

**CONFERENCE ON THE LAW OF ARMED CONFLICT**

Mr. Jean Wilhelm, Assistant Director, accompanied by Mr. Michel Veuthey, Member of the Legal Department, represented the ICRC at the Conference on the law of armed conflict which was held in Brussels from 28-30 January 1970.

The Conference was organized with the heading Humanitarian Rights and Armed Conflicts by the Centre de droit international de l'Université de Bruxelles (Institute of Sociology), the Director of which, Mr. Salmon, had contacted the ICRC as long ago as in the autumn of 1968, with a view to the preparation of the event.

The Conference, under the chairmanship of Mr. Henri Rolin, Minister of State and Chairman of the European Human Rights Tribunal, was attended by some 200 participants; professors specializing in the subject, students, diplomats and representatives of public and private international organizations, a number of them from abroad.

With copious working documents, the Conference dealt in particular with:

- the armed and the international character of conflicts;
- guerrilla warfare (designation of belligerents; application of the law of war and of humanitarian law to guerrilla warfare);
- National legislative measures for the application of the Geneva and other Conventions on human rights.

Of the general trends apparent at the Conference, we might mention the ideas intending to extend the qualification of combatant to all who engage in a struggle against an "oppressor State"; to consider the rights under Article 3 of the Geneva Conventions as a minimum applicable in all circumstances in view of the Universal Declaration and Treaties on human rights; to demand in internal conflicts respect for prohibition of weapons and for the IVth Geneva Convention; and finally to strengthen the guarantees of impartiality of tribunals called upon to hear charges of war crimes.

The following were the titles of the reports which were submitted:

- International Armed Conflicts: the International Character of a Conflict by Prof. Tom J. Farer, Columbia University School of Law;
- Qualité des individus belligérants (J. Patrnoic, professeur à la Faculté de Droit et d'Economie de Pristina);
- The Legal Classification of Belligerent Individuals by Colonel G. I. A. D. Draper, O.B.E., LL.M., Professor in Law, University of Sussex;
- De la théorie classique de la reconnaissance de belligérance à l'article 3 des Conventions de Genève (C. Zorgbibe, professeur agrégé à la Faculté de Droit de Nantes);
- La guérilla et le droit de la guerre (H. Meyrowitz, avocat à la Cour d'appel de Paris);
- La notion de personne protégée dans les Conventions humanitaires (P. de Geouffre de La Pradelle, professeur à la Faculté de droit d'Aix);
- L'application du droit de la guerre et des principes humanitaires dans les opérations de guérilla (K. Mameri, membre de l'Ambassade d'Algérie à Paris);
- L'état des législations internes au regard des obligations contenues dans les Conventions internationales de droit humanitaire (G. Levasseur, professeur à la Faculté de Droit et des Sciences économiques de Paris, et R. Merle, professeur à la Faculté de Droit et des Sciences économiques de Toulouse).

Amongst these reports we would mention that of Colonel G. I. A. D. Draper. Basing himself on existing law in armed conflicts (in his view, this means international as well as internal conflicts) and the need for revision and possible adaptation, he starts by stressing the difficulty of the problem:

“ At the outset, it is advanced that this area of Law has been subjected to considerable stress in recent years. Some consensus can be found for the contention that the existing law of participation does not meet contemporary requirements. Beyond that point consensus is not easily found. Even among those who admit the defects of this part of the Law there is some serious hesitation in embarking upon any revision. The precise modalities of any such revision, whether in content or formulation, are as yet an area of open discussion. Most jurists see grave difficulties in securing that degree of consensus among States which would be necessary to

## MISCELLANEOUS

establish a new Convention exclusively devoted to the Law governing participation in armed conflicts of all kinds. Such might be the optimum, but the feasibility is remote. More modest might be the establishment of a Protocol to Hague Convention No. IV of 1907 or to the Geneva (Prisoners of War and Civilians) Conventions of 1949."

After giving a most interesting historical account of the law of war in the Middle Ages, its codification in the 19th Century and the present rule of combatants, Col. Draper proposes the following essential adaptations:

"All that can be done in that area is to narrow the field of application of Article 3 and to extend the application of Article 2 in each Geneva Convention. This, any conflict in which foreign troops are committed on either side, might be lifted up to an Article 2 conflict for the purpose of those Conventions. That does nothing for the concealed fighter for political objectives. It does however, considerably extend the POW status, now a very valuable one, to all those combatants who are prepared to meet the requirements of Article 4 (A) (2) of the Geneva (POW) Convention. It might well be a practicable proposal to work for this objective, through the medium of a General Assembly Resolution. If this achieved considerable support, it might then be feasible to seek the establishment of a Protocol to the Geneva Conventions by way of a Diplomatic Conference."

"A second consideration in any revision of the law of combatancy is that the conditions enumerated in Article 1 of the Hague Regulations and repeated in Article 4 (A) (2) of the Geneva (POW) Convention are to be read disjunctively. Thus, failure to carry arms openly does not mean that the fighters concerned are on that account alone conducting their operations contrary to the law of war. Conversely the mere fact that they are conducting their operations in accord with the law of war does not make their combatancy lawful if they fail to have a distinctive sign. It is this disjunctive nature of the conditions which makes the conditions of privileged combatancy so severe."

"It might be possible to suggest, in any revision, that the conditions of organization and 'openness' in weapon-carrying

(without the distinctive sign) remain an essential qualification, but that failure to observe the law of war in operations does not deprive them of privileged combatancy and POW status upon capture. This would mean that they would be triable as POW for their breaches of the law committed during operations, in the same manner as soldiers.”

In his conclusions he thus emphasizes:

“ The avenues of revision postulated are:—(i) a narrowing of the internal conflict, and a corresponding widening of the international conflict, definition; (ii) a reducing of the four conditions currently required for civilian combatant status to something nearer the lesser conditions required of the *levée en masse*; (iii) the use of the Martens’ Preamble to the Hague Convention No. IV as the theoretical bases for any such changes set out in (ii); and (iv) the greater use of the Article 5, Geneva (POW) Convention, machinery for determining status and a widened area of competence for such tribunals.”

M. Draper ended thus:

“ It is admitted that such changes are very modest. They will be none the less very difficult to obtain in the present climate of international events and divisions... It is a long road and the chances of success are fragile. Yet, if man has any confidence in man, some such effort must be made before it is too late.”

M. V.