

# Legal Division

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## II. PRINCIPLES AND LAW

### Legal Division

As in the previous year, by far the greater part of the activity of the Legal Division in 1971 was devoted to work relating to the reaffirmation and development of international humanitarian law applicable in armed conflicts.

#### **CONFERENCE OF RED CROSS EXPERTS AT THE HAGUE**

(1 to 6 March 1971)

As it had always done on such occasions, the ICRC wished to associate closely the National Societies in this important undertaking by convening a conference to which they could delegate experts. The Netherlands Red Cross having kindly offered to welcome the conference at The Hague, in the rooms of the International Law Academy in the Peace Palace, it was therefore in that town that the conference, convened by the ICRC in agreement with the Netherlands Red Cross, was held from 1 to 6 March 1971.

The main purpose of the meeting was to proceed to a wide exchange of views on the matters dealt with in reports on the reaffirmation and development of international humanitarian law which the ICRC had submitted to the XXIst International Conference of the Red Cross and which constituted the subject matter, *inter alia*, of that Conference's resolutions XIII to XVIII.

The ICRC was gratified to see that thirty-four National Societies had responded to its invitation and that about seventy eminent persons coming from many different parts of the globe had been delegated to the Conference. The League of Red Cross Societies and the United Nations (Human Rights Division) were also represented. Delegates and ICRC experts taking part in the Conference totalled 80 persons.

The following subjects were discussed at the Conference :

- Protection of the wounded and the sick.
- Measures intended to reinforce the application of the law in force.
- Protection of the civilian population against dangers of hostilities.
- Protection of victims of non-international armed conflicts.
- Rules applicable in guerrilla warfare.
- Role of National Red Cross Societies in the dissemination and development of humanitarian law.

The experts made a number of valuable suggestions, which were incorporated in a report submitted to the government experts in May 1971. The ICRC took these suggestions into consideration to a fairly wide extent when drawing up the protocols for the second session of the Conference of Government Experts.

### **CONFERENCE OF GOVERNMENT EXPERTS ON THE REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS**

(24 May-12 June 1971)

During the whole year, in Geneva and elsewhere, the ICRC consulted, in their individual capacity, experts belonging to various countries on the documentation to be established and on the organization of the two sessions of the Government Experts Conference, the first of which was held in Geneva from 24 May to 12 June 1971.

#### **Preparation of the first session**

The ICRC prepared for the Conference some preliminary documentary material, consisting of the following eight volumes :

- I. Introduction (46 pages and 5 pages of annexes).
- II. Measures intended to reinforce the implementation of the existing law (62 pages and 47 pages of annexes).
- III. Protection of the civilian population against dangers of hostilities (161 pages and 78 pages of annexes).

- IV. Rules relative to behaviour of combatants (17 pages and 15 pages of annexes).
- V. Protection of victims of non-international armed conflicts (94 pages and 27 pages of annexes).
- VI. Rules applicable in guerrilla warfare (58 pages and 17 pages of annexes).
- VII. Protection of the wounded and sick (75 pages and 19 pages of annexes).
- VIII. Annexes (116 pages).

### **Conference of government experts (first session)**

#### **ORGANIZATION**

So that the Conference should not lose its character of a consultation of experts, with informal discussions, in accordance with the directives of the XXIst International Conference of the Red Cross, the ICRC sent invitations to about forty States representative of the main legal and social systems throughout the world, to delegate experts. It also took into consideration, in doing so, the interest shown by certain governments in the work undertaken.

Two hundred experts, delegated by forty-one governments, took part in the Conference, in addition to the representatives of the United Nations Secretary-General.

At the first plenary meeting, the Conference elected Mr. Jean Pictet, Vice-President of the ICRC, as its Chairman. Mr. Riphagen (Netherlands), Mr. Cristesco (Romania) and Mr. González-Gálvez (Mexico) were elected Vice-Chairmen.

After a general discussion, the Conference formed four commissions, chaired by Mr. Singh (India), Mr. Lee (Canada), Mr. Dabrowa (Poland) and Mr. González-Gálvez (Mexico). The task of Commission I was to study the "protection of the wounded and sick"; Commission II, the "protection of the victims of non-international armed conflicts" and the "rules applicable in guerrilla warfare", and Commission III, the "protection of civilian population against dangers of hostilities" and the "rules relative to behaviour of combatants". It had not originally been envisaged to set up more than three commissions, but a fourth was constituted to study the problem of "measures intended to reinforce the implementation of the existing law".

## RESULT OF THE WORK OF THE COMMISSIONS

Commission I prepared two Protocols on the protection of the wounded and the sick, one of which applied to international armed conflicts and the other to armed conflicts not of an international character. As the Commission was unable to deal with the problems relating to a medical flying service, it asked the ICRC to continue its study of the subject and to add the views of the Governments to the documentation.

Commission II dealt with only part of the problems of guerrilla warfare, and decided to confine its study to international armed conflicts. It was also to have concerned itself with the problem of the protection of victims in armed conflicts not of an international character, i.e. civil wars. After an attempt to define "armed conflict not of an international character", it reached the conclusion that there was a case for developing the provisions of Article 3 common to the four Geneva Conventions of 1949.

Commission II also studied the problem of foreign intervention in armed conflict not of an international character. Does foreign military intervention, whether it be in favour of the insurgents or in aid of the established government, transform the conflict into an international armed conflict to which the body of humanitarian law should be made applicable ?

Lastly, Commission II grappled with the problems related to wars of liberation. On the other hand, it did not discuss the problem of internal disturbances which was on its agenda.

Commission III, which was responsible for studying the problem of the protection of the civilian population against dangers of hostilities, made an attempt to give as wide a definition as possible to the concept of "civilian population", but it had to conclude that protection against dangers of hostilities should, in the first place, be provided by a reaffirmation of the limitations which, for humanitarian reasons, should be placed on the conduct of hostilities. The matter is therefore indisputably connected with the problem of prohibiting the manufacture and use of weapons of mass destruction, which was being discussed by the United Nations Disarmament Conference.

The Commission also decided to reaffirm the precautions that belligerents should take to avoid exposing the civilian population to the dangers inherent in military operations. The Commission therefore

considered the establishment of refuge areas and the protection which should be afforded to relief bodies coming to the aid of the civilian population.

The protection of journalists engaged on dangerous missions was, in the opinion of the experts, mainly a matter for the United Nations.

Lastly, the Commission tackled the problem of the behaviour of combatants, the rules regarding which are contained in the 1907 Hague Regulations. The experts called upon the ICRC to study the rules with a view to reaffirming them and bringing them up to date.

The Conference expressed the wish that the problem of the application of the existing law should be considered by a special commission. This led to the setting up of Commission IV to study, *inter alia*, the problem of the supervision of the application of the Geneva Conventions of 1949. The experts considered what steps should be taken to ensure a more satisfactory operation of the system of Protecting Powers and their substitutes. They also studied the problem of strengthening the provisions relating to the repression of breaches of the Geneva Conventions of 1949, and the question of reprisals which, although prohibited against persons and objects protected under the Geneva Conventions of 1949, are not yet prohibited by the existing law when carried out by belligerents in the conduct of hostilities. Lastly, all experts shared the view that the dissemination of the humanitarian rules applicable in case of armed conflicts was one of the essential measures designed to strengthen the application of law ; they submitted suggestions relating, in particular, to the teaching of humanitarian rules among the armed forces and the civilian population.

Noting that the experts were unable to examine all the subjects on the agenda, and that the ICRC was called upon to pursue the studies with a view to submitting Draft Protocols regarding most of the subjects, the President of the ICRC announced at the closing meeting that the ICRC proposed to convene a further Conference of Government Experts in the spring of 1972.

### **Drafting of the Report on the Work of the Conference**

During the months which followed the Conference, the ICRC drew up a " Report on the Work of the Conference ", based on the reports of the various Commissions. It was published in English, French and

Spanish, and was sent to all States Parties to the Geneva Conventions of 1949, as well as to the Secretary-General of the United Nations.

## **Preparation of the Second Session of the Conference**

### INVITATION TO THE SECOND SESSION OF THE CONFERENCE OF GOVERNMENT EXPERTS

In accordance with the opinion of a large number of experts, who urged that it would be desirable to widen the circle of participating States, the ICRC, when despatching the " Report on the Work of the Conference ", on 27 September 1971, invited all States which were then formally bound by the Geneva Conventions of 1949 to send experts to the second session of the Conference of Government Experts. This session is scheduled to be held in Geneva from 3 May to 3 June 1972.

### DRAWING UP OF DRAFT PROTOCOLS

Pursuant to the recommendation made by the experts at the first session, the ICRC drew up the text of two Draft Protocols :

(a) *Draft Additional Protocol to the Four Geneva Conventions of 12 August 1949*

This Draft Protocol, applicable in case of armed international conflict, consists of six parts comprising 88 articles.

(b) *Draft Additional Protocol to Article 3 common to the Four Geneva Conventions of 12 August 1949*

This Draft Protocol, applicable in case of an armed conflict not of an international character, consists of ten chapters comprising 48 articles.

Further, there is a *Draft Resolution concerning Disarmament and Peace to be annexed to the Final Act of a possible Diplomatic Conference*.

The two Protocols and the Draft Resolution are embodied in a volume entitled " Basic Texts ".

Brief comments on each article are contained in two further volumes entitled " Commentary ". These two volumes, along with the

documents prepared for the first session, will be the basic documentation for the experts at the second session of the Conference.

#### **MEETING OF NON-GOVERNMENTAL ORGANIZATIONS**

To enable non-governmental organizations particularly interested in the work of the ICRC for the development of international humanitarian law in armed conflicts to state their views and experience, the ICRC held a consultative meeting of such organizations in Geneva, on 18 and 19 November 1971.

At that meeting, the non-governmental organizations urged the need for better protection for the civilian populations, and particularly for children, against the dangers arising from hostilities ; the need for arrangements permitting the internment of prisoners of war in neutral countries ; the need to secure the same treatment for all categories of detainees in internal conflicts ; the need of new provisions concerning supervision, and the need for closer co-operation between the ICRC and the intergovernmental and non-governmental organizations.

#### **RELATIONS WITH THE UNITED NATIONS**

The proceedings of the twenty-sixth session of the United Nations General Assembly were followed by Mr. A. Dominique Micheli, ICRC Delegate to International Organizations<sup>1</sup>. Mr. Claude Pilloud, Director, attended in particular the discussions on " Respect for Human Rights in Armed Conflicts ", which was item 49 of the agenda.

The Secretary-General of the United Nations reviewed the work of the Conference of Government Experts convened in Geneva in 1971 by the ICRC, whose Report was distributed to all the members of the U.N. Third Committee for the study of the problem of " Respect for Human Rights in Armed Conflicts ". He also drew up a report on the subject on which Member States of the United Nations were asked to comment.

Mr. René Jean Wilhelm, Assistant Director of the ICRC, attended a meeting of experts which the Secretary-General of the United Nations convened in New York from 9 to 15 September, to consider the problem of the protection of journalists engaged in dangerous missions in areas of armed conflict.

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<sup>1</sup> See p. 92.



The twenty-sixth session of the United Nations General Assembly adopted *three resolutions* on item 49 of the agenda. The first two resolutions refer to the work of the first session of the Conference of Government Experts and to the ICRC's preparations for the second session of the Conference, in May 1972. A third resolution deals with the protection of journalists engaged in dangerous missions<sup>1</sup>, discussion of which will be resumed by the Commission on Human Rights in 1972.

Resolution 2852 (XXVI) includes the following preambular paragraphs :

*" The General Assembly,*

....

*Having taken cognizance* of the report prepared by the International Committee of the Red Cross on the work of the Conference of Government Experts,

*Welcoming* the decision of the International Committee of the Red Cross to convene in 1972 a second session of the Conference of Government Experts with broader participation to include all the States parties to the Geneva Conventions of 1949 and to circulate in advance of that session a series of draft protocols,

*Stressing* the importance of further close co-operation between the United Nations and the International Committee of the Red Cross,

...."

Operative paragraphs 3 and 4 of this resolution read as follows :

" 3. *Invites* the International Committee of the Red Cross to continue the work that was begun with the assistance of government experts in 1971 and, taking into account all relevant United Nations resolutions on human rights in armed conflicts, to devote special attention, among the questions to be taken up, to the following :

(a) The need to ensure better application of existing rules relating to armed conflicts, particularly the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the four Geneva Conventions of 1949, including the need for strengthening the system of Protecting Powers contained in such instruments ;

(b) The need for a reaffirmation and development of relevant rules, as well as other measures to improve the protection of the civilian population during armed conflicts, including legal restraints and restrictions on certain methods of warfare and weapons that have proved particularly perilous to civilians, as well as arrangements for humanitarian relief ;

(c) The need to evolve norms designed to increase the protection of persons struggling against colonial and alien domination, foreign occupation and racist régimes ;

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<sup>1</sup> See *International Review of the Red Cross*, January 1972, p. 39.

(d) The need for development of the rules concerning the status, protection and humane treatment of combatants in international and non-international armed conflicts and the question of guerrilla warfare ;

(e) The need for additional rules regarding the protection of the wounded and sick ;

4. *Expresses the hope* that the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts will result in specific conclusions and recommendations for action at the government level ;

....”

## **INTERNATIONAL RED CROSS MEETINGS IN MEXICO CITY**

The thirty-first session of the League Board of Governors was held in Mexico City from 12 to 16 October 1971. The ICRC was represented by Mr. Jean Pictet, Vice-President, and Mr. Claude Pilloud, Director.

The International Red Cross Council of Delegates met on 8 October, and the ICRC was represented by its two Vice-Presidents, Mr. Jean Pictet and Mr. Harald Huber, as well as by Mr. Jean-Louis Le Fort, Secretary-General, and Mr. Claude Pilloud. The first item on the agenda was “ Development of Humanitarian Law ”. Mr. Pictet submitted a progress report on the subject.

The National Societies widely approved the work of the ICRC as well as the idea of calling a further Conference of National Societies such as that held in The Hague in 1971, before the second session of the Conference of Government Experts.

The resolutions adopted by the delegates included resolution 1, “ Role of National Societies in the Development of International Law ”, and resolution 2, “ Teaching of International Humanitarian Law ”.<sup>1</sup>

Item 2 of the agenda referred to joint relief action. Mr. Kai Warras, Secretary-General of the Finnish Red Cross and co-ordinator of the Jordan relief operation in 1970, submitted a final report on that operation.

At the close of its deliberations, the Council of Delegates adopted a resolution recommending “ the preparation of a joint relief operational plan between the ICRC and the League taking also into consi-

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<sup>1</sup> See *International Review of the Red Cross*, Dec. 1971, p. 676.

deration the resources of the National Societies in personnel, material equipment and funds ”.

Item 3 of the agenda was the “ Reappraisal of the role and structure of the Red Cross ”. Mr. Jean-Louis Le Fort and Mr. Henrik Beer, Secretaries-General of the ICRC and the League, submitted an interim report on the progress made in the study.

## **RELATIONS WITH VARIOUS INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS**

Pursuant to resolution XIII of the International Conference of the Red Cross (Istanbul, 1969), which urged the ICRC to collaborate with the United Nations and “ all other official and private organizations with a view to ensuring the co-ordination of such studies ”, the ICRC attended several conferences and meetings in 1971.

From 2 to 4 September, the International Institute of Humanitarian Law, at San Remo, held a colloquium on the problem of embodying humanitarian rules in military instructions. The ICRC was represented by Mr. Frédéric de Mulinen, Chief of Division, and Mr. Michel Veuthey, Legal Adviser.

From 24 to 26 September, the Tenth International Assembly of Amnesty International was held in Luxembourg. It was presided over by Mr. Sean MacBride, President of the Executive Committee. The ICRC was represented by Mrs. Danièle Bujard, Legal Adviser. Several resolutions were adopted relating, *inter alia*, to the treatment of prisoners, capital punishment and conscientious objection.

Mr. Antoine Martin, Assistant Head of the Legal Division, attended the Parliamentary Conference on Human Rights convened in Vienna, in October 1971, by the Consultative Assembly of the Council of Europe. The purpose of the conference was to consider what steps should be taken, at national and European level, to preserve and develop human rights as defined in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The International Labour Office convened a conference at Runö, on 26 and 27 August, to review the work and the efforts of the States concerned directed at the prohibition of atomic, bacteriological and chemical weapons. The ICRC was represented by Mr. René-Jean Wilhelm, Assistant Director.

Lastly, mention should be made of the sixth session of the *Commission médico-juridique de Monaco*, from 15 to 17 April, which was attended by Mr. Jean Pictet, Vice-President.

## **OTHER ACTIVITIES**

### **Further accessions to the Geneva Conventions**

In 1971, three States formally became Parties to the Geneva Conventions of 1949. These were Fiji (declaration of continuity dated 9 August 1971, with effect as from 10 October 1970), Bahrain (accession on 30 November 1971, with effect as from 30 May 1972), and Burundi (declaration of continuity dated 27 December 1971, with effect as from 1 July 1962).

The dates are those on which the official instruments were received by the Swiss Federal Council.

Thus, by the end of the year 130 States were Parties to the Geneva Conventions of 1949. When Bahrain's accession takes effect, on 30 May 1972, there will be 131.

### **Recognition of National Societies**

On 7 September, the ICRC announced the official recognition of the Lesotho Red Cross Society, which brought the number of National Societies to 115.

## **Documentation and Dissemination Division**

### **DISSEMINATION OF PRINCIPLES AND CONVENTIONS**

#### **TEACHING OF INTERNATIONAL HUMANITARIAN LAW IN UNIVERSITIES**

On 30 March 1971, the ICRC issued a circular in which it urged all National Societies to examine ways and means of introducing or developing the specific study of international humanitarian law in general and of the Geneva Conventions in particular in their countries' universities. Two questionnaires were attached to the circular : the first was