more recently deemed entitled to legal protection at the international level. This can readily be seen from the text of Article 2 of the above Convention for the Safeguarding of the Intangible Cultural Heritage of 17 October 2002, which includes in the definition of “intangible cultural heritage” the practices, expressions, knowledge, skills — as well as the instruments, objects, artefacts and cultural spaces associated therewith — that communities, groups and in some cases individuals recognize as part of their cultural heritage.

Whatever the relevant legal regime of public or private ownership under domestic legislation may be, the protection of cultural property is clearly governed by the rules laid down in the aforesaid international agreements on the circulation of movables, i.e. works of art and objects of artistic, historic and archaeological interest. Such property can and indeed has been conceived as a sub-group within the notion of cultural heritage, the protection of cultural heritage being “capable of encompassing this [within its] much broader range of possible elements, including the intangibles”.¹² On the other hand, the “equivalent” of the term cultural property (e. g. *beni culturali*) certainly includes not only immovables but also intangibles and/or non-material elements, at least for the civil law countries.

Even though domestic law — which provided legal protection well before the adoption of international instruments — had frequent recourse in

⁸ Emphasis added. See Roberta Garabello and Tullio Scovazzi (eds.), *The Protection of the Underwater Cultural Heritage: Before and after the 2001 Unesco Convention*, Martinus Nijhoff Publishers, Leiden, 2003.

⁹ Emphasis added.

¹⁰ See Blake, *op. cit.* (note 1), p. 83.

¹¹ See Prott and O’Keefe, *op. cit.* (note 1), p. 319.

¹² See Blake, *op. cit.* (note 1), p. 67.

the past to terms such as “monuments”, “objects”, “antiquities” or “sites”, the English usage of the term cultural property, conceived as an expression of and testimony to human creation, now has a wider and more significant application.

It must be stressed that in our domain the various language versions of the terms under consideration here constitute a major difficulty, as they often do not provide a correct translation of the same concept. Rather than a mere shortcoming arising from different language versions conveying the same concept, this becomes a more substantive matter of different legal concepts. This is particularly true when considered that the term cultural property is commonly translated into terms such as “biens culturels”, “beni culturali”, “bienes culturales”, “Kulturgut”, and “bens culturais”, which are not only the (apparent) equivalent of it in other languages, but may also have a slightly but significantly different legal meaning in the relevant domestic legal systems.

The same applies to the term cultural heritage: expressions such as “patrimoine culturel”, “patrimonio culturale” and “património cultural” do not convey exactly the same or an equivalent concept.

Consequently, one of the difficulties to be borne in mind when starting negotiations on the drafting of a bilingual international text authentic in both languages, such as English and French, is to ensure that the different language versions not only convey the same meaning but also — if not primarily — take into account and express the different legal traditions.

An example of misleading drafting: the various authentic texts of the EC Treaty¹³

An example from international practice of how inaccurate drafting of the various authentic texts of a treaty may render the subject matter misleading can be drawn from the experience of the European Union.

With the exception of Article 151 of the EC Treaty, which is a general provision on cultural cooperation among the parties and which makes an

¹³ Treaty on European Community. As it is known the Treaty establishing the European Economic Community was originally signed in Rome on 25 March 1957, entered into force on 1 January 1958 and subsequently amended by the Treaty on the European Union, signed in Maastricht on 7 February 1992 and entered into force on 1 November 1993 — which changed the name of the European Economic Community to simply the European Community — by the Treaty of Amsterdam, signed on 2 October 1997, entered into force on 1 May 1999 — which, *inter alia*, changed the numbering of the articles of the EC Treaty — and by the Treaty of Nice, signed on 26 February 2001 and entered into force on 1 February 2003.

indefinite reference to a “common cultural heritage” of the Member States, Article 30 is in fact the only provision in the Treaty expressly concerned with the circulation of works of art. It is important to note *i*) that Article 30 belongs to Part 3 (“Community policies”), Title 1 (“Free movement of goods”), Chapter 2 (“Prohibition of quantitative restrictions between member States”), of the EC Treaty, and *ii*) that Articles 28 and 29 specify the principles contained in Article 14 on the progressive establishment of the internal market and Article 23 on the customs union covering all trade in goods by stating two general rules, which stipulate that quantitative restrictions on both imports and exports as well as all measures having equivalent effect shall be prohibited.

It is absolutely clear that in such a context Article 30 is an escape clause vis-à-vis the above general principles and rules, for it states that: “The provisions of Articles 28 and 29 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security, (...) the protection of national treasures possessing artistic, historic or archaeological value ...”.

In this regard a first interpretative problem, closely related to the meaning of Article 30 of the Treaty in the various authentic texts, may arise over the relevant derogations to the quantitative restrictions on the export, import and transit of goods, and the different consequences thereof for the powers granted to the Member States. For whereas, according to the Italian (Spanish, Portuguese) text of Article 30 of the Treaty, the provisions of Articles 28 and 29 (formerly Articles 34 and 30, before the entry into force of the Amsterdam Treaty) shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds – among others – of the protection of the “patrimonio artistico, storico o archeologico nazionale”, (“patrimonio artístico, histórico o arqueológico nacional”, “património nacional de valor artístico, histórico ou arqueológico”), other authentic texts (notably the English and the French texts) refer to the protection of “national treasures of artistic, historic or archaeological value” and to “trésors nationaux ayant une valeur artistique, historique ou archéologique”.¹⁴

In other words, it is clear that “national heritage” and “national treasures” evoke two different concepts. Consequently the Italian, Spanish, Portuguese texts appear *prima facie* to give the national authorities a broader

¹⁴ Emphasis added. The German text of Article 30 of the EC Treaty is slightly different, as it refers to “Kultur[un]g[t] von künstlerischem, geschichtlichem oder archäologischem Wert”.

discretionary power in deciding on the categories of goods to be included in the national protective legislation, and more specifically on limitations to their movement, a power which seems much more restricted in other authentic language versions.

The fact that an international treaty authenticated in two or more languages may differ even significantly in the various authentic texts is certainly not surprising. This is confirmed by the existence of an ad hoc rule of interpretation in customary international law as codified by the 1969 Vienna Convention on the Law of Treaties. Article 33, paragraph 4, of that Convention stipulates that except where a treaty expressly provides, in case of divergence, for a particular text to prevail, "when a comparison of the authentic text discloses a difference of meaning which the application of articles 31 and 32 [the other relevant norms of the Convention] does not remove, the meaning which best reconciles the texts, *having regard to the object and purpose of the treaty*, shall be adopted".¹⁵

If Article 30 of the EC Treaty is interpreted in the light of this rule, the conclusion would almost certainly be that unlike the English and French texts, the Italian, Spanish and Portuguese texts do not strictly comply with the requirements of Article 33 of the Vienna Convention, in that Article 30 of the EC Treaty contains a limited number of derogations to the general rules laid down by Article 28 (former Article 30) prescribing the elimination of quantitative restrictions on imports and all measures having equivalent effects, and by Article 29 (former Article 34) prescribing the elimination of quantitative restrictions on exports and all measures having equivalent effects. In other words, Article 30 is a norm that derogates from the ordinary rules applicable, and therefore cannot be interpreted extensively without infringing both the normative scheme of the EC Treaty and the balance between obligations arising from the EC Treaty and prerogatives reserved for the Member States.

National heritage v. national treasures: the interpretative role of the European Court of Justice

It could be objected that even assuming the above rules of interpretation do apply to the EC Treaty, under that treaty there is only one institution entitled to legitimately interpret its provisions, namely the European Court of Justice. According to established case-law, the Court has in fact largely adopted the same view as the Vienna Convention by stating that one language version of a multilingual text of Community law cannot alone take

¹⁵ Emphasis added.

precedence over all other versions, since the uniform application of Community rules requires that they be interpreted in accordance with the actual intention of the person who drafted them and the objective pursued by that person, in particular in the light of the versions drawn up in all languages,¹⁶ and secondly that the various language versions of a provision of Community law must be uniformly interpreted, and thus, in the case of divergence between those versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.¹⁷

In view of the general principle laid down by Article 23 (former Article 9) on the free movement of goods and the customs union upon which the Community is based, and of the above-mentioned Articles 28 and Article 29 of the EC Treaty expressly outlining the aim of eliminating obstacles to the free movement of goods, derogations such as those provided for by Article 30 of the Treaty only justify restrictions on imports, exports and transit of goods that come within the more restrictive terms of the English and the French texts. It unquestionably follows that, in the light of the object and purpose of the Treaty, an extension of the national prohibitions or restrictions to categories of objects that fall within the definition of “national heritage”, but not within the more restrictive notion of “national treasures”, would not be adequately justified.

It might perhaps be maintained that works of art and cultural objects could hardly be considered as goods within the meaning of the EC Treaty. In this regard the Court of Justice has stated that cultural objects are to be considered as goods, as provided for under Articles 28, 29 and 30 of the Treaty, as long as they can be evaluated from an economic point of view and can be commercialized. According to the Court, they must therefore be subject to the rules governing the common market, the sole exceptions and derogations being those provided for under the Treaty.¹⁸

¹⁶ See, *inter alia*: Case 29/69, *Stauder* (1969) ECR 419, para. 3; Case C-219/95, *Ferriere Nord v. Commission* (1997), ECR I-4411, para. 15; Case C-268/99, *Aldona Malgorzata Jany and Oth. v. Staatssecretaris van Justitie* (2001), ECR, para. 47.

¹⁷ See, *inter alia*: Case C-449/93, *Rockfon* (1995), ECR I-4291, para. 28; Case C-236/97, *Skatteministeriet v. Codan* (1998), ECR I-8679, para. 28; Case C-257/00, *Nani Givane v. Secretary of State for the Home Department* (2003), ECR, para. 37.

¹⁸ See Case 7/68, *Commission v. Italy* (1968), ECR 562.

The EC approach is confirmed at the normative level, but the problem of interpretation of the EC Treaty's Article 30 is not resolved

The Community also confirmed this approach in the more recent rules adopted to strengthen the protection of cultural property at a European level: both Regulation 3911/92 adopted by the Council of Ministers on the export of cultural goods and its Directive 93/7 on the return of cultural objects unlawfully removed from the territory of a Member State mainly refer their applicability to an annex detailing the categories of cultural objects that fall within the relevant scope of application.

The Regulation provides for uniform controls at the Community's external borders to prevent exports of cultural goods, which enable the competent (cultural and customs) authorities of the Member State from which the cultural goods are to be exported to a non-EC country to take the interests of the other Member State into account. As the European Commission says, "this is because, in the absence of such controls, abolishing checks at the physical borders within the Community would have meant that a national treasure unlawfully removed from a Member State could be presented at a customs office of another Member State and exported easily to a third country".¹⁹ The Directive complements this preventive instrument by providing mechanisms and a procedure for returning national treasures unlawfully removed from the territory of a Member State. It is important to stress that while the aim of the Regulation is to avoid national treasures being taken out of the Community territory without controls, the Directive deals with the arrangements for restoring such treasures to the Member State of origin when they have been unlawfully removed from it.²⁰

Turning to the scope of application, it should be noted that Regulation 3911/92 applies to the cultural goods listed in its Annex; the goods are divided into 14 categories, including archaeological objects, paintings, engravings, books, photographs, etc. The criteria for an article to qualify as a "cultural object", which vary according to the category, are the age (more than 100, 75 or 50 years, depending on the case) and the minimum financial

¹⁹ See Report from the Commission to the Council, the European Parliament and the Economic and Social Committee on the implementation of Council Regulation/EEC n. 3911/92 on the export of cultural goods and Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State, (hereinafter *Report*), Brussels, 25.05.2000, COM (2000) 325, p. 3.

²⁰ *Ibid.*

value of the goods (from 0 Euro for certain cultural goods up to 150.000,00 for paintings.²¹ Directive 93/7 covers cultural goods which — as they belong to the categories mentioned in its Annex (i.e. the same as those listed in the Annex to the Regulation) — are classified as national treasures possessing artistic, historical or archaeological value under the terms of the legislation or administrative procedures of the Member States. Except for public collections and inventories of ecclesiastical institutions, national treasures that are not “cultural goods” within the meaning of the Annex are excluded from the Directive and are thus governed by the national legislation of the Member States in accordance with the rules of the Treaty.²²

The decision to make the minimum financial value a criterion in particular has been criticized for a number of reasons, which are very likely to be widely supported. On the other hand, even in cases where these two fundamental EC rules are applicable, Article 30 of the Treaty could not be excluded.²³ Article 1 of Regulation 3911/92 is quite clear in this respect when it states that the term “cultural goods” shall refer, for the purposes of the Regulation, to the items listed in the Annex “without prejudice to Member States’ powers under Article 30 (formerly 36) of the Treaty”.

In this respect the question is, once again, which Article 30 is to be applied?

The task of determining interests and values eligible for international protection

The example cited above shows that, given the almost unavoidable linguistic differences in the authentic international texts and the resultant different legal implications, great attention should be given to the need to provide a precise definition of the interests protected by the relevant norm, should the occasion arise. Here it must be stressed that there is no universally shared definition of either “cultural heritage” (“patrimonio culturale”, “patrimoine culturel”) or of “cultural property” (“beni culturali”, “biens culturels”), as each multilateral agreement gives its own definition of those concepts in order to determine the specific scope of application of the relevant rules. However, the factual existence of multiple definitions at both the domestic

²¹ The Annex to Directive 93/7 specifies that “The financial value is that of the object in the requested Member State”.

²² See *Report*, p. 4.

²³ See Article 1 of Regulation 3911/92 and Article 1 of Directive 7/93.

and the international level does not rule out the possibility of determining those interests and values eligible for international legal protection.²⁴

In this respect the concept of "property" — like its almost equivalent concepts of "bene"/"bien" — therefore appears to be a suitable substitute for a number of different terms such as "objects", "monuments", "movables", etc., while the concept of "cultural" summarizes various qualifying criteria such as artistic, historical, archaeological, ethnographic, etc. Furthermore, the concepts of cultural property and of cultural heritage — at either the domestic or international level — may be regarded as equivalent, at least considering that both notions are incomplete and must rely upon other non-legal disciplines, such as history, art, archaeology, ethnography, etc., in order to determine more specifically their respective content. In our domain the existing international agreements and other legal instruments frequently establish diverse criteria to determine the (public) interest to be protected, the main ones being the time factor (such as the age of the property concerned, or a specific date or period), the importance or value of the property, and a precise enumeration (list) of the items protected.²⁵

It may be of interest to recall that the concepts of cultural heritage and cultural property practically never appear simultaneously as complementary notions in the same legal text. This was, almost exceptionally, the case of the 1985 Draft European Convention on the Protection of the Underwater Cultural Heritage prepared by an ad hoc Committee of Experts and presented to the Committee of Ministers of the Council of Europe, which in Article 1, paragraph 1, stated that: "For the purposes of this Convention all remains and objects and any other traces of human existence (...) shall be considered as being part of the underwater cultural heritage, and are hereinafter referred to as 'underwater cultural property'."²⁶ Significantly, the final text of Article 1 of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage has dispensed with that draft and provides a completely different definition exclusively based on the concept of underwater cultural heritage.²⁷

²⁴ See Manlio Frigo, *La protezione dei beni culturali nel diritto internazionale*, Giuffrè, Milan, 1986, p. 135.

²⁵ *Ibid.*, p. 26.

²⁶ See Council of Europe, Draft Convention on the Protection of the Underwater Cultural Heritage and Explanatory Report, DOC. CAHAQ(85)5, Strasbourg, 23 April 1985 and, for further details, Janet Blake, "The protection of the underwater cultural heritage", in *International and Comparative Law Quarterly*, Vol. 45, 1996, p. 819.

²⁷ According to Article 1 of the Convention: "(a) 'Underwater cultural heritage' means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water periodically or continuously, for at least 100 years such as (...)".

Indeed, in most cases the tendency is to use one or other of the two expressions, even though some consider that the use of both might be more appropriate since they would be strictly complementary. In their view, cultural heritage is an abstract and ideal concept whereas property is a more concrete one; and it is only through the protection of the material and concrete evidence of culture — i. e. property — that the main goal of protecting cultural heritage might be reached.²⁸

It should be added, to cite a different point of view, that the concept of “cultural property”/“bien culturel” is not at all equivalent to that of “cultural heritage”/“patrimoine culturel”, when it is considered that the first concept should be completed by determining the existing factual and legal links with the second one. To provide legal protection for the cultural property concerned, it may be of great importance to ascertain the link with a specific community. This would require clarifying to which cultural heritage the property is assumed to belong. The question of whether the heritage is national or international not only brings with it the problem of determining the relevant applicable rules, but also entails in-depth study of a subject that would be far outside the scope of this short contribution.²⁹

In any case it is not possible in our domain to invoke the principle of the common heritage of mankind, in terms of either cultural property or cultural heritage, and to apply the relevant legal regime. This conclusion is valid regardless of any references emphatically made thereto by some international conventions, such as the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, or the 1972 Paris Convention for the Protection of the World Cultural and Natural Heritage.³⁰ In such cases a substantive legal imprecision is concealed behind a perfect formal coincidence of the language versions of the various authentic texts concerned.

²⁸ See Vittorio Mainetti, “The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage: A commentary”, on file with author, p. 23.

²⁹ See John Henry Merryman, “Two ways of thinking about cultural property”, *American Journal of International Law*, Vol. 80, 1986, p. 831; *Ibid.*, “The Nation and the Object”, *International Journal of Cultural Property*, Vol. 3, 1994, p. 61.

³⁰ The preamble to the 1954 Hague Convention refers to the “cultural heritage of mankind/patrimoine culturel de l’humanité”, while the 1972 Paris Convention refers more specifically to the concept of “world heritage of mankind/patrimoine mondial de l’humanité”, raising the question whether the legal regime governing the common heritage of mankind is applicable in our domain. For a negative answer to this, see Frigo, *op. cit.* (note 24), p. 283.

Résumé

Biens culturels ou patrimoine culturel : un combat terminologique en droit international ?

Manlio Frigo

La multiplicité des activités à l'échelle planétaire et, plus particulièrement, la prolifération de conventions internationales relatives à la coopération dans le domaine culturel, sous l'angle de la protection, ont montré la tendance à recourir, parfois indifféremment, à des concepts tels que « biens culturels » et « patrimoine culturel ». Toutefois, ces concepts ne sont pas tout à fait identiques, ni d'un point de vue terminologique ni d'un point de vue juridique. La tâche qui consiste à tracer des frontières précises entre le concept plus étroit et juridiquement défini de « bien » et l'autre, plus redondant, de « patrimoine » serait vraisemblablement plus facile si l'on pouvait utiliser les catégories juridiques élaborées par les systèmes nationaux de droit civil européens. Par contre, cette tâche devient relativement moins aisée du fait que les conventions internationales pertinentes font référence – dans les textes originaux en langue anglaise – aux concepts de « cultural property » et de « cultural heritage ». L'utilisation de cette terminologie pose effectivement des problèmes parce qu'il ne s'agit pas seulement d'un problème de traduction d'une langue dans une autre mais surtout parce qu'elle engendre une confrontation entre des traditions juridiques différentes à l'origine desdits concepts. Cet article a pour objet de relever quelques problèmes de compatibilité dus à la nécessité d'utiliser dans la pratique internationale des concepts qui ne sont pas parfaitement traduisibles dans une autre langue officielle, étant donné que les ordres juridiques concernés sont eux-mêmes différents.

Marking of cultural property with the distinctive emblem of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

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This article analyses an interesting legal issue related to the interpretation of Article 17 on the use of the distinctive emblem of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter “the Convention”), following the query by Bosnia and Herzegovina in 1999 as to whether it is appropriate to mark destroyed cultural sites with that emblem. The first part is a general introduction to the marking of cultural property with the distinctive emblem, while the second part focuses in detail on the query made by Bosnia and Herzegovina.

The marking of cultural property with the distinctive emblem of the Convention

The use of the distinctive emblem is mainly dealt with in Articles 6, 10, 16 and 17 of the Convention and in Article 20 of the Regulations for the Execution of the Convention.

Article 6, entitled “Distinctive Marking of Cultural Property”, stipulates that in accordance with the provisions of Article 16, cultural property may bear a distinctive emblem in order to facilitate its recognition. Article 16, entitled “Emblem of the Convention”, provides that the distinctive emblem of the Convention shall take the form of a shield, pointed below, per

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saltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle). The second paragraph of Article 16 states that the emblem shall be used alone, or repeated three times in a triangular formation (one shield below) under the conditions provided for in Article 17:



The main thrust of the marking system is contained in Article 17 entitled “Use of the Emblem”. Its paragraph 1 specifies the conditions for the triple use of the emblem. Such use is permitted only in the following three cases: (i) for the marking of immovable cultural property under special protection; (ii) for the transport of cultural property under special protection and in urgent cases; and (iii) for the marking of improvised refuges under the conditions set forth in the Regulations for the Execution of the Convention.

Paragraph 2 lays down four conditions for the single use of the emblem, which can be summarized as follows: (i) marking of cultural property under general protection; (ii) a means of identification of the persons responsible for the duties of control in accordance with the said Regulations, and (iii) of the personnel engaged in the protection of cultural property; finally, (iv) marking of the identity cards mentioned in those Regulations.

Paragraph 3 prohibits the use of the emblem in any other cases than those mentioned in paragraphs 1 and 2 of this article, as well as the use of any other sign resembling the distinctive sign of the Convention for any other purpose. Lastly, paragraph 4 prohibits the use of the emblem on any immovable cultural property unless at the same time an authorization dated and signed by the competent authority of the relevant State party to the Convention is displayed. The provisions of Article 17 of the Convention are complemented by those of Article 20 of the Regulations for the Execution of the Convention, which provide States Parties with a large degree of discretion as to the placing of the emblem and its visibility.

To sum up, the Convention does not require States Parties to mark cultural property under general protection with the emblem of the Convention; that choice is left to their discretion. It does, however, make it obligatory for them to mark cultural property under special protection, the transport of cultural property under special protection and in urgent cases, and improvised refuges. All these cases relate to wartime, but from the practical point of view it is preferable to prepare the marking in peacetime.

To identify the reasons for this distinction, it is necessary to go back to the circumstances surrounding the elaboration and adoption of the Convention. The UNESCO Secretariat's draft Convention, contained in the Director-General's circular letter CL/717 of 5 February 1953, comprised the following two draft articles: Article 15 on the "Emblem of the Convention" (current Article 16) and Article 16 on the "Use of the Emblem" (current Article 17).

Draft Article 15 read as follows: "The distinctive emblem of the Convention shall take the form of a solid light blue equilateral triangle on a white circle."¹ It was accompanied by the following commentary:

"...One question of some difficulty is whether the distinctive emblem should be affixed in peace-time or only on the outbreak of hostilities. In the case of isolated refuges specially constructed for the purpose, there can be little doubt; the emblem should be affixed as soon as the Convention enters into force. The case is otherwise, however, with other refuges (certain historic castles or palaces, for example) or with important monuments situated in large urban centres; such marking, in peace-time, might raise difficulties on aesthetic and even psychological grounds, and this would be even more true in the case of a centre containing monuments. The draft, therefore, contains no provision on this point."²

Draft Article 16 stipulated the following:

"1. The distinctive emblem may be used only as a means of identification of:
a) the immovable cultural property under special protection defined in Article 8; (b) the transport of cultural property under the conditions laid down in Articles 12 and 13; (c) the persons responsible for the duties of control in accordance with the Regulations for the execution of the Convention;

¹ *Records on the Conference convened by the United Nations Educational, Scientific and Cultural Organization held at the Hague from 21 April to 14 May 1954*, Staatsdrukkerij- en uitgeverijbedrijf, The Hague, 1961, p. 383.

² *Ibid.*, p. 312.

(d) the personnel engaged in the protection of cultural property; (e) the identity cards mentioned in the Regulations for the execution of the Convention. 2. During an armed conflict the use of the distinctive emblem in any other cases than those mentioned in paragraph 1 of the present article, and the use for any purpose whatever of a sign resembling the distinctive emblem, shall be forbidden.”³

The commentary on that draft Article stated that:

“Article 16, paragraph 1, limits the permitted use of the distinctive emblem to five cases. There had been an idea that its use should also be authorized in order to identify material exclusively designed for the protection of cultural property in the event of armed conflict. It was, however, feared that the value of the sign would be lessened by the considerable amount of such material, and was observed that in most cases the material would be deposited in the same place as the property under special protection, in the event it would receive the protection afforded by the emblem designating that property. ...”⁴

Both draft Articles were substantially redrafted in Working Group II and subsequently adopted in the current form.

It can be seen that the original draft Article 16 (current Article 17) mainly focused on the use of the emblem for cultural property under special protection and other related cases.

The practice of implementation of the provisions relating to the use of the said distinctive emblem is not very extensive and is almost exclusively contained in the Secretariat’s periodic reports on the implementation of the Convention. Professor Toman, in his authoritative article-by-article commentary on the Convention, states that:

“The reports of the High Contracting Parties contain little information on the subject. Only the Federal Republic of Germany, Austria, the Netherlands and Switzerland give any details of measures taken – armlets, identity cards, information leaflets on immovable property, special stamps (Switzerland) – and on the use of the single or repeated form of the emblem. Some countries, such as Switzerland, have produced explanatory notes regarding the shield for cultural property, the armlet and identity cards.”⁵

³ *Ibid.*, p. 384.

⁴ *Ibid.*, p. 312.

⁵ Jiri Toman, *The Protection of Cultural Property in the Event of Armed Conflict (Commentary on the Convention of Cultural Property in the Event of Armed Conflict and its Protocol, signed on 14 May 1954 in The Hague, and on other instruments of international humanitarian law concerning such protection)*, Dartmouth Publishing Company Limited / UNESCO, Hants/Paris, 1996, p. 187.

The Secretariat's last periodic report on the implementation of the Convention, published in 1995,⁶ does contain some information on this subject. Nine countries (Australia, Belarus, Croatia, the Federal Republic of Yugoslavia, Hungary, Malaysia, Madagascar, Slovenia and Sweden) provided information about the marking of cultural property with the distinctive emblem of the Convention, and Egypt announced that such marking was planned.⁷ In addition, the German, the Swiss and the Ukrainian national reports contained brief references to the marking of cultural property.⁸ Finally, Croatia reported cases of the intentional targeting of marked cultural property by the then Yugoslav People's Army in 1991 and afterwards.⁹

The intentional targeting of marked cultural property may, under certain circumstances, constitute a grave breach of international humanitarian law.¹⁰ One of the worst aspects of such offences is that they will probably result in the reluctance of States party to the Convention to mark cultural property for fear of providing a potential adversary with a "hit-list", and thus undermine the very basis of that law – mutual trust between the belligerents.

When preparing its 2003 periodic report on the implementation of the Convention,¹¹ the Secretariat requested, among other things, information on the implementation of Chapter V thereof, entitled *The Distinctive Emblem*. Thirteen High Contracting Parties (Belgium, Bosnia and Herzegovina,

⁶ *Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague 1954, 1995 Reports*, UNESCO document, Ref. CLT-95/WS/13, Paris, December 1995. For more about the reporting under the Convention, see the author's article, "Reporting system under the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict", *International Review of the Red Cross*, Vol. 82, No. 840, December 2000, pp. 1001-1016.

⁷ *Ibid.*, second document, p. 1006.

⁸ *Ibid.*, first document, pp. 24-25, 44 and 48, respectively.

⁹ *Ibid.*, first document), p. 23.

¹⁰ Article 85(4)(d) of Protocol I (Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts), on the "Repression of breaches of this Protocol", stipulates the following: "4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol: (...) (d) making the clearly-recognized historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, where there is no evidence of the violation by the adverse Party of Article 53, sub-paragraph (b), and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives".

¹¹ The report is still in the draft form and will be distributed as soon as it has been translated into Arabic, Chinese, French, Russian and Spanish.

Finland, Germany, the Holy See, Liechtenstein, Norway, Poland, Slovenia, Spain, Sweden, Switzerland and Turkey) provided information on various aspects of the marking of cultural property, such as the adoption of regulations on marking or the selection of cultural objects to be marked in case of necessity.

Query of Bosnia and Herzegovina as to the appropriateness of marking destroyed cultural sites with the distinctive emblem of the Convention

Following the query with regard to destroyed cultural property, made by Bosnia and Herzegovina at the beginning of 1999, the Secretariat decided to submit this issue for consideration to the fourth meeting of States party to the Convention that was held in Paris on 18 November 1999. It was prompted to do so for two main reasons. Firstly, the Secretariat's principal functions under the Convention are of a purely technical character, such as the provision of technical assistance under Article 23, or depositary functions (e.g. circulation of information on ratification, accession and succession or preparation of certified copies of the Convention). Consequently, the Secretariat is not authorized to interpret the Convention. That responsibility falls strictly within the power of States Parties. Secondly, the meeting of States party to the Convention was the most appropriate forum for an exchange of views on this matter,¹² so as to seek a consensual decision whereby a common understanding of States Parties as to the interpretation of the Convention could be reached.

In its information document¹³ the Secretariat proposed two solutions: (i) submit this issue to national authorities of States Parties with a view to studying it and providing the Secretariat with their observations; or (ii) in case of divergences of views, envisage the possibility of requesting, via UNESCO's General Conference, an advisory opinion of the International Court of Justice ("the Court") under Article X(2)¹⁴ of the Agreement between the United

¹² Article 27(2) of the Convention, entitled "Meetings", reads as follows: "2. Without prejudice to any other functions which have been conferred on it by the present Convention or the Regulations for its execution, the purpose of the meeting will be to study problems concerning the application of the Convention and of the Regulations for its execution, and to formulate recommendations in respect thereof." To date, five meetings of States party to the Convention have taken place, in 1962, 1995, 1997, 1999 and 2001.

¹³ Information document *Point 8 of the provisional agenda – Marking of cultural property with the distinctive emblem of the Convention* (UNESCO document CLT – 99/206/INF.2 of September 1999).

¹⁴ Article X(2) reads as follows: "2. The General Assembly authorizes the United Nations Educational, Scientific and Cultural Organization to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities, other than questions concerning the mutual relationship of the Organization and the United Nations or other specialized agencies." *Basic Texts*, 2004 edition, UNESCO, Paris, 2004, p. 177.

Nations and the United Nations Educational, Scientific and Cultural Organization (1946) authorizing the latter to request advisory opinions of the Court on legal questions arising within the scope of its activities. Article X(3) of the same Agreement provides that "Such request may be addressed to the Court by the General Conference or by the Executive Board acting in pursuance of an authorization by the Conference."¹⁵ From the practical point of view, if the States Parties decided to take this course, they would have to request the General Conference to put the matter before the Court and an item would have to be included on the agenda of the Conference, which would subsequently have to decide whether to comply with the request.

When considering this issue, the meeting of States Parties was not in favour of requesting the advisory opinion of the Court. It proposed instead that the matter be referred to the relevant national authorities of States Parties for their views and that these be subsequently communicated to the Secretariat for it to prepare a working document for the fifth meeting of States party to the Convention.

No communication in this connection from States Parties had been received by the Secretariat before the fifth meeting of States Parties (Paris, 5 November 2001). The Secretariat, however, decided to keep the matter on the meeting's agenda in view of its interest for the interpretation of the Convention and the subsequent practice of States Parties.

During the relevant discussion at the fifth meeting of States Parties, Bosnia and Herzegovina reiterated the importance of preserving the memory of destroyed cultural sites. However, in view of its national policy of reconciliation in the region, it expressed its wish not to submit the matter to the International Court of Justice for an advisory opinion. It therefore proposed that this item be definitely withdrawn from the agenda of the meeting of States Parties. The statement by Bosnia and Herzegovina was followed by an extensive discussion which may be summarized as follows: Argentina drew attention to the relevance of giving consideration to the marking of partially destroyed cultural property; Germany stated that the possibility of marking destroyed cultural property with the emblem of the Convention should not be excluded from the outset, citing as an example the ruins of the Kaiser Wilhelm Church in Berlin which is on the national register of heritage sites. Poland mentioned the discretion left to States Parties in selecting cultural property to be thus marked. Following the discussion Professor Adul Wichiencharoen (Thailand), Chairperson of the meeting, proposed that this

¹⁵ *Ibid.*, p. 177.

issue be kept on the agenda of the next meeting of States party to the Convention. The Secretariat then asked the participants to provide it with their substantive comments so that it could prepare a working paper for the next meeting. At the time of finalizing the present analysis two replies have been received. One State was essentially in favour of marking partially destroyed cultural sites with the emblem; the second placed emphasis on the marking of such sites with a view to their possible reconstruction. The latter also stressed the need to avoid any possible abuse of the use of the emblem.

To conclude, the issue raised by Bosnia and Herzegovina with regard to the marking of destroyed cultural property with the distinctive emblem of the Convention was not an abstract question of international humanitarian law which would be of interest to few international law scholars. On the contrary, it is an issue that may be of relevance in future armed conflicts and its interpretation by States party to the Convention would certainly facilitate implementation of the Convention and help to avoid distrust between future belligerents. It is regrettable that neither the fourth nor the fifth meeting of States party to the Convention have accepted the idea of requesting the advisory opinion of the International Court. Such an opinion would certainly have clarified the interpretation of Chapter V on use of the distinctive emblem, thus facilitating a common understanding of this issue among States Parties, and would also have made the Convention more visible.

Résumé

La signalisation des biens culturels au moyen du signe distinctif de la Convention de La Haye de 1954 pour la protection des biens culturels en cas de conflit armé

Jan Hladik

Cet article examine les questions juridiques liées à l'interprétation de l'article 17 – relatif à l'usage du signe distinctif – de la Convention de La Haye de 1954 pour la protection des biens culturels en cas de conflit armé, suite à la question posée en 1999 par la Bosnie-Herzégovine quant à l'opportunité de signaler au moyen de cet emblème les sites culturels détruits. La première partie de l'article est une introduction générale sur le thème de la signalisation des biens culturels au moyen de l'emblème, tandis que la seconde étudie en détail la question posée par la Bosnie-Herzégovine et, en particulier, l'analyse qu'en ont faite deux réunions des États parties à la Convention en 1999 et en 2001.

UNESCO's mandate and recent activities for the rehabilitation of Afghanistan's cultural heritage

CHRISTIAN MANHART*

Afghanistan's cultural heritage

Afghanistan, situated at an important junction on the ancient Silk Road, has been a crossroads of cultures since time immemorial. Its unique cultural heritage reflects a history marked by the complex indigenous encounter with Achaemenid Persia, Alexandrian Greece, Buddhism, Hinduism and Islam. Among its many treasures are the Kanishka/Zoroastrian site of Surkh Kotal, the ninth-century Nine Domes Mosque of Haji Piyada, the twelfth-century Minaret of Jam, and the walled city of Herat including the Friday Mosque, the Musallah complex with its minarets and the Gawhar Shad mausoleum, the Mir Ali Sher Navai Mausoleum, the Gazargah Shrine and the Shah Zadehah mausoleum; the fourth and fifth-century Buddha statues of the Bamiyan Valley were destroyed in March 2001 by the Taliban regime.

The present situation of Afghanistan's heritage, which has suffered irreversible damage and loss during the past two decades of war and civil unrest, can be described as a cultural disaster. For many years the United Nations, through its specialized agencies UNESCO and UNOCHA¹, and non-governmental organizations involved in the preservation of Afghanistan's cultural heritage have constantly made every possible effort to protect it and continue to do so.

UNESCO's mandate in safeguarding Afghanistan's cultural heritage

In January 2002 UNESCO was officially requested by Abdullah Abdullah, Minister of Foreign Affairs of the Afghan interim administration, to play a coordinating role in all international and bilateral activities aimed at safeguarding Afghanistan's cultural heritage. As a first step, a Memorandum of Understanding was signed in March 2002 with the Afghan

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Minister of Information and Culture, Mr Said Makhdoom Raheen, which entrusted UNESCO with the coordination of international efforts for the National Museum of Kabul.

Following the request by the Afghan government, UNESCO responded firmly to the challenge of rehabilitating Afghanistan's endangered cultural heritage. As the UN Programme Secretariat for Education, Science and Culture, UNESCO is supporting the Afghan Ministry of Information and Culture and related government agencies by coordinating all activities in the field of culture. The safeguarding of all aspects of the country's cultural heritage, both tangible and intangible, including museums, monuments, archaeological sites, music, art and traditional crafts, is of particular significance in terms of strengthening cultural identity and a sense of national integrity. Cultural heritage can become a point of mutual interest for former adversaries, enabling them to rebuild ties, to engage in dialogue and to work together in shaping a common future.

UNESCO's strategy is to assist in the re-establishment of links between the populations concerned and their cultural history, helping them to develop a sense of common ownership of monuments that represent the cultural heritage of different segments of society. This strategy is therefore directly linked to the nation-building process within the framework of the United Nation's mandate and concerted international efforts for the rehabilitation of Afghanistan. Referring to the UN Secretary-General's dictum, "Our challenge is to help the Afghans help themselves", policies and activities for the safeguarding of Afghanistan's cultural heritage focus on training and capacity-building activities related to the preservation of that heritage.

In May 2002 UNESCO, in cooperation with the Afghan Ministry of Information and Culture, organized the first International Seminar on the Rehabilitation of Afghanistan's Cultural Heritage. Held in Kabul, it brought together 107 specialists on Afghan culture, as well as representatives of donor countries and institutions. Under the chairmanship of Makhdoom Raheen, Minister of Information and Culture of the Afghan government, the participants gave presentations on the state of conservation of cultural sites in the country and discussed programmes and coordination for the first conservation measures to be taken. This seminar resulted in more than US\$ 7 million being pledged for priority projects, allocated through bilateral agreements and UNESCO Funds-in-Trust projects. An eleven-page document

¹ United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA).

containing concrete recommendations for future action was adopted, in which the need to ensure effective cooperation was emphasized.

Responding to the urgent need to enhance and facilitate the coordination of all international activities, and in accordance with the Afghan authorities, UNESCO has established an International Coordination Committee (ICC). Its statutes were approved by the 165th session of the organization's Executive Board in October 2002. The Committee, which consists of Afghan experts and leading international specialists belonging to the most important donor countries and organizations providing funds or scientific assistance for the safeguarding of Afghanistan's cultural heritage, meets on a regular basis to review ongoing and future efforts to rehabilitate that heritage.

In June 2003, the Committee's First Plenary Session was organized at UNESCO headquarters in Paris. It was chaired by Makhdoom Raheen in the presence of Prince Mirwais, seven representatives of the Afghan Ministry of Information and Culture, and more than 60 international experts participating as members of the Committee or as observers. The meeting resulted in specific recommendations for efficient coordination of actions to safeguard Afghanistan's cultural heritage to the highest international conservation standards. These recommendations concern key areas such as development of a long-term strategy, capacity-building, implementation of the World Heritage Convention and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, national inventories and documentation, as well as rehabilitation of the National Museum in Kabul and safeguarding of the sites of Jam, Herat, and Bamiyan. Several donors pledged additional funding for cultural projects in Afghanistan following the meeting.

Bamiyan

The eyes of the world have been on the famous Bamiyan Valley since the destruction of the great Buddhist statues in early 2001: at 55 metres and 38 metres they were the tallest standing Buddhas in the world. The smaller of the two Buddhas is thought to have been carved into the sandstone cliffs of Bamiyan as long ago as the third century A.D. The demolition of the Bamiyan Buddhas was the result of a decree by Mullah Omar proclaimed in February 2001 and ordering "all non-Islamic statues and tombs considered offensive to Islam" to be destroyed.

Immediately after the fall of the Taliban regime in December 2001, UNESCO sent a mission to Bamiyan to assess the condition of the site and

to cover the remaining large stone blocks with fibreglass sheets to protect them from harsh climatic conditions during winter. This first mission revealed that as a result of the explosions, cracks had appeared in the rock cliffs in and around the niches where the Buddha statues had previously stood. It also noted that not only the two large Buddha statues had been destroyed by the Taliban, but also the smaller Kakrak Buddha.

Much discussion has taken place in Afghanistan and all over the world about the future of this great site, revolving around the question of whether the two giant Buddha statues should be reconstructed. The participants at the First International Seminar on the Rehabilitation of Afghanistan's Cultural Heritage clearly recognized that the first emergency priority is to stabilize the cliff face with its niches and caves. Noting that the decision whether to engage in the reconstruction of the Buddha statues is a matter to be settled by the government and people of Afghanistan, it was agreed that reconstruction is not a priority as long as humanitarian aid for the Afghan people is urgently needed. Furthermore, the participants emphasized that the authenticity, integrity and historical importance of this great site need to be memorialized in an appropriate way, and that reconstruction of the statues therefore requires further discussion and careful consideration.

In July 2002 a second UNESCO mission jointly organized with the International Council on Monuments and Sites (ICOMOS) and directed by its president, Michael Petzet, was undertaken in order to prepare conservation measures at the Bamiyan site. A project preparation mission composed of German, Italian and Japanese experts then took place in September and October 2002. It was found that over 80 per cent of the mural paintings dating from the sixth to the ninth century AD in the Buddhist caves have disappeared through neglect or looting. In one cave, experts even came across tools used by the thieves and the remains of freshly removed paintings. In view of this situation a contract was concluded through the Afghan Ministry of Information and Culture with the local commander, who immediately provided ten armed guards to keep the site under permanent surveillance, and no further thefts have been reported since. It was also observed with concern that the large cracks which have appeared in and around the niches could lead to the collapse of parts of them and of the inner staircases. The experts thereupon made additional measurements and advised on appropriate action to consolidate the cliffs and niches. As a result of this mission, the Japanese Foreign Ministry generously approved a UNESCO Fund-in-Trust for the safeguarding of the Bamiyan site for a total budget of more than US\$ 1.8 million.

ICOMOS financed the restoration of a Sunni mosque and another building, both of which are in close proximity to the niche of the larger Buddha. The aforesaid building is now being used to house the guards and store the project equipment.

An Expert Working Group on the preservation of the Bamiyan site was jointly organized by UNESCO and ICOMOS in Munich, Germany, in November 2002. Twenty-five Afghan and international experts evaluated the present state of the site, compared different conservation methods and issued recommendations for implementation of the project's various activities. It was clearly reiterated that the statues should not be reconstructed. After delays due to the security situation resulting from the war in Iraq, the project was initiated in June 2003 with a three-week mission by architect Mario Santana from Louvain University for the scientific documentation of the back of the niches and the remaining fragments of the Buddhas.

During the First Plenary Session of the International Coordination Committee for the Safeguarding of Afghanistan's Cultural Heritage, which also took place in June 2003, a number of recommendations were made for the Bamiyan site. It was advised in particular that consolidation of the extremely fragile cliffs and niches and preservation of the mural paintings in the Buddhist caves be considered as priorities, as well as the preparation of an integrated master plan.

In order to prevent the collapse of the cliffs and niches, large scaffolding was supplied free of charge by the German Messerschmidt Foundation and transported by the German army to Afghanistan in August 2003. With the help of this scaffolding and other imported specialized equipment, the internationally renowned Italian firm RODIO has successfully completed the first phase of the emergency consolidation of the cliffs and niches. In July, September and October 2003 several missions by specialists from the National Research Institute for Cultural Properties (Japan) were sent to Bamiyan to safeguard the mural paintings and to draw up a master plan for the long-term preservation and management of the site. A Japanese firm was commissioned to prepare a topographical map of the valley and a 3-D model of the cliffs and niches. In addition, UNESCO is helping the Afghan government to create a site museum which will be set up in a traditional house close to the site. To this end, the Swiss government recently approved a UNESCO Funds-in-Trust project for the restoration of a traditional mud-brick house in the old Bamiyan village, with a budget of US\$ 250,000. Studies of the traditional houses will be conducted so as to recommend appropriate restoration methods.

To ensure the coordination of all safeguarding activities in Bamiyan, a Second UNESCO/ICOMOS Expert Working Group met in Munich, Germany, in December 2003. Twenty-five experts took part in this meeting and evaluated the progress of consolidation, conservation and archaeological activities. They especially commended the consolidation methods applied and work carried out by the Italian firm RODIO, which recently succeeded in preventing the upper eastern part of the Small Buddha niche from collapsing. They also formulated specific follow-up recommendations, as well as a work plan for 2004 for final consolidation of the Small Buddha niche, conservation of the fragments of the two Buddha statues, preservation of the mural paintings and coordination of the archaeological work undertaken by the *Délégation Archéologique Française en Afghanistan* (DAFA) and the National Research Institute for Cultural Properties (NRICP), Japan. In March 2004, a UNESCO mission composed of several experts from diverse fields went to the site to launch and coordinate follow-up work on finalizing the consolidation of the cliffs and niches, conserving the fragments of the Buddha statues and preserving the mural paintings.

Jam and Herat

The Minaret of Jam stands alone on a peninsula formed by the south bank of the Hari Rud river and the Jam river in a remote valley closely surrounded on all sides by mountains. Owing to its particularly isolated position, the existence of this most spectacular monument built at the end of the twelfth century was only rediscovered and confirmed in the late 1940s. Today, we know that at 65 metres it is not only the second-highest minaret in the world, but also one of the very few well-preserved architectural monuments from the Ghorid period.

The walled city of Herat, the capital of Herat Province and once, despite its turbulent history, a great centre of religion and culture, is known for its famous citadel (*Qala-i-Ikhtiyaruddin*) in the heart of the old city, the stunningly decorated Friday Mosque (*Masjid-I-Jami*), the remains of the Musallah Complex with its minarets and the Gawhar-Shad's mausoleum topped by a flamboyant ribbed turquoise-blue dome.

In March 2002, UNESCO sent two consultants to Jam and Herat. The architect Professor Andrea Bruno and structural engineer Marco Menegotto assessed the state of conservation of the Minaret of Jam and of the Fifth Minaret of Gawhar-Shad gardens, the Gawhar Shad mausoleum, the Citadel, the Friday Mosque and other monuments in Herat and drafted project documents for their conservation. Two months later, Andrea Bruno, accompanied by a hydrologist, carried out a mission to advise on consolidating the Jam

Minaret's foundations, stabilizing its overall structure and improving the flow of the two rivers. They also recommended protective measures for the archaeological zone of Jam, threatened by illicit excavations. This mission revealed that, although the gabions (fortifying devices) installed by UNESCO in 2000 were damaged during the dramatic flash floods of April 2002, they remained efficient in protecting the monument, which perhaps only survived as a result of this measure. The Minaret of Jam was inscribed as the first Afghan cultural property on the UNESCO World Heritage List in June 2002. In October and November 2002, architects Tarcis Stevens and Mario Santana drew up detailed metric documentation of the five minarets of the Musalla complex in Herat, as well as of the Jam Minaret. They combined this documentation with a preliminary training session for Afghan experts on the use of the Total Station (a laser theodolite) donated by UNESCO to the Afghan Ministry of Information and Culture. This training will be continued in 2004.

An Expert Working Group Meeting on the Preservation of Jam and the Monuments in Herat was held at UNESCO headquarters in January 2003. Among the twenty-three participants were Sayed Makdoom Raheen, Zahir Aziz, Ambassador of Afghanistan to UNESCO, Omara Khan Massoudi, Director of the National Museum of Kabul, and Abdul Wasey Feroozi, Head of the Afghan Institute of Archaeology. The experts evaluated the present state of conservation of the site of Jam and of the above-mentioned historical monuments in Herat. They also addressed the problem of illicit excavations, compared different conservation methods and made emergency and long-term conservation and coordination proposals with reference to identified priorities. The concrete recommendations formulated by this Working Group enabled emergency activities to begin in 2003.

In November 2002 the Swiss authorities approved a UNESCO Funds-in-Trust project for emergency consolidation and restoration of the site of Jam, with a total budget of US\$ 138,000. In addition, the Italian authorities granted US\$ 800,000, as cooperation with the UNESCO Funds-in-Trust programme, for emergency consolidation and restoration of monuments in Herat and Jam. These projects began in April 2003 with the reconstruction of a project house in Jam, the clearing of the Jam river bed and the repairing and strengthening of the wooden and metal gabions installed in 2000 and 2002 by UNESCO and damaged in April 2002.

In July and August 2003, the Italian experts Andrea Bruno, Giorgio Macchi and Mariachristina Pepe, together with representatives of UNESCO, carried out a mission to Herat and Jam to start preliminary work on a geological

survey of the ground at the minarets, in preparation for their long-term consolidation. At the same time the Fifth Minaret in Herat, which was in imminent risk of collapse, was temporarily stabilized by means of steel cables designed by Giorgio Macchi. This emergency intervention was successfully carried out by the Italian firm ALGA, in very difficult security and logistical conditions. The minaret is now secured and stabilized, although it would probably not withstand severe earthquakes. The ground survey and the long-term consolidation of the Jam Minaret and the Fifth Minaret of Herat will be undertaken in 2004. In addition, three archaeologists from the Istituto per l'Africa e l'Oriente (IsIAO), under UNESCO contract, carried out safeguarding excavations on the site of Jam during the month of August 2003.

In 2002, UNESCO and the Society for the Preservation of Afghanistan's Cultural Heritage (SPACH) jointly financed the tile-making workshop in Herat which they had revived in 1994. There are currently 60 Afghan trainees at the workshop, learning how to manufacture traditional tiles. In December 2003, the German authorities approved a UNESCO Funds-in-Trust project for the retiling of the Gowhar Shad Mausoleum at the cost of US\$ 120,000. The traditional tiles needed for this project are now being produced at the tile-making workshop in Herat.

In February and March 2004, Professors Andrea Bruno and Claudio Margottini and a representative of UNESCO carried out a mission to Jam to advise the Afghan Ministry of Information and Culture on the construction of a road and bridge at the site. The mission resulted in the signature of a joint agreement by the local communities of Jam, the Afghan government and UNESCO, allowing the organization to resume its operational activities to consolidate and restore the minaret and preserve the surrounding archaeological remains. The necessary geophysical surveys, followed by detailed technical subsoil investigations, will be executed as soon as possible to prepare for the minaret's long-term consolidation.

Kabul Museum

The Kabul Museum has suffered tremendously in the past 24 years of conflict in Afghanistan. During that period it was extensively looted and destroyed. Before the Taliban arrived in the capital in 1996, the museum was temporarily closed and its collections were deposited at various locations in Kabul. From 1991 to 1996, many of its most precious items disappeared, such as the Begram ivories, the entire numismatic collection, most Buddha statues, and fragments of wall paintings from the Bamiyan Valley.

Immediately after the fall of the Taliban regime in December 2001, UNESCO sent a mission to identify and gather together the remains of various statues and objects in the Kabul Museum and to prepare a project for their restoration. In November 2002, in view of the approach of winter, UNESCO took some emergency measures. New windows were installed in several rooms on the ground and first floor and a deep well with a pressure tank and plumbing was built to provide water for the conservation laboratory. In addition, a large electric generator was donated to supply electricity. In 2003, UNESCO, through SPACH, contributed US\$ 42,500 to the restoration of the museum, in particular for completion of the roof.

In January 2003, the Greek government started restoration of the Kabul Museum building as part of a commitment it had made during the Kabul Seminar held in May 2002, consisting of a donation of approximately US\$ 750,000; UNESCO provided the Greek specialists with drawings and plans of the Kabul Museum produced by the organization's consultant, Andrea Bruno. The US government also contributed US\$ 100,000 to this project. The British International Security Assistance Force (ISAF) has furthermore installed a new restoration laboratory composed of two rooms, one wet-room and one dry-room, both of which were funded by the British Museum. In addition, the French CEREDAF donated conservation equipment, while the newly created French DAFA, together with the Guimet Museum in Paris, carried out training courses for the museum's curators that were begun by the Italian firm IsIAO in 2002.

In April/May 2003 and March 2004 a UNESCO expert, Bertille Lyonnet, undertook one-month missions to Kabul at the Afghan authorities' request in order to train staff from the National Museum in Kabul in the restoration of the ceramic collections.

Summary of international cooperation and funding for rehabilitation of Afghanistan's cultural heritage

Complementing its operational activities, UNESCO promotes existing normative instruments while developing new ones for the legal protection of tangible and intangible cultural heritage. Given that the prevention of illicit excavations and illicit trafficking is a major challenge in contemporary Afghanistan, UNESCO supports the efforts of the Afghan government to ban illicit excavations and control its borders to prevent smuggling of illicitly acquired movable cultural objects.

In conclusion, it can be stated that to date, funding and other forms of assistance well exceeding the \$7 million pledged during the Kabul Seminar held in May 2002 have been given for cultural projects in Afghanistan. To summarize, the UNESCO Funds-in-Trust programme has been entrusted with the following amounts from donor countries: \$1,815,967 from the government of Japan for the conservation of Bamiyan; a further US\$ 969,000 from the government of Italy for the monuments of Herat, Jam and the Kabul Museum; US\$ 705,000 from the Italian government for the Ghazni museums, plus US\$ 67,460 for a Cultural Heritage Seminar to be held in Kabul in May 2004; US\$ 138,000 for Jam and US\$ 250,000 for Bamiyan from the Swiss government; and US\$ 850,000 from the German government in 2002, through ICOMOS Germany and the German Archaeological Institute, for the restoration of the Babur Gardens and to train Afghan archaeologists, as well as US\$ 119,780 in 2003 for the retiling of the Gowhar Shad Mausoleum.

Besides these Funds-in-Trust donations, bilateral contributions include US\$ 5 million from the Aga Khan Trust for Culture for the restoration of the Babur Gardens and the Timur Shah Mausoleum in Kabul, and for the rehabilitation of traditional housing in Kabul, Herat and other cities. The Greek government has also earmarked \$750,000 for the restoration of the Kabul Museum building, and the US government has contributed US\$ 100,000 to this project. The French Délégation Archéologique Française en Afghanistan has carried out preventive excavations. The French Musée Guimet and the Italian IsIAO team have conducted several training courses for the staff of the Kabul Museum, while the British Museum has restored three rooms at the Kabul Museum for the installation of a conservation laboratory. In addition, UNESCO has provided \$400,000 under its Regular Budget for the biennium 2002/03 for cultural activities in Afghanistan. In September 2002, UNESCO concluded a contract with the French NGO Agence d'Aide à la Coopération Technique et au Développement (ACTED) for the emergency repair of the protecting roof of the nine domes of the Hadji Pyada mosque in Balkh – the oldest mosque in Afghanistan – in order to preserve it from the harsh winter weather.

All UNESCO activities are being implemented in accordance with the recommendations of the International Coordination Committee for the Safeguarding of Afghanistan's Cultural Heritage.

UNESCO would like to take this opportunity to thank all of these generous donors for their invaluable contributions. It should also be emphasized

that these cultural funds come from specific cultural budgets. As such, they have not been taken from humanitarian funds, but instead constitute a supplement to them. If activities such as those described above are to continue, further financial support will have to be found.

Résumé :

Le mandat de l'UNESCO et ses activités récentes pour la réhabilitation du patrimoine culturel de l'Afghanistan

Christian Manhart

Le patrimoine culturel afghan a subi des pertes irréversibles au cours des deux dernières décennies de guerre. L'UNESCO a contribué à la protection de ce patrimoine pendant de nombreuses années et continue à tout mettre en œuvre pour assurer sa sauvegarde. En janvier 2002, l'UNESCO a été mandatée par le gouvernement intérimaire afghan pour assurer la coordination de l'ensemble des activités internationales en faveur de la sauvegarde de ce patrimoine, un rôle qu'elle assume par le biais du Comité international de coordination pour la sauvegarde du patrimoine culturel afghan. Ses activités concernent des secteurs clés tels que le développement d'une stratégie sur le long terme; le renforcement des capacités locales par la formation et l'équipement; l'application des conventions internationales; la documentation et la création d'inventaires nationaux; la reconstruction du musée national de Kaboul avec son laboratoire de conservation; la réhabilitation des musées de Ghazni; la consolidation des fondations du minaret de Djam; la conservation des quatrième et cinquième minarets et du mausolée de Gawar Shad à Herat; la conservation des fragments des deux Bouddhas à Bamiyan ainsi que la consolidation des niches et falaises et la protection des peintures murales dans les grottes.



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Buddhist caves in Bamiyan



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Bamiyan - Niche of Large Buddha



(Photo Sergio Colaone)

Emergency stabilisation works of the 5th minaret of Herat



(Photo François Langlois)

Jam – Gabion protection of the base of the minaret, carried out by UNESCO

UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage Paris, 17 October 2003*

The General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) meeting in Paris at its thirty-second session in 2003,

Recalling the tragic destruction of the Buddhas of Bamiyan that affected the international community as a whole,

Expressing serious concern about the growing number of acts of intentional destruction of cultural heritage,

Referring to Article I(2)(c) of the Constitution of UNESCO that entrusts UNESCO with the task of maintaining, increasing and diffusing knowledge by “assuring the conservation and protection of the world’s inheritance of books, works of art and monuments of history and science, and recommending to the nations concerned the necessary international conventions”,

Recalling the principles of all UNESCO’s conventions, recommendations, declarations and charters for the protection of cultural heritage,

Mindful that cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights,

Reiterating one of the fundamental principles of the Preamble of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict providing that “damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world”,

* Declaration adopted by the thirty-second session of the UNESCO General Conference, Paris, 17 October 2003. The declaration is available on UNESCO's website: <<http://www.unesco.org/culture/laws/intentional/declare.pdf>>.

Recalling the principles concerning the protection of cultural heritage in the event of armed conflict established in the 1899 and 1907 Hague Conventions and, in particular, in Articles 27 and 56 of the Regulations of the 1907 Fourth Hague Convention, as well as other subsequent agreements,

Mindful of the development of rules of customary international law as also affirmed by the relevant case-law, related to the protection of cultural heritage in peacetime as well as in the event of armed conflict,

Also recalling Articles 8(2) (b) (ix) and 8(2) (e) (iv) of the Rome Statute of the International Criminal Court, and, as appropriate, Article 3(d) of the Statute of the International Criminal Tribunal for the former Yugoslavia, related to the intentional destruction of cultural heritage,

Reaffirming that issues not fully covered by the present Declaration and other international instruments concerning cultural heritage will continue to be governed by the principles of international law, the principles of humanity and the dictates of public conscience,

Adopts and solemnly proclaims the present Declaration:

I - Recognition of the importance of cultural heritage

The international community recognizes the importance of the protection of cultural heritage and reaffirms its commitment to fight against its intentional destruction in any form so that such cultural heritage may be transmitted to the succeeding generations.

II – Scope

1. The present Declaration addresses intentional destruction of cultural heritage including cultural heritage linked to a natural site.
2. For the purposes of this Declaration “intentional destruction” means an act intended to destroy in whole or in part cultural heritage, thus compromising its integrity, in a manner which constitutes a violation of international law or an unjustifiable offence to the principles of humanity and dictates of public conscience, in the latter case in so far as such acts are not already governed by fundamental principles of international law.

III – Measures to combat intentional destruction of cultural heritage

1. States should take all appropriate measures to prevent, avoid, stop and suppress acts of intentional destruction of cultural heritage, wherever such heritage is located.

2. States should adopt the appropriate legislative, administrative, educational and technical measures, within the framework of their economic resources, to protect cultural heritage and should revise them periodically with a view to adapting them to the evolution of national and international cultural heritage protection standards.
3. States should endeavour, by all appropriate means, to ensure respect for cultural heritage in society, particularly through educational, awareness-raising and information programmes.
4. States should:
 - (a) Become parties to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two 1954 and 1999 Protocols and the Additional Protocols I and II to the four 1949 Geneva Conventions, if they have not yet done so;
 - (b) Promote the elaboration and the adoption of legal instruments providing a higher standard of protection of cultural heritage, and
 - (c) Promote a coordinated application of existing and future instruments relevant to the protection of cultural heritage.

IV – Protection of cultural heritage when conducting peacetime activities

When conducting peacetime activities, States should take all appropriate measures to conduct them in such a manner as to protect cultural heritage and, in particular, in conformity with the principles and objectives of the 1972 Convention for the Protection of the World Cultural and Natural Heritage, of the 1956 Recommendation on International Principles Applicable to Archaeological Excavations, the 1968 Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works, the 1972 Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage and the 1976 Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas.

V – Protection of cultural heritage in the event of armed conflict, including the case of occupation

When involved in an armed conflict, be it of an international or non-international character, including the case of occupation, States should take all appropriate measures to conduct their activities in such a manner as to protect cultural heritage, in conformity with customary international law and

the principles and objectives of international agreements and UNESCO recommendations concerning the protection of such heritage during hostilities.

VI – State responsibility

A State that intentionally destroys or intentionally fails to take appropriate measures to prohibit, prevent, stop, and punish any intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization, bears the responsibility for such destruction, to the extent provided for by international law.

VII – Individual criminal responsibility

States should take all appropriate measures, in accordance with international law, to establish jurisdiction over, and provide effective criminal sanctions against, those persons who commit, or order to be committed, acts of intentional destruction of cultural heritage of great importance for humanity, whether or not it is inscribed on a list maintained by UNESCO or another international organization.

VIII – Cooperation for the protection of cultural heritage

1. States should cooperate with each other and with UNESCO to protect cultural heritage from intentional destruction. Such cooperation should entail at least :

- (i) provision and exchange of information regarding circumstances entailing the risk of intentional destruction of cultural heritage;
- (ii) consultation in the event of actual or impending destruction of cultural heritage;
- (iii) consideration of assistance to States, as requested by them, in the promotion of educational programmes, awareness-raising and capacity-building for the prevention and repression of any intentional destruction of cultural heritage;
- (iv) judicial and administrative assistance, as requested by interested States, in the repression of any intentional destruction of cultural heritage.

2. For the purposes of more comprehensive protection, each State is encouraged to take all appropriate measures, in accordance with international law, to cooperate with other States concerned with a view to establishing

jurisdiction over, and providing effective criminal sanctions against, those persons who have committed or have ordered to be committed acts referred to above (VII - Individual criminal responsibility) and who are found present on its territory, regardless of their nationality and the place where such act occurred.

IX – Human rights and international humanitarian law

In applying this Declaration, States recognize the need to respect international rules related to the criminalization of gross violations of human rights and international humanitarian law, in particular, when intentional destruction of cultural heritage is linked to those violations.

X – Public awareness

States should take all appropriate measures to ensure the widest possible dissemination of this Declaration to the general public and to target groups, *inter alia*, by organizing public awareness-raising campaigns.

2003 Council of Delegates and 28th International Conference of the Red Cross and Red Crescent: Challenges and results

François Bugnion^{*}

Convened under the motto “*Protecting human dignity*”, the 28th International Conference of the Red Cross and Red Crescent met in Geneva from 2 to 6 December 2003 and was attended by 1,709 delegates representing 153 governments, 176 recognized National Societies and 65 observers.

Not only was attendance higher than at previous conferences, but several States were also represented by ministers, deputy ministers, secretaries of state or other political leaders, two factors which testify to the increased interest in international humanitarian law and in the Conference. As usual, the Conference was preceded by meetings of the General Assembly of the Federation (28 to 30 November) and the Council of Delegates of the International Red Cross and Red Crescent Movement (30 November to 2 December).

Objectives and challenges

The main objectives of the statutory meetings were dictated by an environment of mounting international tension, the querying of the role of the State, and the resurgence of epidemics for which modern medicine has not yet found an appropriate remedy.

If the world hoped for a period of peace and stability after the fall of the Berlin Wall, that hope has all too patently been short-lived. The attacks of 11 September 2001 and the war in Afghanistan and then in Iraq have revealed a new and steadily widening rift in the international community. The resumed arms race is evidence of that rise in international tensions which has also caused international humanitarian law to be called into question.

*

François Bugnion is Director of International Law and Cooperation within the Movement at the ICRC. In accordance with Article 22 of the Rules of Procedure of the International Red Cross and Red Crescent Movement, the ICRC and the International Federation will shortly be publishing the Report of the 28th Conference and Council of Delegates, which will contain all the official documents whose publication is provided for in that article. The current report has been published in French in the *International Review of the Red Cross*, Vol. 86, No. 854.

At the same time, the querying of the role of the State and the criticism - indeed, in many countries, the dismantling - of the welfare State model that came into being in the decades following the Second World War have brought to light situations of distress and exclusion which cannot fail to alert the International Red Cross and Red Crescent Movement.

Finally, the AIDS epidemic, the sharp increase in tuberculosis in countries where the disease was thought to have been eradicated, and the emergence of viruses and bacteria resistant to the therapies developed in the past few decades have recalled the vulnerability of individuals and societies and the limits of medical science, undermining the hopes and the sense of security that came with the advent of antibiotics and the eradication of age-old diseases.

Against this backdrop, the meeting of the International Conference of the Red Cross and Red Crescent assumed a particular importance. Yet the political hazards were infinitely greater now than during the 1995 and 1999 Conferences. The risk of seeing the political situation in the Middle East make a brusque entry at the Conference was all the more real, since the Israeli-Palestinian agreement known as the “Geneva Accord” had been signed the day before the opening ceremony. Lastly, the lack of any substantive solution to the question of the emblem was a continuing threat to the unity of the Movement.

By devoting the work of the Conference to the theme of “*Protecting human dignity*”, the International Red Cross and Red Crescent Movement clearly intended the protection of the human being and of fundamental human rights to be the core issue of the deliberations.

Hence the objectives which the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies had set themselves as joint organizers and joint hosts of the Council of Delegates and the International Conference:

For the Council of Delegates, the objectives were:

- to engage the components of the Movement – National Societies, ICRC and Federation – to take conscience of their responsibilities in view of the growing intolerance and to define their roles more adequately with regard to this drift;
- to recognize the progress made since 1999 with regard to the question of the emblem and to confirm the mandate given to the Standing Commission to continue its work in this area;
- to confirm the validity of the Movement’s mode of operation and in particular of the Seville Agreement, which governs the conduct of international operations.

For the Conference, the objectives were:

- to confirm unequivocally the relevance of international humanitarian law to the armed conflicts of our time;
- to endorse the main conclusions of the February 2003 Conference of Experts on the Missing;¹
- to highlight the humanitarian consequences of the use of certain weapons and invite States to take concrete measures to address them;
- to specify the partnership between National Societies and States; and
- to firmly reject any form of discrimination or stigmatisation of the victims of infectious diseases, especially HIV/AIDS.

Participation

The main questions in this regard concerned the participation and representation of Iraq and the Iraqi Red Crescent Society and the participation of Palestine, the Magen David Adom in Israel (MDA) and the Palestine Red Crescent Society. Solutions were found in preliminary negotiations conducted primarily by the Secretary-General of the Conference, Ambassador Thomas Kupfer (Switzerland), and remained unchallenged in the statutory meetings. The MDA and the Palestine Red Crescent took part as observers in those meetings and sat side by side there as National Societies awaiting recognition.

Council of Delegates

The opening ceremony of the Council of Delegates was devoted to the presentation of the Henry Dunant Medals, which were awarded this year to Ms Monique Basque, former President of the Red Cross Society of Côte d'Ivoire, Mr André Durand, former ICRC Delegate-General and historian, Prof Frits Kalshoven, deeply committed to the development and dissemination of international humanitarian law, and to Ms Noreen Minogue, Australian Red Cross volunteer. The ceremony was also an occasion for Princess Margriet of the Netherlands to report on the work of the Standing Commission, which she has chaired from 1995 to 2003.

¹ See *International Review of the Red Cross*, Vol. 85, No. 849, March 2003, pp. 186-193.

ICRC President Jakob Kellenberger was elected as Chairman of the Council of Delegates, while Mr. Hisham Harun Hashim, Deputy National Chairman of the Malaysian Red Crescent Society, was elected as Vice-Chairman.

Certain subjects were given particularly close consideration during the debates.

First and foremost was the preparation of the International Conference. Three substantive issues were tabled:

- biotechnology, weapons and humanity
- the emblem, and
- the status of National Societies as auxiliaries of the public authorities in the humanitarian field.

The subject of auxiliary status had a particular interest to the National Societies, who welcomed the work the Federation had done and urged it to press ahead with this work in the years to come.² Although numerous participants likewise took the floor in the plenary debate on the question of the emblem, the proposed resolution was well received and adopted by consensus, without amendment.³ The Council also adopted a resolution in support of the ICRC's initiative on biotechnology and encouraged the National Societies to promote it at the national level.⁴

A large number of National Societies addressed the plenary session on the implementation of the *Seville Agreement*, wishing to make their voice heard more widely in the coordination of international relief operations. Many speakers stressed that much remained to be done to improve implementation of the Seville Agreement, particularly in view of the growing complexity of humanitarian operations, the risks of instrumentalisation of humanitarian action, and the dangers facing humanitarian workers in the field.

The resolution that was finally adopted provides for the establishment of an *ad hoc* working group of the Standing Commission to define procedures governing participation by the Movement's components in operational contexts; it also underlines the role of the host National Society and that of the National Societies involved in international operations. This group is composed of representatives of the ICRC, the Federation and the National Societies;

² Resolution No. 6. The eleven resolutions of the Council of Delegates were published in *the International Review of the Red Cross*, Vol. 85, No. 852, December 2003, pp. 885-915.

³ Since the question of the emblem was the subject of debate and deliberation in both the Council of Delegates and the International Conference, an account of these debates is given in a separate section (see below).

⁴ Resolution No. 4.

it will work in accordance with the Statutes of the Movement and will take its decisions by consensus.⁵

In parallel, the Council renewed the mandate of the Standing Commission's *ad hoc* task force in charge of monitoring, evaluating and analysing the progress made by all components in implementing the *Strategy for the Movement* that was adopted in 2001.⁶

The Council further called on all components of the Movement to promote respect for diversity and fight discrimination and intolerance. It thereby reaffirmed the commitment of all components of the Movement to step up action to disseminate and implement the Fundamental Principles and promote humanitarian values across religious, cultural, political and ethnic lines, and, through their work, to anticipate developments and attenuate situations likely to cause discrimination and result in marginalisation and exclusion. The resolution adopted by the Council comprises a plan of action intended to serve as a basis for implementing the measures advocated.⁷ This resolution testifies to the Movement's determination to respond to the upsurge of intolerance and discrimination which it is witnessing today.

The agenda item "Movement action in favour of refugees and internally displaced persons", which was a follow-up to the resolution adopted by the Council of Delegates in 2001, was intended to give the Movement's components a renewed awareness of the importance of pursuing and developing their activities in favour of refugees and displaced persons. The resolution adopted has an annex entitled *Minimum elements to be included in operational agreements between Movement components and their external operational partners*. This document lists a number of rules, criteria and procedures that must be observed when signing an agreement with a partner outside the Movement, in order to ensure that the Movement's principles and policies are adhered to and that the emblem is used in conformity with the rules the Movement has adopted.⁸

The Council of Delegates also extended the Movement Strategy on Landmines through 2009, while expanding its scope to cover explosive remnants of war. It urged the

⁵ Resolution No. 8.

⁶ Resolution No. 7.

⁷ Resolution No. 9.

⁸ Resolution No. 10.

Movement's components to participate in ongoing efforts to prohibit the use of sub-munitions (including cluster-bombs) in or near civilian areas.⁹

28th Conference: inaugural ceremony

Through an audiovisual presentation illustrating the main situations of distress the world is confronted with, the opening ceremony highlighted the challenges inherent in the Conference theme, "*Protecting human dignity*". The presentation by BBC journalist Caroline Wyatt was centred on four subjects: the impact of certain weapons; the fate of persons missing as a result of armed conflicts; the consequences of disasters; and the stigmatisation of people living with AIDS.

These subjects were taken up in the keynote address by Princess Margriet of the Netherlands, Chairwoman of the Standing Commission,¹⁰ in the speeches given by the Swiss Minister of Foreign Affairs, Federal Counsellor Micheline Calmy-Rey, representing the government of the host country, by the Geneva authorities and in an audiovisual message from Mr Nelson Mandela.

Two guest-speakers addressed the Conference on behalf of the relatives of missing persons and on behalf of persons infected with the AIDS virus, while young volunteers from the five continents recited the Fundamental Principles of the Red Cross and Red Crescent.

Plenary sessions

The Conference participants used the two and a half days of plenary sessions to make known their main concerns, their respective positions on specific issues and their pledges with regard to humanitarian action and the subjects of the Conference. In the statements made by 124 delegations at the plenary sessions, many government representatives also took the opportunity to voice their support for the work of the Movement's components and to report on measures taken at the national level to implement the pledges given at the previous Conference in 1999.

Election of the Chairman and Vice-Chairpersons

⁹ Resolution No. 11.

¹⁰ See *IRRC, op. cit.* (note 2), pp. 881-884.

Acting on the proposal of the Council of Delegates, the Conference elected Mr Jaime Ricardo Fernandez Urriola, President of the Red Cross Society of Panama, as its Chairman. The Vice-Chairpersons were Ambassador Yolande Biké, Permanent Representative of Gabon, Dr Abdelkader Boukhroufa, President of the Algerian Red Crescent, Mr Hisham Harun Hashim, Deputy National Chairman of the Malaysian Red Crescent Society, and Dr René Rhinow, President of the Swiss Red Cross.¹¹

Statements by the ICRC and Federation Presidents

Of considerable importance and awaited with interest, the statements by the respective Presidents of the ICRC and the Federation met with a wide response. They were published in the previous issue of the *Review*.¹²

Debate on "Contemporary humanitarian challenges and the protection of war victims"

A very large number of delegations took the floor on this subject. An overview of their interventions allows for the following tenets to be deduced:

- *a great interest in international humanitarian law*, whose importance and relevance in contemporary armed conflicts were reaffirmed. Some delegates considered it regrettable that the very parties that should be complying with it sometimes questioned its validity so as to dispense with their obligations. Courses of action were proposed to enhance respect for this body of law, including the fight against impunity; referral to the International Fact-Finding Commission (IFFC); the strengthening of the protective function of the ICRC; and the mobilisation of civil society;
- *unanimous condemnation of acts of terrorism against the civilian population* and the reminder that human dignity is affected not only by violations of humanitarian law but also by aggression and foreign occupation;
- *demand for compliance with humanitarian law in the framework of the "global war on terrorism"*: there is no intermediate category, between combatants and civilians, of persons who are excluded from the protection of humanitarian law in international armed conflicts, nor is there any legal vacuum between the Third

¹¹ The Report of the 28th International Conference (see note 1 above) will include both the list of all persons elected as officers of the Council of Delegates and the Conference and the list of participants.

¹² *IRRC, op. cit.* (note 2), pp. 867-880.

Geneva Convention, which protects prisoners of war, and the Fourth Geneva Convention, which protects civilians. Furthermore, several complementary bodies of law apply in the fight against terrorism, in particular human rights law, international criminal law and national law;

- *great confidence was demonstrated in the ICRC*, as well as a marked interest in its initiatives (biotechnology, explosive remnants of war, customary law, protection of women in war) *and growing concern in view of attacks* against its work and delegates and against humanitarian action in general;
- *determination to combat erosion of the Fundamental Principles of the Red Cross and Red Crescent* and the transgression of those principles (questioning of the relevance of neutrality or impartiality; increasing xenophobia);
- *support was reaffirmed for the solidarity of the Movement and for a harmonious relationship between the National Societies and States party to the Geneva Conventions*. As one African delegation put it, when the population of a country is beset simultaneously by conflicts, floods, the Ebola virus, malaria and AIDS, the task is such that every possible effort is needed. Human dignity also means access to basic health care, medication, water, a decent job, and education;
- *support was pledged for the fight against the HIV/AIDS epidemic* and all forms of related stigmatisation and exclusion.

Election of the Standing Commission

A single ballot sufficed to elect the members of the Standing Commission. Were elected:

- Dr Mohammed Al-Hadid, President of the Jordanian Red Crescent;
- Ms Janet Davidson, Member of the Board of Governors and Honorary Vice-President of the Canadian Red Cross;
- Mr Philippe Cuvillier, member of the Governing Board and Chairman of the Committee for International Relations and Operations of the French Red Cross;
- Mr Freddy Pedersen, President of the Danish Red Cross;
- Ms Zoy Katevas de Sclavos, President of the Chilean Red Cross.

For the second term running, no African dignitary was elected to the Standing Commission. Africa had put up two candidates, with the result that the votes were divided

between them, and neither was elected, confirming once again the importance of prior consultations and agreement within the regional groups.

At its constitutive meeting on 5 December 2003, the newly elected Commission appointed Dr Al-Hadid as Chairman and Ms Davidson as Vice-Chair. These elections were done by acclamation.

Special reports / Women and war

The first plenary session offered the occasion for reviewing the implementation of the Plan of Action for the years 2000-2003, adopted at the previous Conference. In addition to the report on the emblem, several special reports were then presented, dealing with the following issues:

- the role of the National Societies as auxiliaries to the public authorities;
- Volunteers' Day;
- customary international law;
- women and war.

Queen Rania Al-Abdullah of Jordan kindly lent her support to the "Women and War" project by giving a speech that was received with great attention and by inaugurating the photo exhibition prepared by the ICRC.

Commissions

The four working sessions of the Commissions allowed for a further clarification of the debates in the plenary session and in the Drafting Committee on the Declaration and on each of the subjects raised in the Agenda for Humanitarian Action.

The method of having the debates introduced by a panel of speakers, also including people from outside the Movement (experts or representatives of victims), was in general well appreciated. The fact that there were two plenary commissions working in parallel allowed a large number of delegations to intervene in the debates and make their voice heard. Finally, the possibility for the rapporteurs of the Commissions to give the Drafting Committee an oral summary of their respective proceedings made for better liaison between these various bodies.

Drafting Committee

Chaired by Ambassador Johan Molander, former Permanent Representative of Sweden, the Drafting Committee met for two and a half days and worked until midnight each day in order to reach agreement on all the texts the Conference was asked to adopt.

The negotiations were mainly concerned with the draft Declaration and the draft Agenda for Humanitarian Action, which had been the subject of interventions by numerous States and National Societies.

Declaration

The final document adopted by the Conference clearly reaffirms the relevance of international humanitarian law and the responsibility of States to respect and ensure respect for that body of rules, irrespective of the nature or origin of the conflict. All subjects dealt with in the draft Declaration submitted to the Drafting Committee were retained and the wording of certain passages was even made more forceful. This was the case with the protection of humanitarian workers: the text eventually adopted includes a commitment to denounce attacks on them and to ensure that such attacks do not remain unpunished. The Declaration reaffirms the independence of humanitarian workers from political and military actors, as well as the protection of humanitarian assistance.

A reference was added to the Declaration specifying that persons alleged to have committed crimes are entitled to a fair trial, an important element in the protection of persons captured in the course of armed conflict.

Furthermore, a reference to the special protection and respect, guaranteed for women and children by international humanitarian law, was added to the text.

In an insertion concerning the dissemination of humanitarian law, specific reference was made with regard to the education of the civilian population, in collaboration with the media, religious institutions or other comparable organisations.

With regard to health standards, mention was made of efforts to reduce health risks by comprehensive measures concerning prevention, treatment and care, including access to medication at affordable prices.

Agenda for Humanitarian Action

There is every reason to be satisfied with the final content of the text adopted. The following four subjects are covered in this text:

- (i) missing persons and assistance to their families;
 - (ii) the human costs of the availability, use and misuse of weapons in armed conflicts;
 - (iii) reducing the risks and impact of disasters and improving preparedness and response mechanisms;
 - (iv) reducing the risks and impact of HIV/AIDS and other infectious diseases.
- Respect and restore the dignity of persons missing as a result of armed conflicts or other situations of armed violence, and of their families

The main challenge with this text was to keep the reference to the right of families to know the fate of their missing relatives and to ensure that this objective and the actions proposed cover not only armed conflicts but also situations of internal violence. These two points were widely debated and a compromise was found. Article 32 of Protocol I additional to the Geneva Conventions, which refers to the right of families to know the fate of their relatives, is quoted in the Agenda. In this spirit, families are to be informed of the fate of their missing relatives, including their whereabouts, and, if they are dead, the cause of death. Moreover, it has been specified that these measures do apply both to armed conflicts and to other situations of armed violence.

- Strengthen the protection of civilians from the indiscriminate use and effects of weapons and the protection of combatants from unnecessary suffering and prohibited weapons through controls on the development, proliferation and use of weapons

Contrary to misgivings before the Conference that the section on weapons might give rise to controversy, very few changes were in fact made to this part of the text. None of the important points dealt with in this section was withdrawn, and the main amendments adopted consisted of replacing a commitment by States to adhere to certain treaties, such as the Ottawa Convention,¹³ with an invitation to do so. The adoption, one week before the 28th Conference, of a Protocol on Explosive Remnants of War¹⁴ to the 1980 Convention on Conventional Weapons, facilitated the debates on the human costs of the availability, use and misuse of weapons in armed conflicts. One or two States would have wished to include a reference to nuclear weapons in the text, but the majority of participants were against this.

¹³ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction, signed in Ottawa on 18 September 1997.

¹⁴ Protocol V.

- Minimize the impact of disasters through implementation of disaster risk reduction measures and by improving preparedness and response mechanisms

The Drafting Committee commended the work carried out by the International Federation on the rules, laws and principles applicable to international disaster relief operations. However, States wanted to avoid supporting a process that could lead to the creation of a new body of rules of international law, parallel to international humanitarian law. All references to the international law governing relief operations in the event of disasters were withdrawn from the text, except for those referring specifically to the Federation's International Disaster response Law Project, and they were deleted from the text and replaced by the wording "laws, rules, and principles applicable to international disaster response actions".

- Reduce the increased vulnerability to diseases arising from the stigma and discrimination and from the lack of access to comprehensive prevention, care and treatment

Many participants felt that the draft text placed excessive emphasis on reducing vulnerabilities due to the stigmatisation and other forms of discrimination of which infected persons are victims and that it did not sufficiently stress the importance of treatment and care. They consequently wished to add this point. This was the section of the Agenda for Humanitarian Action that gave rise to the liveliest debates in the Drafting Committee. Indeed, some participants wanted to delete any reference to prevention programmes designed to avoid the exchange of syringes amongst drug addicts and to encourage the distribution of condoms, while others wanted to maintain these references. Moreover, some States do not consider the right to health to be a fundamental right.

The question of the "right to health" was finally resolved with a reference to the terms of the Constitution of the World Health Organization. The latter considers the enjoyment of the highest attainable standard of health to be one of the fundamental rights of every human being without distinction of race, religion, political belief, or economic or social condition.

Resolutions

Only minor amendments were made to Resolution 1 on the adoption of the Declaration and Agenda for Humanitarian Action, to bring it into line with the wording of the Declaration.

Resolution 2 on the revision of the Regulations for the Empress Shôken Fund and Resolution 4 on the date and place of the next International Conference were adopted without debate.

The Drafting Committee adopted the resolution on the emblem, noting that two States had expressed their national positions.

All documents finalized by the Drafting Committee were adopted by consensus at the last plenary session of the Conference on 6 December 2003.¹⁵

Workshops

Conceived as fora for informal exchanges of views on contemporary humanitarian concerns, the workshops were regularly attended and aroused sustained interest throughout the Conference, a fact that confirmed the trend already observed in 1999. Numerous proposals had been submitted to the Standing Commission, which finally selected eleven of them. All were connected with the general theme of the Conference and specific points in the draft texts of the Declaration and Agenda for Humanitarian Action.

Six of the workshops were concerned with the implementation of international humanitarian law in armed conflicts (humanitarian law and the challenges of contemporary armed conflicts; children and armed conflict; biotechnology; small arms and human security; domestic implementation of the Statute of the International Criminal Court; operational challenges and the safety of humanitarian action). Two further workshops were also related to the same subject (National Societies and cooperation between civilians and military personnel; the preparation of National Societies for situations of conflict and natural disasters). Finally, others discussed different sections of the Declaration and Agenda for Humanitarian Action (HIV/AIDS: prevention, care and treatment; the fight against stigmatisation and discrimination; the participation of civil society in international partnerships to promote health). The choice of the panellists and the participants' contributions gave rise to lively and instructive discussions.

¹⁵ The resolutions of the 28th International Conference, the Declaration and the Agenda for Humanitarian Action were published in the *International Review of the Red Cross*, *op. cit.* (note 2), pp. 885-915.

Pledges

As in 1999,¹⁶ the 28th International Conference gave participants an opportunity to make individual pledges alongside the consensus achieved in adopting the Conference resolutions. A total of 372 separate pledges have been registered. This distinct increase compared to the 27th Conference held in 1999 confirmed the participants' intention to set themselves their own specific humanitarian objectives. Even better, 64 of these 372 pledges were collective pledges, stating the intention of several participants (such as the government and the National Society in a given country or all governments or National Societies in a given region) to join forces in working towards common humanitarian goals.

Many of the pledges took the form of measures in support of the Agenda for Humanitarian Action. For instance, several governments and National Societies, as well as the ICRC, made pledges directly linked to the question of missing persons. Others made specific pledges concerning the prohibition or restriction of the use of certain weapons; disaster risk reduction or the fight against the risks linked with the AIDS virus.

In addition, a large number of governments and National Societies reiterated their commitment to certain objectives of the 1999 Plan of Action, particularly those relating to the promotion, dissemination and implementation of international humanitarian law and to the strengthening of National Societies and of their operational capacities.

The question of the emblem

The debates on the question of the emblem took place in an exceptionally serene atmosphere, given the political environment in the Middle East. Despite the differences of opinion and the fact that this issue is so emotionally charged, the attitude of moderation demonstrated by the main speakers made it possible to adopt two major resolutions by consensus, namely Resolution 5 of the Council of Delegates and Resolution 3 of the International Conference adopting the said Council of Delegates resolution.

Assessment

- A large number of delegations, both of States and National Societies, drew attention to the progress made since the last International Conference (1999), under the auspices of

¹⁶ *International Review of the Red Cross*, Vol. 81, No. 836, December 1999, pp. 826-827.

the Standing Commission, towards a comprehensive and lasting solution to the question of the emblem on the basis of draft Third Protocol additional to the Geneva Conventions, relating to the emblem. Many delegates deplored that it had not yet been possible to complete this process by adopting the draft Protocol; stated that this question should remain on the international community's agenda and expressed the wish for a diplomatic conference to be convened to examine and adopt draft Protocol III as soon as circumstances are such that there is a reasonable perspectives of success.

- The representatives of the Arab group felt that their voice had been heard. Although they reiterated their reservations about several clauses of draft Protocol III and repeated that they were against convening a diplomatic conference in the near future to adopt it, they did not question the process that was under way, nor did they oppose the consensus on the slightly amended draft resolution.
- The adoption of this resolution means that the ball is now back in the States' court, after having been returned to the Movement when the diplomatic conference scheduled for October 2000 was postponed. As Christina Magnuson, the Standing Commission's Special Representative on the question of the Emblem, emphasized in her address to the Council of Delegates, "the Movement has acquired the means to resolve a pressing problem that had threatened its unity and undermined the effectiveness of its operations, and that for more than 50 years has prevented it from achieving the full universality to which it aspires. However, despite this major progress, the edifice we seek to construct remains unfinished. It still lacks the cornerstone that only the States can lay through the adoption of the new additional protocol".
- Although it is to be welcomed that by adopting this resolution, States have once more placed the emblem issue on their diplomatic agenda and confirmed their adherence to the process under way, the text clearly does not introduce any new element that might justify hopes of reaching a conclusion in the near future. As the Permanent representative of Algeria, who was speaking on behalf of the Arab group, and the First Counsellor of the Permanent Mission of Iran commented after the Conference resolution had been adopted, the success of diplomatic negotiations on the question of the emblem thus continues to depend, today as it was in the past, on political developments in the Middle East.

- In the abovementioned intervention, the Algerian Ambassador further stated: "... the Arab group stresses its attachment to the consensus on the principle of Protocol III, provided that the emblem does not have any political, religious, ethnic, racial or regional meaning. In this context, the Arab group considers that the draft Protocol currently proposed is still under discussion and may be modified. The Arab group points out in this connection that just before the negotiation process came to a halt, it proposed that this text be modified." (unofficial translation)
- The MDA delegation, for their part, underscored the development of operational cooperation between the National Society of Israel and other components of the Movement: "The relationship between MDA and the Red Cross / Red Crescent Movement has undergone a period of intense change and growth since the last international Conference in 1999. Ties have been created and cooperation has been improved in diverse spheres of activity as a direct result of the strategic decision of the Movement to develop ties with MDA... It is the hope of MDA that the Movement will continue forward down the path it has selected so as to achieve the vital and all-important goal of universality... MDA is deeply appreciative of the efforts of both the Movement's leadership and like-minded States and National Societies to this end."

Through the resolutions adopted, the Council of Delegates and the Conference requested the Standing Commission "to continue to give high priority to securing, as soon as circumstances permit, a comprehensive and lasting solution to the question of the emblem, in cooperation with the Swiss government as depositary of the Geneva Conventions and with other concerned governments and components of the Movement, on the basis of the proposed draft Third Additional Protocol".¹⁷

Closing session of the Conference

At the final plenary session the Conference received general information on:

- the reflections made in the framework of the workshops;
- the pledges made;
- the proceedings of the Commissions and Drafting Committee.

¹⁷ Resolution No. 5 of the Council of Delegates, paragraph 6.

The Conference then adopted by consensus the resolutions submitted to it, in some cases giving explanations of the vote.

The third plenary session ended with a closing ceremony, during which the Presidents of the ICRC and the International Federation and the Chairman of the Standing Commission took stock of the Conference and underlined its successful outcome.

Results and conclusions

Despite the difficult political environment, the Conference ran smoothly, thanks to the intensive preparatory work that had been accomplished. The specific nature and humanitarian purpose of the International Conference of the Red Cross and Red Crescent were recognized and respected by the representatives of both States and National Societies.

With regard to substance, many delegates commended the quality of the preparatory documents, the most important of which reflected a broad consultation process. This was the case in particular for the report on international humanitarian law and the challenges of contemporary armed conflicts.

With regard to the results, it should be noted first and foremost that both the Council of Delegates and the 28th International Conference adopted all their resolutions by consensus. The Conference was not divided at any moment. Even when it came to the question of the emblem, it was possible to come to a consensus on a text which was practically identical to the document the Standing Commission had proposed.

Thus:

- the Conference unequivocally confirmed the relevance of international humanitarian law in contemporary armed conflicts;
- it recognized that no one may be deprived of all legal protection and formally declared that persons who are prosecuted are entitled to a fair trial;
- with regard to the missing, the Conference confirmed the right of families to know the fate of their relatives and adopted the main conclusions of the February 2003 Conference of Experts; it also accepted the reference to armed conflicts and other situations of armed violence;
- the Conference expressed its satisfaction at the adoption of Protocol V on Explosive Remnants of War to the 1980 Convention and encouraged States to ratify it;

- it expressed its support for the ICRC's initiative concerning biotechnology, weapons and humanity, and invited States to work with the ICRC to develop a ministerial-level declaration to this effect;
- it underlined the need to minimize the impact of disasters as far as possible by implementing disaster risk reduction measures and improving preparedness and response mechanisms;
- it underlined the need to reduce the increased vulnerability to diseases that arises from stigmatisation and discrimination and the lack of access to comprehensive prevention, care and treatment;
- it welcomed the study carried out by the International Federation on the role of the National Societies as auxiliaries to the public authorities in the humanitarian field;
- finally, the Council of Delegates and the Conference recognized the progress made since 1999 towards a comprehensive and lasting solution to the question of the emblem, on the basis of draft Protocol III, and mandated the Standing Commission to continue its work with a view to implementing that solution as soon as circumstances permit.

By adopting all its resolutions by consensus, by unequivocally reaffirming the relevance and binding force of international humanitarian law for the armed conflicts of our time, and by expressing its support for efforts to continue and develop humanitarian action based on the Fundamental Principles of the Red Cross and Red Crescent, the Conference succeeded in rising above divisions and controversy. It gave the world the message of unity that was expected of an international conference convened under the symbols of the red cross and red crescent.

Everything will now depend on how States, National Societies, the ICRC and the International Federation will follow up on these resolutions. The measures taken to ensure that follow-up will very largely determine the extent to which the results obtained at the statutory meetings can be transformed into concrete action to efficiently strengthen the protection of victims of war and other situations of armed violence, natural disasters, epidemics and the other scourges afflicting humanity.

Livres et articles

Books and articles

Récentes acquisitions faites par le Centre d'Information et de Documentation, CICR
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