

DIPLOMATIC CONFERENCE
ON THE REAFFIRMATION AND DEVELOPMENT OF
INTERNATIONAL HUMANITARIAN LAW APPLICABLE
IN ARMED CONFLICTS
(Summary of Work)

Introduction

The first session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law, which opened at the International Conference Centre, Geneva, on 20 February 1974, closed on 29 March. ¹

1. Attendance

The Diplomatic Conference, convened by the Swiss Government as depositary State of the Geneva Conventions twenty-five years after the signing of the four Geneva Conventions in 1949, was attended by some seven hundred delegates representing 126 States, representatives of the United Nations and its specialized agencies, and of regional intergovernmental organizations such as the Organization of American States (OAS), the Organization of African Unity (OAU), the Arab League and the Council of Europe. Fourteen liberation movements recognized by the OAU and the Arab League also took part in the work of the Conference, as did observers from about twenty non-governmental organizations.

¹ See *International Review*, March 1974.

This large attendance deserves mention. In addition to liberation movements and international organizations, there were twice as many States as at the 1949 Diplomatic Conference, which was attended by sixty-three.

2. Preparatory work

The first session of the Diplomatic Conference was preceded by considerable preparatory work. The XXth International Conference of the Red Cross (Vienna, 1965) in resolution XXVII proclaimed four principles relating to the protection of civilians against the dangers of indiscriminate warfare, and urged the International Committee of the Red Cross to pursue the development of international humanitarian law.

In May 1968, the International Conference on Human Rights called by the United Nations in Teheran invited the Secretary-General of the United Nations to establish contact with the ICRC with a view to making a concerted study.

In September of the same year, the ICRC told the representatives of Red Cross, Red Crescent and Red Lion and Sun Societies gathered in Geneva that it was renewing the effort to ensure the reaffirmation and development of humanitarian law applicable in armed conflicts, as it had done several times since the founding of the Red Cross.

In 1969, the ICRC presented to the XXIst International Conference of the Red Cross, meeting in Istanbul, a report on the reaffirmation and development of the laws and customs applicable in armed conflicts. The report comprised the results of the work done by the ICRC in various spheres, bearing more particularly in mind the experience and the lessons that had emerged from its practical action in conflicts over past decades. The Conference unanimously adopted resolution XIII, in which it requested the ICRC to pursue actively its efforts with a view to proposing, as soon as possible, rules which would supplement the existing humanitarian law, and to invite governmental experts to meet the ICRC for consultations on those proposals.

Pursuant to that resolution the ICRC, on 24 May 1971, convened the "Conference of Government Experts on the Reaffirm-

ation and Development of International Humanitarian Law Applicable in Armed Conflicts”, to which some forty governments were asked to send experts.¹ As the Conference was unable to deal with all the items on its agenda, it asked that a second session be held, one which would be open to all States parties to the 1949 Geneva Conventions. The second session, which was held in Geneva from 3 May to 3 June 1972 and which assembled more than four hundred experts delegated by seventy-seven governments, gave a decisive impetus to the undertaking.²

Besides the two sessions of the aforementioned Conference, the ICRC held a great many individual and collective consultations. In the Hague, in March 1971, and in Vienna, in March 1972, it submitted its drafts to National Society experts and heard their views. Again, in November 1971, it consulted representatives of non-governmental organizations.

In this field, the ICRC also remained in close touch with the United Nations and closely followed the proceeding of the General Assembly, which at every session since 1968 has adopted resolutions on “ respect for human rights in armed conflicts”, thereby encouraging the ICRC to continue its work.

Each time, the Secretary-General of the United Nations submitted to the General Assembly full reports containing useful suggestions, and his representatives took an active part in the two sessions of the Conference of Government Experts called by the ICRC.

The two draft Protocols prepared by the ICRC (I. Draft Protocol additional to the Geneva Conventions of August 12, 1949, and relating to the protection of victims of international armed conflicts; II. Draft Protocol additional to the Geneva Conventions of August 12, 1949, and relating to the protection of victims of non-international armed conflicts) are therefore the result of several years' joint effort. After being considered by the XXIInd International Conference of the Red Cross which met in Teheran in November 1973, they served as a basis for discussion at the Diplomatic Conference.

¹ See *International Review*, October and November 1971.

² See *International Review*, June and July 1972.

Work of the Conference

1. Initial plenary meetings

(a) *Proceedings*

Twelve of the first nineteen plenary meetings were devoted to procedural matters.

After electing Mr. Pierre Graber, Federal Councillor and Vice-President of the Swiss Federal Council, President of the Conference, at the opening plenary meeting on 20 February, the Conference held no further official meeting until 27 February. During that week, in accordance with the practice now followed by major diplomatic conferences, the geographical groups (Africa, Latin America, the group of west European and other States, and the east European States) had numerous unofficial consultations with the Presidency and among themselves on the important problems confronting the Conference, *inter alia* the question of extending invitations to further participants, the distribution of official posts, and the rules of procedure. The consultations allowed agreement to be reached on several points.

Consequently, when the official meetings were resumed and the question of participation was considered, the Conference admitted Guinea-Bissau by consensus, that is, without putting the question to the vote. By consensus, the Conference also granted the liberation movements recognized by the OAU and the Arab League the right to participate in the proceedings, but without the right to vote. In this context, it should be mentioned that the XXIInd International Conference of the Red Cross, in Teheran, and the twenty-eighth session of the United Nations General Assembly had urged the Diplomatic Conference to consider inviting such movements. On the other hand, as agreement was not reached on the participation of the Provisional Revolutionary Government of the Republic of South Vietnam, the Conference took a vote and refused by 38 to 37 to invite that Government.

The Conference confirmed officially, by consensus, the agreement reached unofficially on the distribution of official posts, namely the appointment of nineteen Vice-Presidents of the Con-

ference, and of the Chairmen, Vice-Chairmen and Rapporteurs of the four main Committees, the Drafting Committee and the Credentials Committee.

The Conference ended this phase of the proceedings by approving the Committee's programme of work and adopting the rules of procedure, on the basis of a report drawn up by the Drafting Committee, chaired by Mr. Chowdhury (Bangladesh), on numerous proposed amendments to the draft rules of procedure.

(b) General discussion

From 5 to 11 March, in the course of the seven initial plenary meetings devoted to general discussion, eighty delegations took the floor to state their position regarding the draft Protocols Additional to the Geneva Conventions—regarded as an interesting basis for discussion—and other questions relating to the application of humanitarian law.

2. Work of the Committees

It was only on 11 March, following the general discussion in plenary, that three of the four main Committees began to meet and deal with the draft Protocols Additional to the Geneva Conventions submitted by the ICRC. Committee II, however, started its meetings on 6 March, while the plenary meetings were still going on.

Committee I, chaired by Ambassador E. Hambro (Norway), opened the discussion on general provisions and application. One of the questions that arose was that of national liberation wars. The discussion and the adoption of the report submitted by Mr. Marin-Bosch (Mexico), at the final plenary meetings, showed that the essential provision discussed by Committee I was Article 1 of draft Protocol I—also discussed in a working group chaired by Mr. Marin-Bosch. Finally, an amendment to the draft article defining the scope of the Protocol applicable in international armed conflicts, adopted by 70 votes to 22 with 12 abstentions, asked that this type of conflict be included in the field of application of Protocol I and of the Geneva Conventions:

“ Article 1—General principles

- 1. The present Protocol, which supplements the Geneva Conventions of August 12, 1949, for the Protection of War Victims, shall apply in the situations referred to in Article 2 common to those Conventions.*
- 2. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial and alien occupation and racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.*
- 3. The High Contracting Parties undertake to respect and to ensure respect for the present Protocol in all circumstances.*
- 4. In cases not included in the present Protocol or in other instruments of treaty law, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.”*

Committee I also began to examine other important articles such as Article 2 (Definitions), Article 3 (Beginning and end of application), Article 4 (Legal status of the Parties to the conflict) and, above all, Article 5 (Appointment of Protecting Powers and of their substitute). Amendments were proposed to about fifteen articles in draft Protocol II, applicable in non-international armed conflicts, but for lack of time they could not be discussed at this first session.

Committee II, chaired by Colonel T. Mallik (Poland) with Mr. D. Maïga (Mali) as rapporteur, was concerned with the protection of the wounded, the sick and the shipwrecked, as well as with medical transport, civil defence bodies and relief. The Committee discussed at length questions relating to definitions and it provisionally adopted Article 8 of draft Protocol I defining the wounded, the sick, the shipwrecked, and also medical personnel and units. Subject to definitive adoption, this article will extend the benefit of international humanitarian law to the wounded, the sick and the shipwrecked, and also to *civilian* medical personnel and units.

Committee II appointed a Drafting Committee chaired by Dr. B. Jakovljevic (Yugoslavia), and a Technical Sub-Committee on Signs and Signalling which, chaired by Mr. H.A. Kieffer, a Swiss expert, studied the rules relating to the identification and marking of medical and civil defence personnel, units and vehicles. The Technical Sub-Committee adopted the proposal put forward by the ICRC in the Annex to the draft Protocols Additional to the Geneva Conventions of 12 August 1949 regarding improved signalling and identification, and hence protection, for medical services and civil defence. The experts thus approved the ICRC proposal of an internationally recognized sign for civil defence bodies (blue triangle on orange background), the issue of a special identity card for civilian medical personnel (similar to that in force for military medical personnel), improved visibility of the sign of the red cross, red crescent and red lion and sun, or the adoption of other signals for the identification of medical vehicles, such as distinctive luminous signs (flashing blue light), special radio frequencies and secondary radar.

Committee III, chaired by Professor H. Sultan (Egypt), in an encouraging manner approached the problem—hitherto imperfectly covered by international humanitarian law—of the protection of the civilian population against hostilities. Owing to the diligence of a working group presided over by Professor R. Baxter (United States of America) who at the same time was the Committee's rapporteur, the Committee adopted, with certain reservations regarding the field of application of the Protocols, Articles 43 and 45 of Protocol I and the corresponding articles of Protocol II, i.e. Articles 23 and 25, on the protection and definition of the civilian population.

Article 43, entitled "Basic rule", thus reads as follows:

In order to ensure respect and protection for the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and shall direct their operations only against military objectives.

Article 54, entitled “ Definition of civilians and civilian population ”, lays down that:

1. *A civilian is anyone who does not belong to one of the categories of persons referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 42 of the present Protocol.*
2. *The civilian population comprises all persons who are civilians.*
3. *The presence, within the civilian population, of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.*
4. *In case of doubt as to whether a person is a civilian, such person shall be considered to be a civilian.*

Other articles, such as Article 44 of draft Protocol I and Article 26 of draft Protocol II, on the field of application of the rules, were only partly dealt with. Committee III did not reach agreement as to whether the Protocols should cover the protection of civilians on land alone or also in the air (e.g. in civil aircraft) and at sea (e.g. in merchant vessels).

Nor was Committee III, for want of time, able to discuss at the first session the numerous amendments submitted on various articles in the two draft Protocols.

In addition to the three main Committees, the Conference constituted an *ad hoc Committee on Conventional Weapons*, pursuant to a meeting of a group of experts convened by the ICRC, in Geneva in June 1973, and to resolutions adopted by the XXIInd International Conference of the Red Cross (Teheran, November 1973) and the twenty-eighth session of the General Assembly of the United Nations. The weapons concerned are “ weapons that may cause unnecessary suffering or have indiscriminate effects ” such as certain incendiary weapons (e.g. napalm), fragmentation weapons (e.g. pellet bombs), blast weapons, delayed-action weapons, or small-calibre high-velocity projectiles (which cause wounds similar to those caused by “ dum-dum bullets ”). The Committee, chaired by Mr. D. Garces (Colombia) with Professor F. Kalshoven (Netherlands) as rapporteur, after a general discussion on weapons and after voicing considerations regarding specific weapons such as incendiary weapons, exploding bullets and “ antipersonnel ” weapons,

adopted the plan of work proposed by the ICRC, including the convening of a Conference of Government Experts by the ICRC, subject to certain conditions.

Final Plenary Meetings

1. Reports of Committees

At the final plenary meetings held on 28 and 29 March, the Conference studied and noted the reports of its Committees. In view of the importance of the report of Committee I, the Conference had before it a resolution submitted by India which was adopted by consensus. According to this resolution, the Conference, adopting the report of Committee I, welcomed the adoption of Article 1 of draft Protocol I by Committee I.

2. Follow up

As President Graber pointed out at the final plenary meeting, the Diplomatic Conference had not concluded but merely suspended its work. It was proposed to hold a second session in Geneva, from 3 February to mid-April 1975. Pursuant to a resolution (document CDDH/52) submitted by ten delegations (Bangladesh, Canada, Egypt, India, Mexico, Nigeria, Sri Lanka, Sudan, Sweden and Yugoslavia), participants were invited to submit amendments and proposals on the draft Protocols, if possible before 15 September 1974, in order that the Secretariat of the Conference might distribute them before 15 November.

3. Final addresses

We reproduce below the addresses delivered at the closing plenary meeting of the first session:

Dr. Eric Martin, President of the International Committee of the Red Cross

As President of the International Committee of the Red Cross, I have requested the opportunity to say a few words at the closing meeting of the first session of the Diplomatic Conference, because

our institution is closely concerned with the problems that have been debated at the Conference and with the evolution of humanitarian law.

The ICRC is gratified to see the very large number of participants at the Conference and it welcomes the fact that some of the parties concerned who did not take part in earlier meetings have had an opportunity to express their views.

All of you have demonstrated, in the course of your work here, that a spirit of good will is present among all peoples. The International Committee of the Red Cross firmly hopes that the universality of the Law of Geneva will be preserved, and it is precisely in this respect that this session's discussions have shown a genuine will common to all parties that that universality should endure. That in itself constitutes a positive result of the work carried out here.

At this first session, a certain number of fundamental issues have been examined. The ICRC earnestly hopes that at the beginning of its second session the Conference will investigate the substance of the questions at issue and that swift progress will be made. It should not be forgotten that International Conferences of the Red Cross—of which States are members—and the United Nations General Assembly stressed the pressing need for the reaffirmation and development of the Geneva Conventions for the Protection of War Victims.

The deliberations at this first session have permitted the plenipotentiaries to enter into contact with each other, to get better acquainted and to compare their views. In this connection, the 250 or so amendments that have been submitted represent a valuable mass of material that should now be studied in greater detail and its essence extracted.

The ICRC is ready to provide any information you might wish to obtain and offers its co-operation in any task that you might wish to entrust to it. It has started making preparations to convene a conference of government experts on weapons in accordance with the wishes of the Diplomatic Conference. In this connection, the work of the ad hoc Committee has enabled the ICRC to frame a plan of work and determine the terms of reference of the government experts who will meet in Lucerne from 24 September to

18 October 1974. The ICRC is very happy that this conference should take place under its auspices and will send the invitation to attend it some time in May.

I would like today to entreat you most earnestly to put to good use the period until our next session by persisting in the study of all these problems which, as you have shown, lie close to your hearts, and, moreover, to endeavour by frequent contacts to reduce the gaps between divergent points of view and to seek solutions to problems still outstanding. We are convinced that some solution may be found even to the most difficult cases.

I hope that, by renewed efforts of understanding and in a spirit of conciliation, appropriate formulas may be devised that will satisfy all the representatives of States here. May I, in this context, quote what the founder of the Red Cross, Henry Dunant, said in one of his writings:

To produce an idea that is pure, fruitful, humane; to sacrifice one's life for that idea—that is a passion sublimated in the heat of an imagination in possession of the senses and raised to the holiness of a pure ideal. But one must have greatness of heart to bring to fruition this noble idea transmuted to passion, for there can be no real success without that enthusiasm of the heart which generates energy and perseverance.

You have shown, in the course of your work here that a spirit of good will is present among all peoples. Whatever happens, cherish the universality of the Law of Geneva as one might cherish some possession of great price.

Ladies and gentlemen, it remains for me to express to you the deep gratitude of the ICRC, not only for having accepted its draft Protocols as the sole basis for discussion, but also because, in the course of the discussions and in the numerous statements that have been made, you have renewed your faith in our institution and have marked your appreciation of all that it is doing for the victims of conflicts. We urgently need your support. Please continue to grant us it.

Mr. Pierre Graber, President of the Conference, Federal Councillor

Now that we are approaching the end of the first phase of our work, I may be permitted a few remarks on the results of that phase.

Beforehand, however, I would like to give you some details about the continuation of our work.

I am pleased to be able to do so in complete agreement with the Conference Bureau, which met yesterday at the end of the afternoon and exchanged views over a wide range of subjects.

1. First of all, as I mentioned to the Bureau, the Swiss Government intends to invite participants to the second session of the Conference, starting on 3 February next year and probably lasting until the second fortnight of April. The closing date of that session cannot yet be decided for technical reasons beyond our control. That date and length of session were approved by the Bureau.

During the second session, in 1975, there will be a recess for the Easter holidays towards the end of March. In compliance with the wishes of a number of delegations, that recess should not exceed a week, and it should be an opportunity for delegations to consult their governments.

2. Several members of the Bureau have stressed that the second session should be—and indeed could only be—the continuation of the work so far undertaken, which is now suspended and will be resumed next year.

With this in mind, the Bureau in general felt that although circumstances did not warrant our abandoning the idea of a general debate altogether, they did necessitate our keeping it as short as possible so that the Committees might resume without delay and complete the considerable amount of work which awaited them.

3. The Presidency has had occasion to inform the Bureau that the Secretariat would be pleased to receive delegations' suggestions for improving the Conference organization. The Secretary-General would take them into consideration with a view to the organization of the next session.

4. Again having in mind the second session, the Conference has just this morning approved the draft resolution proposed by a number of countries and bearing the reference CDDH/52. I assure you that the Secretariat will spare no effort not only to despatch within the set time-limits the amendments already proposed and those that will be proposed by 15 September next, but also, as was

suggested to the Bureau, to assemble the amendments which are of interest to each of the Committees into a handy volume.

Finally, ladies and gentlemen, at the conclusion of the first session of the Conference, I would not omit to express thanks for their active co-operation to all holders of the various offices in the Conference, especially the Committee chairmen and rapporteurs, and the Vice-Presidents of the Conference who assisted me in the discharge of my functions. My gratitude goes also to all the known and unknown, seen and unseen persons—the interpreters, translators, secretaries and all others who will, I trust, bear with me if I do not mention them specifically—all those persons who, each in his or her own way, contributed to the smooth proceedings and the good work of the Conference.

If we look back over what we have done, we can say, I think, that a by no means negligible area of ground has been covered in the course of this session. It is true that few articles have been approved in Committee stage. However, the purely quantitative appraisal of the work done during the session would not give a complete picture of what has been achieved. Perhaps the magnitude of the Conference's assignment and the importance of its objectives demanded that the starting-points be well defined and the direction to be taken clearly marked. That was done, and consequently the interval of a year, before the second session, can be put to advantage by all participating States. Much, and the most difficult, has yet to be done, but I have no doubt that the necessary thought and consultations will continue during international meetings. It appears essential for the success of our enterprise that when we come together again in Geneva next year our work should not suffer from the interval but, ideas having been clarified, benefit from it.

* * *

Professor H. Sultan, Head of the Egyptian delegation

At the request of the Bureau of the Conference, and speaking on behalf of the gathering of plenipotentiaries, he thanked the Swiss Government, as the depositary of the Geneva Conventions, for having

taken the happy initiative of convening the Conference and for the efforts it had made to ensure its success. Their thanks were due also to the City of Geneva for its hospitality, to Mr. Jean Humbert, Ambassador, Secretary-General of the Conference, for the successful organization of the Conference, and to the representatives of the ICRC for the help they had extended to the various committees during their discussions. Finally, speaking on behalf of all the delegations, he paid a tribute to Mr. Pierre Graber for the dignity, competence, objectivity and wisdom with which he had guided the proceedings of the Conference.

Conclusions

At the end of five weeks of work, although the discussions on questions of substance hardly lasted fifteen days, any attempt to draw up a quantitative balance sheet based on the number of articles of the draft Protocols which were adopted or examined would not do justice to the results achieved. As the President of the Conference pointed out in his final address, the size of the task assigned to the Conference and the importance of the aims pursued demanded, in the first place, well defined starting points and clear directions.

Rules of procedure would need to be laid down. A general discussion would also be useful. Nor could one lose sight of the fact that extremely important matters of substance had been discussed at the first session: the material field of application (Committee I) and the personal field of application (Committee II) of humanitarian law, the definition and protection of the civilian population, and the limitation of certain conventional weapons.

In view of the universal nature of the international community assembled in Geneva, of the fact that armed conflicts were taking place at the same time as a Conference designed to restrict violence, and of the wide variety of features of present-day conflicts, one can realize the difficulty of what has been achieved, and of what remains to be achieved in coming years, to ensure that renovated international humanitarian law is adopted and applied.