

REAFFIRMATION AND DEVELOPMENT
OF INTERNATIONAL HUMANITARIAN LAW
APPLICABLE IN ARMED CONFLICTS

CONFERENCE OF GOVERNMENT EXPERTS

For the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which was held in Geneva from 24 May to 12 June 1971,¹ the ICRC had compiled copious documentary material comprising eight volumes, namely:

I—Introduction; II—Measures Intended to Reinforce the Implementation of the Existing Law; III—Protection of the Civilian Population against Dangers of Hostilities; IV—Rules Relative to Behaviour of Combatants; V—Protection of Victims of Non-International Armed Conflicts; VI—Rules Applicable in Guerrilla Warfare; VII—Protection of the Wounded and Sick; VIII—Annexes.

The ICRC is today publishing a report on the work of the Conference.² We quote below, by way of example, some extracts from the report on the work of Commissions I and II. Next month we shall quote from the report on the work of Commissions III and IV. We begin with the "Introduction", which brings out the importance of the meeting and the spirit in which it was held, and follow this with the major part of the commentary on the general discussion.

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¹ See *International Review*, June and July 1971.

² *Report on the Work of the Conference*, ICRC, Geneva, 1971, 121 pp.

INTRODUCTION

In September 1969, at Istanbul, the XXIst International Conference of the Red Cross unanimously adopted Resolution No. XIII entitled " Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts ". In that resolution, the Conference requested the International Committee of the Red Cross (ICRC) to pursue actively its efforts with a view to proposing, as soon as possible, concrete rules which would supplement humanitarian law in force. It also urged the ICRC to invite government experts to meet for consultation with the ICRC on those proposals.

On the basis of that resolution and in order to be able subsequently to put forward proposals to all governments, the ICRC decided to convene the " Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts ", which was held from 24 May to 11 June 1971 in Geneva.

Consistent with the same resolution, which advocated the meeting of government experts who were representative of the main legal and social systems in the world, and bearing in mind the active interest displayed by many governments for Red Cross efforts in that field, the ICRC invited some forty governments to delegate experts to the Conference. A few of them having decided not to participate, the invitation was extended to several other governments which had shown special interest in the meeting. Finally, almost 200 experts from 41 States were gathered in Geneva.

In its invitation of 22 October 1970, the ICRC gave a provisional list of matters to be submitted to the Conference.

In the course of the first few months of 1971, the ICRC sent the governments invited the documentary material it had drawn up on the basis, in particular, of the opinions gathered during private consultations with some fifty experts throughout the world. Consisting of the eight *Documents* listed above and which covered more than 800 pages in each of the Conference's three working languages (French, English and Spanish), that material contained *inter alia* draft rules in various stages of development and accompanied by

extensive comments on the problems to be dealt with and on the opinions of persons consulted. The ICRC added other documents, particularly the report on the work of the Conference of Red Cross Experts which met in The Hague from 1 to 6 March 1971, with the active assistance of the Netherlands Red Cross, to give National Red Cross Societies the opportunity to make known their views on the main problems submitted to the government experts.

The ICRC also sent the governments invited two reports by the UN Secretary-General on Respect for Human Rights in Time of Armed Conflicts, and the records of relevant proceedings of the UN General Assembly which, in its resolution 2677 (XXV), asked the Secretary-General to transmit those documents to the ICRC for submission to the Conference of Government Experts.

When it sent the documentary material to the governments invited, on 19 March 1971, the ICRC proposed that the Conference set up three commissions to meet simultaneously. It also proposed a provisional agenda sharing the matters for discussion among the commissions.

At the beginning of its work, the Conference adopted the rules of procedure proposed by the ICRC. Those rules specified, *inter alia*, that experts would express personal opinions not binding on the governments which had appointed them, and that the Conference would reach no decisions and pass no resolutions. In accordance with the same rules, the Conference elected its own and each commission's officers.

After two days of general discussion, the Conference split into four commissions—a fourth having been considered necessary—three of which met simultaneously to consider the subjects which had been assigned to them. The last two days were devoted to the adoption of commission reports and to a general discussion in the course of which the Conference considered, among other things, the action to be taken to follow up its work.

Apart from the documents already mentioned, this report consists in the main of those drawn up by the four commissions as amended by the Conference. The ICRC has added an analysis of its own of the plenary sessions with which the Conference began and ended.

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The International Committee of the Red Cross is gratified that governments replied so favourably to its appeal by delegating numerous and highly qualified experts to Geneva. It wishes to convey to them here its profound gratitude.

After three weeks of discussions, conducted in the best team spirit and without a single note of discord, experts were almost unanimous in desiring a second Conference with a broader attendance in the near future. Indeed, although in general the results were important, the work was far from uniformly advanced in every field. Some fully worked out draft treaty provisions were produced, but some subjects were not even broached.

The International Committee of the Red Cross was therefore requested to draw up new drafts, as complete and concrete as possible. It intends to do so with a view to submitting them to governments in good time for the second Conference which it is already preparing to organize.

GENERAL DISCUSSION DURING INITIAL PLENARY MEETINGS

a) Purpose of the Conference

11. The experts, as a whole, considered that care should be taken not to raise the question of the revision of the Geneva Conventions of 1949, which would be weakened thereby, but rather to reaffirm them, for they still constituted the basis for all future developments. It was therefore necessary to draw up additional texts in those fields where the 1949 Geneva Conventions had proved inadequate before the new requirements of humanity. The representative of the Secretary-General of the United Nations recommended that the realities of contemporary armed conflicts, their nature, their methods of combat and the struggle carried on by resistance movements should be more fully taken into account. As to the method to be adopted, he advocated that the text of the Geneva Conventions of 1949 should remain untouched, that additions and clarifications

should be provided, and that the imperfections that might be noted in the light of present-day armed conflicts should be remedied.

12. In the opinion of several experts, who pointed out the importance of maintaining and consolidating international peace in conformity with the principles and aims of the United Nations, it was in that perspective that the development and reaffirmation of international humanitarian law in armed conflicts should be imagined. In this connection, emphasis was laid on Article 2 (4) of the United Nations Charter, which prohibits the threat or use of force. One of the experts pointed out that it was paradoxical and saddening to find that, bearing this article of the Charter in mind, it was necessary to deal with the study of the law of armed conflicts; passing in review all the past endeavours made internationally since 1907, he found that the legal instruments devised so far had not eliminated armed conflicts but had only limited their ills. He added that this limitation still held good but that the basic aim was to change world society. Other experts submitted that humanitarian concern should be directed towards the suppression of weapons and the elimination of war. One of the experts, observing that peace was the surest guarantee for the protection of human rights, stressed the necessity for all States to conclude regional or bilateral agreements in this respect.

13. A large number of experts emphasized that the work of the Conference should be carried out with the requisite realistic approach. Attention was drawn to the fact that it would be necessary to prepare texts that could be accepted by governments and that, consequently, the rules to be formulated should be realistic and applicable. One of the experts, stressing that the envisaged development should be reasonably acceptable, considered that the ICRC should study which were the rules that had been best or least respected, and what were the reasons for that. Emphasis was laid on the indispensable harmonization to be created between "the necessities of war" and "the requirements of humanity", as well as on the necessary balance between idealism and realities.

14. Several experts urged that the rules to be elaborated had to be extremely clear and as simple as possible.

15. Some experts declared that, during the current discussions, the principle of State sovereignty and non-intervention in the domestic affairs of States, in conformity with Art. 2 (7) of the United Nations Charter, should not be lost sight of. It was considered that the conclusions adopted by the Conference should take these principles into account, and that it was in the framework of international law, deriving from the Charter, that the envisaged developments should be imagined. One of the experts remarked that the principle of non-intervention in the domestic affairs of States had just been reaffirmed by the Declaration relative to the principles of international law concerning friendly relations and co-operation among States, adopted by the United Nations General Assembly at its twenty-fifth session.

b) Relations and co-operation between the Secretary-General of the United Nations and the International Committee of the Red Cross

16. Several experts expressed satisfaction with the close and positive collaboration established between the United Nations and the ICRC concerning the different problems currently submitted to the Conference. They hoped that this efficacious co-operation would continue. One of the experts said that these two organizations complemented each other in the work accomplished in this field. Another expert, who held that co-operation between the United Nations and the ICRC was of fundamental importance, considered that certain matters should be settled by the United Nations and other matters outside that organization.

17. Resolution 2677 (XXV) on " Respect for Human Rights in Armed Conflicts ", adopted by the United Nations General Assembly at its twenty-fifth session, which emphasized " the importance of continued close collaboration between the United Nations and the International Committee of the Red Cross ", was mentioned. It was hoped that positive conclusions reached at the present Conference would be submitted to the General Assembly at its twenty-sixth session.

18. Several experts praised the reports presented by the Secretary-General of the United Nations on " Respect for Human Rights

in Armed Conflicts " (A/7720, dated 20 November 1969, and A/8052, dated 18 September 1970) as well as the documentary material presented by the ICRC to the Conference (Documents I to VIII).

19. The representative of the Secretary-General of the United Nations stated that his presence at the Conference was a further sign of the interest shown by the Secretary-General in the work of the ICRC in the field of humanitarian law and of his wish for fruitful collaboration in the attainment of the numerous objectives which the Red Cross had in common with the United Nations. He drew the Conference's attention to resolution 2677 (XXV) adopted in December 1970 by the General Assembly; this resolution requested the Secretary-General to transmit his two reports on respect for human rights in armed conflicts (A/7720 and A/8052) to the ICRC, together with a number of other documents, for consideration by the Conference of government experts, and to report to the General Assembly at its twenty-sixth session on the results of the present Conference. The General Assembly had been informed at its twenty-fifth session of the ICRC's intention to convene a conference of government experts and of its hope that the United Nations, before pursuing its own work in this field, would wait until the results of the Conference were made known. The General Assembly had concurred in the ICRC view-point and had expressed the hope that the Conference would make specific recommendations for consideration by governments. The representative of the Secretary-General hoped that the results of the work here undertaken would be as specific as possible and recalled that resolution 2677 (XXV) contained the General Assembly's decision to consider this question again, in all its aspects, at its twenty-sixth session. He indicated that the keen interest shown by the United Nations in these problems went back to the International Conference on Human Rights, held in Teheran in 1968, and mentioned resolution XXIII adopted by that Conference. The Secretary-General's representative then went on to give the historical background of United Nations activities in that sphere since that date, and mentioned, in particular, the work undertaken and the resolutions adopted by the General Assembly at the twenty-third, twenty-fourth and twenty-fifth sessions. He spoke in detail of the five resolutions adopted in this respect by the General

Assembly at its twenty-fifth session [resolutions 2673 (XXV) to 2677 (XXV)]. He thought that all these various questions taken together bore an urgent character and that their consideration should be speeded up. The General Assembly should be furnished with relevant subject-matter and given the opportunity to express its views on the appropriate specific measures that should be taken.

c) Role of the Red Cross

20. All the experts who spoke congratulated the ICRC on the initiative it had taken to convene the present Conference and expressed their thanks for the considerable amount of documentary material which it had prepared and which constituted a sound basis for discussion. Several experts voiced their determination to cooperate with the ICRC in this sphere. Hopes were also expressed that the ICRC would receive certain guidelines for continuing its work.

**SPECIFIC PROBLEMS DISCUSSED IN THE
GENERAL DEBATE ¹**

21. Some experts held the view that it would be expedient no longer to distinguish, like the common Articles 2 and 3 of the four 1949 Geneva Conventions, between international and non-international armed conflicts. They considered that that distinction was no longer valid as most conflicts had changed in type, and they referred to the UN General Assembly resolution 2675 (XXV) on "Basic Principles for the Protection of Civilian Populations in Armed Conflicts", which contained provisions applicable to armed conflicts as a whole. One expert stated that the long-standing distinction was not practicable or realistic, as the concept of non-international armed conflict was completely changed by foreign assistance to Parties in conflict. He felt that the requirements of the Geneva Conventions relative to international armed conflicts

¹ During the plenary sessions, experts made observations and suggestions on which they later elaborated in the Commissions. This paper therefore deals with only the preliminary remarks of a general nature on each of the subjects for discussion.

should equally apply to non-international armed conflicts. The UN Secretary-General's representative drew attention to the fact that United Nations instruments on human rights were applicable in time both of peace and of armed conflict and that some of the provisions in the International Covenants on Human Rights were such from which derogations would not be permitted even in time of war.

22. Other experts, by contrast, were in favour of the distinction between international and non-international conflicts.

23. According to some experts, aggression should be defined and a distinction drawn between the victim of aggression and the aggressor. That definition and that distinction were, in their view, important for the achievement of the developments it was desired to bring about. One expert, however, stressed the necessary equality of application of international humanitarian law rules to all Parties to an armed conflict.

24. Concerning Document II entitled "Measures intended to reinforce the implementation of the existing law", a number of experts stated that they attached capital importance to the examination of that question by a Commission. Some affirmed that the strict observance of existing rules was a primary and fundamental necessity. The view was held that it was essential to provide the means to supervise the application of the rules and it was hoped that effective measures of supervision would be taken. It was pointed out that improvements in law were effective only if implementation were ensured and that this depended particularly on the dissemination of knowledge of the principles and on the existence of an impartial international supervision. One expert stated that the question of reservations in respect of the humanitarian Conventions should be added to the problems raised in Document II; according to him the possibility of making such reservations should be limited, if not precluded. A number of preliminary remarks were put forward concerning the supervision of the proper observance of the law, a point which was later examined closely by Commission IV. It was said that progressive development of international humanitarian law should be hoped for but that it might not be achieved if measures

of effective supervision were not provided. It was felt that the UN and the ICRC could carry out complementary activities in that field. However, one expert pointed out that the United Nations was a political body and that its impartiality could therefore be called in question. Some recommended that consideration be given to extending the ICRC's role and the work of National Red Cross Societies in this respect. Others stated that rather than urge the setting up of new international organizations for the application of humanitarian law, existing institutions, particularly the ICRC, should be reinforced. One expert expressed doubt on the advisability of setting up a permanent fact-finding body, believing that an *ad hoc* body should be set up when necessary. The UN Secretary-General's representative underlined, in this connection, the importance of an international presence in areas where conflict occurred and he stated that Document II did not exactly express either the responsibilities of the United Nations and its agencies under the Charter or the United Nations standpoint. Referring to the desirability of separating the humanitarian from the political, he averred that it was untrue to say, as had been said by some, that United Nations undertakings were always political. The United Nations could, indeed, adopt forms of organization quite aloof from any political considerations, as was proved by the existence of UNICEF, the HCR, UNRWA, the World Food Programme, and so forth. He felt it was perfectly possible to set up within the United Nations a purely humanitarian and autonomous institution. Recognizing that the ICRC had a universal mission, he believed that the point to which the ICRC could go and wished to go, should be further specified before concluding whether existing international institutions were suitable or unsuitable.

25. Preliminary remarks were made on Document III ("Protection of the civilian population against dangers of hostilities") and on the questions to be discussed by Commission III. The main opinions expressed were the following: the scope of the subject and the developments which were necessary made it desirable to draw up an additional protocol; the reinforcement of protection for possible victims, and particularly the civilian population, was essential in view of the way in which weapons had developed; there should

be as extensive a defence as possible, and even complete immunity, for the civilian population; the civilian population as a whole should be protected, without special rules and discrimination in favour of women and children which would complicate regulations in which simplicity was of the essence; whatever the nature of a conflict, the civilian population's right to protection should be the same; protection of the civilian population did not mean protection solely of human life but also of the resources necessary for human existence, so that protection of property essential for survival should not be omitted, and starvation as a weapon should be forbidden; in view of the danger of air raids killing entire populations over wide areas, and considering the inadequacy of relevant rules, air warfare should be subject to regulations; protection could be developed for civilian populations living in occupied territories. It was pointed out that public opinion was manifestly in favour of protection for journalists on dangerous missions¹.

26. Several experts, taking the view that it was important to examine the questions raised in Document IV (" Rules relative to behaviour of combatants ") considered that developments were necessary in that field and they put forward various opinions, namely: the rules contained in the Regulations annexed to the Fourth Hague Convention of 1907, now considered as norms of customary law, should be worded in a manner more appropriate to modern times; the combatant status concept needed rethinking in order to cover guerrilleros, and to provide at least minimum rules for the benefit of those other persons not having that status; the confusion between regular and irregular armed forces was one of the basic problems requiring study; the inequality of weapons available to combatants could affect their behaviour, and the definition of combatants varied depending on the wars in which they were engaged and the methods used; the concept of combatants should be clearly defined; the distinction between combatants and non-combatants was in jeopardy and it was important to stress the fact that the sick, expectant mothers and children were non-com-

¹ This subject was to be examined by Commission III on the basis of documents submitted by the UN Human Rights Commission (cf. Conference Rules of Procedure, Art. 2 (d)).

batants to which the 1949 Geneva Conventions were still fully applicable; prisoner of war status should not be granted to combatants using illicit methods.

27. Several experts underlined that the questions raised in Document V (" Protection of victims of non-international armed conflicts ") carry today great importance. The main opinions were: non-international or semi-international armed conflicts had been numerous since the conclusion of the 1949 Geneva Conventions and it appeared necessary to develop the law because the Conventions did not always cover new situations; although the rules on international armed conflicts were detailed, those relating to non-international armed conflicts, which were on the increase, had proved clearly inadequate and the target was to render the greatest number of rules applicable to those conflicts in view of the fact that victims needed protection whatever the nature of a conflict; consistent with resolution XVII of the twenty-first International Conference of the Red Cross, Article 3, common to the four 1949 Geneva Conventions, should be made more precise or supplemented; an additional protocol to the common Article 3 should be drawn up; the question of the internationalization of non-international armed conflicts should be examined; such conflicts should be clearly defined; the problem should be studied both from the point of view of protection and from that of the conduct of hostilities; steps should be taken to ensure the acceptance of ICRC intervention as a neutral intermediary in non-international armed conflicts. In addition, some experts firmly stressed that national sovereignty and the principle of non-interference in internal affairs of States must be respected. It was stated that internal disturbances and internal tensions should not be dealt with by the Conference: one expert took the view that such situations could not be subject to international regulations and another that they were not within the competence of the Conference; in contrast, one expert considered that Article 3 contained within its provisions a minimum of rules applicable to such situations. . .

PROTOCOL

**concerning the Protection of the Wounded and Sick,
to the Fourth Geneva Convention of August 12, 1949,
relative to the Protection of Civilian Persons
in Time of War¹**

PREAMBLE

The Parties, while solemnly reaffirming the provisions of the Fourth Geneva Convention of August 12, 1949, relative to the protection of civilian persons in time of war, have agreed to the following additional provisions.

Art. 1: Application of the Protocol

The provisions of this Protocol shall apply to all cases specified in article 2 of the aforesaid Fourth Convention and, with the exception of articles 8 and 10, paragraph 3 and 4 of this Protocol, to the whole of the populations of the countries in conflict.

Art. 2: Terms

In this Protocol the expression:

- a) "Protected Person" means all those persons specified as protected persons in the four Geneva Conventions.
- b) "Medical Establishments and Units" means hospitals and other fixed medical establishments, medical and pharmaceutical stores of fixed medical establishments, mobile medical units, blood transfusion centres and other installations designed for medical purposes.
- c) "Medical Transportation" means transportation of wounded, sick, infirm, maternity cases, medical personnel, medical equipment and supplies by ambulances or by any other means of transportation excluding aircraft transportation.
- d) "Medical Personnel" means persons regularly and solely engaged in the operation and administration of medical establishments and units, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick, the infirm and maternity cases.
- e) "Distinctive Emblem" means the distinctive emblem of the red cross (red crescent, red lion and sun) on a white background.

¹ The text of the Protocol is given as approved by the Conference of Experts.

CONFERENCE OF GOVERNMENT EXPERTS

Art. 3: Protection and care

All wounded and sick, whether non-combatants or combatants rendered *hors de combat*, as well as the infirm, expectant mothers and maternity cases, shall be the object of special protection and respect.

In all circumstances these persons shall be treated humanely and shall receive medical care and attention necessitated by their condition with the least possible delay, and without any adverse distinction or discrimination founded on race, colour, caste, nationality, religion, political opinion, sex, birth, wealth or any other similar criteria.

Art. 4: Respect for persons

Any unjustified act or omission which endangers the health or physical or mental well-being of any protected person is prohibited.

Consequently, all experiments on and treatment of protected persons, including removal or transplant of organs, not intended to provide them with medical relief are prohibited. This prohibition applies even if the protected persons concerned have given consent to such experiments.

Art. 5: Civilian medical establishments and units

Civilian medical establishments and units may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict.

The Parties to a conflict shall provide these medical establishments and units with certificates identifying them for the purposes of this Protocol.

With authorization from the State, medical establishments and units shall be marked by means of the distinctive emblem.

In order to obviate the possibility of any hostile action, Parties to the conflict shall as far as military considerations permit take the necessary steps to make known the location of medical establishments and units and mark them with the aforesaid distinctive emblem in such manner as to be clearly visible to the adverse forces.

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

Art. 6: Discontinuance of protection of civilian medical establishments and units

The protection to which civilian medical establishments and units are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time-limit, and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these medical establishments and units, or the presence of

small arms and ammunition taken from such combatants which have not yet been handed to the proper service, shall not be considered to be acts harmful to the enemy.

Art. 7: Civilian medical transportation

Ambulances and other vehicles used for medical transportation and serving civilian medical establishments and units shall be respected and protected at all times. They shall bear a certificate from the competent authority testifying to their medical nature.

Other means of transport used in isolation or in convoy, whether on land or on waterways, temporarily assigned for medical transportation, shall be respected and protected while being used for the aforesaid purpose.

With the consent of the competent authority, all vehicles and means of transportation mentioned above shall be provided with the distinctive emblem. However, the means of transportation mentioned in paragraph 2 above may display the distinctive emblem only while performing their humanitarian mission.

The provisions of article 6 shall also be applicable to medical transportation.

Art. 8: Requisition

The right of the Occupying Power to requisition civilian medical establishments and units, their movable and immovable assets as well as the services of their medical personnel, shall not be exercised except temporarily and only when there is urgent necessity for the care of protected persons and then on condition that suitable arrangements are made in due time for the care and treatment of the patients and for the needs of the civilian population for hospital accommodation.

The material and stores of medical establishments and units cannot be requisitioned so long as they are necessary for the needs of the civilian population.

Art. 9: Civilian medical personnel

Civilian medical personnel duly recognized or authorized by the State and regularly and solely engaged in the operation and administration of medical establishments and units and the duly authorized personnel of the National Red Cross Societies employed in the medical treatment of the protected persons, as well as the personnel engaged in the search for, removal and transporting of and caring for wounded and sick, the infirm and maternity cases, shall be respected and protected.

The aforesaid medical personnel shall be recognizable by means of an identity card bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped armband which they shall wear on the left arm while carrying

CONFERENCE OF GOVERNMENT EXPERTS

out their duties. This armband shall be issued by the State and shall bear the distinctive emblem.

As far as possible, every assistance shall be given to the aforesaid personnel in order that they may carry out their humanitarian mission to the best of their ability. In particular they shall be permitted access to all places where their services may be required, subject to such supervisory and safety measures as may be considered necessary by the Parties to the conflict.

If the aforesaid personnel fall into the hands of the adverse party they shall be given all facilities necessary for the performance of their mission. In no circumstances shall they be compelled or required to perform any work outside their medical duties.

The management of each medical establishment and unit shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

Art. 10: Protection in the discharge of medical duties

In no circumstances shall the exercise of medical activities, consistent with professional rules, be considered an offence, no matter who the beneficiary may be.

In no circumstances shall medical personnel be compelled by any authority to violate any provision of the Geneva Conventions of August 12, 1949 for the protection of war victims, or of this Protocol.

No medical personnel shall be required to perform acts or do work which violates professional rules.

No medical personnel shall be compelled to inform an occupation authority of the wounded and sick under their care, unless failure to do so would be contrary to the regulations concerning the notification of communicable diseases.

Art. 11: The role of the population

The civilian and military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded or sick of whatever nationality.

The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.

No one may ever be molested or convicted for having nursed or cared for military or civilian wounded or sick.

Art. 12: Use of the distinctive emblem

The Parties shall take all necessary measures to ensure the proper use of the distinctive emblem and to prevent and repress any misuse thereof.

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COMMISSION II

**DEFINITION OF NON-INTERNATIONAL
ARMED CONFLICTS**

129. This subject was introduced by an ICRC representative, who stressed that Article 3 of the prevailing law did not define non-international armed conflict. Governments were therefore left considerable discretion in respect of events occurring on their territory. However, there could be no ground for the misinterpretation of that article: hostilities between armed forces within a State constituted non-international armed conflict. Yet, in several non-international armed conflicts, one party or the other had contested that the conflict came within the meaning of Article 3.

130. In order to improve the situation, by limiting to a reasonable extent the State's right to decide, the ICRC representative considered that the concept of non-international armed conflict should be made more precise by a non-exhaustive list of examples (*inter alia*) of situations in which the existence of non-international armed conflict could not be disputed by the governments involved. (See proposal on page 46 of Document V.)

131. In reply to a question, the ICRC representative stated that parts (a) and (b) of the proposal on page 46 *were not cumulative, but alternative.*

132. The author of document CE/Plen.2/bis spoke on Article 1 of his proposed draft protocol additional to Article 3. His draft, he said, was an attempt to draw up rules applicable in events within a State without interfering in its internal affairs but with the aim of alleviating suffering. The procedure he adopted, he said, was not to set out from too restrictive a definition but to speak of governmental military forces on the one hand and, on the other, of regular and irregular military forces not covered by Article 2, common to all the Conventions. Such a definition, in his own opinion, could not cover internal disturbances, which could not be considered to be non-international armed conflicts, although in case of need the provisions to be drawn up could be applied to them.

CONFERENCE OF GOVERNMENT EXPERTS

133. The author of documents CE/Com.II/1-3 then explained his draft. The idea was *not to draw a distinction between international and non-international conflicts*—Article 3 providing minimum norms applicable in all armed conflicts regardless of category—but to produce a single document in the form of an additional protocol to the Third and Fourth Geneva Conventions with provisions applicable to ALL armed conflicts and with rules for the protection of the civilian population irrespective of the criteria of nationality and enemy occupation. Nevertheless, document CE/Com.II/3 did refer to wars of national liberation, recommending that the Geneva Conventions, consistent with their Article 2, should apply to them. That point of view was approved by other experts.

134. By way of preliminary, two experts nevertheless pointed out that, in their opinion, it would not be advisable to draw up a single protocol for both types of conflict. One of the experts drew attention to the fact that international law relating to armed conflicts did draw a distinction between the two and that as the distinction was based on objective criteria it would be difficult to change it; in addition, any attempt to eliminate that distinction, if accepted, would change the whole structure of international law. Consequently, a system applying simultaneously and completely to the two situations under consideration was inconceivable. Another expert held the view that it would be dangerous to have only one protocol applicable to all types of conflict, due to the fact that different situations and, hence, different needs had to be taken into account from case to case. He therefore advocated the drawing up of two additional protocols to the Geneva Conventions. The view was also expressed by one expert that the result might be to reduce protection to a lowest common denominator.

135. The Commission's discussion was thereafter concentrated on:

- the need to define international armed conflicts,
- the content and scope of a definition, and the terminology used in the draft proposals concerned.

1. The need for a definition

136. One expert was firmly opposed to such an attempt, considering that a correct definition would entail rights and obligations and that it would have to be applicable and applied.

137. Another expert stated that it would be difficult to reach a consensus on the criteria to be specified in the definition, which might exclude many situations and give rise to marginal cases open to endless legal discussion leading to a result at variance with the true objective, namely the extension of the scope of humanitarian law. On the other hand, he said, with good will from both sides, Article 3 as it stood could be applied in a great many circumstances.

138. In this connection, one expert reminded the Commission of the difficulties which the 1949 Diplomatic Conference had encountered and which, in his opinion, still existed, although they had not prevented the negotiators in 1949 from guaranteeing the victims of non-international armed conflicts at least basic protection. If, therefore, it was desired to ensure respect for a more complex set of rules in these conflict situations, the problem was entirely different; the more the regulation, the greater was the care required to ensure that, without a shadow of doubt, the definition covered the situations envisaged adequately.

139. In response to the argument concerning the negotiation of the 1949 Conventions, the UN Secretary-General's representative and several experts pointed out that more than twenty years had elapsed and that ideas had considerably changed. The representative of the Secretary-General also emphasized that many norms had been established to define the concept of "humanity" and of human rights, some of which had been specifically designed to be applicable in both time of war and in time of peace. According to one expert, international law was becoming more and more a part of national law; an additional protocol could make the provisions agreed upon compulsory in national law "for future rebels", national law itself making provision for respect for international law. Whilst some experts feared that a definition might come into

CONFERENCE OF GOVERNMENT EXPERTS

conflict with State sovereignty, one of them was of the opinion that a good definition, related to characteristic situations, would avoid invoking, in respect of such situations, Article 2, paragraph 7, of the Charter; the international conscience was more and more aware of the need for protection.

140. One expert underlined the fact that a definition, apart from avoiding uncertainty, could be important in the eyes of the public in some countries.

141. *The majority of the experts considered it necessary to define non-international armed conflict.*

(to be continued)