

# INTERNATIONAL COMMITTEE OF THE RED CROSS

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## REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS

### CONFERENCE OF RED CROSS EXPERTS

*On 1 March 1971, the Conference of Red Cross experts on the reaffirmation and development of international humanitarian law applicable in armed conflict opened at the Peace Palace in The Hague. The Conference, of which the significance was explained in our March issue, and which continued until 6 March, was convened by the International Committee of the Red Cross and organized with the valuable co-operation of the Netherlands Red Cross Society. Sixty-nine delegates, representing 34 National Red Cross and Red Crescent Societies, participated in the session.*

*The opening meeting, under the Chairmanship of the Jonkheer Kraijenhoff, President of the Netherlands Red Cross Society, took place in the main hall of the International Court of Justice, in the presence of H.E. Mr. C. H. F. Polak, Minister of Justice, Mr. V. G. M. Marijnen, Burgomaster of The Hague, Mr. Marcel A. Naville, President of the ICRC, Mr. Marc Schreiber, Director of the U.N. Human Rights Division, Mr. Nedim Abut, Under Secretary-General of the League of Red Cross Societies, and many diplomatic representatives.<sup>1</sup>*

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<sup>1</sup> *Plate*: The President of the Netherlands Red Cross, the Jonkheer G. Kraijenhoff, addressing the opening meeting. *On his left*: Mr. Naville, President of the ICRC; Mr. Schreiber, Director of the U.N. Human Rights Division; Mr. Abut, Under Secretary-General of the League; Mr. van Emden, Director-General of the Netherlands Red Cross; Mr. Pilloud, Director of the ICRC Department of Principles and Law. *On his right*: Mr. Polak, Minister of Justice; Mr. Marijnen, Burgomaster of The Hague; Mr. Pictet, Chairman of the Legal Commission and member of the ICRC; Mrs. Bindschedler and Mr. Gallopin, members of the ICRC.

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*A number of speakers took the floor. Mr. Marijnen bade the participants welcome; Mr. Schreiber presented the greetings and good wishes of the United Nations Secretary-General, underlining the excellent co-operation between the United Nations and the ICRC. The Presidents of the Netherlands Red Cross and of the ICRC each delivered an address, the main passages of which we reproduce below, not omitting to mention that Mr. Naville expressed the Geneva institution's gratitude to the Netherlands Red Cross which played a determining role in the organizing of the Conference.*

### **Jonkheer G. Kraijenhoff, President of the Netherlands Red Cross:**

... We know full well that our country is small and that The Hague is not very large. But both the country and the city are renowned all over the world, not only in the spheres of trade, industry and fine arts; I only have to mention the name of Grotius, the founder of the law of nations.

We are proud to welcome you here, for you will find yourselves in those same surroundings where so many eminent persons before you, each in the historical context of his own period, worked towards the creation of a body of regulations of international law.

It was in 1907 that the construction of the Palace of Peace was begun in The Hague. It was formally opened on 28 August 1913 during the second Peace Conference. Since then, two world wars and a large number of internal conflicts have sown destruction throughout the world. The consequences thereof have assumed various aspects; being obliged to face up to them, we have frequently observed that the present regulations do not meet the needs of the time, while circumstances change with such bewildering speed that one must speak of revolution rather than evolution!

We of the Red Cross cannot and should not stand aloof from all these events, for at the centre of all there is mankind. The protection of suffering humanity is our own responsibility, and that is why we must compliment the International Committee of the Red Cross for having so quickly taken the initiative after the XXist International Conference at Istanbul.

Within these historic walls, you will be examining for the next few days a subject as interesting as it is complex, and your work

will greatly influence the outcome of this conference. You undoubtedly are aware of the responsibility you bear towards your own country and people as much as towards the whole of humanity. This meeting is certainly quite important with regard to the behaviour of nations during a conflict, but it is, also, especially so for all men at all times now and later on, and wherever they may be.

I extend to you my best wishes that you might work in that spirit of understanding and tolerance which has always been that of the Red Cross, and that you might finally obtain satisfactory results.

**Mr. M. A. Naville, President of the ICRC:**

... Twenty-two years have passed since the community of independent nations, still shaken by the horrors of the Second World War, built up in 1949 that monumental legal instrument, the Geneva Conventions. Planned and prepared by the International Committee of the Red Cross, its 400-odd articles are the most complete code of rules for the protection of the human being in the event of armed conflict. It is a duty incumbent on governments to spread knowledge of them widely and to ensure the observance of their provisions. And it is only right to underline that, to the extent that those Conventions are applied, they afford sufficient protection to the victims of the events they were designed to cover. We must therefore discount, as pointless and even dangerous, any idea of undertaking at present the general revision of these laws which almost every nation in the world has ratified.

It is true that some States which acceded to independence only after 1949, and therefore did not participate in drawing up the Conventions, may be inclined to ask that they be recast on the grounds that they are not suited to their way of thinking or way of life. The Red Cross must therefore endeavour to demonstrate to those countries that the Geneva Conventions are standards of universal civilization to which all States can and should subscribe, for they were drawn up in a spirit of respect for the principles of non-discrimination, equality, and impartiality. Let us study carefully how the application of existing law may be improved, but let us avoid undermining a legal system instead of strengthening it.

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On the other hand, how urgent it is to supplement those Conventions in order that the protection of victims may be ensured in all sorts of new situations which arise as a result of the nature of contemporary conflicts! By underlining the urgency and need of this task, the XXIst International Conference of the Red Cross, at Istanbul in 1969, wished to make it clear that the reaffirmation and development of humanitarian law was the central concern of the Red Cross as a whole, and not only of the International Committee.

On the basis of the mandate which was unanimously confirmed by Istanbul resolution XIII, and encouraged by the support which the United Nations has just given it in resolution No. 2677, the International Committee of the Red Cross wished to initiate the public phase of its programme by calling together the experts of National Red Cross Societies for a broad exchange of views and to associate closely the National Societies in its work for the renovation of international humanitarian law. It will avail itself of this opportunity to make known the results of its work and to explain its views on the main problems.

It must be stated at this point that at this meeting of experts opinions will not be binding on those who express them. The work to be carried out consists of a sort of exploration in common, during which what is said will be noted but will not be decisive. It is hoped that the subjects for discussion will be broached from a general point of view and that specific examples will be referred to only for the purpose of drawing from them conclusions acceptable to all. Everyone will bear in mind that the common concern which brings us to this hospitable town is essentially humanitarian.

The documentary material available to you consists in the main of reports submitted to the Istanbul Conference, the important decisions reached by the U.N. General Assembly in 1969 and 1970, and the first of a series of preliminary reports which the ICRC is now completing and which are intended for the government experts who will attend the meeting which will start in Geneva on 24 May this year. This documentary material, which will later be supplemented, should cover the various fields in which there is need for additional rules.

# CONFERENCE OF RED CROSS EXPERTS

THE HAGUE, 1-6 March 1971



Photo Charles Hartman, The Hague.

Opening meeting : address by the President of the Netherlands Red Cross.



**The Hague:** The Conference of Red Cross Experts.

Photos Charles Hartman, The Hague.



It is well known that most of the conflicts which have occurred since 1949 have been non-international. However, for such conflicts, the 1949 Geneva Conventions postulate only a few principles which, although essential, experience has proved inadequate. In those Conventions, nothing is said, for example, on the functions which National Societies may be called upon to discharge in internal conflicts; on the use and protection of their emblem; on the safeguard of medical personnel. Nor is there any mention of the status or treatment which should be afforded during internal disorders and tension to persons arrested for political, ideological or racial reasons and whom the ICRC endeavours to visit in many countries of the world.

The way in which conflicts are carried out shows that the civilian populations are more and more sorely tried by hostilities. The Geneva Conventions protect them mainly when they are in the power of an enemy, but the existing rules for their safeguard against the effects of hostilities, and particularly against weapons of mass destruction, have for a long time been clearly inadequate. It is therefore important to impose on attacking forces and on those responsible for the civilian population, obligations to take precautions so that the population is not needlessly exposed to the effects of the fighting.

In internal conflicts new methods of fighting are used. What we call guerrilla warfare is well known in history, but in our day it has assumed new forms. To what extent can those who wage it be compelled to observe certain essential humanitarian limits and to what extent should they be considered as prisoners of war in the event of their capture? Such questions call for a prompt reply.

These are some of the main items on our agenda, but there are others. Avoiding lengthy discussion of technical and legal details, the Conference should apply itself rather to those aspects of the problems which are of special concern to the Red Cross. It should above all endeavour to educe some of the main trends. The results of this exchange of views will be the subject of a report to the Conference of Government Experts in May and, of course, to all National Societies. It is too soon to say how the proposals to be drawn up by the International Committee of the Red Cross, following these various meetings of experts, may be converted into rules

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binding on States. However, to quote the U.N. resolution, it is desirable that one or more diplomatic conferences, attended by plenipotentiaries of interested States, should meet in due course, after suitable preparation, to adopt international legal instruments designed to reaffirm and develop humanitarian law applicable in armed conflicts.

In several ways the National Red Cross, Red Crescent and Red Lion and Sun Societies may contribute to the success of this work.

In the first place, in the drawing up of humanitarian law, the nearer the approach to the government level and to a diplomatic conference, the more what are called the demands of State security, or military necessity, obtrude. True, all effective regulations must take this into account, but the Red Cross as a whole must make it understood that certain basic humanitarian requirements predominate over any other consideration.

In the second place, faced with the difficulties of the undertaking, certain circles and governments may be tempted to delay or postpone the work. There again, the Red Cross as a whole, and each National Society in its own country, should insist on the necessity of reaching, in a reasonably near future, general agreement on new protective provisions. In connection with this matter of humanitarian law studies, the National Societies and the ICRC have a decided advantage over other institutions; their work may be based on actual experience and first-hand knowledge at the individual level of the realities of present-day conflicts. That is a guarantee of realism and effectiveness.

Finally, in contrast to the days when the 1949 Conventions were drawn up, the world today is characterized by profound ideological differences, by hate and by armed violence, all of which of course make the acceptance of humanitarian discipline more difficult. Our movement, which by virtue of its very principles should be able to rise above political and social antagonism and set an example of mutual understanding, must ensure that politics influence this work as little as possible in order that the rules to be drawn up shall be based not on partisan and particular considerations but on, and only on, the welfare of victims.

Hence the role of the Red Cross is fundamental here. It is its duty and original character to remind the Powers that in leading the people certain rules must be given priority. To safeguard the innocent, to refrain from inflicting needless suffering, to treat an enemy with humanity, is to increase the chances of a return to peace, to a peace which at heart all men seek yet to achieve which, by a tragic contradiction, they incessantly wage war against each other.

*During the working meetings the experts exchanged views on the problems which, due to the armed conflicts and tension of recent years, are of the greatest concern to the Red Cross. Bearing in mind particularly the changing techniques of modern conflicts and their effects in the realm of human rights, the experts were unanimous in recognizing the necessity and urgency of reaffirming and developing international humanitarian law. They considered that any effort to do so was also a contribution to the promotion of the spirit of peace throughout the world.*

*In the quest for a balance between idealism and realism, the experts shared the ICRC opinion that the 1949 Geneva Conventions should not be revised but supplemented and given greater precision by additional protocols.*

*The Conference recognized the importance of disseminating existing law among the armed forces, youth and the public at large. In this in particular all Red Cross, Red Crescent and Red Lion and Sun Societies had an essential role to play in their respective countries.*

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*As its chairman, the conference elected Mr. Jean Pictet, Chairman of the Legal Commission and member of the ICRC. At the closing meeting he summarized the work of the Conference and highlighted the main points. We therefore reproduce, to conclude, the text of Mr. Pictet's recapitulation, and we also point out that the conclusions reached by the Conference of Red Cross Experts will be conveyed to the Conference of Government Experts which will take place in Geneva from 24 May to 12 June 1971:*

In the course of the general discussion with which our conference opened, we were reminded that, although the united and indivisible Red Cross movement was founded to alleviate the suffering caused by armed conflicts, it must also contribute to the maintenance of peace. Moreover, war as a means of settling international disputes was forbidden by the United Nations Charter.

That being said, the consensus was that the reaffirmation and development of the law applicable in armed conflicts was an urgent necessity, bearing in mind the progress achieved in the realm of human rights. However, it was by no means necessary to entirely re-shape the existing conventions. It was sufficient to supplement them and give them added precision, particularly by means of additional protocols.

Concerning the first item on the agenda, *the protection of the wounded and the sick*, the two draft protocols submitted by the ICRC were considered to be an excellent basis.

Agreement was reached on the following two principles:

(a) the civilian medical personnel should be granted protection equivalent to that of the military medical personnel, and

(b) the right to display the sign of the red cross (or red crescent) should, in time of conflict, be conferred only on persons subject to State supervision.

For further details on this first item, reference may be made to the report of the Working Party which was set up to draft the conference's conclusions in this field.

The second item of the agenda, *Measures intended to Reinforce the Implementation of the Law*, was split into four subdivisions.

1. *Dissemination of knowledge on the Geneva Conventions.* A number of experts stressed that humanitarian law should not only be developed, but better applied. For that, it was essential that the Conventions be much better known and be taught more thoroughly at all levels. Renewed effort was demanded, particularly of the armed forces and universities, and also to influence youth. It was necessary to reach the individual direct. The Red Cross had a con-

tribution to make to that mission. Interesting practical suggestions were put forward, particularly that of training advisers to be attached to large military units.

2. *Supervision* of the implementation of treaty provisions.

Some delegations stated that supervision was essential to the proper implementation of the Conventions and should, if possible, be reinforced.

The view was also expressed that the system of supervision provided for in the Geneva Conventions was good and that, rather than evolve a different system, what was required was to eliminate the obstacles which all too often States raised to the appointment of Protecting Powers.

Most of the experts advocated strengthening the humanitarian role of the ICRC and some went so far as to suggest that the ICRC should, on a permanent basis and automatically, substitute for Protecting Powers. In this respect, the ICRC delegation pointed out that, contrary to what was thought or said in certain quarters, it was ready to act as the substitute for Protecting Powers whenever possible and expedient, by assuming the *humanitarian* tasks falling to a Protecting Power, as the Conventions themselves laid down. The ICRC was still a relief organization, independent and acting in accordance with Red Cross principles; it would not become the mandatary of a specific State.

Some experts suggested the founding of a special organization to deputize for Protecting Powers, as permitted, incidentally, by the Conventions. Such a body could be founded within the framework of the United Nations.

Other experts underlined the increased influence today of public opinion and the usefulness of enlisting its support to enforce respect of the law.

3. *Sanctions*. A clearer definition of war crimes was advocated.

4. *Reprisals*. These were recognized as the cause of great suffering, and a failure in that they did not achieve their objectives. In 1949, the Geneva Conventions forbade reprisals against persons protected by the Conventions. It was the wish of some experts

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that they also be forbidden in all circumstances against the civilian population as a whole.

Another important item was: *the protection of the civilian population against the dangers of indiscriminate warfare.*

Although, in this respect, general principles, customary rules and United Nations resolutions could be invoked, it was essential to draw up compulsory international law standards providing civilian populations with the protection which they so urgently required.

Several experts pointed out that although weapons of mass destruction—permitting of no distinction between military objectives and population—and also weapons which inflicted needless suffering were already prohibited, it would be worth while reaffirming the relevant laws. That matter was being dealt with by the United Nations but the Red Cross could not but be interested in it and should continue to make its voice heard.

It was agreed that future rules should define the civilian population and the special safeguard of the weak and defenceless and also, for example, of the personnel of civil defence services. Stress was laid also on the importance of active and passive precautions to be taken by the parties to a conflict.

The Conference devoted special attention to international Red Cross relief for sorely tried populations. Provision should be made to send such populations the food and medical supplies they needed. In that respect, the traditional role of National Red Cross Societies, laid down in Article 63 of the Fourth Geneva Convention and endorsed by Resolution No. XXVI of the twenty-first International Conference of the Red Cross, should be given the support of an international law provision so that governments grant National Societies the necessary facilities.

The next item was the delicate problem of *non-international armed conflicts* and internal disorders.

On the whole, the experts approved of the idea of a protocol to supplement the Geneva Conventions. They nevertheless emphasized the difficulty of satisfactorily defining such conflicts.

In a similar general way, the experts urged that the ICRC's right to take initiative in non-international armed conflicts be

strengthened in such a way that its offers of service would be accepted by governments. Governments, it was said, should have confidence in the Red Cross. Moreover, the impartial role of National Red Cross Societies for the benefit of all conflict victims should have the backing of a legal provision.

The importance of respect for humanitarian law by insurgents—in their own interest, incidentally—was emphasized. The ICRC should obtain a commitment from them as it had already done.

With respect to internal disorders, one expert suggested, as the conventional system of recognizing belligerent status had proved ineffective, that standard minimum rules based on the Conventions should supplement Article 3 of the Conventions.

The last item on the agenda was *guerrilla warfare*, a particular form of fighting which occurred both in internal and international conflicts.

One expert stated that all people were entitled to resist invasion and that any government had the right to organize its armed forces in the manner it deemed expedient. However, stress was also laid on the reciprocal advantages to the parties, whatever the circumstances, of observing certain limitations in their methods of fighting, and of granting humane treatment to defenceless enemies. Support was given also to the idea of refraining from carrying out capital punishment during hostilities.

Attention was drawn to the very clear change in the concept of combatant since the drawing up of the Hague Regulations respecting the Laws and Customs of War on Land in 1907 and even since the Geneva Conventions of 1949. The Conference discussed the well-known conditions required of combatants to qualify for treatment as prisoners of war and it considered whether they should be maintained or amended. It appeared that, in any case, an army had to be able to distinguish enemy combatants from the peaceful population and that a certain element of loyalty should prevail during the fighting: that implied that both parties would comply with the laws and customs of war in their operations.

A recommendation was put forward that simple rules, applicable to all the widely varying forms of guerrilla warfare and understandable to everybody, should be drawn up.

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In that respect, as in others, the Red Cross had always to endeavour to ensure that the principles of humanity and impartiality prevailed.

When the agenda was completed, the experts were asked whether they had other points to raise.

One expert asked the very appropriate question of what National Red Cross Societies could do to develop and implement humanitarian law. It was suggested that they could promote that undertaking by approaches to their respective governments, train one or more specialists to be made available to the authorities, undertake a publicity campaign to obtain the so necessary support of public opinion, constitute among themselves a select committee of experts, and so forth.

Throughout its work, the Conference sought a balance between idealism and realism. Co-operation among National Red Cross Societies, the ICRC and governments should be continued, for, as was said, "humanitarian law is of concern to all".

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