

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

Opening of the Conference

The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts opened in Geneva on 20 February 1974.¹ This Conference was convened by the Swiss Government and is being attended by plenipotentiary representatives of 118 States Parties to the Geneva Conventions of 12 August 1949 and Members of the United Nations, as well as by many observers for intergovernmental and non-governmental organizations. The Conference will sit until 29 March to deal with two additional draft protocols to the Geneva Conventions, which the International Committee of the Red Cross has drawn up with a view to supplementing existing international humanitarian law in the light of recent developments in matters of war.²

At the opening ceremony a statement was made by Mr. Pierre Graber, Vice-President of the Federal Council and Head of the Swiss Federal Political Department. He was followed by Mr. André Chavanne, State Councillor, Vice-President of the State Council of the Republic and Canton of Geneva, and Dr. Eric Martin, President of the ICRC. A message from the Secretary-General of the United Nations was read by Mr. Vittorio Winspeare Guicciardi, Director-General of the United Nations Office at Geneva. The texts of the addresses delivered are given below.

In accordance with the tradition that an eminent person from the host country is elected Chairman of the Conference, Mr. Graber was duly appointed.

Mr. Moktar Ould Daddah, President of the Islamic Republic of Mauritania, who was in Geneva, attended the opening meeting of the Conference.

¹ Plate.

² See, especially, *International Review*, October 1973.

Mr. Pierre Graber, Vice-President of the Federal Council

For the sixth time in a century, Switzerland and Geneva are privileged to welcome a diplomatic conference whose task is to relieve the sufferings of war victims. Today this concern is so widely shared that the attendance at this conference is unparalleled: 117 States and 35 international, governmental and non-governmental organizations have accepted the Federal Council's invitation and are represented here by delegates or observers. On behalf of the Government and people of Switzerland, I extend a warm welcome to all.

Your presence, and that of the numerous other distinguished persons who are attending this opening ceremony, bear eloquent testimony to the wide interest taken in this conference and in its work.

An illustrious son of Geneva, Jean-Jacques Rousseau, who wrote some admirable words about the laws of war, said: "War is not a relationship between man and man, but a relationship between States... one has the right to kill those who defend their State as long as they bear arms, but as soon as they lay down their arms and surrender, they cease to be enemies or the instrument of the enemy, and are once again just human beings, whose lives no one has any longer the right to take".

Much has changed since the eighteenth century. Very often wars have not been relationships between States; civilians, previously spared, are now exposed to the same dangers as the armed forces. But one thing remains—the human being, the simple human being, who has to be protected against his own folly. It is he who calls on us, who appeals to us as legislators. We must not disappoint him.

The opening of this Conference is the result of years of far-reaching preparatory work carried out by the International Committee of the Red Cross, with the fruitful collaboration of both governmental and non-governmental experts from many countries and of a number of international organizations, among which I am happy to mention the United Nations.

The results of this preparatory work are contained in the two Draft Additional Protocols to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, which will serve as the basis for your discussions.

I wish to pay a tribute to those responsible for drawing up these draft Protocols: the International Committee of the Red Cross and all those who, by their legal knowledge or through their familiarity with the diversity of forms that armed conflicts can take, have made it possible to carry out the very considerable and painstaking labour without which no diplomatic conference is possible.

The Federal Council learned with the greatest satisfaction of the successful conclusion of the preparatory work, and accordingly it has decided to convene this Plenipotentiary Conference, to which it has invited all the States Parties to the Geneva Conventions and all the Member States of the United Nations. In so doing the Swiss Government is carrying on a long tradition, since it had the honour of originating all the diplomatic conferences which led to the Geneva Conventions. My country considers it a very great privilege to have been able to contribute in this way to the development of this very important branch of international law. It is also an opportunity for my country to give tangible expression to its unflinching support for the work of the Red Cross.

For the same reason, the Federal Council is ready, if such action should seem appropriate, to convene a second session of this Conference at the same time next year.

International humanitarian law has come a very long way since 22 August 1864, when the plenipotentiaries of thirteen States met together in this city of Geneva and adopted, with almost no changes, the ten Articles of the First Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, prepared by Henry Dunant and Gustave Moynier. Later, legal protection was gradually extended to other categories of war victims—the shipwrecked, prisoners of war, the inhabitants of occupied zones and interned civilians. These are now included in the field of application of the four Geneva Conventions of 12 August 1949 to which almost all States are parties today. The echo of Dunant's anguished cry on the battlefield of Solferino has become amplified with time. The voice of this stubborn visionary is now heard in the furthest corners of the world. Inspired by the example of a handful of men who were guided by the conviction that they were serving the cause of humanity, States have endeavoured to codify to an ever-

increasing extent the law applicable in armed conflicts, a law with which the name of the Netherlands is so closely associated.

This century of labour does honour to the whole international community and testifies to the increasingly keen realization of the need to give better protection to the human person. But, alas, this labour is still unfinished, for the truth is that the reinforcement of the legal protection given to the victims of armed conflicts has been obtained simply in response to the extension of the suffering resulting from ever-recurring violence, and the constant development of new armaments. A comparison between certain articles of the Conventions of 1864 and 1949 is sadly revealing in this respect. In this connexion I would recall the indispensable supplementary efforts being undertaken within other bodies for the peaceful settlement of disputes and to find solutions to the complex problems of disarmament.

The four Conventions of 1949 still retain their full value today. The rules they lay down cannot be repeated too often and the need to respect them strictly cannot be over-emphasized.

The development of the methods and means of combat, and the experience gained during the wars, both international and non-international, that have followed each other without interruption during the last quarter of a century, have brought to light new forms of distress and in consequence the urgent and imperative need to develop the law at present in force and to add further provisions to the existing Geneva Conventions.

It has sometimes been said that the Geneva Conventions adopted up to now were drawn up by a relatively small group of States, most of them European, although their scope was universal from the first. At that time the international community was such that it could not have been otherwise. Today every continent is represented here. We should welcome this development, as a result of which humanitarian law will be placed on a wider basis.

Through the Geneva Conventions your forefathers saved the lives or transformed the fate of tens of millions of men. Now it is your turn. You have come here for this purpose from all over the world. You are the spokesmen of your Governments, and the cares and concerns you bring with you into this hall no doubt reflect the problems facing your countries; they bear the stamp of their

history and culture and also of the trials through which they have passed or are still passing.

May the ideal of charity, so clearly proclaimed, over and above frontiers and ideologies, by the emblem of the Red Cross, transcend this diversity and inspire you to overcome difficulties and differences. We must not lose sight of the humanitarian objective of this conference. If, today, we are still powerless to save the world from the scourge of war, at least we have the power to make war less implacable and less blind. May you succeed in reaching an agreement that will be instrumental in relieving much terrible suffering, in sparing innocent lives and in giving better protection to the weak.

That is my earnest wish as I declare open this Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

Mr. André Chavanne, Vice-President of the State Council of the Republic and Canton of Geneva

In his address to the participants in the opening ceremony, Mr. Chavanne said that it had been with considerable pleasure that the Genevese authorities had learned that an important Diplomatic Conference on Humanitarian Law would once again be held in Geneva. Everybody hoped that that law would be adapted to counter the regrettable new forms of violence afflicting humanity, and that it would make it possible, even more than in the past, to alleviate the hardship caused by that violence and to bring relief to the victims. For the citizens of Geneva, the Conference was intended to continue the work of a man who, with Jean-Jacques Rousseau, was one of their most illustrious compatriots—Henry Dunant.

It was a moving experience to re-read the memoirs of that idealist whose desire it had been, in spite of all obstacles and notwithstanding the outlook of his generation, to found the Red Cross, of which he had conceived after the battle of Solferino and which subsequently rendered such great services. It was in August 1864, at the First Congress held in Geneva, that twelve plenipotentiaries signed the Convention, which took into account the wishes expressed in a preliminary meeting concerning the provision of assistance to

the wounded, the setting up of medical personnel and the organization of an ambulance service.

Admittedly, past history offered not unimportant examples of humanitarian law for the benefit of civilian populations decimated by war, of wounded soldiers, of subject peoples. But in view of the increasing power of arms, the unbelievable escalation of the catastrophes caused by modern conflicts, wider and more effective rules had to be enacted and accepted in practice by all.

It was comforting to know that realism was born of idealism. Intelligent determination had been required to define possible solutions and to find in our small city—and in the Federal Council—the support required not only to awake but also to interest public opinion throughout the world.

In undertaking that task, Henry Dunant had become immortalized. It was hoped that the deliberations of the Conference would lead to an extension of his work and ensure that all those who suffered as a result of internal or external conflicts would have the protection and hope to which they were entitled as human beings stricken by fate.

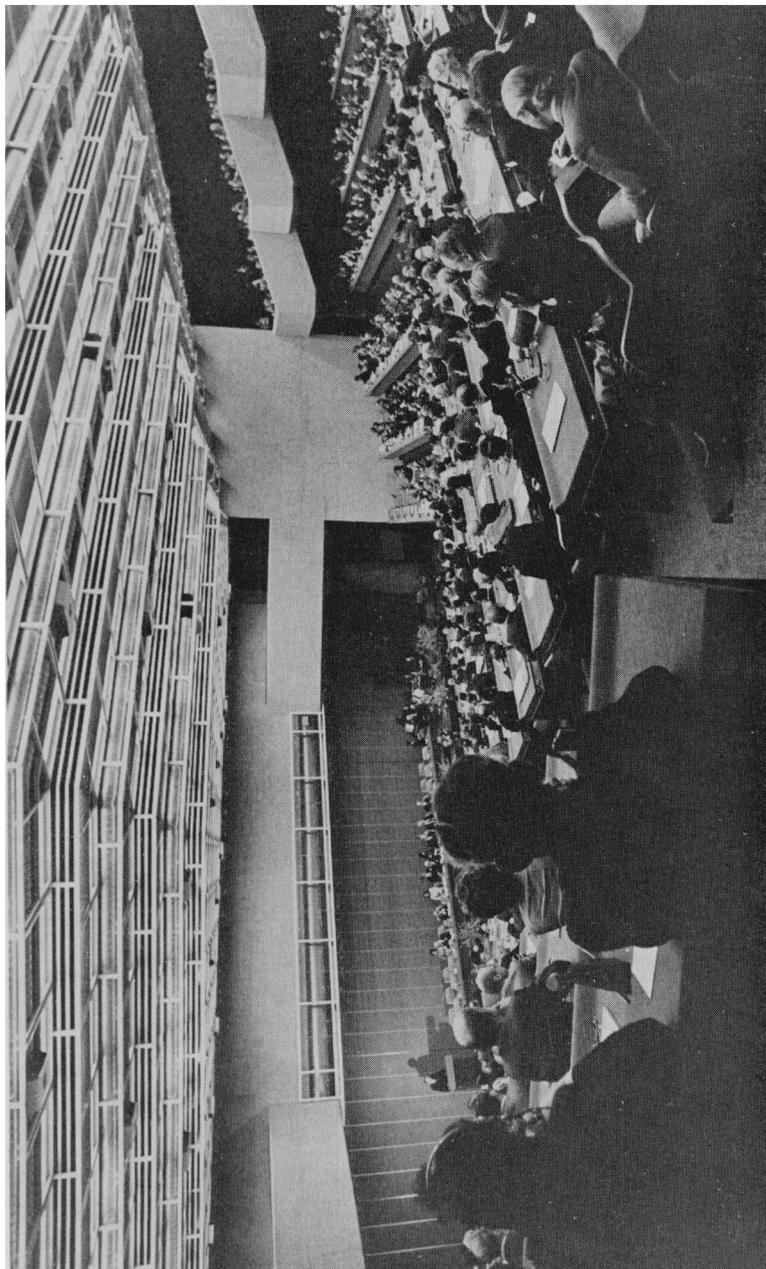
Mr. V. Winspeare Guicciardi, Director-General of the United Nations Office at Geneva

On behalf of the Secretary-General of the United Nations, who greatly regrets his inability to attend in person, I should like to convey to you and all Delegates, Experts and Observers, a personal message of his most warm good wishes for the success of this Conference.

I should like to pay particular tribute to the Swiss Government, depositary of the Geneva Conventions, for having assumed the task of organizing the Conference and for having provided the necessary diplomatic support for its convening. The United Nations is grateful to the Swiss Government for the invitation to be represented and to the International Committee of the Red Cross for its outstanding work, and to National Red Cross Societies for their active contribution in preparing the draft protocols to be considered. This excellent preparatory work augurs well for the Conference.

We are all again indebted to be Council of State of the Republic

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Geneva, 20 February 1974 : Opening session.

Photo J.-J. Kurz/ICRC



Address by Mr. Pierre Graber, Vice-President of the Swiss Federal Council, President of the Diplomatic Conference (*from left to right: Mr. Guicciardi, Mr. Graber, Mr. Chavanne and Dr. Martin*).

Photo J.-J. Kurz/ICRC

and Canton of Geneva. It was here in 1864 that the first Diplomatic Conference on International Humanitarian Law was convened by the Swiss Federal Council, and again in 1906, 1929 and 1949. It is not by chance that international humanitarian law is known as the " Law of Geneva ". But to organize such a conference in 1974 is much more complex. In 1949, 64 States were represented by delegates or observers; today the number of States has more than doubled. The presence here of representatives of many new countries—most of them Members of the United Nations—is the highest tribute that may be paid to the permanency and universality of the foundations of the movement first conceived by Henry Dunant more than a century ago.

The widespread demand for the holding of the Conference shows that governments are fully aware of their responsibilities in reducing as much as possible human suffering and material devastation brought about by armed conflicts, and of the need to take a fresh look at this matter in the light of recent developments in methods and means of warfare. The long-term goal of respect for the Charter of the United Nations and complete disarmament under effective international control have yet to be achieved, although some very important steps have been taken during recent years. Meanwhile, the international community must ensure full and effective application of present legal rules designed to alleviate the sufferings inherent in armed conflicts and must supplement them by new rules more in keeping with the contemporary realities.

The International Conference on Human Rights, held in Teheran in 1968 under the auspices of the United Nations, declared itself convinced that humanitarian principles must prevail even in times of armed conflict, and requested the General Assembly to invite the Secretary-General to study steps which could be taken to secure the better application of existing humanitarian international conventions, as well as the need for additional conventions or for possible revision of existing ones, to ensure the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare. The General Assembly has since considered at each session a whole range of problems concerning respect for human rights in armed conflicts.

After considering the reports of the Secretary-General, as well as the most useful work of the ICRC and its committees of experts, the General Assembly adopted from 1968 to 1973 a series of resolutions, some of which reaffirmed or developed important general principles. One resolution in particular proclaimed basic principles for the protection of civilians in all armed conflicts. The General Assembly also expressed its concern for the treatment of prisoners of war, the protection of captured combatants in the armed struggle against colonialism, the intense sufferings created by certain weapons and means of warfare, and the effectiveness of machinery for implementation of the Geneva Conventions.

An important aspect of these resolutions is their applicability in equal terms to all armed conflicts, regardless of the traditional distinction between "international" and "non-international" conflicts. Thus the General Assembly has reaffirmed one of the fundamental premises of the Charter of the United Nations and the Universal Declaration of Human Rights: the existence and primacy of inalienable rights of man, regardless of political, military or any other circumstances. The same trend is reflected to some extent in the draft protocols of the ICRC which, in their present state, purport to strengthen considerably the protection granted to those involved in so-called internal armed conflicts and to provide them with safeguards as far as possible similar to those enjoyed by combatants and civilians in international conflicts.

At its latest session, the General Assembly adopted another resolution urging all participants in this Conference to do their utmost to reach agreement on additional rules which may help to alleviate the suffering brought by armed conflicts and to protect non-combatants and civilian objects in such conflicts. The General Assembly also proclaimed a number of basic principles regarding the legal status of combatants struggling against colonial and alien domination and racist regimes, declaring that the struggle of peoples under colonial and alien domination and racist regimes for the implementation of their right to self-determination and independence is legitimate and in full accordance with the principles of international law; that any attempt to suppress the struggle against colonial and alien domination and racist regimes is incompatible with the Charter and other basic instruments of the United Nations

and constitutes a threat to international peace and security; that armed conflicts involving the struggle of peoples against colonial and alien domination and racist regimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Convention.

At the request of the General Assembly, the Secretary-General has transmitted to this Conference, for comment and advice, the draft articles and amendments on the protection of journalists engaged in dangerous professional missions in areas of armed conflicts. The General Assembly has expressed the view that an international instrument on this subject is desirable. The General Assembly also invites the Diplomatic Conference to consider—without prejudice to its examination of the draft protocols submitted to it by the ICRC—the question of the use of napalm and other incendiary weapons and to seek agreement on rules prohibiting or restricting the use of such weapons as well as other specific conventional weapons which may be deemed to cause unnecessary suffering or to have indiscriminate effects.

In conclusion, may I stress the increasingly intimate connexion between the present work of reaffirmation and development of international humanitarian law, on the one hand, and some of the most basic purposes and endeavours of the United Nations, on the other. This growing convergence of our respective efforts is true in the field of disarmament and in the limitation or prohibition of the use of certain weapons. But also in relief to civilian victims of armed conflicts, the United Nations have vastly extended the scope of their humanitarian action, principally through the UNICEF and UNHCR. The need for close co-ordination in relief work between the United Nations, the ICRC, the League of Red Cross Societies and other humanitarian organizations has been frequently emphasized, and we are hopeful that the progress already made will continue on an increasing scale. In short, the spirit and the letter of the Charter and those of the Geneva Conventions are but two facets of the same ideal, our common faith in the dignity of man.

The Secretary-General, who will inform the General Assembly of the United Nations of the progress and achievements of this Conference as requested in several of the relevant resolutions adopted by the Assembly at its last session, reiterates to the Conference his best wishes for success in its humanitarian endeavours.

Dr. Eric Martin, President of the International Committee of the Red Cross

Twenty-five years after the adoption of the four Geneva Conventions in 1949, a new Diplomatic Conference is being held in Geneva, the birthplace of the Red Cross, to adapt humanitarian law to the present-day demands of armed conflicts.

I should like first of all to thank the Swiss Government for having convened this Diplomatic Conference, and to recall the amount of preparatory work involved—work to which the ICRC, the United Nations and a great many international experts devoted their efforts over a number of years.

We address a message of welcome to the plenipotentiaries and delegates who have come here, and extend our wishes for the successful outcome of their work, undertaken in a spirit of objectivity, conciliation and generosity.

The face of the world is changing, the international community is being rapidly transformed; but the principles of humanitarian law are the common, permanent heritage of all nations, irrespective of race, religion or politics.

In recent years the application of humanitarian law has at times been jeopardized because the civilian population was inadequately protected against the effects of war. This shortcoming could be remedied by adopting the Additional Protocols to the Geneva Conventions, which include important provisions in this field.

The Geneva Conventions, unlike other treaties, serve no private or national interests. They are not concerned with economic problems or political advantages; they safeguard human life and, when scrupulously applied, with no restrictions, benefit the whole international community.

Everyone should realize the crying need to apply these agreements in all circumstances to victims of any armed conflict, whether the resort to force be regarded as justified or unjustified, whatever political label be given to the adversary, and whatever stand he may take. These treaties must of course be adapted to the evolution of the type of conflict and to the conscience of the world; they must none the less maintain one constant principle which, for more than a century, has been the backbone of the Geneva Conventions, namely absolute, unconditional respect for an enemy who, wounded,

prisoner or civilian, is *hors de combat*, and no longer an enemy but just a man. Then there will be no question of lawful or unlawful use of force, disputes concerning the status of parties to conflicts or conditions, such as reciprocity, for the application of humanitarian law.

In saying this, the ICRC in no way seeks to underestimate the value of vital efforts on parallel lines to rule out armed conflict. It hopes that those efforts will meet with full success and, for its part, feels that the faithful application of humanitarian law will make it easier to settle conflicts and restore peace.

The ICRC has been active all over the world for more than a hundred years. It has known failure, but its efforts have often been rewarded and it has managed to alleviate the suffering of millions of victims. Its help is constantly available to all countries with a view to solving problems in its field; the ICRC is at their service, always ready to continue its work whenever war divides countries or nationals of a single country. Throughout this Conference the ICRC and its experts will be at your service, ready to facilitate your work and to supply any information you may require.

Having voiced my gratitude and extended my good wishes as President of the ICRC, I—who am neither a diplomat nor a jurist—express the hope that the political problems, which will not fail to arise, will neither slow down the normal pace of the Conference nor jeopardize its outcome. The world expects the Conference to improve the condition of victims of armed conflict. This is the aim we must always keep in view.

Ladies and Gentlemen, you who represent the world powers here, the Red Cross and suffering mankind put their hopes and their trust in you.