

DIPLOMATIC CONFERENCE

ON THE REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS

The thirty-third plenary meeting under the presidency of Mr. Pierre Graber, Federal Councillor and Head of the Federal Political Department, denoted the end of the third session of the Diplomatic Conference on the Reaffirmation and Development of Humanitarian Law in Geneva on 11 June 1976.¹

The Conference decided that its fourth session would begin on 17 March 1977; the first three weeks will be devoted to the work of the Drafting Committee, the main Committees resuming their meetings with effect from 15 April, and the session will end on 10 June 1977.

In planning measures designed to accelerate their work, representatives showed their desire that at the fourth session the Conference would finally adopt the two draft additional Protocols to the 1949 Geneva Conventions.

President Graber pointed out that it was more imperative than ever that the evils of armed conflicts should be limited and he requested that the provisions of the Geneva Conventions should be respected everywhere and in all circumstances. He also requested the States participating in the Conference to have regard forthwith for the additional rules drawn up so far. Mr. Graber concluded with an appeal for generous aid for all the victims of hostilities throughout the world, without any distinction.

¹ See *International Review*, May 1976.

At its plenary meeting the Conference took note of the reports of its Committees.

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Mr. Graber delivered the following statement at the press conference:

Some may find it surprising that delegations have been unable to finish the work for which this international meeting was convened, namely the final adoption of the Additional Protocols to the four Geneva Conventions of 1949.

The reason for this should not be sought in any lack of desire on the part of the participants, as they resumed their activities on 21 April, to reach a successful conclusion, or in any lack of assiduity.

In fact, every committee and every working group kept hard at it. An average of 52 meetings were held each week. You will recall that the third session began in mid-stream, so to speak, with 70 articles still to be considered out of a total of 140 in the two draft additional Protocols.

During the present session, which was three weeks shorter than the previous one, 33 articles were in fact adopted in committee, plus 13 articles of the Technical Annex.

By what yardstick should this result be judged? Although the 107 States taking part in the Conference have different views on the difficult questions discussed here, the articles adopted, taken as a whole, are an important contribution to the development of humanitarian law.

This is true, for example, so far as humanitarian measures are concerned, of the solutions reached in the matter of medical air transport, which is sometimes of decisive importance to the wounded and the sick. They show considerable progress over the position in 1949. The Technical Annex, by improving the facilities available in future to medical and civil defence personnel, is also of primary importance to the same categories of persons.

The Conference has, in addition, asserted the right of families to be informed of the fate of their relatives who have either died or disappeared during an armed conflict. This is a major achievement.

In the field of penal sanctions, the Conference has succeeded in drawing up a list of violations of the provisions of the Protocol and of other basic rules which should be regarded as grave breaches. An innovation in humanitarian law closely related to the work of the previous session on the protection of civilian populations was the inclusion,

in the list of breaches, of the rules under which that protection is provided.

We must also, of course, consider some articles which, although not having quite the same impact on public opinion as others, nevertheless clearly reflect the effort made: here I would refer to the rules covering the behaviour of combatants towards each other. One of the basic rules (prohibition of declarations of no quarter) goes back to the Hague Conferences at the beginning of the century. That rule, in conjunction with the provision concerning the safeguard of an enemy *hors de combat*—and the need for it becomes clearer every day in the light of the sanguinary events familiar to us all—has been, through the action of our Conference, reaffirmed and developed for the whole international community, and the new countries are themselves participating directly in this reaffirmation, thus underlining the value of the work accomplished.

This account, necessarily brief, must also include a reference to the provisions already adopted in the Committees in the sphere of non-international conflicts, even though some delegations still oppose draft Protocol II on grounds of sovereignty.

Quite apart from the results achieved, the discussions have been instrumental in bringing out the various points of view on other matters, often reducing the distance between them, and in giving the work of the fourth session a good starting point. I would refer here to the discussions concerning the safeguards to be provided for civil defence personnel in case of armed conflict, and, in particular, to the discussions on the basic question of the status of guerrillas. On this point, where a successful outcome appeared to be within reach, the Committee concerned finally preferred not to take a vote, in the hope that consultations and further reflection between now and the fourth session will pave the way for a consensus at that session. Indeed the consensus procedure, which in general has been preferred by delegates, necessarily requires more time, but it ensures more effective protection through the broader recognition it renders possible.

Let us not be taken in by fine words. A constructively objective attitude imposes strict appraisal of the effort that remains to be made. Some thorny problems still lie ahead. I have just referred to the status of guerrillas; I must also mention the chapter on the repression of breaches, the question of establishing an international inquiry commission, and such problems as *apartheid*, reprisals, the protection of petroleum instal-

lations, fundamental safeguards, and prisoners of war accused of war crimes.

We can reasonably expect that all the participating States will make the effort needed to cope with these last-named problems. Indeed, they have not shrunk from seeking compromise on problems even more difficult than those that still remain to be solved. We have full confidence that they will complete the noble task they have assumed: to reaffirm, but also to develop, humanitarian law in the light of the traumatic experiences of the recent decades. The Conference has, moreover, shown its determination to complete the task by itself taking appropriate measures to speed up its work and bring it to a successful conclusion.

As to Switzerland, the host State of the Conference, we shall do all we can during the coming months to ensure a meticulous preparation for the fourth session, in particular through the active pursuit of consultations at all the appropriate levels, and to create an atmosphere that will permit the Conference fully to carry out its mandate.

There is no alternative to humanitarian law. Only men have the ability to remedy the evils engendered by their conflicts. It is their good fortune that, against themselves, they can appeal to their conscience and to their ceaseless desire to make the world more habitable.

Nor is there any alternative to the need for establishing juster and more equitable relations among men. Humanitarian law is equally subject to that requirement, which we must all satisfy, day by day, in every field of human activity—political, social, economic or monetary.

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In a forthcoming issue we shall give an analytical review of the work of the Diplomatic Conference.
