

INTERNATIONAL COMMITTEE OF THE RED CROSS

CONFERENCE OF GOVERNMENT EXPERTS

SECOND SESSION

The second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, convened by the ICRC, began in Geneva last May and terminated on 2 June. We give below a brief analysis of the results of the four commissions assigned, as mentioned in our previous issue, to the study of the content of the two draft additional Protocols to the 1949 Geneva Conventions. In a subsequent issue we shall refer to the final report on the work of the Conference, which the ICRC is now preparing and will shortly publish.

Commission I

Commission I was concerned with the protection of the wounded and sick in international armed conflicts. At the close of its work, it produced a complete text comprising provisions relating to the three main items: *protection of civilian medical personnel, units and institutions*, to be provided with the same immunity as granted to military medical personnel and units under the Geneva Conventions; *medical air transport*, and, lastly, *the position of National Red Cross Societies* and other relief bodies.

The principle of extending protection to civilian medical personnel and all kinds of civilian medical institutions—whether permanent or temporary, public or private—was accepted and considered as one of the principal additions to the Geneva Conventions.

The experts approved the proposal that medical institutions enjoying protection should be duly recognized by the competent authorities of the State within whose territory they operated, in

order to avoid any abuse. The question of marking medical institutions in time of peace and in time of war, concerning which tests had been carried out, was also discussed.

The Commission also considered the question of protection for the individual. The experts felt that any act endangering health (physical mutilation, medical and scientific experiments, including the grafting or removal of organs not justified by medical treatment) should be prohibited.

Protection for the medical mission was a matter which was considered by the experts, who largely accepted the principle of immunity, i.e. that a person should not be punished for having carried out medical activities, whoever benefited by it, or compelled to commit acts contrary to the ethics of duty.

The question of medical air transport was carefully studied. Here again, the Commission and the experts in air navigation and signalling succeeded in drawing up complete regulations which should allow the resumption of operations by medical aviation immune from attack.

In this context, one of the biggest problems was aircraft marking, and the experts recommended that, in addition to the red cross emblem, advanced methods be used, such as flashing blue lights, radiocommunication on special frequencies, and a secondary radar transponder.

The conditions relating to the use of medical aviation were also discussed. The experts favoured provisions designed to facilitate the mission of the aircraft, whether over its own territory or over combat zones.

Lastly, the Commission considered the position of National Red Cross Societies and other bodies performing humanitarian and impartial activities, for which provisions were drawn up to ensure special facilities.

Commission II

Commission II dealt with non-international armed conflicts. Such conflicts have hitherto been covered by Article 3 common to the four Geneva Conventions of 1949, the value of which is recognized but which nevertheless does not provide enough protection for

the victims. The ICRC therefore submitted to the experts for their consideration an additional Draft Protocol developing Article 3, and consisting essentially of provisions based on those of the Geneva Conventions. The necessity for the development of Article 3 was largely accepted. Some experts declared that the victims of armed international and internal conflicts should enjoy the same protection, but the majority opposed that view, feeling that the specific nature of non-international conflict should be borne in mind and appropriate rules established in a separate Protocol.

The definition of armed conflict not of an international character was one of the questions discussed. Differing views were voiced: while some experts favoured an extremely broad and flexible definition, based on purely objective criteria, others preferred a more precise provision embodying criteria such as the intensity and duration of the conflict.

All the experts were agreed on the need to give captured combatants humane treatment throughout their captivity. This was an important step forward, because Article 3 made no provision in this respect. Some experts thought that captives might be granted, if not the same treatment as laid down in the Third Convention for prisoners of war, at least similar treatment; other experts, and they were more numerous, said that they favoured basic humane treatment not solely reserved for combatants, but extended to civilians deprived of freedom for acts committed in connection with the conflict.

With regard to penal prosecution against combatants, it should be recalled that Article 3 does not grant combatants immunity. Some experts proposed the abolition of the death penalty for combatants who had fought fairly, that is, respected the essential provisions of the law of armed conflict. Others considered that execution of the death penalty should be suspended until the end of hostilities and that the victor should be urged to grant a general amnesty.

Relief was a question of special importance. In the course of a great many armed conflicts not of an international character, hunger had sometimes been cruelly felt, and the wounded and the sick had not always received the care they needed. The ICRC

was therefore expressing the concern of the international community as a whole in formulating provisions designed to facilitate humanitarian assistance and to strengthen the action of National Red Cross Societies and other relief organizations. On the whole, the ICRC proposals were welcomed. Some experts, however, were apprehensive lest humanitarian assistance should throw the door open to any interference in the internal affairs of a State.

Commission III

Commission III dealt with three subjects:

1. protection of the civilian population against dangers of hostilities;
2. combatants;
3. protection of journalists engaged in dangerous missions.

The protection of the civilian population against dangers of hostilities (the Geneva Conventions, as they stand, protect civilians only against arbitrary action by the enemy authorities in whose power they happen to be, for instance, in the case of occupation) is closely linked with the use of weapons. Many experts considered that there should be an express prohibition. The proposals put forward revealed various tendencies ranging from a specific prohibition of ABC weapons to a prohibition of new conventional weapons (liable to cause needless suffering or which were particularly cruel). It was held that a meeting of experts (scientists, army experts, doctors and jurists) should be convened within the next few months, to study technical data relating to those categories of weapons.

The definitions of civilian population and of objects of a civilian character gave rise to prolonged discussion. To ensure, too, that the protection of the civilian population was made more effective, many experts urged the need for a broader concept of objects indispensable to survival (foodstuffs, clothing, dwellings, etc.), on the one hand, and for absolute immunity to be granted to those objects, on the other. That idea held good also for works and installations containing dangerous forces (dams, dikes, sources of energy, etc.). The experts reaffirmed that attacks against the

civilian population were prohibited, but with regard to civilians indirectly exposed to danger (if they are in the vicinity of military objectives, for example barracks, arms factories, etc.), different viewpoints were expressed about the measures of precaution recommended by the ICRC. Lastly, most of the experts supported the idea of further developing the concept of "open cities". The situation of children in time of armed conflict was discussed: it was generally considered that children should not be used to commit hostile acts; however, even if they did so, they should not be held responsible for such acts. The idea of facilitating humanitarian assistance to the civilian population, in particular by means of provisions regarding relief, was favourably received.

The experts also dealt with the question of civil defence organizations. In the first place, they would need to be defined, and here the experts favoured a functional definition. It was considered that those bodies should be able to fulfil their duties, not only in occupied territory, but in areas of military operations as well. It was hoped to find, for those bodies, an internationally recognized emblem which might be used in both international and non-international armed conflicts.

The second subject concerned *combatants* and was related to the reaffirmation and development of certain rules limiting the methods and means of warfare and safeguarding the condition of combatants placed *hors de combat*. The Commission endeavoured to define the rules relating to perfidy and conditions of capture (including the treatment of fliers in distress). As regards the treatment of captured guerrilleros, the Commission largely agreed with the ICRC's proposals that the conditions as laid down in international law underlying recognition of prisoner-of-war treatment should be made more flexible.

Finally, Commission III discussed the third subject, *the protection of journalists engaged in dangerous missions*, a question on which the United Nations wished to know further the views of the government experts. While some experts felt that a multiplicity of categories enjoying protection would only weaken the general protection due to the civilian population—and from which journalists as well benefited—most of the experts considered that,

if the majority of States favoured special protection, suitable rules should be drafted and the United Nations supported in its efforts.

Commission IV

Commission IV considered *measures intended to reinforce the implementation* of the existing law. It emerged from the deliberation of the first session of the Conference that the experts proposed to give priority to a study of the measures designed to ensure better application of the Conventions. Some of them had declared that a study of the application of those instruments already in force was of paramount importance as regards future rules, since the utility of any international agreement was contingent on its application.

The experts on the whole considered that the appropriate measures for ensuring the application of the law had to be supplemented (co-operation of all the High Contracting Parties, supervision, dissemination of rules, penal sanctions.)

In the first place, the Commission considered questions related to international assistance in application and supervision of application. It was of the opinion that it was necessary to reinforce the international machinery designed to ensure and facilitate impartial supervision of the implementation of the Geneva Conventions. It considered it advisable, in particular, to specify the system for the appointment of Protecting Powers (States not involved in the conflict, who were responsible for representing the interests of a belligerent in the territory of the adversary and for supervising the application of the Conventions) and their substitutes (organs to replace Protecting Powers should the latter not be appointed or accepted). A number of experts thought it would be advisable to fix a time-limit within which a Protecting Power or substitute would be appointed or accepted. As regards the substitute for the Protecting Power, some experts favoured the automatic appointment of the ICRC, while others thought it would be preferable to appoint a substitute—whether the ICRC or any other organ—with the agreement of the Parties concerned. A third view was to set up a permanent body, in the United Nations for instance, to act as substitute.

The Commission also dealt with the provisions on penal sanctions in the Conventions and in the Additional Protocol which was being prepared. A number of proposals intended to supplement those articles of the Conventions relating to breaches were put forward and accepted. The inclusion of a provision allowing a subordinate to refuse to obey an order that would entail committing a breach of the Conventions was, in particular, examined; a draft article relating to breaches by omission was also considered.

The experts reaffirmed the need for the more effective dissemination of the Geneva Conventions and the Additional Protocols. They hoped for greater efficacy in this sphere among the armed forces and the civilian population. Some experts laid stress on the need for training legal advisers who would be attached to the military command.

The Commission also studied the application of humanitarian law in armed struggles for self-determination. By a large majority, the experts turned down the draft Declaration on the subject. Some considered those struggles as international conflicts, and hence covered by the Geneva Conventions as a whole, while others, on the contrary, regarded them as non-international armed conflicts pertaining to Article 3 and the Protocol additional to that article.

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During the closing session, Mr. Marcel A. Naville, ICRC President, referred to the future work for the reaffirmation and development of international humanitarian law applicable in armed conflicts. We quote his address below.

As the end of the Conference which has brought you together in Geneva for just over four weeks draws near, I would like to take this opportunity of thanking all of you for the contribution you have made to the task of reaffirming and developing International Humanitarian Law as it applies to armed conflict. It is most gratifying that so many governments accepted the invitation of the ICRC. Among the States represented at this second session, many have attained their independence and sov-

ereignty since the four Geneva Conventions were adopted in 1949. The presence here of so many of the States which have joined the Family of Nations since 1949 is a clear manifestation of the desire to reaffirm and develop this International Humanitarian Law.

To what extent has the work of the last few weeks contributed to the development of this Law? The reports of the four Commissions presented to the Plenary Session clearly show that considerable progress has been made; it is now the intention of the ICRC to examine the scope of these reports and to draw the relevant conclusions. This task will require time and thought, but already the ICRC is able to map out the broad lines to be followed in the future.

In fact, the results of this second session are ample enough to make it possible for the ICRC to recommend here and now that a Diplomatic Conference be held in the near future. The following steps will be taken by the ICRC in preparation for that Conference.

First of all, the ICRC will draw up a full report on the work of this second session. The most important part of this document will consist of the texts presented to you and the reports of the four Commissions. These documents will be forwarded to all States Parties to the Geneva Conventions and, as last year, they will be placed before the twenty-seventh session of the General Assembly of the United Nations when it examines the question of "Respect for Human Rights in Armed Conflicts". This will bring us to the autumn of this year. We hope that, as in the past, the General Assembly will take as full account as possible of the results of our work at this Conference and of our future plans.

Secondly, the ICRC will draw up the texts of new Additional Protocols in the light of all the views expressed at the present session of the Conference of Government Experts.

The drafting of some of these texts, for example those concerning subjects discussed by Commission I, is almost completed.

For some of the other subjects, however, the ICRC will have to make a selection, and it will be necessary to draw up new texts.

The questions studied in Commissions II, III and IV fall into this category. In this connection, the ICRC plans, where necessary, to undertake further consultations either by calling together a small number of experts in Geneva or by consulting certain experts individually. Naturally, it will keep in close touch with the United Nations on those matters of which the United Nations has been asked to make special study.

In any event, the ICRC intends to present the new Draft Protocols to the Swiss Government as the Depositary State of the Geneva Conventions some time next spring, for communication to the governments of the States Parties to the Conventions. In this way these governments will be able to examine them before the Diplomatic Conference meets. The Draft Protocols will also be presented to the twenty-second International Conference of the Red Cross to be held in the autumn of 1973.

This is the programme which the ICRC, bearing in mind the work to be done and the timing of the international meetings, intends to follow in the near future.

I would like to assure you that, whatever the progress made at the stage culminating in a Diplomatic Conference, the ICRC will continue to work for the development of International Humanitarian Law wherever this is still necessary. A task such as this never really ends, and the ICRC will never relax its efforts to ensure effective protection for all victims of all the forms of conflict which afflict mankind.

I would like here to refer to one point which was discussed in Commission IV and which has already been commented on by ICRC representatives. This is the question of the appointment of Protecting Powers and their substitute. I feel that it is necessary to come back to this subject to confirm that the ICRC intends to make use of the power conferred on it to assume the role of substitute for the Protecting Power whenever it considers this necessary and possible. The ICRC should not, however, automatically be required to assume this responsibility. The ICRC will offer its services only when all other possibilities have been exhausted and all the Parties concerned have given their consent. It is clear that, if it is to carry out this task, the ICRC will need

to be supplied with all the necessary funds and staff. Finally, the ICRC would like to make it clear that, if it were to accept the role of substitute, it would not in any way be with the intention of weakening the arrangements provided for in the Conventions relating to Protecting Powers.

Before I close, it is my pleasant duty to express the gratitude of the ICRC to all those governments which, conscious of the expense involved in organizing and holding a Conference such as the present one, have either contributed or promised to contribute to meeting the cost. A note concerning the financial implications of the work of the Conference has been sent out to all the governments of the States Parties to the Geneva Conventions, and its text has or will be communicated to you before the end of the Conference.

In conclusion, I would like to tell you how much your presence here and your participation in the work of the Conference has encouraged the International Committee of the Red Cross in its work, and I avail myself of this opportunity to express my conviction that the task we are so firmly resolved to accomplish will be brought to a successful conclusion.

Even though there are problems still outstanding, the experts' second session enabled some viewpoints to be drawn nearer together, and was responsible for a certain rapprochement and even a measure of agreement on a number of by no means unimportant points. Switzerland's intention to convene a Diplomatic Conference early in 1974 having been announced by its representative, it may be hoped, without being unduly optimistic, that the community of States will then agree to strengthen, by means of international legal instruments, the safeguards offered to the human person in time of armed conflict.