

Development of humanitarian law

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II. GENERAL AND PERMANENT ACTIVITIES

1. DEVELOPMENT OF HUMANITARIAN LAW

Geneva Conventions

New accessions.—In 1968, six more States became parties to the 1949 Geneva Conventions, namely the Republic of Malawi (accession, 5 January 1968), the Republic of Botswana (accession, 29 March 1968), the Kingdom of Lesotho (declaration of continuity of 20 May 1968, with effect from 4 October 1966), Guyana (declaration of continuity of 22 July 1968, with effect from 26 May 1966), Barbados (declaration of continuity of 20 August 1968, with effect from 30 November 1966) and Malta (declaration of continuity of 22 August 1968, with effect from 21 September 1964.)

The dates shown are those on which the official deeds of participation were received by the Swiss Government. In the cases of the Kingdom of Lesotho, Guyana, Barbados and Malta, participation became effective on the day of independence of each of these countries.

Thus, at the end of 1968, the number of States explicitly bound by the Geneva Conventions was 122.

Dissemination.—In the course of 1968, the ICRC received some further replies to its Memorandum of 21 November 1966 on the dissemination of the Geneva Conventions in application of Resolution XXI of the XXth International Conference of the Red Cross (See 1967 Report, pp. 58-60). This brought up to fifty the number of communications received by the ICRC; forty from Governments and ten from National Red Cross Societies. These replies will be the subject of a report to the XXIst International Conference of the Red Cross.

The IIIrd Congress of the Neutrality of Medicine took place in Rome from 16-20 April. The International Committee delegated

two of its members, Mr. Frédéric Siordet and Mr. Jean Pictet, who submitted a report entitled: "The Geneva Conventions; their Dissemination and their Application".

In this report—based on the ICRC's above mentioned Memorandum and on Resolution XXI adopted by the XXth International Conference of the Red Cross—the ICRC suggested that the Congress should adopt a resolution inviting the national committees not only to use their influence with a view to inducing their respective governments to intensify their action for the dissemination of the Geneva Conventions, but also to assist them in this task as far as they could.

The Congress was concluded by the adoption of eight resolutions. Each of them mention the Geneva Conventions and one is concerned particularly with the question of dissemination. It is entitled "Geneva Conventions—Dissemination and Application", and is as follows:

The Third International Congress of the Neutrality of Medicine, considering the Geneva Conventions are now recognized as an established instrument in the protection of war victims, and that the number of governmental ratifications thereof and accessions thereto shows that these Conventions are universally accepted;

considering that their application depends to a considerable extent on widely disseminated knowledge thereof;

believing that medical neutrality is based on the Geneva Conventions,

takes the view that it is the duty of the Committee for the Neutrality of Medicine to participate as much as possible in disseminating knowledge on these Conventions, especially in professional circles particularly concerned; and

conscious of the need to contribute to the training of the necessary personnel to implement these Conventions;

bearing in mind that 1968 was declared the International Human Rights Year, which should engender awareness of the special rights defined in the Geneva Conventions;

considering that in the event of armed conflict all responsible authorities should ensure respect of the Geneva Conventions;

protests vehemently against all breaches of the Geneva Conventions; and

recommends all National Committees for the Neutrality of Medicine to intensify their efforts in the field of dissemination of

knowledge on these Conventions. With this aim, it also recommends these Committees and other bodies concerned (medical and scientific Societies, trades unions, professional journals, etc.) to conduct enquiries among all doctors to find out their answers to the following three questions:

1. Do you know of the existence and the spirit of the Geneva Conventions?
2. Can you make these Conventions more widely known in your own environment, especially in medical circles?
3. In our world today, where violence is an ever more frequent feature, where the humanitarian spirit of these Geneva Conventions provides a refuge, an example and even an ideal, do you think that that spirit enables you to have a salutary influence on those who place their confidence in you?

Participants to the Congress were received in private audience by His Holiness Pope Paul VI who stated:

“ In this year devoted to human rights, we encourage you particularly to make more widely known and respected the international conventions which protect in conflicts those whose noble mission it is to relieve, care for and help their fellow-men, friends and foes alike.”

Going beyond its traditional sphere, still today limited to helping the wounded, the sick, prisoners of war and civilian victims of war, the ICRC, in its February 1968 issue of the *International Review of the Red Cross*, published “ Minimum Rules for the Protection of Non-Delinquent Detainees ”, which will be submitted to the XXIst International Conference of the Red Cross for approval. The ICRC had suggested to the Medico-Legal Commission of Monaco that it take this study in hand, and that Commission, kindly complying with this wish, confided to Professor Jean Graven, of Geneva, the task of drawing up such a document, which it approved.

If these rules meet with the approval of the International Conference, the ICRC will see to it that the work of its delegates called upon to promote their application is facilitated. It has already undertaken studies in this direction.

During the International Human Rights Year, the *International Review of the Red Cross* made a special effort to present its readers

with articles on activities relevant to the Geneva Conventions and the Universal Declaration of Human Rights. We would mention in particular "The Red Cross and Human Rights"¹ by Frédéric Siordet, a Member of the ICRC.

Also on this question of disseminating existing treaties, the *International Review of the Red Cross*, in April, gave by way of example an outline of a plan for the nation-wide dissemination of the Geneva Conventions in the Federal Republic of Germany. The same issue also contained a four-day programme drawn up by the Swiss army for officers in all branches of the forces.

Text-book for African schools.—Anxious to disseminate widely the essential principles of the Red Cross and of the Geneva Conventions, the ICRC, in 1967, thanks to the financial support of the Swiss Government, published a school text-book entitled "*The Red Cross and My Country*". By the end of the year, 127,000 copies had been distributed in five French and four English speaking countries of West Africa, namely: Upper Volta, Togo, Dahomey, Ivory Coast and Mali; Gambia, Sierra Leone, Liberia and Ghana.

In order to find out the practical results of this action in those countries, and with a view to extending it elsewhere, the ICRC sent one of its representatives, Mr. Laverrière, to Africa in the Autumn of 1968.

On his return, he reported that of the nine countries which had received the text-book, only Liberia and Upper Volta were not using it in schools. These two States planned to introduce it at the beginning of 1969.

In the other African countries recently approached, the governments and National Societies welcomed the idea and 100,000 new copies will be sent to African countries in 1969.

In addition, the officials the delegate met in the course of this mission having underlined the usefulness of better knowledge of the Geneva Conventions among the armed forces, the ICRC decided to undertake the study of the publication of an illustrated booklet giving the gist of the four Conventions.

¹ *International Review of the Red Cross*, March 1968, pp. 118 ff.

Reaffirmation and Development of Humanitarian Laws and Customs Applicable in Armed Conflicts

In its previous Annual Report, the ICRC mentioned the important memorandum it sent on 19 May 1967 to all governments on legal protection for civilian populations against the dangers of indiscriminate warfare. This drew particular attention to the essential principles of protection as stated by the XXth International Conference of the Red Cross at Vienna in 1965. It also brought up a very important related problem, namely, the advisability of reaffirming and developing the humanitarian rules applicable in armed conflicts. This it did in the following terms:

Another aspect of this problem is also of deep concern for the International Committee and calls for the sympathetic attention of governments.

The observance of rules destined, in case of armed conflicts, to safeguard essential human values being in the interest of civilisation, it is of vital importance that they be clear and that their application give rise to no controversy. This requirement is, however, by no means entirely satisfied. A large part of the law relating to the conduct of hostilities was codified as long ago as 1907; in addition, the complexity of certain conflicts sometimes places in jeopardy the application of the Geneva Conventions.

No one can remain indifferent to this situation which is detrimental to civilian populations as well as to the other victims of war. The International Committee would greatly value information on what measures governments contemplate to remedy this situation and in order to facilitate their study of the problem it has the honour to submit herewith an appropriate note.

The ICRC decided to bring this matter to the knowledge of governments for reasons founded on its experience and observations in the course of its practical work. It is no longer possible, as formerly, clearly to distinguish between the two fields of the law of war, the Law of The Hague—which regulates the conduct of hostilities—and the Geneva Conventions—which safeguard war victims. There is a clear overlap and the lack of precision affecting the Law of The Hague makes its observance difficult, thereby adversely affecting the application of the Law of Geneva and causing useless suffering.

The great majority of governments which acknowledged receipt of this memorandum, some forty, stated they had submitted it to their relevant departments for study but, by the end of 1968, had still not informed the ICRC of the result of those studies. The few replies which reached the ICRC showed in general the usefulness of incorporating, at some later date, the principles proclaimed by the Vienna Conference into a genuine instrument of international law.

However, it may be considered that governments replied indirectly to the ICRC's memorandum of 19 May by the resolution entitled " Human Rights in Armed Conflicts " which they adopted in April 1968 at the International Conference on Human Rights at Teheran. The text of the resolution is as follows:

The International Conference on Human Rights,

Considering that peace is the underlying condition for the full observance of human rights and war is their negation,

Believing that the purpose of the United Nations Organization is to prevent all conflicts and to institute an effective system for the peaceful settlement of disputes,

Observing that nevertheless armed conflicts continue to plague humanity,

Considering, also, that the widespread violence and brutality of our times, including massacres, summary executions, tortures, inhuman treatment of prisoners, killing of civilians in armed conflicts and the use of chemical and biological means of warfare, including napalm bombing, erode human rights and engender counter-brutality,

Convinced that even during the periods of armed conflicts, humanitarian principles must prevail,

Noting that the provisions of the Hague Conventions of 1899 and 1907 were intended to be only a first step in the provision of a code prohibiting or limiting the use of certain methods of warfare and that they were adopted at a time when the present means and methods of warfare did not exist,

Considering that the provisions of the Geneva Protocol of 1925 prohibiting the use of " asphyxiating, poisonous or other gases and of all analogous liquids, materials or devices " have not been universally accepted or applied and may need a revision in the light of modern development,

Considering further that the Red Cross Geneva Conventions of 1949 are not sufficiently broad in scope to cover all armed conflicts,

Noting that States parties to the Red Cross Geneva Conventions sometimes fail to appreciate their responsibility to take steps to ensure the respect of these humanitarian rules in all circumstances by other States, even if they are not themselves directly involved in an armed conflict,

Noting also that minority racist or colonial regimes which refuse to comply with the decisions of the United Nations and the principles of the Universal Declaration of Human Rights frequently resort to executions and inhuman treatment of those who struggle against such regimes and considering that such persons should be protected against inhuman or brutal treatment and also that such persons if detained should be treated as prisoners of war or political prisoners under international law,

1. Requests the General Assembly to invite the Secretary-General to study:

- a) Steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts, and
- b) The need for additional humanitarian international conventions or for possible revision of existing Conventions to ensure the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare.

2. Requests the Secretary-General, after consultation with the International Committee of the Red Cross, to draw the attention of all States members of the United Nations systems to the existing rules of international law on the subject and urge them, pending the adoption of new rules of international law relating to armed conflicts, to ensure that in all armed conflicts the inhabitants and belligerents are protected in accordance with "the principles of the law of nations derived from the usages established among civilized peoples, from the law of humanity and from the dictates of the public conscience."

3. Calls on all States which have not yet done so to become parties to the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925, and the Geneva Conventions of 1949.

Having continued its own investigations and drawn up a provisional inventory of the humanitarian aspects of the law of war for which a process of up-dating and development was most urgent, the ICRC decided, in June 1968, to submit a report on the whole

problem to the XXIst International Conference of the Red Cross in September 1969, and to consult beforehand a group of experts representing the main lines of thought in the world.

Mr. Pictet, Member and Director-General of the ICRC, on 29 August 1968, informed of these intentions all the National Red Cross Societies meeting in Geneva for the Executive Committee of the League, in a paper on "The Necessary Restoration of the Law of War". After underlining the inadequacy of the law of war in relation to the conduct of hostilities, and the consequences thereof, Mr. Pictet stated:

What are the points with which this revision should deal, or rather this reconstruction of a new law? It is indeed often better to wear new clothes rather than patch up the old ones which have more holes than good material. The principal one is, as I have said, the protection of civilian populations against the dangers of indiscriminate warfare and the prohibition of certain weapons, even against military personnel, such as napalm. Then there is the problem, also a major one, of internal conflicts and guerilla warfare. Here there is an imperative humanitarian necessity since civil wars engender proportionally more suffering than do international wars because of their characteristics of hatred.

Then should be considered the provisions governing the conduct of hostilities and which determine the rights and duties of belligerents. In particular the question of belligerency and irregular fighters must be resolved. Who can lawfully carry out acts of hostilities and who can be the object of such acts? Then come hostilities properly speaking and finally the capital matter of reprisals and sanctions.

What is one to conclude from this? Today can be seen the crumbling away of law and international morality. We are living in a period of an upsurge of neo-barbarism which dishonours our civilization. Should we abdicate before this disastrous state of affairs?

To ask the question is indeed to resolve it by replying with an emphatic negative. In fact, if the rules of war are obsolete, because they are not adapted, their principles, however, remain, since they are the expression of an eternal truth. Today as in the past, certain acts of war must give way to the demands of humanity. Acts committed in violation of the humanitarian principles are not, as they are sometimes presented, necessities of war from which there is no escape, but quite often facile solutions which, in the long run, do not "pay" and which the parties to conflicts should abandon without compromising their cause.

It is urgently necessary that the restoration of the law of war be undertaken and brought to a successful conclusion, or rather, for

such is the terminology I propose to you, the "reaffirmation and development of laws and customs applicable in armed conflicts." This should be the preoccupation of the Red Cross today and of those who are attempting, according to their means, to reconstruct the world in the image of man. With its long experience, the ICRC will bring all its help and care to it. It will be submitting proposals in that sense to the next International Conference of the Red Cross. It is indeed evident that the question requires thorough study. National Societies will be fully associated with it. May they think about it carefully between now and then.

There is no doubt that public opinion places all its force in the balance, in order to support this vital undertaking. The people of all countries, tired of being the plaything of blind powers which threaten them, will know how to have their rights and the just demands of humanity respected.

Consistent with the Teheran Resolution quoted above, the UN Secretary-General asked the ICRC, in August 1968, for its views on that resolution. In its reply to U Thant on 18 September 1968, the ICRC said, *inter alia*:

The studies which the Secretary-General is requested to undertake concern a sphere very similar to that in which have been deployed the International Committee's efforts these last few years, not only to improve the application of the Geneva Conventions or to develop them in certain respects, but also to urge the concluding of new agreements for the strengthening of the protection of civilian populations.

More recently, basing itself on observations and the experience it has had of armed conflicts in the last decade, the International Committee has considered it essential to extend its work still further. It has therefore decided to take all preparatory steps and studies likely to lead to the reaffirmation and the development of laws and customs of a humanitarian character in armed conflicts. To this end, it has already started, with the help of experts, to draw up a list of the problems arising from the rules still in force, from those which need to be reaffirmed or developed and from gaps to be filled.

Taking the above into account, we would much appreciate being informed of what steps may eventually be taken as regards this part of the resolution and we are prepared to give you every assistance you may require in the studies you may be called upon to undertake.

The ICRC referred also to the suggestion in its memorandum of 1967 that governments should forthwith demonstrate the impor-

tance they attach to the principles proclaimed at the Vienna Conference by an appropriate official demonstration, such as a UN General Assembly resolution. The ICRC added:

When the Teheran resolution is submitted to the General Assembly this autumn, the opportunity could be taken to put these intentions into effect in a somewhat different form. Would it, for instance, not be possible for the General Assembly, both to request that the thorough studies proposed by the Teheran Resolution be carried out, and to restate certain essential principles of protection which should at least be respected in any armed conflict? Pending the result of these studies and the adoption of new or revised stipulations, which would require time, we believe it would be expedient to seize any suitable opportunity to issue a reminder of the written or unwritten regulations recognized by the international community and the strict observance of which might save so many human lives.

At the beginning of November, Mr. Pilloud, ICRC Director, went to New York as an observer to the General Assembly's discussion of this subject. He was consulted by several government delegations which wished to submit a draft resolution to the Third Commission of the General Assembly, following up the Teheran Resolution.

The initiative taken by these delegations resulted in the unanimous adoption by the UN General Assembly on 19 December 1968 of a resolution on "Respect for Human Rights in Armed Conflicts". This is of direct interest to the Red Cross and particularly the ICRC. It reads as follows:

The General Assembly,

Recognizing the necessity of applying basic humanitarian principles in all armed conflicts,

Taking note of resolution XXIII on human rights in armed conflicts, adopted on 12 May 1968 by the International Conference on Human Rights,

Affirming that the provisions of that resolution need to be implemented effectively as soon as possible,

1. *Affirms* resolution XXVIII of the XXth International Conference of the Red Cross held at Vienna in 1965, which laid down, *inter alia*, the following principles for observance by all governmental and other authorities responsible for action in armed conflicts:

- a) that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;
- b) that it is prohibited to launch attacks against the civilian populations as such;
- c) that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible;

2. *Invites* the Secretary-General, in consultation with the International Committee of the Red Cross and other appropriate international organizations, to study:

- a) Steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts;
- b) The need for additional humanitarian international conventions or for other appropriate legal instruments to ensure the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare;

3. *Requests* the Secretary-General to take all other necessary steps to give effect to the provisions of the present resolution and to report to the General Assembly at its twenty-fourth session on the steps he has taken;

4. *Further requests* Member States to extend all possible assistance to the Secretary-General in the preparation of the study requested in paragraph 2 above;

5. *Calls upon* all States which have not yet done so to become parties to the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949.

It was with keen satisfaction that the ICRC took note of this resolution which, it will be observed, by affirming the principles of Vienna Resolution No. XXVIII endorses the ICRC's unremitting efforts and negotiations over a number of years.

But this was only the beginning of the extensive programme for the up-dating of the humanitarian standards of international law of which the necessity was recognized by the ICRC. Consequently, concomitantly with its contacts with the United Nations on this point, the ICRC continued its work on its programme, as stated in its letter to U Thant. Its studies were sufficiently advanced by the end of the year to enable it to decide on convening in February

1969 the meeting of experts which it had envisaged and to which it desired to submit the main problems of reaffirming and developing the laws and customs applicable in armed conflicts.

The Red Cross as a Factor in World Peace

A second Round Table on this subject was to be held on 9 and 10 September 1968. It was intended to follow up the meeting of the same nature held in The Hague on 28 August 1967. However, in view of the conflicts and tensions prevailing at the time and the increased tasks accruing to some of the persons invited to that meeting, the majority of participants considered it preferable to postpone it. Whilst acquiescing, the ICRC was pleased to note that the participants reaffirmed their interest for this work and the necessity of continuing it before the XXIst International Conference of the Red Cross took place, in order to be able to submit to the meeting at Istanbul certain concrete proposals. It was therefore decided to convene the second Round Table for January 1969.

2. RELATIONS WITH RED CROSS INSTITUTIONS

Recognition of new National Societies

In the course of 1968, the ICRC officially recognized the Kuwait Red Crescent on 6 June and the Guyana Red Cross on 8 August. The number of officially recognized National Societies thus rose to 111.

National Societies

In June, Mr. Samuel A. Gonard, ICRC President, went to Engelberg to attend the General Meeting of the Swiss Red Cross.

Towards the end of September, he spent a week in Italy where he met the President of the Republic, Mr. Giuseppe Saragat, and the Minister of Foreign Affairs. He was also received in audience