

INTERNATIONAL COMMITTEE OF THE RED CROSS

CONFERENCES FOR THE DEVELOPMENT OF HUMANITARIAN LAW

Main Subjects

Notwithstanding the volume reached by the Geneva Conventions in 1949, they do not cover the whole field of human misfortunes. It is now more than twenty years since they were drafted. Moreover, although Geneva Law was developed in detail in 1949, The Hague Law, on the contrary, which deals more with the regulation of hostilities and of the utilization of weapons, goes back to 1907, when bomber aircraft had not yet come into existence.

The ICRC therefore decided to initiate a new stage in the development of humanitarian law. It was given a formal mandate to do so by the XXIst International Conference of the Red Cross, held at Istanbul in 1969. This effort has also the support of the United Nations, which adopted important resolutions in the same field.¹

Conferences of experts have therefore been convened by the ICRC. The first, organized by the Netherlands Red Cross Society and which was attended by National Red Cross Society experts, took place at The Hague from 1 to 6 March. News on the conference will be given in our next issue. The second conference, at which government experts from a number of countries will meet, will be held in Geneva from 24 May to 12 June 1971.

We give below a summary of the main subjects to be dealt with by these two conferences for the development of humanitarian law. (Ed.)

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¹ See *International Review*, January and February 1971.

Protection of Wounded and Sick

The 1949 Conventions did not provide adequate solutions to the problem of the protection to be afforded to civilian doctors and other members of the civilian medical personnel. Under existing law, only personnel of civilian hospitals are protected in any way. The other doctors and nurses are not more protected than civilians in general and do not have the right to bear the red cross emblem. A survey carried out among Governments revealed that in most countries it was envisaged to amalgamate military and civilian medical services, or at least to create a truly civilian medical service that would be organized and supervised by the State. It would be therefore now possible to extend the red cross emblem to civilian personnel.

The present Article 3 of the Geneva Conventions, applicable to internal conflicts, merely says that the wounded and sick shall be collected and cared for, but it contains no mention at all of the protection of doctors, medical personnel or hospitals, nor of the respect due to the protective red cross emblem. This gap must be filled.

Measures Intended to Strengthen the Application of the Law

Humanitarian law has already saved millions of lives. It can save many more, but, for this, it must be applied and primarily must be familiar to all those in authority. What is to be done in order that this twofold objective may be achieved?

In this respect, the problem of supervising the application of the Conventions is of capital importance. This supervision has been entrusted to Protecting Powers, i.e. neutral States representing the interests of a belligerent in the country of an adversary, and subsidiarily, to the ICRC. But, in many cases, for political reasons, there has been no Protecting Power to do anything. How can this be remedied?

Another question of outstanding importance is: could the sanctions applied to prevent and repress violations of the humanitarian Conventions be strengthened?

Protection of Civilian Populations

In general the Fourth Geneva Convention protects civilians only against abuse of an enemy's authority, but not against the use of weapons.

It is now known—somewhat belatedly—that the large-scale bombing of towns during the Second World War did not “pay” from the military point of view. However, although the destroyed towns have been rebuilt, the limits which humanity requires in the conduct of hostilities have not been reaffirmed.

Today States may perhaps be prepared to confirm in a formal undertaking certain minimum rules to that effect, stipulating that the parties to a conflict do not have an unlimited choice of means to inflict injury on an enemy, that terrorist raids against the civilian population *per se* are prohibited, that attacks may be directed solely against military objectives and that even then every precaution must be taken to spare civilians inordinate damage.

Protection of Victims of Non-International Conflicts

Another major problem is: how to ensure the application of humanitarian law, or at least its essential provisions, in conflicts which are not international; in other words, in civil wars and internal conflicts. There is a dire need for a solution to this problem, for civil wars sometimes give rise to a proportionately greater amount of suffering than those which are international, due to the fervour and hate they engender. Whereas formerly the law of nations was not considered relevant to revolt, there has been, since 1949, an article in the Geneva Conventions—article No. 3, common to all four—which has acquired fame because it constituted an innovation. It has also proved to be invaluable in practice.

Nevertheless, even its own authors admit that it was but the first step. Experience in recent conflicts has shown that there are many points which it does not cover. For instance, although it demands humane treatment and regular trial for prisoners, it does not prevent the bringing to justice and the punishment of people who have participated in rebellion. Can the giant stride now be taken, that is to say, can such people be granted the impunity

which is granted prisoners of war if they have only taken part in hostilities without committing any crime, or can at least capital punishment be discontinued for the duration of the conflict?

Can consideration be given to the introduction of some sort of supervision, or at least make ICRC intervention official, instead of optional for the parties as at present? Can measures be contemplated to attenuate the hardship caused by blockade to non-combatants, particularly children?

There is one omission which might be remedied without opposition. Article 3 states that in the case of armed conflict not of an international character the wounded and sick shall be collected and cared for, but it states not a word on the protection of doctors, nursing personnel and hospitals or on the respect due to the protective red cross emblem. This gaping loophole must be closed.

Guerrilla Warfare

Guerrilla warfare (or "little war") is a method of waging war which has become very widespread in recent times. It is characterized by underground fighting in which the combatants resort especially to surprise attacks and ambushes. It may occur in international just as much as in internal conflicts. The civilian population, torn between one side and the other, is often the principal victim of this form of combat. It is indispensable that it should be able to avail itself of the safeguards of humanitarian law.

Another problem is to determine whether the conditions which combatants must obey in order to qualify for prisoner-of-war treatment should be revised. Such conditions would include, for example, to carry arms openly and to respect the laws and customs of war, in order that the fighting may be fair and above board.

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