

INTERNATIONAL COMMITTEE OF THE RED CROSS

CONFERENCE OF RED CROSS EXPERTS

A summary report on the proceedings of the second session

Our previous issue mentioned the Conference of Red Cross Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. The second session was held in Vienna in March, and we now give a summary report of the proceedings, in the course of which experts underlined the progress which has been made in this field. In general, they approved the ICRC's decision, with a view to simplification, to forgo drawing up several additional protocols in favour of dealing with the whole subject in two additional protocols, one relating to international, and the other to non-international, armed conflicts.

Protection of wounded, sick and shipwrecked persons

Many experts held the view that the definition of civilian medical personnel was too restrictive and should be extended to cover temporary medical personnel. It was also suggested that that category of protected persons should include civilian medical personnel responsible for sickness prevention, first aid and social welfare, as well as the medical personnel of civil defence organizations. For that purpose, it was suggested that a new provision should be drafted for the better protection of medical personnel as a whole.

The other regulations proposed called forth many remarks. Requests were made, in particular, for the protection of temporary medical units for first aid to the wounded and the sick; for better

protection for civilian medical personnel by stipulating that the protection should be extended to include commuting between home and work; and for the development of Article 20, "Role of the population".

In connection with the provisions relating to the wounded, the sick and the shipwrecked, in the Draft Protocol additional to Article 3 common to the four Geneva Conventions, the experts' remarks concerned mainly the matching of the two Draft Protocols.

The protection of National Red Cross Societies by the introduction of a clause in the Protocols, proposals for which had been put forward at the 1971 Conference of Government Experts, was brought up again. The sponsors of these proposals considered that what the ICRC had included on the subject in the Protocols was not sufficient. Some asked that the League of Red Cross Societies be specifically named. Finally the following clause was adopted:

"The Parties in conflict shall grant National Red Cross, Red Crescent, and Red Lion and Sun Societies, and the international bodies of the Red Cross, the assistance and protection necessary for the discharge of all their humanitarian activities for the benefit of conflict victims, and in the context of the Geneva Conventions and of the present Protocol."

**Protection of the civilian population against dangers
resulting from hostilities**

The definition of civilian population as proposed in Article 41, and of objects of a civilian character as contained in Article 42 met with no objection in principle. However, it was suggested that the list of objects indispensable to the survival of the civilian population should be completed. The provisions of Article 48 (1) prohibiting attacks by way of reprisals against "objects indispensable to the survival of the civilian population", prompted a number of remarks. It was pointed out that International Red Cross Conferences had always condemned reprisals of any sort whatsoever, a standpoint which should resolutely be maintained; that the only reprisals of any practical importance were those perpetrated against the civilian population—the absolute prohibition of which was stipulated in the drafts; that reprisals against

civilian objects played no great part in military operations; and that, consequently, it was quite possible to envisage the complete prohibition of reprisals so far as all objects of a civilian character were concerned. The great majority of delegates were in favour of extending the prohibition of reprisals as suggested. The principle of proportionality, covered by Article 50, was questioned and one delegation asked for it to be deleted. However, most of the delegates were in favour of retaining it.

Of all the provisions relating to relief in international armed conflicts, Article 64 (Humanitarian assistance) prompted the most comment. The Chairman therefore proposed that a working committee be formed. This was done and the working committee suggested the rewording of Article 64(2) as follows:

“ Relief for the benefit of civilian population is to be provided without discrimination. The offer of such relief by an impartial international humanitarian body such as the Red Cross shall not be regarded as an unfriendly act.”

The amendments suggested for Article 64(1) and (3) merely involved a slight rewording.

Combatants

Concerning Article 30—Means of combat—the Swiss Red Cross delegation put forward a proposal that the first paragraph be changed to “The right of belligerents to adopt means of injuring the enemy is not unlimited”, which is the wording of The Hague Regulations and of broader humanitarian scope than the ICRC’s proposal. There was a clear majority in favour of the Hague wording.

The Red Cross delegation from the Federal Republic of Germany proposed that Article 30(2) be changed to read: “ It is forbidden to use weapons, projectiles or substances causing unnecessary suffering, or particularly cruel methods and means which permit of no distinction between a military objective and the civilian population”. This proposal, consistent with resolutions adopted by International Conferences of the Red Cross, and supplementing Article 45 (Respect for the civilian population) was supported by many experts.

INTERNATIONAL COMMITTEE

Article 38 (Guerrilla fighters) also was the subject of much comment. Some experts favoured deleting the conditions concluding Article 38(1); others considered the principle was one they could accept. However, some modifications were proposed and the question was raised whether it was necessary to retain condition (b), as even regular armies, in their operations, no longer wore a distinctive sign or displayed their weapons openly.

Plan for National Red Cross Societies

A plan of action for the dissemination and development of international humanitarian law in armed conflicts had been submitted to the experts. Many Societies expressed their views on the subject. It was stressed that the question should be dealt with methodically by each National Society in liaison with the ICRC. In that respect, seminars were recommended. In addition, in order for work to be effective, the suggestion was made that a special committee be set up in each country with a view to promoting dissemination which could be undertaken at two levels, to reach both the public in general, and specialized circles. Stress was laid on the fact that the purpose was to reinforce peace, stability and international co-operation.

Measures intended to Reinforce the Implementation of the Existing Law

When considering Parts I, V and VI of Draft Protocol I, the Conference concentrated mainly on Articles 6-10 relating to assistance in, and supervision of, the application of the law; Article 74 (Prohibition of reprisals and exceptional cases); Article 75 (Orders and instructions); and Article 82 (Reservations). Several proposals were made for the rewording of Article 6 (Appointment of Protecting Powers and of their substitute). Some experts thought Article 74, relating to reprisals, should not be included in the Protocol on the grounds that other articles prohibited reprisals, and that limitations on resort to reprisals in the conduct of hostilities had no place in a humanitarian protocol.

Non-international armed conflict

The Draft Protocol additional to common Article 3 of the four Conventions was examined chapter by chapter.

As a preliminary, one of the experts stated that the principle of non-interference in the internal affairs of a State should be included in the preamble. In contrast, another pointed out that non-international armed conflicts could no longer be exclusively within the purview of the governments involved; they were the concern of the whole international community.

Opinions varied concerning the definition of non-international armed conflict. Some held the view that it was too restrictive; others that it was difficult to elaborate a definition and that Article 3—which relates to non-international armed conflict—should not be changed. The majority, however, like the government experts, considered a sound definition to be essential, and the ICRC proposal as a sufficient basis for discussion.

It was suggested that the treatment afforded prisoners of war, in accordance with Article 25 of the Draft Protocol, should be extended to certain categories of combatants who did not comply with all the conditions laid down in Article 4(A)(2) of the Third Convention. On the subject of prohibiting the death penalty, it was suggested that the ban be extended for the benefit of civilians deprived of their freedom for acts committed in connection with an armed conflict. With regard to the article concerning co-operation in the observance of the Protocol, several experts proposed that the ICRC be quoted as an example of a body offering every guarantee of impartiality and efficacy in co-operating in the observation of the Protocol. This proposal was approved.

This second session of the Conference of Red Cross Experts was a great encouragement to the ICRC in its work for the reaffirmation and development of international humanitarian law. On the whole, the Draft Additional Protocols were well received and gave rise to an interesting exchange of views. No insuperable criticism was levelled at the Protocols, but many suggestions for the wording of some articles were put forward.