

*REAFFIRMATION AND DEVELOPMENT
OF INTERNATIONAL HUMANITARIAN LAW
APPLICABLE IN ARMED CONFLICTS*

**DRAFT ADDITIONAL PROTOCOLS TO THE
GENEVA CONVENTIONS**

BRIEF SUMMARY

As announced previously, the ICRC has drafted two Additional Protocols to the Geneva Conventions of 12 August 1949. These drafts are to be the basic working documents of the Diplomatic Conference to be held in Geneva from 20 February to 29 March 1974, and to which all signatories of the Conventions have been invited.

Prior to this Conference, the drafts are to be considered by the National Red Cross, Red Crescent and Red Lion and Sun Societies meeting in Teheran at the next International Red Cross Conference. In view of this, the ICRC has recently sent a short summary of the drafts to those Societies, pending a more detailed analysis which the ICRC will be publishing shortly.

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In the past hundred years, the International Committee of the Red Cross has produced the Geneva Conventions for the protection of war victims, a paramount factor of civilization and humanity in the world.

In 1949, the Conventions were minutely revised and improved. Today they constitute the most recent and complete code to protect

human beings in case of armed conflict. Yet they are far from covering the whole gamut of human suffering and need to be supplemented by further agreements. The ICRC was asked to do so by the last two International Conferences of the Red Cross, held in Vienna in 1965 and in Istanbul in 1969.

The ICRC responded by launching into work which, with the very active co-operation of government experts and Red Cross experts who met in 1971 and 1972, led to two draft Additional Protocols to the Geneva Conventions of 12 August 1949. The first (draft Protocol I) relates to the protection of victims of international armed conflicts, and the second (draft Protocol II) to the protection of victims of non-international armed conflicts.

These drafts will constitute the basic documents for the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts convened by the Swiss Federal Council, the Government of the depositary State of the Geneva Conventions, and to be held in Geneva from 20 February to 29 March 1974. They will first be submitted to the XXIIInd International Conference of the Red Cross, in Teheran in November 1973.

The ICRC has also kept in touch with the United Nations and closely followed the proceedings of the General Assembly, which at every session since 1968 has adopted a resolution entitled "Respect for human rights in armed conflicts". This has been a powerful incentive to continue the work undertaken.

Problems relating to atomic, bacteriological and chemical weapons have been the subject of international agreement or discussion among governments. The ICRC therefore does not propose to raise them when submitting its draft Protocols. It will be recalled that, at several International Conferences of the Red Cross, the Red Cross as a whole has clearly expressed its disapproval of weapons of mass destruction, and urged governments to agree on the banning of the use of such weapons.

With regard to weapons known as "conventional" weapons, which inflict unnecessary suffering and indiscriminately strike civilians and combatants alike, the ICRC has, at the request of the second session of the Conference of Government Experts, made a study with a view to describing those weapons and their effects.

The report will be made available to any governments and institutions interested. The ICRC is prepared, should the need be felt, to pursue its research in this direction, which may lead to the convening of a special meeting of government experts to study the problem.

Here follows a brief analysis of the content of the two draft Protocols recently sent to all States parties to the Geneva Conventions of 1949 (of whom there are now one hundred and thirty-five) and to National Red Cross, Red Crescent and Red Lion and Sun Societies.

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Draft Protocol I

This comprises six Parts:

- General provisions;
- Wounded, sick and shipwrecked persons;
- Methods and means of combat—Prisoner-of-war status;
- Civilian population;
- Execution of the Conventions and of the Protocol;
- Final provisions.

Part I

The provisions of this Part concern questions relating to the application of the Protocol. They are also designed to ensure a better application of the 1949 Conventions. Article 1 clearly indicates that the Protocol in no way initiates a revision of the Geneva Conventions but, in accordance with the wish expressed by all the experts consulted, aims at supplementing them where, in view of experience with modern weapons, they have proved unequal to the dictates of humanity. Special attention is drawn to the article entitled *Appointment of Protecting Powers and of their substitute* (Art. 5), which is meant to strengthen the international mechanism provided by the Geneva Conventions so as to

guarantee impartial supervision of their application. It should also be noted that many governments and experts expressed the wish that qualified personnel be trained in order to facilitate the application of the Geneva Conventions and this Protocol. That wish has led to Article 6, which provides for the training of such personnel by the Contracting Parties. National Red Cross (Red Crescent, Red Lion and Sun) Societies will obviously be called upon to play an important part in this context.

Part II

First of all, this Part reaffirms the provisions of the Geneva Conventions regarding the treatment of the wounded, the sick and the shipwrecked. It states that such treatment shall be given to “ persons, whether military or civilian, who are in need of medical assistance and care and who refrain from any act of hostility ” (Art. 8 (a) and (b)).

This Part further supplements the Geneva Conventions on two essential points:

- first, it extends to all medical personnel, whether military or civilian, the protection hitherto enjoyed by military medical personnel and the medical personnel of civilian hospitals;
- secondly, it extends the protection enjoyed by military medical establishments and units and civilian hospitals to all installations of a medical nature. The latter are described as “ medical units ”.

It also provides for the protection of the medical mission.

Lastly, an attempt has been made to improve the identification and marking of personnel, units and means of medical transport by having recourse to the most modern techniques. Marking and identification systems are dealt with in the annex to the draft Protocol.

Part III

This Part comprises two Sections. The first deals with *methods and means of combat*, and the second with *prisoner-of-war status*.

Section I lays down rules of behaviour which, during the fighting, combatants must respect with regard to the adverse armed forces. These rules are meant to ensure some fairness in combat and to safeguard civilians who do not take part in the hostilities. This Section states, first of all, that the right of Parties to the conflict to adopt methods and means of combat is not unlimited (Art. 33). It prohibits any recourse to perfidy and gives some examples of acts which must be considered as constituting perfidy “when carried out in order to commit or resume hostilities” (Art. 35). It reaffirms the safeguard of an enemy *hors de combat* in a rule which forbids the killing, wounding or torturing of an enemy who, having laid down his arms or no longer having any means of defence, has surrendered (Art. 38).

Section II, which consists of only one Article (Art. 42), extends the number of persons who, in case of capture, should have the benefit of prisoner-of-war status. By virtue of this provision, members of resistance movements would enjoy prisoner-of-war status so long as those movements fulfilled certain conditions.

Part IV

The principal aim of this Part is to strengthen the *protection of the civilian population*. It deals with the most important aspects of immunity from the effects of hostilities. After reaffirming the rule that the Parties to the conflict shall confine their operations to the destruction or weakening of the military resources of the adversary (Art. 43), the draft mentions various examples of the application of that rule: prohibition against attacks on the civilian population as such; prohibition against indiscriminate or terroristic methods such as area bombardment (Art. 46); the limitation of attacks to strictly military objectives (Art. 47), etc. The purpose of these rules is to prohibit the practice of indiscriminate bombing which, during the Second World War and subsequent armed conflicts, made so many victims among the civilian population.

To enable the population to survive and to avoid anything that might cause refugees to wander about, aimless and destitute, the draft provides that indispensable objects—food, crops, livestock, etc. (Art. 48)—and works or installations containing danger-

ous forces—dams, dykes and nuclear generating stations (Art. 49)—shall enjoy complete immunity from attack and destruction of any kind. Special agreements recognizing or conferring on certain localities a non-defended or neutralized status are based on the “open city” practice (Art. 52 and 53). Civil defence may be carried out both in zones of military operation and in occupied territories (Art. 55 and 56), and two proposals are made regarding an international distinctive civil defence emblem (Art. 59).

Nor does the draft overlook other important matters such as relief (Art. 60 to 62) and the treatment of persons in the power of a Party to the conflict (Art. 64 to 69). Pursuant to resolution XXVI of the XXIst International Conference of the Red Cross, the draft has broadened the nature of permitted relief and has extended entitlement to the entire civilian population. Humane treatment is to be provided for persons (children, women and refugees) still insufficiently protected from arbitrary action on the part of the belligerents.

Part V

Section I of this Part embodies provisions relating to the implementation of the Geneva Conventions and the Protocol. Article 71, based on a suggestion by Red Cross experts, concerns the employment in the armed forces of qualified legal advisers who shall ensure that humanitarian law is appropriately taught and applied. Article 72 reaffirms the obligation to disseminate the Geneva Conventions and the additional rules as widely as possible, in time of peace as in time of armed conflict. The ICRC knows that in this regard it can continue to rely on the active co-operation of National Red Cross Societies.

Section II, entitled *Repression of Breaches of the Conventions and of the present Protocol*, supplements the penal provisions of the Geneva Conventions, in accordance with the views of the experts consulted.

Part VI

The final provisions relate mainly to questions of form (signature, ratification, registration, etc.) such as appear in any inter-

national legal instrument. Some articles, however, deal with critical matters such as reservations (Art. 85) and denunciation (Art. 87).

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Draft Protocol II

This draft comprises eight Parts:

- Scope of the Protocol;
- Humane treatment of persons in the power of the parties to the conflict;
- Wounded, sick and shipwrecked persons;
- Methods and means of combat;
- Civilian population;
- Relief;
- Execution of the Protocol;
- Final provisions.

The Geneva Conventions of 12 August 1949 contain only one article applicable in non-international armed conflict: common Article 3, which provides fundamental guarantees for all victims of such conflicts and a legal basis for the offer of services by impartial humanitarian bodies, has made it possible to improve the lot of persons affected by conflicts of that kind. It has nevertheless proved inadequate in several respects—particularly in regard to the treatment of the wounded and the sick and persons deprived of freedom. All the experts consulted considered it necessary to develop the rules applicable in non-international armed conflicts, and that is the purpose of the draft Protocol.

It should be pointed out that this draft is not meant to replace common Article 3, which continues to hold good. Common Article 3 and Protocol II would co-exist independently. Moreover, their scope would not be entirely identical: while common Article 3 applies to all non-international armed conflicts, the Protocol would

apply to conflicts of some intensity, as indicated in draft Article 1 entitled *Material field of application*. According to the second paragraph of that article, the Protocol would not apply to situations of internal disturbances and tensions.

Draft Protocol II restates numerous rules from the Geneva Conventions, adapting them to the requirements of non-international armed conflicts. It is also directly based on draft Protocol I, particularly in regard to the wounded and the sick, methods and means of combat, and the protection of the civilian population. But it does not repeat all the detailed rules contained in draft Protocol I, thereby complying with the desires of experts who earnestly stressed the need to bear in mind special fighting conditions in the context of a non-international armed conflict.

The purpose of draft Protocol II is, on the one hand, to protect the population of a High Contracting Party in whose territory a non-international armed conflict takes place against arbitrary action by the parties to the conflict which have the population in their power and, on the other hand, to protect the population against the effects of hostilities, e.g.:

- Persons who do not take part or who have ceased to take part in hostilities shall in all circumstances be treated humanely (Art. 6). If their liberty is restricted, they shall have decent internment or detention conditions (Art. 8). The wounded and the sick shall receive the care that their state of health requires (Art. 12);
- The armed forces shall abide by certain rules of behaviour in order to ensure fair combat (Art. 20 to 23), and they shall respect the civilian population (Art. 24 to 26).

The purpose of the draft Protocol is exclusively humanitarian: it concerns the human being, the moral conduct which should be adopted with regard to him and the treatment to which he is entitled. Its application would entail no change in the legal status of the parties to the conflict.

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These are the proposals which will be put first to the Red Cross world and then to governments.

Owing to the armed conflicts which, alas, continue to occur, and the development of the forms and techniques of war, it is imperative to adapt the Geneva Conventions to new circumstances.

National Societies, which have steadily supported the ICRC's efforts in this sphere, now have a vital role to play in ensuring the successful outcome of this generous undertaking. At the same time as they continue to proclaim their ardent wish to see peace reign and to contribute thereto by their actions, they should remind governments and public opinion in their respective countries of the urgent need to reaffirm and develop international humanitarian law.
