

INTERNATIONAL COMMITTEE OF THE RED CROSS

REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS

CONFERENCE OF GOVERNMENT EXPERTS

SECOND SESSION

It will be recalled that a Conference of Government Experts, convened by the ICRC, met in Geneva from 24 May to 11 June 1971.¹ At the closing meeting, the President of the International Committee announced that the ICRC had decided to convene a second session in the following year.

This session opened in Geneva on 3 May 1972 and closed early in June. It was attended by about 400 experts delegated by seventy-seven governments. The Conference was also followed by United Nations observers, nine technical experts in problems of medical transport, ten observers from non-governmental organizations, the League of Red Cross Societies, and several National Societies.

The Conference opened with a formal ceremony. Addresses were delivered—extracts of which are given below—by Mr. Marcel A. Naville, President of the ICRC; Mr. Henri Schmitt, President of the Council of State of the Republic and Canton of Geneva, and Mr. Marc Schreiber, Director of the United Nations Human Rights Division, representing the Secretary-General.

¹ See *International Review*, July 1971.

Mr. Marcel A. Naville:

It is almost a year since the opening of the first session of the Conference. It was attended by experts from thirty-nine governments, and it made possible a considerable step in the right direction: it will be recalled, in particular, that it approved two Draft Additional Protocols relative to the protection of the wounded and the sick in the event of international or internal armed conflict. In other matters submitted—the protection of the civilian population, the behaviour of combatants, the scope and status of medical aviation, the rules applicable in internal armed conflicts, and the reinforcement of the application of the law in force—in these various matters, the experts' work did not go so far, due to lack of time. Nevertheless, from their initial study emerged the lines of research to be followed and the objectives. They showed that solutions were possible and desirable.

These considerations led the ICRC and the experts gathered last year to the conclusion that a second session of the Conference was necessary.

When convening the present session, the ICRC complied with a recommendation, expressed by the great majority of the experts, to open the Conference more widely to the international community: on 27 September 1971, all governments of States expressly Parties to the 1949 Geneva Conventions were invited to send experts to this second session. I should like to convey the gratitude of the International Committee of the Red Cross to the States which have replied to its appeal and which have delegated here eminent experts whose co-operation and qualified opinions are essential to enable us to make progress along the course which we have set. Indeed, without the active support of governments, the work undertaken cannot be brought to a conclusion.

It is appropriate to survey briefly at this stage how our work has been proceeding over the eleven months between the two sessions. The ICRC first drew up a report on the work of last year's Conference. This document, which has been forwarded to all governments concerned, enables those experts who did not attend the first session to know exactly the subjects discussed and should permit more rapid progress in the consideration of

some items which may be considered as having been settled; at least we hope so.

The proposal having been made last year that the ICRC draw up draft rules which should be as complete and as definite as possible, our jurists set to work on two almost complete Protocols, intended to supplement the Geneva Conventions, and the study of which will constitute the main concern of our proceedings.

That work was not carried out in isolation. Many experts in various countries have been consulted, both in Geneva and in their own cities. They have helped us to draw up the Protocols, bearing in mind, as much as possible, the various opinions expressed, and incorporating those most worth retaining.

In November 1971, the ICRC organized in Geneva a consultative meeting with the non-governmental organizations which, for many years, have displayed great interest in the work undertaken in connection with international humanitarian law and have contributed not only their moral support but also their experience and specialized knowledge. The results and recommendations of that meeting are also to be submitted to you in a report included in the documentary material.

So as to take into consideration the wishes of certain of those institutions which are carefully following the development of humanitarian law, and which previously had had the opportunity to comment upon the ICRC's draft instruments and reports, the ICRC has invited these non-governmental organizations to send observers to the Conference here. By attending the work of the different commissions, the representatives of those organizations will have the opportunity of being in direct contact with the discussions. It gives me pleasure to welcome them here among us and to tell you how much we have appreciated their co-operation and support.

The ICRC, moreover, at the beginning of this year, sent two missions which visited twelve African countries, in order to keep them informed of the progress in our studies and to further their interest in our common enterprise.

The ICRC is not unmindful, too, of the fact that the most fervent upholders of the reaffirmation and development of humanitarian law are to be found in Red Cross circles. It was therefore

eager to associate the National Red Cross, Red Crescent and Red Lion and Sun Societies in its work. In Mexico, in October 1971, at a meeting of the International Red Cross, and in Baghdad, in March of this year, at a meeting of the National Societies of Arabic-speaking countries, ICRC representatives presented a detailed account of the present situation of the questions under review. Finally, six weeks ago, the experts of thirty-six National Societies met in Vienna to carry out, together with delegates of the ICRC, a study in depth of the texts that are being submitted to you today, and valuable exchanges of views took place at the time. It must therefore be acknowledged that the ICRC has done its best to put before you drafts which have received widespread approval in the Red Cross world. It is with great pleasure that we welcome here a number of representatives of National Societies who will attend our meetings.

Concurrently and in close co-operation with the ICRC, the United Nations has continued to devote special attention to the various aspects of respect for human rights in armed conflicts. The Secretary-General of the United Nations presented a third report on this matter, the purpose of which was to provide the General Assembly at its twenty-sixth session with a survey of the results of the first session of the Conference of Government Experts and of other recent developments relating to the protection of human rights in armed conflicts. Two resolutions adopted by the twenty-sixth General Assembly, and with which you are no doubt familiar, invite the Secretary-General and the ICRC to continue the work begun, and express the hope that the second session of the Conference of Government Experts will result in specific conclusions and recommendations for the further development of international humanitarian law for action at government level. It moreover requested the Secretary-General to transmit to the ICRC his latest report together with any further observations received from governments as well as the records of relevant discussions and resolutions of the General Assembly.

Thus, the very fruitful collaboration that has been established for many years between the United Nations and the ICRC is continuing satisfactorily, and it is in this spirit that I am happy to greet today among us the representative of the Secretary-

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General, Mr. Marc Schreiber, and members of his staff, who are taking part in our work . . .

. . . We hope we have managed to provide conditions that will enable the Conference to achieve definite results. The ICRC is not the only one to set its hopes on that achievement. It knows full well that wide sections of world public opinion, a great many governments and numerous public or private institutions are impatiently waiting for new instruments for the protection of victims of war and for the safeguarding of fundamental human rights. Ladies and Gentlemen, in your deliberations you should bear in mind mankind's anxious hope. Your work should make it possible in the near future to hold a meeting of plenipotentiaries from the majority of States, in order that the new rules which the world is waiting for may enter into effect without delay. The International Committee can then consider that its efforts have not been in vain, and devote itself with increased energy to the further tasks with which it will then be confronted.

Mr. Henri Schmitt:

It is an honour for Geneva and for all Switzerland to welcome the Second Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. Our government and our people are aware of the role you are called upon to play in finding bases for treaties which will make it possible to eliminate some of the cruelty from the conflicts which unfortunately afflict the world, by establishing clear and precise definitions of the rights and protection of the individual when feelings run high.

In an age when everyone speedily becomes inured to the misfortunes of others, when this indifference to poverty, sickness, death and war is the reflection of our egotism and materialism, is it not worth making every effort to embody in law the obligations and rights of those who are victims of man's folly, by entrusting to the International Red Cross a new task which dovetails with the organization's traditional role since its inception ?

In making our own modest contribution to the relief of suffering caused by man, we should be motivated by deep and sincere

emotion, which must be translated into determination to extend protection to people swept into chaos and want. The search for solutions which engage our conscience demands that our minds must be open and our hearts ready to accept feelings which so many people conceal under a shell of indifference or disillusionment. . .

. . . An international convention, especially when it concerns humanitarian principles, can be effective only if the principles it contains are accepted and adopted by all peoples. It must be more than an arrangement between governments or a document on relations between military high commands. An extension of international humanitarian law of the kind that you are to discuss can be fully effective only if the principles that it defends are rooted in the will of the peoples that you represent. It is therefore necessary to guarantee the activities of Red Cross Societies in all our countries, for these Societies form the very basis of the work of the neutral and impartial body, the International Committee.

In the absence of an agreement prohibiting recourse to war, faced with the difficulties confronting the international community in its efforts to secure international peace, in view of the present inability of international penal law to impose respect for principles on which we all nevertheless agree, we must rejoice in the efforts being made to broaden a whole sector of international law which has successfully withstood the test of time. Here, I think, we must prove ourselves realistic and must, regardless of our governmental responsibilities, ensure the success of this work. I would go so far as to say that, in sparing more of our fellow men from the effects of war, we are reinforcing the efforts of those who seek to codify the suppression of war itself. . .

. . . I believe that it is more necessary than ever before, from a legal point of view, that the absence of any distinction between friends and enemies should be stressed all the more strongly since, in undeclared wars, the official non-intervention of the State machinery leaves whole populations defenceless.

Although the revisions of 1906 and 1929 enabled international legislation to be updated while capitalizing, if I may put it that way, from the experience gained during the course of past wars,

the fundamental nature of the Geneva Conventions made it necessary to take the further step constituted by the proposals being made to you now and which are much more than simply an adaptation of the Conventions which bind us today. It is here that the moral authority of the ICRC is exerted; Switzerland, and Geneva in particular—the headquarters of this international committee—will do everything in their power to reinforce this moral authority throughout the world. We are fully aware, as politicians, placed in responsible positions in this country, that the International Red Cross can ensure respect for the treaties and conventions which you prepare only to the extent that the Red Cross itself is respected and is able to offer guarantees of its impartiality towards everyone. This is one of the reasons for which we feel that the political neutrality of Switzerland is essential to International Red Cross activities and impact in the world; it is also the reason why Geneva, the European Headquarters of the United Nations, once again declares its readiness to serve those who work for peace or to mitigate the suffering which exists in this world. Neutrality and indifference are poles apart; indeed, neutrality must allow feelings to intervene in the madness of mankind. Neutrality is something active and is based on solidarity with the world, and it is in this sense that we understand the term. . .

Mr. Marc Schreiber:

. . . The second session of the Conference is indeed an important new step forward in the co-operation that has been established for some years now between the United Nations and the International Committee of the Red Cross in the field of the protection of Human Rights in armed conflicts. The close and practical co-operation, stimulating sustained and fruitful efforts, corresponds to the wishes of the whole body of the United Nations members. In 1968, the International Conference on Human Rights, held in Teheran twenty years after the Declaration on Human Rights had been universally adopted, drew to the attention of the organs of the United Nations the importance of the adequate steps that could be taken to secure the better application of existing human-

itarian conventions and rules in all armed conflicts and the need for additional legal instruments to ensure the better protection of civilians, prisoners, and combatants in all armed conflicts and the limitation of the use of certain methods and means of warfare. The following year, additional impetus and new life to the work of the ICRC were given by the XXIst International Conference of the Red Cross, in order to supplement existing humanitarian law.

The United Nations General Assembly gave effect to the Tehran resolution, and at the same time as it invited the Secretary-General to undertake the studies requested and examined the problems arising in this field at each of its sessions, often giving them the highest priority, it noted expressly in several resolutions its appreciation of the work done by the ICRC. The General Assembly took good care that the resolutions and reports submitted to it should be transmitted to the ICRC and that it should be kept informed by the Secretary-General of the results of the work of the Conference convened by the ICRC. The representatives of the ICRC have followed carefully the discussions of the General Assembly and of the Commission on Human Rights on questions dealing with the protection of human rights in armed conflicts, and the United Nations Secretariat has kept in touch as much as possible with its opposite numbers at the ICRC on the work that has been undertaken by both sides quite independently of each other, but with an evident desire for harmonization.

This is not the moment to recall in detail the points at issue expressed in the various resolutions of the General Assembly of the United Nations. These form part of the Conference documentation. Two resolutions following two parallel lines of thought were adopted at the last session of the General Assembly on the general question of respect for human rights in armed conflicts. They requested the Secretary-General to report to the General Assembly on the results of our Conference. On two occasions, the General Assembly expressed the hope that the Conference would result in specific conclusions and recommendations for action at governmental level in respect of the reaffirmation and development of international humanitarian law. A third resolution requested the Conference to submit its observations on

draft provisions to be included in an international convention on the protection of journalists engaged in dangerous missions in areas of armed conflicts, already examined by the Commission on Human Rights. The General Assembly recognized the need for such a convention and decided to examine this item as a matter of the highest priority at its next session.

There are two more remarks I should like to make. First of all, we need only look through the documentation provided to realize the usefulness of the first session of this Conference, held almost a year ago, and to applaud the extent and the quality of the work done by the ICRC since the Conference was adjourned. Even a cursory examination of the documents shows how far the viewpoints and opinions expressed during the first session have inspired the substance and the form of the proposals submitted by the jurists for our consideration. It is right to pay tribute not only to the skill and elegance with which they have composed difficult texts full of subtle distinctions but also to their wish to bear in mind as far as possible the various viewpoints expressed and the decisions made by international bodies. . .

. . . In closing, I should like to express the wish and the hope that, in carrying on our technical work based on the texts prepared by the ICRC and with the assistance which it so kindly provides, we never lose sight of those for whom this work is done, even if we do not mention them: the civilians, the prisoners, the wounded, the combatants themselves, often drawn helplessly into the throes of armed conflicts, the like of which only our age is capable of creating. The news media have reminded us enough of this during the past year and continue to do so every day. Nor do they disguise the disquiet among the public—more sensitive than ever before to the large-scale violations of human rights—who wish to safeguard and affirm the imperatives of human dignity and thus, without doubt, save civilization itself. The thought of the victims of armed conflicts should give us the determination to achieve acceptable results as speedily as possible, not merely to enrich international law, both present and future, but in the hope that our efforts will lead to the relief of indescribable misery and an end to shameful and purposeless humiliation and degradation. . .

... "Peace is the underlying condition for the full observance of human rights, and war is their negation"—as it is expressed in the Resolution of the Teheran Conference. Let us also think, then, of those who, whether at governmental or at any other level, attempt to stop armed conflicts, or prevent them from breaking out. In the tranquillity of this city, whose humanitarian traditions pay homage to humanity as a whole, let us do our best not to dash the hopes of people but to spread encouragement among them.

Following three plenary meetings, at which the Conference elected its Officers—Mr. J. Pictet (ICRC), President ; Mr. W. Riphagen (Netherlands) and Mr. Cristescu (Romania), Vice-Presidents ; and Mr. P. Gaillard (ICRC), Secretary-General—the subject matter of the two Draft Protocols prepared by the ICRC and additional to the 1949 Geneva Conventions, was divided among the four Commissions.

Commission I dealt with protection for the wounded and the sick in international armed conflicts. It is proposed to give civilian medical institutions and civilian medical personnel the same protection as military medical personnel have under the Geneva Conventions, and also to allow for a resumption of medical aircraft immune from attack.

Commission III studied the protection of the civilian population against dangers of hostilities. While the Geneva Conventions protect the civilian population against abuse of power by the enemy, they do not protect it, except in the case of hospitals, against the use of weapons.

Commission IV considered provisions designed to strengthen the application of existing law, supervision—e.g. the appointment of a Protecting Power—and the application of penalties.

Commission II dealt with the same subjects as the other three, but only in the case of armed conflict not of an international character.

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The ICRC is now preparing the final report on the work of the Conference. This will be sent at the beginning of autumn to all Governments and National Societies.