RESISTANCE MOVEMENTS AND INTERNATIONAL LAW

by W. J. Ford

Pursuing its attempt, one of real interest, to adapt certain texts of international law to present conditions, the World Veteran's Federation convened in Paris in February 1967 a consultative group of experts which included Mr. C. Pilloud, Director at the ICRC. A most interesting exposition was made on that occasion by Dr. W. J. Ford of the Netherlands, which greatly facilitated the discussions.

With the author's kind permission and with the agreement of the WVF, the International Review *has pleasure in publishing the main portions of this study which appears for purposes of reference.*

The group of experts arrived at certain conclusions and made a series of recommendations which it submitted to the Executive Board of the WVF. These were notably that the WVF proposes producing a clear and concise analysis of the international Conventions applying to resistance movements together with a commentary. This document should be widely disseminated both amongst the WVF and its members and institutions interested in such problems. It pointed out that the 1949 Geneva Conventions relative to the treatment of prisoners of war and to civilians do not entirely cover every situation and it was suggested that the WVF assembles documentation on the application or non-application to resistance movements of those two Conventions, since they entered into force. It also recommends that the conditions laid down in article 4 of the Convention relative to the treatment of prisoners of war be analysed in the light of the evolution in military technical methods. (Ed.).

10. " Armed conflicts not of an international character "

Are the Geneva Conventions of 1949, which relate to international conflicts, also applicable in the case of an " armed conflict not of an international character "?

The answer to this question will be found in the identically worded Article 3 of the four Geneva conventions, part of which reads:

" In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

. . . . . "

This Article contains rules of positive law that may be invoked by members of resistance movements in the case of an armed conflict not of an international character. It lays down a set of minimum

rules for them in such a conflict, which rules should be observed in all circumstances. So the rules of Article 3 are not subject to reciprocity, which is very important, especially in an internal armed conflict in which hatred and embitterment may rise high.

The Diplomatic Conference was faced with the problem of defining " armed conflicts not of an international character ". It was clear that mutiny or operations by bandits could not be considered as civil war. But at what moment did a mutiny cease to be mutiny and become a civil war?

There were two camps. One group of delegates maintained that an accurate definition of an " armed conflict not of an international character " would have to be incorporated in the text of the Convention. Other delegates held the view, which eventually prevailed, that no definition should be given. The advantage of not giving any definition at all is that the risk of giving too narrow a definition is avoided. Different kinds of conflict, such as civil wars, colonial conflicts, insurrections, irrespective of their size and extent, can be brought under the scope of the approved text. These conflicts have certain characteristics in common with wars. But there are differences. It would hardly be possible to make all internal disturbances subject to Article 3. Persons who take up arms against their government are not a High Contracting Party. But in Article 3 there is strong emphasis on the humanitarian element. Article 3 clearly demonstrates the wish to ensure that a minimum measure of protection be given in all circumstances.

Article 3 does not contain any indication of the moment at which it should be applied. It may safely be assumed that parties to an armed conflict not of an international character that is of any importance as far as its duration and extent are concerned would declare Article 3 applicable. Whether it had been possible to set up a governing body in the rebels' area and whether the rebels were gaining on the enemy would be important points. Once Article 3 has been declared applicable, its provisions will have to be strictly observed.

The government's legal position may not be undermined by the application of Article 3. From the application of Article 3 it may only be inferred that the internal conflict has got out of hand and involves more than just maintaining order. If such is the case,

application of Article 3 is called for to prevent a further increase in the number of victims.

Article 3 occupies a very special position in the Geneva Conventions. According to traditional concepts, the rights of belligerents are accorded only to subjects of international law, i.e. to States recognized as such by the international community of nations. According to these concepts only States can conclude agreements like the Geneva Conventions and only States can derive right sand obligations from them. This would mean that in an armed conflict not of an international character the insurgent party could operate as belligerents only if it was internationally recognized. The novelty of Article 3 is that an insurgent party is granted certain minimum rights on the ground of humanitarian considerations, even if it is not recognized. But the final paragraph of Article 3 expressly provides with respect to the foregoing provisions that

> " The application of the preceding provisions shall not affect the legal status of the Parties to the conflict ".

The purpose of this provision is to remove the fear that application of Article 3 would be interpreted as conferring the status of belligerent on the opposing insurgent party. A government is allowed to defend the existing order against rebels. It is for the government to decide what measures to take. It may institute criminal proceedings against rebels.

It follows that even if the insurgent party may claim a certain minimum protection under Article 3 in an armed conflict not of an international character, it is not considered as a belligerent party. It retains its position or rather its lack of legal status that would confer on it the rights and obligations of a belligerent party. It is quite clear why the insurgent party still enjoys a certain measure of protection: the introduction of humanitarian considerations in conflicts that by their very nature are often among the most cruel.

The tendency that is apparent from the inclusion of Article 3 in the Geneva Conventions is very significant. The more so since the number of armed conflicts not of an international character in politically unstable areas seems to be increasing. If this development should manifest itself, Article 3 should be given an even more prominent place.

11. " Humanitarian principles common to civilized nations "

The best way of applying the humanitarian principles common to civilized nations to political prisoners, in so far as the latter are not already expressly protected by conventions, has been a moot point for some considerable time. According to the 1953 report of the Commission of Experts for the Examination of the Question of Assistance to Political Detainees, instituted by the I.C.R.C., the commission considered that it was the task of the Red Cross to relieve human suffering not only " in the case of international warfare, but also in that of civil war or disturbances ".

> " It (the commission) esteemed that it should not take into account the origin of the sufferings endured but merely record them and seek the means for their alleviation . . ." (page 2).

This idea, fundamental to the Red Cross, had been expressed on an earlier occasion, viz. at the Xth International Red Cross Conference in Geneva in 1921, when the following statement was drawn up:

" 1. The Red Cross, which stands apart from all political and social distinctions, and from differences of creed, race, class or nation, affirms its right and duty of offering relief in case of civil war and social and revolutionary disturbances.
The Red Cross recognizes that all victims of civil war or such disturbances are, without any exception whatsoever, entitled to relief, in conformity with the general principles of the Red Cross.

2. In every country in which civil war breaks out, it is the National Red Cross Society of the country which in the first place is responsible for dealing, in the most complete manner, with the relief needs of the victims; for this purpose it is indispensable that the Society shall be left free to aid all victims with complete impartiality."

During the XVIth International Red Cross Conference in London in 1938, the I.C.R.C. and the National Red Cross Societies were urged to ensure the application of the humanitarian principles

of the Geneva Convention of 1929 and the Xth Hague Convention of 1907. Attention was drawn to:

" . . . humane treatment for all political prisoners, their exchange and, as far as possible, their release . . ."

The point of view adopted by the two International Red Cross Conferences with respect to the treatment of prisoners in " civil war and social and revolutionary disturbances " was shared by the XVIIth International Red Cross Conference at Stockholm in 1948. At this conference attention was drawn to:

". . . the importance of applying humanitarian principles to persons prosecuted or detained for political reasons . . .".

It was in that year that the four conventions were concluded, all containing the same Article 3—referred to above—which prohibits acts that offend " personal dignity ". The article provides for intervention if necessary by the I.C.R.C.:

" An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the parties to the conflict ".

It is of the greatest importance that it should be made possible to set up a humanitarian body, such as the International Committee of the Red Cross, which is acceptable to all parties to the conflict. This humanitarian body can only perform its duties if it refrains from expressing any opinion whatever on the measures taken by the parties concerned. It should only do what it can to ensure that these measures are carried out with due observance of a certain humanitarian minimum. This minimum is laid down in Article 3 of all the Geneva Conventions of 1949. Humanitarian intervention does not in any way prevent the punishment of persons who have revolted against the State. The difference between the legal and the humanitarian approach is clear from the provision of Article 3 already quoted, viz.

" The application of the preceding provisions shall not affect the legal status of the parties to the conflict ".

As summed up by the Mexican delegate to the Diplomatic Conference the position is that:

"... the rights of the State should not be placed above all humanitarian considerations. But on the other hand, humanitarian action should never include any intrusion on the legal plane, nor any expression of opinion with regard to the merits or otherwise of the steps taken by the authorities in order to assure the maintenance or the re-establishment of public order.[1]"

13. Military Manuals

It will also be necessary to pay attention to the military manuals which governments have compiled for their armed forces. A few examples are given below.

France

In France a military manual was published in 1877. Its title was "Manuel de droit international à l'usage des officiers de l'armée de terre".

The Manual was based on the Brussels Declaration and contained the principal rules of the Law of War set out in a systematic fashion. It was to be used by the Army and by the Military Academies. Another military manual, entitled "Service des armées en campagne" was published in 1918. The text of the Hague Regulations of 1907 was reproduced in full in the second part entitled "Droit international". It also contained the Decree of 2 December 1910 promulgating these Regulations. In Article 2 of the Decree, the Minister of War was instructed to further the practical application of the Hague Regulations.

The Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 is referred to in the "Introduction sur l'organisation et le fonctionnement du Service de santé de l'armée de terre en temps de guerre" of 1955.

Germany

In 1866 when there was great likelihood of war breaking out between Prussia and Austria, Bluntschli published a codex of the

[1] Commission of Experts for the study of the question of the application of humanitarian principles in the event of internal disturbances.

Law of War entitled " Das moderne Kriegsrecht der zivilisierten Staten als Rechtsbuch dargestellt ". Bluntschli compiled this codex —the first of its kind in European literature—to propagate the knowledge of the Law of War, particularly among the forces. When compiling his codex Bluntschli was guided to a considerable extent by the American Instructions, which are discussed below. According to Bluntschli privileged combatant are: (1) partisans and volunteer corps that have been ordered or authorized to carry out their operations or that operate as militarily organized troops in the belief that they are fully entitled to do so, and (2) the civilian population that takes up arms " en masse " to defend its country.

In 1902 the German General Staff published a manual entitled " Kriegsbrauch im Landkriege ". The army is considered to be composed of:

(a) the regular army proper, including militias, home guards, the national guard and ' Landsturm ', which, however, are only incorporated into the regular army when mobilization takes place;

(b) armed forces that have no organizational link with the army.

According to the manual, the population of a certain territory cannot be denied the natural right to resist the enemy en masse. The population was obliged to observe the customs of war, to be recognizable as combatants, to offer resistance in an orderly fashion by placing themselves under the command of responsible leaders and to organize themselves in a military manner. These conditions go far beyond the requirements contained in Article 2 of the Hague Regulations.

Articles 1 and 2 of the Hague Regulations are recognized as the formulation of the prevailing law of war in paragraph 3 of the " Kriegssonderstrafrechtsverordnung " of 1938. Paragraph 3 also deals with " Freischärlerei ". A " Freischärler " is:

> " wer, ohne als Angehöriger der bewaffneten feindlichen Macht durch die völkerrechtlich vorgeschriebenen äusseren Abzeichen der Zugegörigkeit erkennbar zu sein, Waffen oder andere Kampfmittel führt oder in seinem Besitz hat in der Absicht, sie zum Nachteil der deutschen oder einer verbündeten Wehr-

macht zu gebrauchen oder einen ihrer Angehörigen zu töten, oder sonst Handlungen vornimmt, die nach Kriegsbrauch nur von Angehörigen einer bewaffneten Macht in Uniform vorgenommen werden dürfen."

Anybody acting as " Freischärler " (guerilla) will be punished with death. The true value of the declaration concerning " La sauvegarde et l'empire des principes et du droit des gens ", quoted in the foregoing chapter on The Hague Peace Conferences (1899 and 1907) will be clear from the text quoted above.

Netherlands.

In Chapter XIII of the " Voorschrift Velddienst " (Rules for service in the field) it is stated that in time of war two groups can be distinguished in the enemy population, viz. the armed forces and the peaceful civil population. War is waged exclusively with the enemy armed forces. The belligerents mentioned in Article 1 of the Hague Regulations are regarded as belonging to the armed forces. No mention is made of the population of non-occupied territory who voluntarily take up arms on the approach of the enemy and fight the invading troops.

Volume III of the " Verzameling van gemeenschappelijke verordeningen voor de krijgsmacht " (collected common ordinances for the armed forces) was published in 1956. Acts and decrees concerning international law are included in full, e.g. the Hague Regulations of 1899 and 1907 and the Geneva Convention relative to the Treatment of Prisoners of War and the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949.

U.S.S.R.

The criminal code of the largest of the Soviet Republics, the Russian Soviet Federal Socialist Republic, does contain a few rules of the law of war but it lacks a criterion for the legal status of belligerents. In the special part of the code, under the heading crimes against the state, mention is made of persons participating in an armed revolt, bandits and saboteurs. Their acts are judged according to national criteria and they are punished under the provisions of domestic law.

United Kingdom.

The British Government commissioned Edmonds and Oppenheim to compile a military manual. It was published in 1912 under the title " Land Warfare ". The manual deals with the provisions of the Hague Regulations of 1907. The full text of the Regulations is added as an annex.

In Article 17 it says that two categories can be distinguished in the enemy population, viz. the armed forces and the peaceful civil population. It is pointed out in the manual that one cannot enjoy the privileges of both categories simultaneously (Article 35). So everyone will have to decide definitively to which category he wishes to belong.

Under the provisions of Article 20 the following groups are regarded as belonging to the armed forces in addition to the army:

(a) militias and volunteer corps not forming part of the army, if they meet the requirements of Article 1 of the Hague Regulations, and

(b) the inhabitants of a territory not yet invaded, described in Article 2 of the Hague Regulations.

a. The four requirements laid down in Article 1 of the Hague Regulations are strongly emphasized. According to Article 22 the requirement of subordination is met if the militias or volunteer corps are commanded by an officer or a person in authority. It is specifically added that recognition by the State is not essential. This was already clear from Article 1 of the Hague Regulations.

Article 25 deals with the fixed badge (sign) that must be recognizable at some distance. This distance is not further defined. According to the British manual it must be assumed:

> ". . . that the silhouette of an irregular combatant in the position of standing against the skyline should be at once distinguishable from the outline of a peaceful inhabitant, and this by the naked eye of ordinary individuals, at a distance at which the form of an individual can be determined."

It is not necessary to inform the enemy of the distinctive sign, although it is considered useful to do so (Article 25). The third

condition is that members of resistance movements wear their arms openly. If they carry hidden revolvers, hand grenades or daggers, they may lose the status of privileged combatants (Article 26). Finally, irregular combatants must carry out their operations in conformity with the laws and customs of war. So they will have to refrain from faithlessness, cruelty to prisoners and wounded people, looting and unnecessary violence.

b. Article 29 stipulates that the inhabitants mentioned in Article 2 of the Hague Regulations must carry their arms openly and that their operations must be in conformity with the laws and customs of war. The last sentence of Article 29 reads:

> " It must, however, be emphasized that the inhabitants of a territory already invaded by the enemy who rise in arms do not enjoy the privileges of belligerent forces ".

The compilers' views are not set out in the manual. But in his book " International Law "—reprinted in 1912—Oppenheim states that the levy en masse of the inhabitants of a territory already invaded by the enemy differs from that dealt with in Article 2 of the Hague Regulations. Rules for a rise in arms intended to liberate invaded territory are not given in this article. Oppenheim concludes from this that the old rule of the law of war that those taking part in such a levy en masse shall not be treated as prisoners of war when captured, remains operative.

It may reasonably be inferred from Article 30 of the British manual that Edmonds and Oppenheim realized the uncertainties to which the final provision of Article 29 might give rise. Indeed, Article 30 provides that the rules relative to the levy en masse " should be generously interpreted ", for:

> " The first duty of a citizen is to defend his country, and provided he does so loyally he should not be treated as a marauder or criminal ".

Article 37 stipulates that officers and soldiers shall not judge the legal status of prisoners. Execution without trial is strictly forbidden by International Law.

The whole of the third chapter of Edmonds and Oppenheim's manual, some articles of which are discussed above, was included in the Manual of Military Law of 1914.

In 1958 Lauterpacht and others revised the manual of military law, entitled " The law of war on land ", published by the War Office. Much attention was paid to the Geneva Conventions of 1949, which were ratified by the United Kingdom on 23 September 1957. The Convention relative to the Treatment of Prisoners of War has been added to the Manual of Military Law as appendix XIII.

Under the title " The Armed Forces " Article 89 states that " privileged combatants " includes:

> " IV—volunteers who are members of organized resistance movements belonging to a party to the conflict and operating within or outside their own territory, even if such territory is occupied by the enemy, provided that they fulfil the four conditions laid down under (ii) above ".

In a footnote it is stated that the inclusion of resistance movements in the " armed forces " category and the conferment of the status of " lawful combatants " on members of resistance movements subject to the fulfilment of the four conditions are the result of an innovation introduced by the Convention relative to the Treatment of Prisoners of War. According to present-day views the continuation of the fighting by resistance movements, even after the occupation of the territory has been completed, should not be regarded as illegal. According to the same footnote, complete occupation in modern warfare may ". . . be but an episode in a campaign in which the legitimate government, though compelled to withdraw from the national territory, continues to fulfil its responsibilities in conjunction with its allies ".

This was the case in the Second World War, when many countries were occupied by the German army for several years. It is expressly stated in the Manual of Military Law that citizens cannot be deprived of their right to organize themselves spontaneously and attack the enemy if their legitimate government has succeeded in securing a foothold in the occupied territory. The case is cited of the French Forces of the Interior, which the Supreme Commander of

the Allied Expeditionary Force regarded as forming part of his forces.

The conditions referred to in paragraph 89 IV are those given in the second paragraph of Article 4 of the Convention relative to the Treatment of Prisoners of War, which is partly quoted above. Any combatants such as spies and saboteurs, who do not fulfil these conditions are treated as unprivileged combatants. According to paragraph 96 this means that they need not be looked upon as prisoners of war when they are captured, although they are entitled to the minimum rights specifically accorded to spies and saboteurs under Article 5 of the Convention relative to the Protection of Civilian Persons in Time of War, referred to above.

Paragraph 104 provides that officers and soldiers are not to judge the status of prisoners:

> ". . . their duty is the same: they are responsible for his person and must leave the decision of his fate to the competent authority. No law authorizes them to have him shot without trial, and international law forbids summary execution absolutely. If his character as a member of the armed force is contested, he should be sent before a court competent to enquire into the matter. P.O.W. Convention, Article 5 provides that in case of doubt as to whether a person who has committed a belligerent act and has fallen into the hands of the enemy is entitled to be treated as a prisoner of war, he enjoys the protection of the Convention until such time as his status has been determined by a competent tribunal. Moreover, the same Convention lays down that even with regard to conflicts which are not of an international character and in connection with which persons who have been captured are not entitled to be treated as prisoners of war, the parties to the conflict must observe certain provisions of a fundamental character. One of them prohibits ' the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.' "

The passage in '. . .' in the above quotation is the literal rendering of Article 3 (d) of the Convention relative to the Treatment of Prisoners of War.

United States.

The Instructions for the Government of Armies of the United States in the Field were published in 1863 by the Ministry of War. Although these instructions were not the result of some international conference but had been drafted to serve as directives in the American Civil War, they have had a tremendous effect on the further development of the law of war. It might therefore be useful to discuss these Instructions in some detail.

Under the provisions of Article 51 of the Instructions the inhabitants of a territory not yet occupied may resist the enemy after having been authorized to do so. Persons taking part in a levy en masse will be regarded as prisoners of war when they are captured. But according to Article 52 of the Instructions the inhabitants of an occupied territory do not have the right to resist. If they do resist, they forfeit the protection otherwise accorded to them under the law of war. The provision of Article 51 of the Instructions can be found in the Brussels Declaration (Article 10) and the Hague Regulations (Article 2) but the need for authorization has been dropped. In compliance with the desire of the smaller States not to accord any rights to an invader, Article 52 was not incorporated in the Brussels Declaration nor in the Hague Regulations.

In Article 82 it is stipulated that captured combatants will not be regarded as prisoners of war if they have not been authorized to carry out their operations, if they are not members of the regular enemy army and do not continue to take part regularly in the fighting. Compared with Article 9 of the Brussels Declaration and Article 1 of the Hague Regulations, the Instructions are not favourably disposed towards volunteer corps, reflecting perhaps the times in which they were drafted.

Persons who have risen in arms against the occupying power do not acquire the privilege of being held as prisoners of war (Article 85). Lieber looked upon these resistance fighters as " war rebels ", taking the word " rebel " in its original meaning, i.e. someone who returns to the war after it has already been won by the enemy. According to Lieber the " rebel "—a person who renews the war, the fighting—must be treated with the utmost severity, since he exposes the occupying army to new dangers and

prevents the cruelty of war from being mitigated. On comparing the present situation with the views held in the days of Lieber, one can clearly see that there is a tendency to be more lenient towards " war rebels ".

In 1914 the Instructions were replaced by the Rules of Land Warfare, in which everything vital in the Instructions was incorporated. This manual, which was published by the U.S. Ministry of War, contains the texts of a number of treaties, one of which is the Convention with respect to Laws and Customs of War on Land of 1907.

Chapter III is devoted to the armed forces of the belligerent parties. In Article 29 the enemy population is divided up into two groups viz. the armed forces and the peaceful civilian population, each of which have their specific rights and obligations.

Article 30, which corresponds with Article 1 of the Hague Regulations, stipulates who shall be regarded as combatants. Two categories of volunteers are distinguished, viz. those that have united with the regular army and those that have not done so, with the result that the latter must fulfil the four conditions set down in Article 30. Under Article 32 an officer or a civilian in authority can command the volunteers as someone who is responsible for his subordinates. Articles 33, 34 and 35 relate to the distinctive sign, carrying arms openly and the observance of the law of war, respectively.

Article 36 is identical with Article 2 of the Hague Regulations and deals with the levy en masse. Two inferences may be drawn from this Article, viz.

1. that no belligerent State is entitled to declare that it will look upon persons taking part in a levy en masse as criminals (Art. 37);

2. that if the inhabitants of a territory not yet occupied have the right to resist the enemy under certain conditions, it may conversely be reasoned that the inhabitants of an occupied territory do not have that right; if the latter do take up arms against the enemy, they cannot acquire the privileges of being held as prisoners of war (Art. 39).

The status of prisoners must be decided on by legal process (Art. 40). Summary executions are unlawful.

On 18 July 1956 the Department of the Army published a Field Manual under No. 27-10 to replace the edition of 1 October 1940. In Chapter I (paragraph 7 of section 1) it is stated that the law-making treaties regarding the conduct of warfare are only formally binding on the countries that have ratified these treaties or have acceded to them. Materially, however, international public opinion views the rules embodied in these treaties as generally accepted principles of the law of war:

> " For these reasons the treaty provisions quoted herein will be strictly observed and enforced by United States forces without regard to whether they are legally binding upon this country ".

In Chapter 3 (paragraph 60 of section 1) two categories of enemy inhabitants are distinguished, viz. members of the armed forces (" persons entitled to treatment as prisoners of war upon capture ") and the civilian population. Both categories have clearly defined rights and obligations. One cannot belong to both categories at the same time.

The text of Article 4 (cited above) of the Convention relative to the Treatment of Prisoners of War is given in full in paragraph 61 (" Prisoners of War defined "). It enumerates the persons who will be regarded as prisoners of war when captured. In Article 70 it is expressly stated that this enumeration is not exhaustive (". . . and does not preclude affording prisoner-of-war status to persons who would otherwise be subject to less favourable treatment "). Paragraph 64 of Chapter 3 deals at length with the four conditions to be fulfilled by members of militias and volunteer corps. The status of captured persons will have to be decided on by a " competent tribunal ". According to paragraph 71 of section 1 a competent tribunal is:

> ". . . a board of not less than three officers acting according to such procedure as may be prescribed for tribunals of this nature ".

If a competent tribunal rules that certain captured persons are not prisoners of war, they are regarded as " protected persons "

within the meaning of Article 4 of the Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, viz.

> ". . . those who, at a given moment and in any manner whatsoever find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals ".

The text of Article 3 (quoted above) which occurs in all four Geneva Conventions of 1949 concerning an armed conflict not of an international character occurring in the territory of one of the High Contracting Parties is given in full in paragraph 11 (chapter 1, section 1) under the heading " Civil War ".

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It seemed useful to examine a number of military manuals in this study, because they reflect official views on the position of members of resistance movements under international law. The inference to be drawn from these manuals is that members of resistance movements may only be regarded as privileged combatants under certain conditions. If they are not privileged combatants, they still have certain rights. One is that they may not be punished without a trial. Their status must be decided on by a tribunal.

(To be continued).

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