

# The National Information Bureau in Aid of the Victims of Armed Conflicts \*

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## I. INTRODUCTION

War separates families; it separates prisoners of war from the Power on which they depend and civilians from their country of origin or residence. Uncertainty about what has happened to a loved one who is missing on the battlefield or in enemy-controlled territory is much more difficult to bear than the news that he has been captured and interned by the enemy, or sometimes even that he is dead. Moreover, registering a captured person helps to protect him. The provisions for obtaining, collating and transmitting this type of information are a major step forward in international humanitarian law. The National Information Bureau (hereinafter NIB) plays a key role in the system laid down for this purpose by the 1949 Geneva Conventions. The NIB has the important but difficult task of obtaining and transmitting information on protected persons of the adverse party who are in the hands of the party to the conflict to which the NIB belongs.

The setting up of an office to reply to inquiries about prisoners of war in belligerent States and neutral countries was already prescribed by the Hague Conventions of 1899 and 1907 on land warfare.<sup>1</sup> The Geneva Conventions of 1929<sup>2</sup> and 1949 relating to

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<sup>1</sup> See Art. 14 of the Regulations respecting the Laws and Customs of War on Land, annexed to the Hague Conventions of 1899 and 1907.

<sup>2</sup> See Art. 77 of the Convention.

the treatment of prisoners of war extended and more closely defined the tasks of such bureaux. Finally, the Fourth Geneva Convention of 1949 relating to the protection of civilians in wartime also provides for an NIB to carry out similar tasks in aid of protected civilians.

The NIB, which must, as we will see, be operative the very first day of a conflict, cannot be improvised, especially in a conflict affecting a large number of protected persons. It is therefore extremely advisable to prepare for it in peacetime, just as military, economic and other preparations are made for the eventuality of war. Thus a resolution entitled "National Information Bureau" was adopted by consensus at the Twenty-fifth International Conference of the Red Cross and "urges the States Parties to the Conventions to consider taking such measures as may be necessary to institute their National Information Bureau in peacetime in order for it to fulfil its tasks as soon as possible at the outbreak of an armed conflict".

We therefore feel it useful to set out the States' obligations concerning NIBs, cite the relevant provisions in the Conventions and discuss several related problems, in particular the possible role of National Red Cross or Red Crescent Societies (hereinafter National Societies). In section II, we will look at the NIB and its tasks as set out in the Conventions. In Sections III and IV, we will consider which supplementary tasks might be assigned to NIBs.

## II. THE NATIONAL INFORMATION BUREAU AS SET OUT BY THE 1949 GENEVA CONVENTIONS

### 1. The legal status of National Information Bureaux

As soon as an international armed conflict or occupation begins, each party to the conflict must organize a NIB and ensure that it can work efficiently.<sup>3</sup> Neutral Powers which may have

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<sup>3</sup> See Art. 122 (1) of the Third Convention and Art. 136 (1) of the Fourth Convention. The text of these provisions does not speak of a "National Information Bureau" but of an "official Information Bureau". However, as the title in the margin of these two articles is "National Bureau", the term "National Information Bureau" will be used hereinafter to indicate the Bureaux provided for by Article 122 of the Third Convention and Article 136 of the Fourth Convention.

received persons protected by the Third Convention have the same obligation.<sup>4</sup>

### 1.1. *Organization responsible for the NIB*

The Conventions give no specific instructions as to the nature, composition or working methods of the NIB. Neither do they state which body shall be responsible for establishing and running it. The NIBs which were set up during the Second World War, particularly those which dealt with prisoners of war, were usually run directly by government authorities. Others, especially those dealing with civilians, were created by the National Societies. The preparatory work for the Geneva Conventions of 1949 shows that the National Societies wished to be given responsibility for the NIB. But the Conference of Government Experts which prepared the 1949 Conventions preferred to leave matters indefinite and allow the Government complete freedom in this respect.<sup>5</sup> The resolution of the Twenty-fifth International Conference quoted above is also unspecific as to who should run the NIB. It confines itself to recommending “that the States Parties to the Conventions invite their Red Cross or Red Crescent Society as well as the ICRC to lend such assistance needed to establish the National Information Bureau”.

From a legal point of view, it might be said that the NIB's independence vis-à-vis the State should not be too great, as it is the latter's international responsibility to ensure that the NIB performs its duties properly. In order to assume that responsibility conscientiously, the State must to some extent monitor and control the NIB's work. Likewise, unless it has a close working relationship with the State administration, the NIB cannot carry out its task of

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<sup>4</sup> Article 122 (1), second sentence, of the Third Convention. Regarding protected civilians transferred to a neutral Power, the Fourth Convention contains no obligation to organize a NIB. But Art. 45 (3) of the Fourth Convention states that a third State which agrees to accept protected civilians is responsible for the Convention being applied to them; this includes the obligation to inform the families of what has happened to them. It is possible to assign this task to the NIB although it is not expressly mentioned as one of its tasks by the Conventions (for “supplementary Convention-based activities”, see Chapter III).

<sup>5</sup> Pictet, Jean, ed., *The Geneva Conventions of 12 August 1949, Commentary*, vol. IV, *Geneva Convention relative to the protection of civilian persons in time of war*, ICRC, Geneva, 1958, p. 523, and vol. III, *Geneva Convention relative to the treatment of prisoners of war*, ICRC, Geneva, 1960, p. 574.

gathering, from various branches of the administration, the requisite information on protected persons in the hands of the State. In practice, it is often easier to obtain information from an uncooperative department or reconcile divergent points of view if the NIB, rather than being a non-governmental body, is itself part of the administration and can thus appeal to its superiors in the hierarchy.

In addition, it should not be forgotten that the Detaining Power may, for security reasons, look askance at contacts developing between persons belonging neither to the armed forces nor the security services and prisoners of war or other enemy aliens. If the NIB is run by a National Society, obtaining the necessary information on protected persons can thus be made difficult. Moreover, members of the National Society who work for the NIB could be confronted with the dilemma of a clash between their humanitarian duty and their duty as citizens of the Detaining Power. Finally, the fact that it is the National Society which sets up and runs the NIB could to some extent diminish the belligerents' sense of responsibility, thus reinforcing their tendency to let the Red Cross discharge their humanitarian obligations for them.

The establishment of the NIB therefore remains at all times a government task. If the government entrusts the task of running it to the National Society, the latter must be conscious of the fact that it is doing work for which the State is responsible. For this reason, and to preserve the National Society's independence in performing its traditional tasks, the NIB's activities should then be entrusted to an autonomous service of the National Society.

## 1.2. *One NIB or several NIBs?*

A State may assign the duties of the NIB as set out in Art. 122 of the Third Convention and those in Art. 136 of the Fourth Convention to two separate bodies. This may be practical if the NIB is run by the government, because the authorities responsible for civilians in its power are not usually the same as those responsible for prisoners of war. If, however, the NIB is not integrated into the government administration, it is probably better to assign the two tasks to the same organization because, firstly, the technical problems involved are very similar and, secondly, doing so avoids gaps or duplication of effort in registering protected persons and obtaining information about them.

## 2. The tasks of the National Information Bureau as set forth in the Conventions

### 2.1. *Obtaining information*

The various departments of the government administration must forward to the NIB the following information, documents and objects:

- a) In the case of wounded, sick, shipwrecked or dead combatants in the hands of the Power responsible for the NIB:
  - any particulars which may assist in their identification,<sup>6</sup>
  - certificates of death or duly authenticated lists of the dead,<sup>7</sup>
  - the location of graves and particulars of the dead interred in them.<sup>8</sup>
- b) In the case of prisoners of war held by the Power responsible for the NIB:
  - information regarding their identity, their capture, their health or a change of situation affecting them,<sup>9</sup>
  - personal articles of value which were not restored to prisoners upon their repatriation,<sup>10</sup>
  - notification that an escaped prisoner has been recaptured,<sup>11</sup>
  - death certificates.<sup>12</sup>
- c) In the case of protected civilians who are kept in custody for more than two weeks, are subjected to assigned residence or interned:<sup>13</sup>

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<sup>6</sup> See Art. 16 (1) and (2) of the First Convention and Art. 19 (1) and (2) of the Second Convention.

<sup>7</sup> See Art. 16 (3) of the First Convention and Art. 19 (3) of the Second Convention.

<sup>8</sup> See Art. 17 of the First Convention and Art. 20 of the Second Convention.

<sup>9</sup> See Art. 122 (4), (5) and (6) of the Third Convention.

<sup>10</sup> See Art. 119 (2) of the Third Convention.

<sup>11</sup> See Art. 94 of the Third Convention.

<sup>12</sup> See Art. 120 (2) of the Third Convention.

<sup>13</sup> Art. 136 (2) of the Fourth Convention specifies the persons involved. It should be noted that this article was placed, at the express request of the ICRC, in Section V and not in Section IV of Part III of the Fourth Convention. It therefore applies not only to civilian internees but to all persons protected by the Fourth Convention.

- information relating to their identity and health,<sup>14</sup>
  - the fact that these protected persons are in one of the above-mentioned situations and notification of any change affecting them,<sup>15</sup>
  - personal valuables left by these protected persons,<sup>16</sup>
  - lists of graves in which interned civilians who have died are interred.<sup>17</sup>
- d) In the case of children living in territories occupied by the Power responsible for the NIB:
- all the data necessary for the identification of children whose identity is in doubt.<sup>18</sup>

Some of this information, for example that relating to the death, escape or release of a protected person, should at all times be available from the Detaining Power and the NIB must be sure to obtain it, come what may. Gathering further information, on the other hand, depends on the willingness of the protected persons themselves. If they refuse or are unable to furnish it, the NIB is released from its obligation. Prisoners of war are bound to give only their surname, first names, rank, date of birth and serial number.<sup>19</sup> If they refuse to give that information, they may not be coerced.<sup>20</sup> Likewise, any coercion of a civilian to obtain information is prohibited.<sup>21</sup>

## 2.2. *Transmission of information*

The NIB must transmit all the information <sup>22</sup> and documents it

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<sup>14</sup> See Art. 138 (1) and (2) of the Fourth Convention.

<sup>15</sup> See Art. 136 (2) of the Fourth Convention.

<sup>16</sup> See Art. 139 of the Fourth Convention.

<sup>17</sup> See Art. 130 (3) of the Fourth Convention.

<sup>18</sup> See Art. 50 (4) of the Fourth Convention. The NIB must have a branch office in territories occupied by the Power to which it belongs, if only to carry out this task. But such an office is usually also necessary in order to obtain information on protected persons detained in an occupied territory by the Power to which the NIB belongs.

<sup>19</sup> See Art. 17 (1) of the Third Convention.

<sup>20</sup> See Art. 17 (4) of the Third Convention.

<sup>21</sup> See Art. 31 of the Fourth Convention.

<sup>22</sup> Except that on children in occupied territories, which is provided for in Art. 50 (4) of the Fourth Convention; this information should probably not be forwarded automatically, but merely stored and thus make it possible to reply to requests.

receives to the Central Tracing Agency<sup>23</sup> and the Protecting Power.<sup>24</sup> Personal valuables must be forwarded to protected persons, either directly by the NIB or through the Central Tracing Agency or the Protecting Power.

The Protecting Power must forward the information, documents and valuables it receives to the State which it represents. The Central Tracing Agency forwards them to the following:

- a) in the case of civilians, to their country of origin and/or their country of residence;<sup>25</sup>
- b) in the case of combatants and prisoners of war, to their country of origin and/or the Power on which they depend.<sup>26</sup>

It should be pointed out that the obligation to transmit this information is not absolute, at least with regard to civilians. Indeed, the Fourth Convention contains a provision that such information should not be transmitted to the country of origin or of previous residence in cases where “the transmission might be detrimental to the person concerned or to his or her relatives”.<sup>27</sup> In such cases, it must be forwarded only to the Central Tracing Agency (CTA), which likewise will not transmit it to the country of origin or a country of previous residence “in cases where such transmissions might be detrimental to the persons whom the said information concerns, or to their relatives”.<sup>28</sup>

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<sup>23</sup> The Third Convention refers to a “Central Prisoners of War Information Agency” (Art. 123) and the Fourth Convention refers to a “Central Information Agency for Protected Persons” (Art. 140). As the work of these two agencies is always, in practice, entrusted to the CTA, a permanent institution which is a department of the ICRC in Geneva, we will hereinafter speak of the CTA.

<sup>24</sup> See Art. 122 (3) of the Third Convention and Art. 137 of the Fourth Convention. If the NIB must choose between two Protecting Powers because a civilian has a country of origin other than his country of residence or because a prisoner of war depends on a Power other than his country of origin, it should make its choice on the basis of the CTA’s criteria as set out in notes 25 and 26.

<sup>25</sup> Art. 140 (2) of the Fourth Convention. If a civilian’s country of origin and country of residence are not the same, the CTA forwards the information to one of the two countries or to both. It chooses between these countries according to the interests of the protected person and bearing in mind that it is above all for the family that the information is forwarded (see Pictet, *op. cit.*, vol. IV, p. 530).

<sup>26</sup> See Art. 123 (2) of the Third Convention. In practice, if the Power on which the prisoner depends is not his country of origin, the CTA will not transmit information to the latter unless the prisoner consents, as this may inform that government that its citizen has enlisted in the armed forces of a foreign country.

<sup>27</sup> Art. 137 (2) of the Fourth Convention.

<sup>28</sup> Art. 140 (2) of the Fourth Convention.

The Conventions require that the information forwarded “shall make it possible quickly to advise the next of kin concerned”.<sup>29</sup> The Power which receives the information must therefore forward it as quickly as possible to the families.

### 2.3. *Replying to enquiries*

The NIB not only passes on the above-mentioned information but stores it as well. Under the Conventions, the NIB must reply to all enquiries it receives concerning protected persons.<sup>30</sup> The Third Convention requires the NIB to “make any enquiries necessary to obtain the information which is asked for if this is not in its possession”.<sup>31</sup> In order to meet its obligation to answer all enquiries, the NIB must do so for civilians as well,<sup>32</sup> although this task is not expressly laid down in the Fourth Convention. Forwarding a death certificate would be one way of replying to an enquiry.

The Diplomatic Conference of 1949 did not accept the United Kingdom’s proposal<sup>33</sup> to specify who may make enquiries. Enquiries usually come from the adverse Party, the CTA or a National Society, but they may also be made directly by the families, or by the NIB of the adverse Power as part of its supplementary Convention-based activities, in aid of its compatriots (a definition of these activities is given in Chapter III).

## 3. **Facilities granted to the NIB**

Various provisions are intended to facilitate the transmission of information by the NIB:

a) Under the Conventions, mail between the NIB and the CTA

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<sup>29</sup> See Art. 122 (4) of the Third Convention and Art. 138 (1) of the Fourth Convention.

<sup>30</sup> See Art. 122 (7) of the Third Convention and Art. 137 (1) of the Fourth Convention.

<sup>31</sup> Art. 122 (7) of the Third Convention.

<sup>32</sup> See Pictet, *op. cit.*, vol. IV, pp. 530/531.

<sup>33</sup> See Final Record of the Diplomatic Conference of Geneva of 1949, Federal Political Department, Berne, 1950 and 1951, vol. III, p. 91.

must be exempt from postal, transport and, so far as possible, telegraphic charges.<sup>34</sup>

- b) The Universal Postal Convention exempts from charges all letters, parcels and money orders which are forwarded, received or sent by the NIB in connection with prisoners of war and civilian internees.<sup>35</sup>
- c) Under regulations adopted by the International Telecommunication Union, telegrams sent by a NIB or one of its delegations in the course of their duties under the Conventions will cost only 25% of the normal rate.<sup>36</sup>
- d) Correspondence, lists and reports exchanged between the NIB and the CTA may be conveyed by transport specially organized by the ICRC or the Protecting Powers.<sup>37</sup>

#### 4. NIBs in State practice

In the years since 1949, Parties to international armed conflicts have frequently neglected their obligation to create a NIB and its work has been done *de facto* by ICRC delegates, visiting protected persons<sup>38</sup> and using all the information brought to their knowledge. But it would be incorrect to say that the obligation to establish a NIB has fallen into disuse. In order to comply with the Conventions, the Parties to a conflict do not necessarily have to create a separate organization and give it the official title of National Information Bureau. It is enough if some branch of government pools the relevant information on protected persons and forwards it to the CTA and the Protecting Power if there is one. As the CTA has, since 1949, repeatedly received such infor-

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<sup>34</sup> See Art. 74 and 124 of the Third Convention and Art. 110 and 141 of the Fourth Convention.

<sup>35</sup> See Art. 16 (3) of the Universal Postal Convention in its 1984 version.

<sup>36</sup> See Art. 64, para. 3, of the Telegraph Regulations (revised in Geneva, 1958) annexed to the International Telecommunication Convention. All telegraph services are obliged to accept these telegrams bearing the prefix RCT (see the 1977 Orange Book of the International Telegraph and Telephone Consultative Committee of the International Telecommunication Union, Vol. II.3, nos. A 287-297).

<sup>37</sup> See Art. 75 of the Third Convention and Art. 111 of the Fourth Convention.

<sup>38</sup> Visits provided for by Art. 126 of the Third Convention and Art. 143 of the Fourth Convention.

mation from government authorities or National Societies,<sup>39</sup> it can be said that in these cases the obligation to set up a NIB was at least acknowledged.

The States have not been inactive either as regards peacetime preparations for establishing a NIB, preparations not explicitly prescribed by the Conventions but nonetheless indispensable to fulfil quickly and efficiently, in the event of conflict, the obligations they entail.

Some States have already prepared for the creation of a NIB by assigning to the National Society the task of running it. Others have issued the necessary instructions within the government administration or arranged for a separate organization to be set up. Another solution adopted is a mixed organization run both by representatives of the government departments concerned and by the National Society. But many States seem as yet to have made no preparations at all. In some cases, the failure to do so seems due to the belief that the preparation of a NIB in peacetime requires a high investment of money and staff.

This fear is unfounded. Especially if the preparations are confined to the NIB's tasks as expressly provided for in the Conventions, it can be enough to place one person in charge,<sup>40</sup> give the necessary instructions to the various government departments likely to have the relevant information in wartime, and to train several volunteers who in turn would train the necessary additional staff in the event of conflict. A National Society can assist its government above all in this respect, namely by sharing the experience of its tracing service with the future NIB.<sup>41</sup> In any case, it can remind its government of its obligation under the Conventions, ask it which preparatory measures have been taken to meet those obligations and if need be assist it to complete such preparations.

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<sup>39</sup> See, for example, Djurovic, Gradimir, *L'Agence centrale de Recherches du Comité international de la Croix-Rouge*, Genève, 1981, pp. 254, 257-264 and, more particularly, *ICRC, Annual Report: 1950*, p. 51, 1951, pp. 55-56; 1952, p. 52; 1956, p. 26; 1961, p. 28; 1963, pp. 26, 27, 36; 1965, pp. 18, 44; 1967, pp. 7, 25; 1968, p. 30; 1969, p. 27; 1970, pp. 38, 75; 1971, p. 57; 1973, pp. 12, 50; 1977, p. 36; 1978, pp. 18, 27; 1982, p. 31; 1984, p. 14.

<sup>40</sup> In peacetime, this person need not deal full-time with that task.

<sup>41</sup> Thus, Resolution XIV adopted by the Twenty-fifth International Conference of the Red Cross with regard to NIBs recommends that States "invite their Red Cross or Red Crescent Society as well as the ICRC to lend such assistance needed to establish the National Information Bureau".

### III. ACTIVITIES BASED ON THE CONVENTIONS BUT NOT ASSIGNED BY THEM TO THE NIB

In addition to the above-mentioned tasks which are expressly assigned to the NIB by the Conventions, each State party to a conflict <sup>42</sup> is of course free to assign the NIB other tasks which are also specified by the Conventions but not expressly assigned to the NIB. As those tasks are also performed on behalf of protected persons, using the same techniques and requiring the same knowledge, it might even be advisable to assign them to the NIB but only if the NIB can be relied upon to carry them out quickly and conscientiously. As the tasks mentioned below are specified by the Conventions without being expressly assigned to the NIB, we shall call them supplementary Convention-based activities.

These activities must be divided into two categories: those on behalf of protected persons of enemy nationality,<sup>43</sup> either civilian or military, who are in the hands of the State to which the NIB belongs (we shall term them “protected enemy aliens”) and those on behalf of protected persons of the same nationality as the NIB who are in enemy hands (hereinafter referred to as “compatriots” of the NIB).

#### **1. Supplementary Convention-based activities on behalf of protected enemy aliens**

We have seen that under the Conventions the NIB works on behalf of protected enemy aliens. Some of the activities involved, however, though laid down in the Conventions, are not expressly assigned by the Conventions to the NIB and are therefore supplementary Convention-based activities. But it is often wise to entrust them to the NIB because both they and the activities specifically assigned to it by the Conventions concern the same persons and because carrying them out facilitates and complements the NIB's

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<sup>42</sup> As well as the neutral Powers mentioned in Article 4.B (2) and 122 (1) of the Third Convention.

<sup>43</sup> In the case of a NIB created by a neutral Power, they are of course not enemy aliens, but combatants who depend on one of the States party to the conflict.

mandate under the Conventions. Four types of activity may be delineated:

1.1. *Forwarding other information and documents relating to protected enemy aliens*

Under the Conventions, a State party to a conflict must forward to the Central Tracing Agency a number of documents concerning enemy aliens in its hands.<sup>44</sup> There is no reason why a State party to a conflict could not instruct its NIB to perform this task, considering that the NIB is the CTA's normal 'correspondent'. Likewise, the NIB may be assigned the task of transmitting to the Protecting Power information on legal proceedings instituted against a protected person or administrative steps taken vis-à-vis protected persons.<sup>45</sup>

1.2. *Registering persons who have been captured or interned*

The Detaining Power must enable each prisoner of war and civilian internee to fill in respectively a capture card<sup>46</sup> or internment card.<sup>47</sup> This must be done as soon as possible after the person is captured or interned and not later than one week after his arrival in a camp. These cards have two sections, one of which must be forwarded directly to the family, the other to the CTA. A Detaining Power could give its NIB the task of registering these persons and forwarding the cards. Indeed the NIB could then at the same time carry out its task under the Conventions of obtaining the information which it must transmit to the adverse Party.<sup>48</sup> However, if the National Society or another organization which is not actually part of the government is put in charge of the NIB, it is difficult, for practical reasons, to imagine that a representative of that organization would be present to register the protected person at the initial questioning by the Detaining authorities.

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<sup>44</sup> See Art. 30 (4), 54 (2), 68 (2), 77 (1) of the Third Convention and 91 (4), 113 (1) and 129 (3) of the Fourth Convention.

<sup>45</sup> See Art. 104 and 107 of the Third Convention and Art. 43 (2), Art. 71 (2) and (3) and Art. 75 of the Fourth Convention.

<sup>46</sup> See Art. 70 of the Third Convention.

<sup>47</sup> See Art. 106 of the Fourth Convention.

<sup>48</sup> See above, Chapter II, 2.1.

### 1.3. *Forwarding the correspondence of protected persons in the hands of the State to which the NIB belongs*

Prisoners of war,<sup>49</sup> civilian internees<sup>50</sup> and all persons protected by the Fourth Convention<sup>51</sup> must be allowed to send and receive letters and cards. It would be feasible for the Detaining Power<sup>52</sup> to give its NIB the task of forwarding this correspondence.<sup>53</sup> On the other hand, the task of censoring or—if necessary—limiting such correspondence should always be assigned to a government authority and may never be carried out by a National Society, even if that Society is placed in charge of the NIB.

### 1.4. *Tasks prescribed by Protocol I*

Additional Protocol I of 1977 does not mention the NIB but it provides for the transmission of information on missing persons and the registering of some categories of persons for whose registration there is no provision in the Conventions.<sup>54</sup> As these activities are very similar to the tasks assigned to the NIB by the Conventions, it seems perfectly natural to place the NIB in charge of them.

## 2. **The NIB's supplementary Convention-based activities on behalf of its compatriots**

As we have seen, under the Conventions the NIB is concerned only with protected persons in the hands of the State to which it belongs and not with its compatriots in the hands of the adverse Party. But a Party may ask its NIB to concern itself with those persons as well.

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<sup>49</sup> See Art. 71 of the Third Convention.

<sup>50</sup> See Art. 107 of the Fourth Convention.

<sup>51</sup> See Art. 25 of the Fourth Convention.

<sup>52</sup> Or the Power in whose hands the persons protected by the Fourth Convention are.

<sup>53</sup> The NIB is entitled to exemption from postal dues under Art. 16 (1) and (2) of the 1984 version of the Universal Postal Convention.

<sup>54</sup> See Art. 33 and 78 of Protocol I.

## 2.1. *Tasks which may be assigned to the NIB in this respect*

A Party to a conflict may specify that it does not wish to receive information and documents from the CTA and the Protecting Power concerning persons in the hands of the adverse Power,<sup>55</sup> and ask instead for the information and documents to be sent to its NIB, which will then forward them directly to the families.

The NIB may also be assigned the task of gathering all the requests from families to trace persons in the hands of the adverse Power and replying to these requests on the basis of its own information, or forwarding them to the CTA or the NIB of the adverse Power.<sup>56</sup> By assuming all these supplementary Convention-based activities, the NIB would in a way become the permanent partner of the adverse Power's NIB in activities assigned to that NIB by the Conventions.

Likewise, a State may instruct its NIB to forward to the families the capture cards and internment cards received from the adverse Power, to distribute to the families the mail received from protected persons in the hands of the adversary State and to collect the replies from those families.

Finally, a NIB which is entrusted with these supplementary Convention-based activities on behalf of its compatriots can play a major role in reuniting families, because it will already have in its possession some of the necessary information. Thus, a State can instruct its NIB to facilitate, by pooling and forwarding information, "enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible".<sup>57</sup> And the NIB may be accepted—in some cases even by both Parties to the conflict—as the "organization engaged in this task", i.e. the organization provided for in Art. 26 of the Fourth Convention and Art. 74 of Protocol I.

## 2.2. *Problems related to such a mandate*

As all these activities on behalf of compatriots are typically and traditionally performed by the National Society, it would seem

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<sup>55</sup> As provided for in Art. 122 (3) and Art. 123 (2) of the Third Convention and Art. 137 (1) and 140 (2) of the Fourth Convention.

<sup>56</sup> Even in this case, families naturally remain entitled to correspond directly with the CTA.

<sup>57</sup> Art. 26 of the Fourth Convention.

particularly advisable to assign them to the NIB if it is run by the National Society.

On the other hand, if the running of the NIB is not entrusted to the National Society but to a governmental organization, assigning these activities to the NIB presents considerable problems. First of all, in such a case the government would be encroaching upon classic National Society activities. Unlike the National Society, the NIB will often not have local branches which can make direct contact with the families. This may give rise to particularly difficult problems if, although the families are in a part of the territory of the State to which the NIB belongs, that territory is occupied by the adverse Power.

Secondly, modern international conflicts are often accompanied by internal tensions or even open internal conflict. In such circumstances, families may not consider a governmental organization trustworthy enough for obtaining information on relatives in the hands of the adverse Party to the international conflict.

Finally, the assignment of supplementary Convention-based activities in aid of its own nationals to a NIB run by a government body poses a major problem if the territory of one Party to a conflict is entirely occupied by the adverse Party, for in such a case, the Occupying Power will hold that under the Conventions the NIB is competent only for enemies in the hands of the State to which it belongs. However, no one can be in the hands of a State whose territory is entirely occupied. Therefore as far as its explicitly Convention-based activities are concerned, the NIB of a State whose territory is entirely occupied no longer has a *raison d'être*. Conversely, the above-mentioned supplementary Convention-based activities on behalf of compatriots become very important in such a situation where the government authorities have often ceased to exist. It therefore seems important not to assign these activities to a government agency which might cease to have a legal basis for its existence and might become unable to continue operating; they would be better carried out by the National Society, which is protected against the occupying Power by Article 63 of the Fourth Convention. This can of course be done by assigning all of the NIB's tasks to the National Society, or by assigning to a government-run NIB only the explicitly Convention-based and supplementary Convention-based tasks in aid of enemy aliens and leaving the others to the National Society.

In any case, it would seem wise to keep quite separate within the NIB the services or at least the files regarding its compatriots and

those regarding enemy aliens in the hands of the State to which it belongs.<sup>58</sup>

In conclusion, it should be stressed that a National Society can carry out most of these supplementary Convention-based activities on behalf of nationals of its own country even if it does not itself run the NIB. In practice, it will be much easier for a National Society to carry out activities on behalf of its own compatriots than to work exclusively in aid of protected persons who are citizens of an adverse State, as does a NIB which performs only those activities expressly assigned to it by the Conventions.

#### IV. POSSIBLE NIB ACTIVITIES NOT BASED ON THE CONVENTIONS

A NIB, both in wartime and in peacetime, may take on all manner of tracing activities for which there is no provision in the Conventions. It can, in wartime, carry out tracing activities in aid of displaced persons or other categories of persons who are not designated by the Conventions as beneficiaries of the NIB's work. It can continue its explicitly Convention-based and supplementary Convention-based activities when the conflict is over. It can carry out tracing activities on behalf of victims of conflicts in which the State to which it belongs is not involved<sup>59</sup> and, finally, it can carry out tracing activities when natural disaster strikes.

It may be advisable to assign these tasks, like the supplementary Convention-based activities on behalf of compatriots, to the NIB, which has the requisite expertise and know-how to carry them out. This would also enable the NIB's staff to acquire experience in peacetime in the various tracing activities.

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<sup>58</sup> Having two files does not bring with it the risk of gaps or overlapping with regard to registered persons, because it is always possible to know whether a person to be registered or traced is a compatriot of the NIB or an enemy alien. And should the territory of the State to which the NIB belongs be completely occupied, the NIB will often have to give the Occupying Power information it has on the latter's citizens, whereas it must retain the file dealing with its compatriots.

<sup>59</sup> It should, however, be remembered that activities in aid of military internees, i.e. combatants in a conflict between third countries who are interned by a neutral Power, are activities assigned to a NIB by the Conventions; see Art. 122 (1) in conjunction with Art. 4.B (2) of the Third Convention.

But this should be done only if the NIB is run by the National Society, because assigning such activities to a government agency can entail the same problems as those we saw above <sup>60</sup> in connection with supplementary Convention-based activities on behalf of compatriots.

The National Society can, of course, perform these non-Convention-based tasks without being assigned to run the NIB. Indeed, these activities are today already commonly carried out by a large number of National Societies throughout the world and, in legal and logical terms, have nothing to do with the tasks of the NIB.

## V. CONCLUSION

International humanitarian law provides for five different means of informing families (and States) what has happened to missing relatives, civilians or combatants. The NIB has the following role:

### **1. Passing on information about prisoners of war and protected civilians**

The NIB of the Detaining Power has an obligation under the Conventions to provide the adverse State, via CTA and the Protecting Power, with all the necessary information on protected persons. The NIB of the Power of Origin <sup>61</sup> may be given the supplementary Convention-based task of receiving that information and transmitting it to the families.

### **2. Forwarding official documents, and information concerning legal proceedings instituted against protected persons**

The NIB of the Detaining Power has the obligation under the Conventions of forwarding certain types of documents. It may have the supplementary Convention-based task of forwarding other types of documents, as well as information pertaining to legal proceedings instituted against protected persons. The NIB

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<sup>60</sup> See above, Chapter III, 2.2.

<sup>61</sup> In this conclusion, the term "Power of Origin" is used to indicate the Power on which the prisoners of war depend or their country of origin; for protected civilians, it means their country of origin or of residence.

of the Power of Origin may have the supplementary Convention-based task of receiving those documents and information.

### **3. Forwarding capture cards and internment cards**

The NIB of the Detaining Power may have the supplementary Convention-based task of helping the Detaining Power to meet its obligation of enabling prisoners of war to fill in capture cards and civilian internees to fill in internment cards. It may also be instructed to forward those cards to the CTA and the Power of Origin of the above-mentioned persons. The NIB of the Power of Origin may have the supplementary Convention-based task of taking receipt of those cards and forwarding them to the families.

### **4. Replying to requests**

The NIB of the Detaining Power has the explicitly Convention-based obligation of replying to all requests concerning prisoners of war and protected civilians and of making the inquiries necessary to obtain the requested information. As a supplementary Convention-based activity, it should also reply to the requests for which there is provision in Protocol I.

The NIB belonging to the Power of Origin of the above-mentioned persons may have the supplementary Convention-based task of gathering the requests concerning persons in the hands of the adverse Party, replying to those requests or forwarding them to the CTA or the NIB of the adverse Party.

### **5. Exchange of Correspondence**

The NIBs of the Detaining Power and of the Power of Origin may forward, as a supplementary Convention-based activity, the correspondence between prisoners of war and persons protected

by the Fourth Convention on the one hand, and their families on the other.

It should be remembered, finally, that all the NIB activities which we have mentioned in this conclusion as being supplementary Convention-based may also be carried out by a National Society which is not responsible for the running of the NIB.

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